

AMENDMENT #1

**DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS
OF
SILVERCREEK TOWNHOMES**

Reference is made to that certain Declaration of Covenants, Conditions and Restrictions of Silvercreek Townhomes signed and Notarized by the Declarant on September 8, 1994, and recorded by the Washington County recorders office on December 12, 1994, hereinafter referred to as the "Declaration".

as Entry #486539 in Book 871, Pages 480-499

Consistent with the provisions of Section 4 of Article XI of the Declaration the Declarant hereby amends the Declaration as follows:

Article II Section 2 is replaced in its entirety to read:

Section 2. Owners' Easements of Enjoyment. Only an Owner of a completed Townhome, in possession of a Certificate of Occupancy issued by the City of St. George, has the right and easement of use and enjoyment in and to the Common Area. Furthermore, these rights are subject to:

- (a) The right of the Association to charge reasonable admission, use, service and other fees for the use of any service or recreational storage, or parking facility situated upon the Common Area. No fees shall be charged for parking specifically designated on the Plat as appurtenant to a Lot.
- (b) The right of the Association to limit the number of guests of Members using the Common Area.
- (c) The right of the Association to suspend the voting rights and/or common utility service of a Member for any period during which any assessment or portion thereof against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (d) The right of the Association to enter into agreements or leases which provide for use of the Common Areas and facilities by a similar association in consideration for use of the

common areas and facilities of the other association, or for cash consideration.

- (e) The right of the Association, with the approval of a majority (51%) of each class of Members, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to a private individual, corporate entity, public agency, authority, or utility as provided for herein.
- (f) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association.
- (g) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.
- (h) The terms and conditions of this Declaration.
- (i) The right of the Association, through its Trustees, to adopt rules and regulations concerning use of the Common Areas.

Article III Section 2 is replaced in its entirety to read:

Section 2. Voting Rights. The Association has two classes of voting Membership:

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

CLASS B. The Class B Member is the Declarant. The Class B Member is entitled to three (3) votes for each Lot owned. This entitlement extends to all Lots owned by the Declarant which have been recorded in final plat form or contemplated to be recorded as set forth in aggregate on the

preliminary plat for the project filed with the City of St. George. The Class B Membership will cease and be converted to Class A Membership on the happening of one of the following events, whichever occurs earlier:

(a) upon conveyance of one hundred fifty (150) Lots subject to the Declaration to purchasers; or

(b) December 31, 2004; or

(c) the surrender of Class B Membership status by the express written action of the Declarant. In the case of expansion (as provided under the Declaration) which occurs while the Declarant has Class B Membership, the Declarant's Memberships appurtenant to the Lots in the expansion area shall be Class B Memberships.

Article IV is replaced in its entirety to read:

ARTICLE IV - FINANCES AND OPERATIONS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Townhome (except the Declarant) by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) any other amount or assessment levied or charged by the Association or Trustees pursuant to this Declaration, and (4) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the Townhome and Lot against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the Owner of such Townhome at the time when the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Properties and (b) for the improvement and maintenance of Properties, services, and facilities devoted to this purpose. The assessments must provide for but are not limited to, the payment of taxes on Property of the Association and insurance maintained by the Association; the payment of the cost of repairing replacing, maintaining and constructing or acquiring additions to the Common and Limited Common Areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those Common and Limited Common Areas which must be replaced on a periodic basis; and

other amounts required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Trustees, for the payment of other charges including, without limitation, maintenance, management, utility, cable television, trash collection, sewer and water charges.

Section 3. Maximum Annual Assessment. Until January 1 following recording of this Declaration, the maximum annual assessment shall be One Thousand Two Hundred Dollars (\$1,200.00) per Townhome. This amount shall be the basis of calculation for future maximum annual assessments.

(a) From and after the date referred to above the maximum annual assessment shall be increased each year by five percent (5%) above the maximum assessment for the previous year, without a vote of the Membership.

(b) The Association may change the basis and maximum of the assessments fixed by this Section for any annual period.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments, the Association may levy in any assessment year a special assessment, applicable to the year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common or Limited Common Area structures, fixtures and personal Property related thereto.

Section 5. Additional Assessments. In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other Common or Limited Common Areas from the activities of the City of St. George in maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the Ownership of said utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3, 4 and 5. Written notice of any meeting of Members called for the purpose of taking any action authorized under Sections 3, 4 or 5 shall be sent to all Members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast sixty seven percent (67%) of all the votes of each class of Membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent

meeting shall be one-half of the required quorum at the preceding meeting. No such meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment; Periodic Assessment. Both annual and special assessment must be fixed at a uniform rate for all Townhomes; provided, however, that assessments shall not accrue against the Declarant so long as the Declarant has Class B Membership on the condition that the Declarant shall fund any fiscal deficiency in the operations of the Association until the termination of Class B Membership. This method of determining the assessments, dues and charges may not be changed without the prior written approval of all first Mortgagees.

Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Trustees determine.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination by the Trustees as to the amount of said assessment, the first annual assessment shall be an amount equal to ninety percent (90%) of the maximum annual assessment provided above.

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

The assessment due dates shall be established by the Trustees. The Trustees may provide for the payment of annual and special assessments in equal installments throughout the assessment year.

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

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

Section 9. Effect of Non-Payment of Assessment - Remedies of the Association. Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Trustees shall determine appropriate) until paid. In addition, the Trustees may assess a late fee for each delinquent installment which shall not exceed ten per cent (10%) of the installment.

The Trustees may, in the name of the Association, (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or (b) may foreclose the lien against the Property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of Mortgages, or in any other manner permitted by law, and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent Member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee.

A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the Townhome of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

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

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage held by an institutional lender if the Mortgage was recorded prior to the date the assessment became due. Sale or transfer of any Townhome shall not affect the assessment lien. However, the sale or transfer of any Townhome pursuant to foreclosure of a first Mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Townhome or Owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

Section 11. Books, Records and Audit. The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall all

be available for inspection by Townhome Owners and insurers as well as by holders, insurers and guarantors of first Mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A Townhome Owner or holder, insurer or guarantor of a first Mortgage may obtain an audit of Association records at his own expense so long as the results of the audit are provided to the Association.

Section 12. Obligation for Assessments. The charges and/or assessments referenced in the Declaration are assessed only against completed Townhomes and will not be assessed against Lots in the Project upon which Townhomes have not been constructed. A Townhome is deemed complete upon issuance of a Certificate of Occupancy from the City of St. George.

Article X is replaced in its entirety to read:

ARTICLE X -- EXPANSION

Declarant reserves the right, at its sole election, to expand the Properties to include all property located in the general vicinity of the Property previously described herein by unilateral action of Declarant without the consent of Owners, for a period of ten (10) years from the date of recording of this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah.

Expansion shall occur by the Declarant filing:

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

Any additional properties annexed hereto by the Declarant shall be exclusively for residential single family dwellings, architecturally compatible to the existing Townhomes, similar to the Townhomes already constructed, constructed out of similar materials, with similar Lot size. The maximum number of Lots to be added shall be 400. The Declarant shall have the sole discretion as to development of the Common Area in any expansion area and may include any facilities or amenities thereon that

Declarant deems necessary and such Common Areas shall be owned by the Association.

The Common Area and Limited Common Area in such expansion area shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens, prior to recordation of the Declaration of Annexation and the Association shall accept the deed to said areas. Owners in the original and expansion areas shall have the same rights to the use and enjoyment of the property and facilities of the Association. If, at the time of the expansion, the Declarant has Class B Ownership status, that status shall extend to all Lots in the expansion area. Otherwise, Owners in the original and expansion areas shall all have equal Membership status in the Association. The liability for assessments of each Townhome and Townhome Owner in any expansion area shall be equal to the liability of each Townhome and Townhome Owner in the original Properties.

Notwithstanding anything contained in this Declaration to the contrary, the Declarant shall maintain Class B Ownership status for all Lots contemplated in the original preliminary plat filed with the City of St. George until such time as Declarant is not entitled to Class B Membership status as set forth in Article III.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal to this Amendment effective as of October 1, 2001.

Silvercreek Investors, L.C.

By Hans R. Kuhn
Hans R. Kuhn, Member
Declarant

STATE OF UTAH)
) :SS.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this 31st day of October, 2001, by Hans R. Kuhn, member of ~~Silvercloud Investments, L.C.~~, a member of ~~Silvercloud Investors, L.C.~~ Silvercreek Investors, L.C. who executed the foregoing on behalf of said entity for the purposes therein shown.

[Signature]
NOTARY PUBLIC

