

When recorded mail to:
Gemstone Homes, Inc.
2620 West 450 North
Hurricane, UT 84737

00838659 BK 1579 Pg 0348
RUSSELL SHIRTS * WASHINGTON CO RECORDER
2003 SEP 03 15:38 PM FEE \$56.00 BY AMH
FOR: SOUTHERN UTAH TITLE CO

**THIRD AMENDMENT AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS OF
SHADOW CANYON
PHASE I,
A RESIDENTIAL PLANNED UNIT DEVELOPMENT**

3rd This instrument is made and executed in Hurricane, Washington County, State of Utah, this day of September 2003, by Shadow Glen 420, Inc. a Nevada corporation, hereinafter called "Declarant" by virtue of that certain Assignment of Declarant's Interest executed on January 31, 2003 and recorded as instrument 00801973 in Book 1520 Pages 0158-0161 and does hereby amend and restate the Declaration of Covenants, Conditions and Restrictions of Leisure Time Estates Phase I, executed on the 21st day of October 1996, by L & D Development, Inc., a Utah Corporation and recorded in Book 1046 pages 306 through 332, on the 24th day of October 1996 ; which was thereafter amended by instrument dated the 19th day of May 1998 and recorded in Book 1216 pages 0448 through 0451 on the 20th day of May 1998 and by instrument recorded as No. 00693259 on August 10, 2000 in Book 1376 pages 2200-2222 all in the records of the Washington County Recorder, State of Utah all of which are hereafter collectively called "Declaration."

RECITALS

A. WHEREAS that certain subdivision entitled "Leisure Time Estates (Phase 1), a Planned Unit Development" was duly recorded at the Office of the Washington County Recorder on August 1, 1996, at Book 1023 Page 640, Entry No. 539885; and

B. WHEREAS the name of the subdivision was authorized to be changed by an Ordinance of the City Council of Hurricane, Utah to "SHADOW CANYON Phase I" and pursuant thereto an amended plat was recorded as Instrument Number 659794 in Book 1344 page 2036 on the 27th day of August 1999 in the records of the Washington County Recorder, State of Utah; and

C. WHEREAS the SECOND AMENDMENT AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF SHADOW CANYON PHASE I, A RESIDENTIAL PLANNED UNIT DEVELOPMENT was duly recorded at the Office of the Washington County Recorder on August 10, 2000, as instrument 693259, book 1376 Pages 2200-2222; and

D. WHEREAS this THIRD AMENDMENT AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF SHADOW CANYON PHASE I, A RESIDENTIAL PLANNED UNIT DEVELOPMENT shall supplement, amend and supercede that certain Declaration herein above referenced

SOUTHERN UTAH TITLE COMPANY
ACCOMMODATION RECORDING ONLY
NOT EXAMINED

E. WHEREAS the Declarant owns that certain real property in the city of Hurricane, Washington County, Utah, which is more particularly described below.

F. Declarant will convey the property subject to certain protective covenants, conditions, restrictions, reservations, liens, charges, and assessments as provided hereafter.

G. The Shadow Canyon Homeowners Association, a Utah Non-Profit Corporation ("Association"), has been formed to administer the terms of this Declaration. Owners of lots within the property described below shall be members of the Association.

H. It is the desire and intention of Declarant to convey certain common area to Association.

I. Declarant intends to annex expandable land whose owners will become members of Shadow Canyon Homeowners Association and will be entitled and subject to all rights, powers, privileges, covenants, restrictions, easements, charges, and lies hereinafter set forth.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the Covenants, Conditions and Restrictions hereinafter set forth and in the plats recorded heretofore and to be recorded as follows:

DECLARATION

Declarant declares that all of the property described below and all expandable property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, reservations, assessments, charges, liens, and to the Official Plat Map heretofore recorded. This Declaration is made 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 upon 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 properties are located in Hurricane, Washington County, Utah, and are more particularly described as:

SHADOW CANYON, PHASE I, A RESIDENTIAL PLANNED UNIT DEVELOPMENT by amended plat recorded as Instrument Number 659794 in Book 1344 page 2036 on the 27th day of August 2000 in the records of the Washington County Recorder, State of Utah pursuant to an Ordinance of the City Council of Hurricane, Utah, which authorized a name change from LEISURE TIME ESTATES, PHASE 1, A RESIDENTIAL PLANNED UNIT DEVELOPMENT, according the map recorded August 1, 1996 in Book 1023 Page 640 on file in the records of the Washington County Recorder; and

The properties shall also include all expandable land as more particularly described as follows:

Beginning at the Northwest Corner of the NE 1/4 of Section 15, Township 42 South, Range 13 West, Salt Lake Base and Meridian, and running thence East, along the Section Line, 444.62 Feet; thence S. 4 degrees 06 59" E. 1323.42 feet, more or less, to the South line of the NW 1/4 of said NE 1/4; thence West, along said South line, 539.62 feet, more or less to the Southwest Corner of said NW 1/4 NE 1/4; thence N.0 degrees 01' E., along the 1/4 Section line, 1320 feet, more or less, to the point of beginning. Containing 14.91 acres, more or less.

and such other parcels as chosen by the Declarant to be included in Association.

**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" shall mean and refer to the governing board of the Association.

Section 2. "Common Area" shall mean all real property (including the improvements thereto, if any) owned by the Association or hereafter acquired for the common use and enjoyment of the members and not dedicated for use by the general public. The Declarant may increase the common area by deeding additional property to the Association. Specifically exempted from common area are lots and dedicated public streets which are identified on the official plat of "SHADOW CANYON Phase I" and/or plats prepared pursuant to Article X, as recorded on the official records of the Washington County Recorder 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 are to occur in conjunction with the expansion of the project. Common Area shall also include all land which the Association has an easement right in, if any.

Section 3. "Conveyance" shall mean and refer to actual conveyance of fee title to any Lot to any owner by a warranty deed or other document of title and shall also mean the execution an installment sales contract.

Section 4. "Declarant" shall mean, L & D Development Inc., a Utah Corporation, its successors or assigns, (1) by written agreement shall be given Declarant's rights and (2) acquire more than one undeveloped Lot from the Declarant for the purpose of the development.

Section 5. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the properties, and any amendments or supplements thereto, recorded in the office of the Recorder of Washington County, State of Utah.

Section 6. "Expandable Land" shall mean and refer to those portions of land contiguous to the Property as set forth on the Plat as may from time to time be amended, and such other land upon which Declarant may expand the Project in one or more phases.

Section 7. "Home" shall mean and refer to any detached single-family residential dwelling on a lot within the Project. Multiple family dwellings are not included in this definition and are not allowed in the Project.

Section 8. "Homeowners Association" or "Association" shall mean and refer to Shadow Canyon Homeowners Association, its successors and assigns, a Utah non-profit corporation.

Section 9. "Lot" shall mean and refer to any plot of land shown upon any recorded plat map of the Properties and specifically excepting Common Area and areas dedicated to the use of the general public.

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

Section 11. "Mortgagee" shall mean and refer to any person named as a first mortgagee or beneficiary, owner or holder of a first deed of trust.

Section 12. "Owner" shall mean and refer 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 Properties, including contract buyers, but excluding those having an interest merely as security for the performance of an obligation.

Section 13. "Plat" or "Plat Map" shall mean and refer to the Phase I portion of "Shadow Canyon" and/or plats prepared pursuant to Article X, as recorded in the office of the County Recorder of Washington County, 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 are to occur in conjunction with the expansion of the Project as provided herein.

Section 14. "Properties," "Property" and "Project" shall mean and refer to that certain real property herein before described and such additions thereto as many hereafter be subject to this Declaration or any supplements to this Declaration which occur in conjunction with the expansion of the Project as provided herein.

Section 15. "Supplemental Declaration" shall mean and refer to any supplementary declaration of covenants, conditions, and restrictions, or similar instrument, which extends the provisions of this Declaration to all or any portion within the expandable land and containing such complimentary or amended provisions for such additional land as are herein required by this Declaration.

Section 16. "Utilities" shall mean 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. Every lot owner shall have a right and easement of use and enjoyment in and to the Common Area. This Easement is appurtenant to and passes with 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 facilities situated upon the Common Area. Fees charged by the Association shall in no way affect its status as a non-profit corporation.

(b) The right of the Association, in accordance with its Articles of Incorporation and Bylaws and with the approval of two-thirds of the membership to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said property; the rights of such mortgage in said property to be subordinate to the rights of the Owners

hereunder.

(c) The right of the Association to suspend the voting rights of a member and to deny said member use of the common area or any recreational facility for any period during which any assessment 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 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 Area owned by the Association 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 Area by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication or transfer shall be effective unless (1) all owners consent in writing to the dedication or transfer or (2) an instrument has been signed by two-thirds (2/3) of the members of both classes, agreeing to such dedication, sale, or transfer and the legislative body of the Hurricane City approves the Plat change that is necessitated by the dedication, sale, or transfer, at a public hearing held in accordance with Utah Code Ann. §10-9-801 et. seq. (1953, as amended).

(e) The right of the Association 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 Members. The granting of an Easement for public utilities or other public services consistent with the intended use of the Common Area is not a transfer within the meaning of this clause. No such abandonment, petition, subdivision, encumbrance, sale, or transfer shall be effective unless (1) all owners consent in writing to such abandonment, petition, subdivision, encumbrance, sale or transfer or (2) an instrument has been signed by two-thirds (2/3) of the members of both classes and the legislative body of the City of Hurricane approves the Plat change necessitated by the abandonment, partition, subdivision, encumbrance, sale, or transfer at a public hearing held in accordance with Utah Code Ann. §10-9-801 et. seq. (1953, as amended).

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

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

(h) The right of the Association to make, disseminate post or otherwise publish and enforce reasonable rules pertaining to the regulation and use of all common areas by owners, guests, invitees and tenants of owners, including but not limited to, establishing reasonable swimming pool use restrictions which may include restricting its use to adults only.

(i) The terms of this Declaration.

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

(k) The right of the Association to enter into agreements or leases which provide for use of the Common Areas and facilities by non-profit or profit organizations, or individuals, or for charitable purposes, for a fee to be determined by the Board of Trustees from time to time..

(l) The right of City of Hurricane and any other governmental entity or quasi-governmental body having jurisdiction over the property to access and to have the right of ingress and egress over open spaces and Common Areas contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service.

Section 2. Delegation of Use. Any member may designate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, his guests, or contract purchasers who reside on the property. All such use by family members, tenants, guests or contract purchasers shall be subject to this Declaration, the Bylaws and the Rules and Regulations to be promulgated by the Board of Trustees. Damage caused to the Common Area and facilities, including personal property owned by the Association, by a member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by the member, shall create a debt to the Association. Debts owed to the Association as a result of Damage to the Common Area and facilities shall be an assessment charged to the Lot owner as provided in Article IV.

Section 3. Title to the Common Area. The Declarant covenants that it will convey fee simple title, subject to consent from lien holders having a security interest therein, the Common Area to the Association prior to transferring of the last Lot. The Declarant further covenants and agrees that it will discharge all liens and encumbrances on said Common Area on or before the sale and closing of the last Lot within the Project as the same may be expanded and additional phases to be annexed from time to time.

In accepting the Deed, the Association covenants to fulfill all the terms of this Declaration, to maintain the Common Area in good repair and condition at all times and to operate the Common Area at its own expense in accordance with high quality standards. Said conveyance of the Common Area shall also be subject to, (i) any state of facts an accurate survey may show, and (ii) Easements and rights-of-way of record or in equity.

Section 4. Rules. A Board of Trustees shall have the authority to promulgate rules and regulations for the governance of the properties, and persons within the properties. These rules of the Association shall be available for inspection and copying by the members during reasonable hours.

**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. Classes of Membership. The Association shall have two classes of membership:

- (a) **Class A.** Class A member(s) shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person

owns an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. A vote cast at an Association meeting by any of such co-owners, whether in person or in proxy, shall be conclusively presumed to be both 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 an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

(b) Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to a Class A membership on the happening of either of the following events, whichever occurs earlier:

1. When ninety percent (90%) of all lots owned in the project by Declarant are sold; or
2. On December 31, 2010.

(c) Changes in Voting Procedure. If Declarant shall exercise his option to add additional lots by platting additional phases, then at such time as additional subdivision plats are filed, the voting shall be adjusted accordingly, including that developer may regain his 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.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant and each subsequent 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: (a) annual assessments, (b) special assessments, (c) insurance assessments, if any, (d) additional assessments, (e) individual assessments, (f) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this Declaration, and (g) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. The assessments shall be a charge on the land and shall be a continuing lien on the Lot against which such assessment is made. Each such assessment shall also be the personal obligation of the person who is owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessment shall not pass to a Lot owner's successor in Title unless expressly assumed by them. Each assessment period shall commence at the closing of the purchase of a Lot and amounts shall be prorated to the first of the following month. Unless otherwise provided for this Declaration or by the Board of Trustees, assessments are due the first day of each monthly period and are late at the close of business on the tenth day of the same monthly period at which time a Ten Dollar (\$10.00) late penalty is added to the assessment amount.

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 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;

repair and maintenance of the common areas; establishing and funding a reserve to cover major 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. Until January 1, 1997, the base annual assessment shall be Fifty Dollars(\$50.00)per lot.

(a) From and after January 1, 1997, the maximum annual assessment may be increased by the Board of Trustees each year not more than fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1, 1997, the maximum annual assessment may be increased more than fifteen percent (15%) only by a vote of two-thirds (2/3) of members who are voting in person or by proxy, at a meeting duly called for this purpose. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken incident to a merger or consolidation which the Association is authorized to participate in under its Articles of Incorporation.

(c) The Board of Trustees shall fix the annual assessment at an amount not in excess of the maximum.

(d) Each lot which has been conveyed to an owner and is occupied shall be assessed according to the schedule set forth above. Each un-occupied and/or unsold lot shall pay ten percent (10%) of the full association fee. Should the Association need additional funds to pay it's operating expenses, the Declarant may then advance such amounts to the Association in form of a loan, at a reasonable interest rate, which shall then be paid back the Declarant from future Association fees.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association with approval of two-third (2/3) of members may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement, upon the Common Area, including fixtures and personal property related thereto and for such other purposes reasonably necessary to fulfill the intent of this Declaration.

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 cable television service and for the purpose of repairing and restoring the damage or disruption resulting to Common Areas from the activities of utilities in maintaining, repairing or replacing utility lines and facilities thereon.

Section 6. Individual Assessments. Each owner of a lot shall also be assessed from time to time for (i) all fines, penalties and damages to which its owner is subject as a result of a violation of the terms of this Declaration and rules and regulations prescribed by the Board for the use of the Common Area, (ii) for damages caused to the Common Area by the negligence or willful misconduct of such owner, and (iii) for any other liability, indebtedness or other obligation of the owner to the Association arising under the provision of this Declaration. Notice of all Individual Assessments shall be given by the Board to the Owner of each lot assessed within fifteen (15) days of the adoption of the Individual Assessment. Individual Assessments shall be due and payable within thirty (30) days following written notice thereof by the Board.

Section 7. Notice and Quorum for any Action Authorized Under Sections 3, 4, and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3, 4, or

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 sixty-six and two thirds percent (66-2/3%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be one-half (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, special and capital assessments shall be fixed at uniform rates for all lots and may be collected on a monthly basis.

Section 9. Regular Assessments: Due Dates. 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. Any assessments, including late penalty charges, not paid within thirty (30) days after the due date, thereof shall be delinquent and shall incur a \$25.00 late fee and bear interest from the due date at the rate of eighteen percent (18%) per annum until paid. The Association shall have the remedies provided in the subsections below if payment is not made when due.

(a) **Remedies.** For delinquent assessments the Association shall be entitled to (1) bring an action at law against the owner, personally obligated to pay such delinquent assessment without waiving the lien or assessment or (2) foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of selling Deeds of Trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (3) withhold, interrupt, or terminate any or all services performed by the Association in behalf of the delinquent member.

(b) **Additional Remedies.** In addition to the remedies stated above, Trustees may assess a late fee for each delinquent installment which shall not exceed twenty percent (20%) of the installment

(c) **Costs and Attorneys Fees.** The costs and expenses of any judicial action, arbitration, sale or foreclosure, preparation of Notice of Lien, and any other costs and expenses directly or indirectly related to the delinquent payment, including reasonable attorneys fees, shall be an assessment charged to the Lot owner.

(d) **Right to Bring Action.** Each such 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 trust deed 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, sell 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 Area or abandonment of his Lot.

Section 12. Subordination of the 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 Area. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V SEPARATION FENCES

Section 1. Separation Fences. Declarant may construct, at its discretion, landscaping fences which co-border the Project and separate the Project from other developments and public rights-of-way, and for the purpose of separating Common Areas from Lots. Such fences shall be deemed separation fences and shall be maintained as part of the Common Area. Separation fences may also include yard fences constructed by Lot Owners. It is the intent of the Declarant that all such separation fences shall be deemed to be owned and to be maintained by the Lot Owner

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 fences and liability for property damage due to negligence or acts of omissions shall apply thereto.

Section 3. Repair and Maintenance. Other than those constructed by Declarant, the Lot owner shall be responsible for the cost of repair and maintenance of separation fences. No changes or alterations to separation fences shall be made by lot owners without approval of the Architectural Control Committee. The Association shall repair or maintain separation fences constructed by Declarant and may repair and maintain separation fences constructed by a Lot owner at the Lot owner's expense and all costs reasonably incurred shall become a lien upon such owner's lot and shall be added to the assessment as provided in Article IV.

Section 4. Destruction by Fire or Other Casualty. If a separation fence is destroyed or damaged by fire or other casualty, any owner or the Association who has used the fence may restore it, and if the other owners or the Association thereafter makes use of the fence, 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 others 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 acts causes a separation fence 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 fence each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VI

ARCHITECTURAL CONTROL AND BUILDING RESTRICTIONS

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 homes and landscaping within the property harmonize with existing surroundings and structures. The committee need not be composed of owners. If such a committee is not appointed, the board itself shall perform the duties required of the committee. The Declarant shall have the right to appoint members of the Architectural Control Committee until the happening of either of the following events, whichever occurs earlier: (1) when ninety percent (90%) of the lots owned in the project by the Declarant are sold, or (2) on December 31, 2010.

(a) **Submission to Committee.** No home, accessory or addition to a home, landscaping, or other improvement of a lot shall be constructed, maintained, or accomplished, and no alteration, repainting or refurbishing of the exterior of any home shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee. The Board of Trustees of the association is authorized to determine and require the payment of a reasonable submission fee, if the board finds that to do so would be in the best interests of the Project and the Association.

(b) **Meetings of Committee.** The Architectural Committee shall meet from time

to time as may be necessary to perform its duties hereunder. Any action taken by the Architectural Committee shall require the written approval of a majority of its members.

(c) **Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the committee 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 committee shall have the right to refuse to approve any such plans or specifications and shall have the right in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of said building or other structure so planned and the outlook from adjacent or neighboring property. The board may formulate general guidelines and procedures. The adopted guidelines and procedures shall be incorporated in the book of rules and regulations adopted by the board and the Architectural Control Committee, or the board, as the case may be, shall act in accordance with such guidelines and procedures.

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

(e) **Construction.** Once begun, any improvements, construction, landscaping, or alterations approved by the committee 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 Area in the vicinity of the activity.

(f) **Disclaimer of Liability.** Neither the Architectural Control Committee, 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:

- (1) The approval or rejection of, or the failure to approve or reject, any plans, drawings or specifications;
 - (2) The development or manner of development of any of the property;
- or
- (3) Any engineering or other defect in approved plans and specifications.

(g) **Non-Waiver.** The approval of the Architectural Control Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Control Committee to disapprove any similar plans and specifications subsequently submitted.

(h) **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. Declarant shall further have the right to designate the location and design of any common area amenities, however Declarant shall not be required to provide any such amenities by virtue of this Section.

Section 2. Building Restrictions.

- (a) **Building Type and size:** All lots shall be used only for single family residential

purposes, and no professional or commercial use shall be made of the same, or any portion thereof, nor shall any resident's use of a lot endanger the health or disturb the reasonable enjoyment of any other owner or resident. The building, or structure permitted to be erected, placed or permitted to be located within the project shall be as follows:

(1) On 37 X 80' Lots (or smaller) a building or structure of not less than 800 Sq. Ft. shall be erected. Upon application, the Architectural Control Committee may approve a Recreational Vehicle pad adjacent to the structure. In no case may this pad be used for permanent living and is designated to be for storage of the owner's or guest RV. The Architectural Control Committee may require an owner to remove an unsightly RV or if it is determined that it is not licensed, or is not capable of being used and transported in the way it was designated.

(2) On 55' X 100' Lots a building or structure, of not less than 900 Sq. Ft. is permitted. Recreational vehicle pads for parking may be permitted.

(3) On 62' X 100' Lots a building or structure of not less than 1000 Sq. Ft. is permitted. Recreational vehicle pads for parking may be permitted.

(4) On 68' X 100' Lots a building or structure of not less than 1000 Sq. Ft. is permitted. Recreational vehicle pads for parking may be permitted.

Each building or structure shall have an attached or structurally integrated garage sufficient to park at least two vehicles. All buildings and structures are to be constructed in accordance with the zoning and building ordinances of the City of Hurricane. Upon application, the Architectural Control Committee may approve a building or structure to be constructed, provided the building or structure complies with the set back and other requirements of this declaration, the Committee finds that the design is in overall harmony with the project, and that the approval of the application is in the best interest of the project.

(b) Building Location: All buildings shall be located on all lots so as not to be in violation of Hurricane City ordinances with respect to minimum setbacks and the following additional requirements:

- (1) Fifteen feet (15') Front Setback
- (2) Ten feet (10') Rear Setback
- (3) Five feet (5') Side Setback

The placement of any building or structure on a lot must be approved by Architectural Control Committee.

(c) Driveways and Walkways: Driveways and walkways shall be constructed out of materials commonly used for such purposes as approved by the Architectural Control Committee. There shall be sufficient driveway parking of not less than two (2) vehicles per lot. All recreational vehicles stored on a Lot must be provided sufficient parking space and be approved by the Architectural Control Committee. Recreational vehicles must not be older than 10 years and be maintained in a well kept and operable condition.

(d) Front Yard Lights: A post light shall be permitted within the front set back area of each lot. The post light is to be provided and maintained by the lot owner subject to placement and design approval by the Architectural Control Committee.

(e) **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.

(f) **Yard Fences:** Yard fences shall be of block wall or wrought iron construction and shall substantially conform in style and construction to the fences of the Project. They shall be red or such other color which is in harmony with the Project and shall be approved by the Architectural Control Committee as to style, materials, color height, and placement on the Lot. Yard fences shall not exceed six (6') feet in height. Privacy fence may be approved by the Architectural Control Committee. Any pre-existing vinyl or other style fencing may remain until such time as the nonconforming fence is in need of replacement whereupon it shall be replaced with conforming fencing.

General rules of law and written agreements shall apply to yard walls and fences in relation to maintenance, repair, and liability for negligent acts and omissions.

(g) **Temporary and Other Structures:** No structure of a temporary nature; trailer, bus, house, tent, shack, garage, or other outbuilding shall be used at any time as a residence either temporarily or permanently. No old or second-hand structures shall be moved onto any of said lots. It being the intention hereof that all dwellings and other buildings to be erected on said lots, or within the Project shall be of new manufacture or construction and of good quality workmanship and materials.

(h) **Landscaping:** Prior to occupancy the front half area of each Lot shall be landscaped. Landscaping on each Lot shall require low water maintenance and subject to irrigation by an automatic drip system. Within three (3) months after the completion of the construction of any home upon the property, the homeowner must have completed the landscaping of the Lot. The planting of trees, shrubs and grass is allowed subject to compliance with the restrictions and conditions contained herein and also with reasonable rules and regulations which may be established by the Architectural Control Committee. All landscaping shall be compatible with other homes in the Project. Landscape elements on corner lots shall be located so as not to create a hazard for the movement of vehicles or pedestrians along the streets. All landscaping must be approved by the Architectural Control Committee and shall be properly cared for by the owner to remain healthy and alive. Should an Owner fail to comply with the provisions of this paragraph, the Trustees shall have the right enter upon such Lot to have landscaping completed on the Lot at the Owner's expense. The cost of such installation shall be added to and become part of the assessment to which such Lot is subject.

(i) **Architectural Controls:** No construction shall commence on any lot until the construction plans and specifications and plans showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to Lot placement, topography and finish grade evaluation.

(j) Construction Materials: In order to promote a harmonious community development and protect the character of the neighborhood, the Architectural Control Committee may determine construction material standards and guidelines applicable to the property including but not limited to the following:

1. Exterior Materials. Exterior construction materials, will be limited to stucco or other materials approved for use by the Architectural Control Committee. Approval shall be based on the appearance and style of the structure, reserving to the Architectural Control Committee the right to suggest modifications to enhance the appearance of the structure.

2. Roofing Material. Roofing material shall be terra cotta tile or other materials of a quality nature approved for use by the Architectural Control Committee.

(k) Architectural Restrictions. All structures placed upon or constructed upon a Lot, including but not limited to, additions, patios, carports, garages, porches, and utility sheds must be constructed of the same or compatible materials to as to incorporate a unified design theme compatible with the project.

(l) Maintenance of Lot During Construction: Contractors or sub-contractors and owners/builders are required to clean up the site daily to maintain a clean work site during construction or are required to cleanup daily.

(m) Lateral and Subjacent Support and Drainage: An owner's activities which effect the lateral or subjacent support, or both, of adjacent landowners shall be responsible for damages proximately caused by such activities. Owners shall be responsible for all damage proximately caused by drainage from their lot(s) to adjacent landowners. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow or drainage channels obstruct or retard the flow of water through drainage channels.

(n) Rain Gutters Required: Each structure constructed or placed upon a lot shall include a rain gutter system that provides drainage to the curb.

Section 3. Damages. Any damage inflicted on existing improvements such as curbs, streets, concrete sidewalks, by the owner or their guests, assigned, 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 not repaired by the owner shall be an assessment to the lot as provided in Article IV.

**ARTICLE VII
OPERATION AND MAINTENANCE**

Section 1. Maintenance of Common Areas. The Common Areas shall be maintained by the Association 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.

Section 2. Maintenance of Right of Way. The Declarant shall landscape the public right-of-way located between sidewalk and curb, if there is any such area. The Association shall maintain the landscaping in a good and orderly manner. The public right-of-way is not Common Area

of the Project.

Section 3. Maintenance By Owner. Each owner shall be solely responsible for maintenance of his Lot, landscaping, and exterior of his home. In the event any owner shall fail to perform this maintenance in a manner consistent with the terms of this Declaration, the Trustees shall have the right enter upon such Lot to have maintenance performed on the Lot, landscaping and exterior of the home. The cost of such maintenance shall be added to and become part of the assessment to which such Lot is subject.

Section 4. Utilities. The Association shall not pay for the monthly cable TV service, sewer, and garbage pick-up for each Lot. Each lot owner shall pay for all utility services which are separately billed or metered to individual lots by the City of Hurricane or other party furnishing such service.

Section 5. Indemnification by Declarant. The Declarant, by this instrument and recording of same, agrees to indemnify the Association against loss or damage arising or accruing on the Common Areas or to the Common Area property as a result of the construction activities of the Declarant or his agents.

Section 6. Access at Reasonable Hours. For the purpose solely of performing the maintenance required by this Article, the Association, to its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any Lot at reasonable hours.

Section 7. Management Agreements. The Board may employ a manger or contract with independent contractor or managing agents to perform all or any part of the duties and responsibilities of the Association which are properly the subject of delegation. The manager shall be responsible for managing the property for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the Association itself. Any contract with a person or firm appointed as a manager or managing agent shall be terminable by either party without cause and without payment of a termination fee 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 Area of the Association shall be limited to a duration of one (1) year; provided, however, that the contracts may be renewable for successive one(1) year periods with the approval of the majority of the Board.

**ARTICLE VIII
EASEMENTS**

Section 1. Minor Encroachments. Each Lot and the Common Area 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. 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. In addition to easements set forth on the Plat, there is hereby granted and conveyed to the City of Hurricane, cable television companies, Mountain Fuel Supply Company, telephone companies, Ash Creek Special Services, and other governmental or quasi-governmental entities, their successors and assigns, an easement upon, across, over and under the setback (as defined by Hurricane City ordinances) area of each Lot and of the Common Area property for ingress, egress, installation , replacing, repairing and maintaining all utilities at such location or

locations as deemed appropriate by the provider of the utility. By virtue of this easement, it shall be expressly permissible for the providing utility 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 Area. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, or repair or utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

An easement is further granted to all police, fire protection, ambulance, trash collection and all similar persons to enter upon Common Areas in the performance of their duties. Should any company furnish 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. 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 Area and any Lot to perform the duties of maintenance and repair of the home, yard and landscape area, or Common Area provided for herein. The Declarant expressly reserves to itself, its successors and assigns, a perpetual easement and right, at their own risk, to cross the Common Area established or hereafter established on the 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 subdivisions.

Section 4. Side Yard Easement. Certain of the Lots shall be conveyed with easements over adjacent property or subject to easements for the benefit of adjacent property, or both. Said easements, shall be set forth by description on the deed of conveyance from the Declarant to the Lot Owner referencing this section and incorporating the uses and purposes of which are set out below. The following rules prescribe the terms, conditions and uses of such easement, both by the Owner of the Easement (the Dominant Tenement) and the Owner of the Lot subject to the Easement (the Servient Tenement).

(a) The Dominant Tenement shall have the right to use the easements for landscaping, patio, and use as a general recreational and garden area which may also include sidewalks and incidental purposes relating to use of the easement for ingress and egress to the dwelling served by the easement;

(b) The Dominant Tenement shall not use the easement for any other use including permanent installation of any sort, such as swimming pool structures, equipment, plumbing installation, other than landscape sprinklers, nor sports equipment and facilities.

(c) The Servient Tenement shall have the right at all reasonable times to enter the easement area, including crossing over the Dominant Tenement for such entry, in order to perform work related to the use of the Servient Tenement including maintenance of any fence or wall along the easement boundary line, which shall be the obligation of the Owner of the Servient Tenement to maintain.

(d) The Servient Tenement shall have the right of drainage over, across and upon the easement for water resulting from the normal usage of the Servient Tenement and the Dominant Tenement shall maintain the easement area in such manner as will not interfere with such drainage.

(e) The Dominant Tenement shall not attach any object to a wall or building belonging to the Servient Tenement.

(f) The Dominant Tenement, except as otherwise provided in this Article VIII shall have the exclusive use of the surface of the easement area subject to the rights of any other easement holder, if any, and subject to minor encroachments, if any, existing at the time of the creation of the easement, including overhangs, eaves, etc. over the easement area which are part of the structure located on the Servient Tenement, provide that such items do not encroach over the easement area above a height of five (5) feet from the finished grade elevation of the easement area.

**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 ANY 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 THE HOME.

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

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

(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 Area. Limits of the liability under such coverage shall not be less than \$ 1,000,000 for all claims for personal injury or property damage, or both, arising out of a single occurrence. Such policy or policies shall be issued on a comprehensive liability basis, shall provide that cross-insurers as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner in the development because of negligent acts of the Association or others.

(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 home owners.

(e) Review of Insurance Policy. 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, 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 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
ANNEXATION OF ADDITIONAL PROPERTIES**

Section 1. Annexation by Declarant. Declarant reserves the right at its sole discretion and without the consent of Class A members, to expand the Properties to include additional property for a period terminating December 31, 2010. In the event the Declarant, within the time period set forth in this Article, files other plat(s) creating additional subdivisions and states on said plat(s) the intention to have the property described on said plat subject to the terms, covenants and conditions of this Declaration, then, upon recording of said plat, the property described therein shall be subject to this Declaration.

Section 2. Limitations on Annexation. Developer's right to annex said land to the property shall be subject to the following limitations:

(a) Any additional subdivision annexed hereto by the Declarant shall be comprised exclusively of lots for single-family dwellings, common areas, and commercial activities directly related to the Project. The Declarant shall have the sole discretion to develop the Common Area in said addition(s) and to include any facilities or amenities thereon that Declarant deems necessary.

(c) If additional subdivisions are created by the Declarant pursuant to the terms of this Article, the lot owners in said addition(s) shall be members of the Association and shall have the same rights to the use and enjoyment of the property and facilities of the Association as any other member, either an owner in "SHADOW CANYON", PHASE I or otherwise. The Common Area in any such additional subdivision(s) as set forth therein shall be deeded by the Declarant to the Association, within a reasonable time after the conveyance of the first Lot on said plat, and the Association must accept the deed to said Common Area.

**ARTICLE XI
USE RESTRICTIONS**

Section 1. Residential Use. No owner shall occupy or use his lot, 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. No commercial activities of any kind whatsoever shall be conducted in any residence or on any portion of the lot.

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 to maintain during the period of construction and sale of said Lots, 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 Lots, including, but without limitation, a business office, storage area, construction yard, signs, and sales office.

Section 4. Household Pets Permitted. No animals, livestock or poultry of any kind may be raised, bred, or kept on any Lot or in the Common Area, except that no more than two animals (i.e.

dogs, cats), or other house hold pets may be kept upon the owners lot, or on a leash while off the owner's lot. No dogs, cats or other household pets will be allowed to remain outside the home between dusk and dawn, unless accompanied by the owner at all times. Keeping of household pets shall also be subject to the rules and regulations adopted by the Board of Trustees from time to time.

Section 5. Obstruction of the Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board of Trustees

Section 6. Oil and Mining Operations. No drilling quarrying or mining operations of any kind (other than water wells) shall be permitted upon or in any Lot or upon the Common Area.

Section 7. Alteration of Common Area. Nothing shall be altered or constructed, or removed from the Common Area except with the written consent of the Board of Trustees.

Section 8. Leases. Any lease agreement between a home owner and a lessee shall be required to provide that the terms of the lease shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, Articles of Incorporation of the Association, the Bylaws of said Association, and all rules enacted and published by the Board of Trustees, and that any failure by lessee to comply with the terms of such documents and rules 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 homeowner.

Section 9. Recreational Vehicles. Other than on those Lots where a recreational vehicle pad has been permitted by application to the Architectural Control Committee, in no event shall any recreational vehicle, camper, trailer, tent trailer, or motor home be used for a permanent residence (occasional overnight accommodations by the lot owner's guests is permitted subject to rules and regulations as determined by the Board of Trustees) in and on the Common Areas of the project or on any Lot. Other than as provided above, Recreational Vehicles must be parked in designated Recreational Vehicle parking areas.

Section 10. Nuisances. No noxious or offensive activities shall be carried on or upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the Project.

Section 11. Violation Constitutes a Nuisance. Any act or omission, whereby any restriction, condition, or covenant as set forth in this Declaration, if violated in whole or in part is declared to be and shall constitute a nuisance, and may be abated by the Declarant or affected property owners and such remedy shall be deemed to be cumulative and not exclusive.

Section 12. Rooftop Appliances. No television, radio, satellite dishes, or other external antennas or rooftop appliance of any type or style shall be erected, placed, or maintained upon any of the property, or in front of any building constructed thereon without the prior approval of the Architectural Control Committee and said Committee shall have the right to remove or cause removal of the antennas erected, placed, or maintained without said prior approval.

Section 13. Signs. No billboard or sign of any character shall be erected, posted, painted or displayed upon or about any lot, except a lot owner can place a for sale sign not larger than two (2) feet by three (3) feet on his Lot. This section shall not apply to Declarant so long as Declarant owns one or more lots in the Project, including additional phases as may be annexed into the Project from time to time.

Section 14. Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish trash, garbage or other waste. Such trash, rubbish, garbage or other waste shall

not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 15. Water Supply. No individual water supply system shall be used or permitted on any lot or group of lots unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the State Health Department and the Architectural Control Committee.

Section 16. Safe Condition. Without limiting any other provision of this declaration, each owner shall maintain and keep such owner's lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other owners of their respective lots.

Section 17. Outside Lighting. Any light used to illuminate garage, patios, parking areas, driveways, walkways, or for any other purpose shall be so arranged to reflect light away from adjacent residences and away from the vision of passing motorists.

Section 18. Inoperable Motor Vehicles. No type of motor vehicle which is inoperable for any reason shall be permitted to be parked upon any street, lot, part or portion of the property, except in an approved, enclosed garage.

Section 19. Weeds. Each Lot owner is responsible for controlling and removing weeds and noxious plants growing on his Lot. Any weeds not controlled or removed by the Owner may be removed or controlled by the Association. Costs of removal or control shall be added to and become part of the assessments to which such Lot is subject.

Section 20. No on Street Parking. No on street parking is permitted within the Project except in designated areas as established by the Board of Trustees of the Association.

ARTICLE XIII GENERAL PROVISIONS

Section 1. Enforcement. The Association, or the 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. In the event any Covenant, Conditions or Restriction included herein is consistent or in conflict with restrictions set forth in the subdivision building, zoning or other ordinances of the City of Hurricane, the ordinances shall govern so long as the restrictions contained in the ordinances are more restrictive than the terms of this Declaration. However, where the terms of this Declaration are more restrictive than those contained in the ordinances of the City of Hurricane, owners shall be subject to the enforcement of the terms of this Declaration.

Section 2. Severability, Construction and Validity of Restrictions. All of said conditions, covenants and reservations 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 reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant and lot owners, their

successors, heirs and/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 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors, and assigns for a term of thirty (30) years from the date the Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 4. 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 5. 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 XIII AMENDMENT

Section 1. Declarant's Right to Amend. Until all portions of "SHADOW CANYON" Phase I land are developed, or until the right to enlarge the project through the addition of tracts or subdivisions terminates, whichever event last occurs, Declarant shall have, and is hereby vested with the sole right to unilaterally amend this Declaration and/or the Plat as may be reasonably necessary or desirable: (i) to adjust the boundaries of the Lots; (ii) to more accurately express the intent of any provisions of this Declaration in the light of then existing circumstances or information; (iii) to better insure, in light of the existing circumstances or information, workability of the arrangement which is contemplated by the Restrictive Covenants; (iv) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Project; or (v) to conform to the underwriting guidelines of major secondary market investors in order to facilitate the availability of financing.

Section 2. Lot Owners Right to Amend. Subject to Section 1, this Declaration may be amended during the first twenty (20) year period by any instrument signed by not less than seventy percent (70%) 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 recording 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 XIV REGISTERED AGENT AND REGISTERED OFFICE

The address of the registered office of the Declarant is 2620 West 450 North, Hurricane, Utah

84737. The name of the registered agent at that address is Frank Lindhardt.

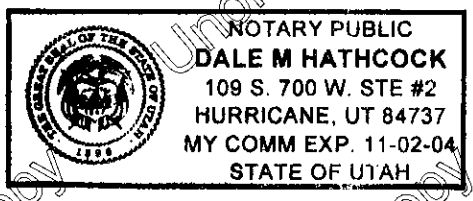
IN WITNESS WHEREOF the undersigned, being the Declarant herein, has executed this document on the day and year first above written.

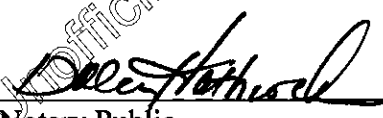
Declarant
Shadow Glen 420, Inc. a Nevada Corporation


by: Frank Lindhardt, Assistant Vice President

STATE OF UTAH }
 }
 } ss.
County of Washington }

On the 3rd day of Sept., 2003, before me Frank Lindhardt, signer of the within and foregoing instrument, who being by me duly sworn, did say that he is the Assistant Vice President of Shadow Glen 420, Inc, a Nevada Corporation, and that said instrument was signed on behalf of said corporation in his authorized capacity.




Notary Public