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**FIRST AMENDMENT TO AND RESTATEMENT OF THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
STONE GATE AT SEVEN HILLS SUBDIVISION**

A SUBDIVISION LOCATED IN
ST. GEORGE CITY, UTAH

Ence Bros. Construction, Inc., hereinafter referred to as the "Declarant," pursuant to its authority in Article XIII of the Declaration of Covenants, Conditions and Restrictions for Stonegate at Seven Hills Subdivision, which were recorded on October 31, 2002, as Entry No. 787939, in Book 1498, at Pages 0736-0756, records of the Washington County Recorder, which affects the following described property, hereinafter referred to as the "Property," located in Washington County, State of Utah, to-wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN BY THIS REFERENCE

hereby amends, supercedes, and restates the Protective Covenants for Stonegate at Seven Hills Subdivision in their entirety to read as follows:

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

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 Directors; Board; or Director(s)" shall mean and refer to the governing board of Stone Gate at Seven Hills Homeowners Association.

Section 2. "Common Area" shall mean all real property (including the improvements thereto), if any, owned by the Homeowners 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, if any, by deeding additional property to the Homeowners Association. Specifically exempted from common area are Lots, dedicated public streets, sidewalks, and curb and gutter which are identified on the Plat of "Stone Gate at Seven Hills Subdivision Phase I and/or plats prepared pursuant to Article X herein, as recorded in 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 Properties. Common Area, if any, shall also include all land in which the Association has an easement right.

"Common Area Facilities" shall mean any facilities, if any, including landscaped areas not privately owned, etc., which may be made available by the Declarant to the Members for their use and enjoyment. The Declarant is under no obligation to provide such Common Facilities at any time.

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.

Section 4. "Declarant" shall mean Ence Bros. Construction, Inc., a Utah corporation, its successors and assigns, so long as such successors or assigns (1) by written agreement shall be given Declarant's rights; and (2) acquire more than one undeveloped Lot from Declarant for the purpose of development.

Section 5. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Stone Gate at Seven Hills Subdivision, 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. "Entire Membership" shall mean all members, regardless of class of membership. When a vote of the Entire Membership is referenced it means all potential votes for both Class A and Class B members.

Section 7. "Expandable Land" shall mean and refer to the land set forth in Article X herein and made a part hereof, which sets forth property upon which Declarant may expand the Project in one or more phases.

Section 8. "Home" shall mean and refer to any detached single-family residential dwelling constructed within the Project. Multiple family dwellings are not included in this definition and are not allowed in the Project.

Section 9. "Homeowners Association" or "Association" shall mean and refer to Stone Gate at Seven Hills Homeowners Association, a Utah nonprofit corporation, its successors and assigns.

Section 10. "Limited Common Area" means that portion of Property, if any, owned by the Association, shown on the Plat as Limited Common Area. The Owner of the Lot to which such Limited Common Area is adjacent and/or appurtenant has the use and enjoyment of that Limited Common Area to the exclusion of other Owners. Limited Common Area is subject to rights of the Association set forth in this Declaration.

Section 11. "Lot" unless otherwise defined or provided for herein, shall mean and refer to any separately numbered and individually described plot of land shown on any recorded subdivision Plat of the Properties, but specifically excludes Common and Limited Common Areas, if any, and areas dedicated to the use of the general public.

Section 12. "Member" shall mean and refer to every person or entity who holds membership in the Homeowners Association.

Section 13. "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 14. "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 15. "Plat" or "Plat Map" shall mean and refer to the Plat for Stone Gate at Seven Hills Subdivision Phase I and/or any other plats prepared pursuant to Article X herein, 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.

Section 16. "Properties," "Property" and "Project" shall mean and refer to that certain real property described in Exhibit A which is attached hereto, and such additions thereto as may 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 17. "Separation Walls" shall mean: (1) the perimeter wall serving as a rear-lot wall of each Lot backing onto the perimeter property line of the Project; and (2) other yard/privacy walls and fences constructed by Declarant as part of individual home construction or as constructed by the Lot Owner in accordance with provisions of this Declaration.

Section 18. "Supplementary 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 19. "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, if any. This easement is appurtenant to and passes with title to every Lot, subject to the following provisions:

- (1) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities, if any, situated upon the Common Area, if any. Fees charged by the Association shall in no way affect its status as a non-profit corporation.
- (2) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, and with the approval of two-thirds of the Entire Membership to borrow money for purposes associated with the Common

Area, if any, 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.

(3) The right of the Association to suspend the voting rights of a member and to deny said member use of any recreational facilities for any period during which any assessment against the member's Lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(4) The right of the Association, if there is no Class B membership, with the approval of all the holders of first mortgage liens on Lots, and Owner approval as provided below, to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to. (The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area, if any, by the Association shall not be deemed a transfer within the meaning of this clause.) No such dedication or transfer shall be effective unless (a) all Owners consent in writing to the dedication of sale or transfer; or (b) an instrument has been signed by two-thirds (2/3) of the Entire Membership agreeing to such dedication, sale, or transfer; and (c) the legislative body of the City of St. George approves the Plat change that is necessitated by the dedication, sale, or transfer.

(5) The right of the Association to seek to abandon, petition, subdivide, encumber, sell or transfer the Common Area, if any, owned, directly or indirectly, by the Homeowners Association for the benefit of the Lots. (The granting of an easement for public utilities or other public services consistent with the intended use of the Common Area, if any, is not a transfer within the meaning of this clause.) No such abandonment, petition, subdivision, encumbrance, sale, or transfer shall be effective unless (a) all Owners consent in writing to such abandonment, petition, subdivision, encumbrance, sale or transfer; or (b) an instrument has been signed by two-thirds (2/3) of the Entire Membership; and (c) the legislative body of the City of St. George approves the Plat change necessitated by the abandonment, petition, subdivision, encumbrance, sale, or transfer.

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

(7) 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, if any, for the installation, maintenance and inspection of lines and appurtenances for public or private utilities.

(8) The right of the Association to make, publish and enforce reasonable rules pertaining to the regulation and use of Common Areas, if any, by Owners, guests, invitees and tenants of Owners.

(9) The terms of this Declaration.

(10) The right of the Association with approval of two-thirds of the Entire Membership to enter into Agreements or leases which provide for use of the Common Area, if any, and facilities by a similar Association in consideration for use of the Common Area, if any, and facilities of the other Association, or for cash consideration.

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

(12) The right of the Declarant to take such actions as it may deem necessary so long as the expansion of the Project shall not be complete, including granting leases, easements, and modifying the improvements and design of the Common Area, if any,

Section 2. Delegation of Use. Any Member may designate the member's right of enjoyment to the Common Area, if any, and facilities to the member's family, tenants, guests, or contract purchasers who reside on the Member's Lot. 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 Directors. Damage caused to the Common Area and facilities, if any, 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, if any, by the Member, shall create a debt to the Association. Debts owed to the Association as a result of such damage to the Common Area and facilities, if any, shall be an assessment charged to the Lot Owner as provided in Article IV.

Section 3. Title to the Common and Limited Common Areas. The Declarant covenants that it will convey fee simple title, subject to consent from lien holders having a security interest therein, and subject to any easements thereon, to the Common and Limited Common Areas, if any, to the Homeowners Association at the time of, or prior to, the conveyance of the first Lot. The Declarant further covenants and agrees that it will discharge all liens and encumbrances on said Common and Limited Common Areas, if any, on or before the sale and closing of the last Lot within the Project as the same may be expanded and additional phases 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 and Limited Common Areas, if any, in good repair and condition at all times and to operate the Common and Limited Common Areas, if any, at its own expense in accordance with high quality standards. Said conveyance of the Common and Limited Common Areas, if any, shall also be subject to, (i) any state of facts an accurate survey may show, and (ii) easements and rights-of-way of record.

Section 4. Rules. The Board of Directors shall have the authority to promulgate rules and regulations for the governance of the Properties, and persons within the Properties. The rules of the Association shall be available for inspection and copying during reasonable hours. Notwithstanding the authority of the Board of Directors to promulgate rules and regulations for the Members of the Association, Members shall have the right to redress any rule. To do so, a signed petition, representing not less than fifty-one percent (51%) of the Entire Membership, as governed by Article III, must be submitted to the Board of Directors, stating the rule or rules being redressed, and the reasons therefore. Upon receipt of said petition, the Board shall cause that the rule or rules made subject of the signed petition be placed on the agenda of an Association meeting. The rule or rules shall, at said meeting, then be presented for vote of the Entire Membership. The vote to be called for shall be "Yes" for retention of the rule, or "No", for the elimination of the rule, each rule, if more than one, being voted on separately. In the event the petition suggested a "Modification to a rule(s)" the vote shall be "yes" for the modification of the rule, or "No" for the rejection of the modification. In the event the modification is rejected, the rule in question shall stand. For a standing rule (or rules) to be challenged by a petition vote, as described above, not less than two-thirds (2/3) of the Entire Membership must vote to reject the standing rule or to modify the standing rule as indicated on the ballot.

ARTICLE III – MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot that 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 that is subject to assessment.

Section 2. Classes of Membership. The Association shall have two classes of voting membership:

A. **CLASS A.** Class A Members shall be all Owners with the exception of the Declarant, until said Declarant's membership converts to Class A membership as provided for herein. Class A members are entitled to one vote for each Lot owned. When more than one person 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 an Association meeting by any of such co-owners, whether in person or by proxy, shall be conclusively presumed to be attributable to the Lot concerned, unless written objection is made prior to said meeting, or verbal objection is made at said meeting by another co-owner of the same Lot. In the event objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists. For the purposes of voting pursuant to this Article Lot shall mean (i) a single Lot; and (ii) in such cases where the same Owner owns two contiguous Lots upon which a single family residence has been constructed, the two contiguous Lots shall be deemed to be one Lot.

B. **CLASS B.** The Class B Member shall be the Declarant (as defined in the Declaration), and shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) upon conveyance of ninety percent (90%) of all Lots, including those in any expansion areas, to Declarant's purchasers;
- (b) the expiration of seven (7) years from the first lot conveyance to a purchaser; or
- (c) by express written action of the Declarant.

In the case of expansion (as provided in the Declaration), the Declarant's membership appurtenant to the Lots in the expansion area shall be Class B membership.

If Declarant shall exercise its option to add additional Lots by platting additional phases as provided in the Declaration, then at such time as additional subdivision plats are filed, the voting shall be adjusted accordingly so that Declarant regains Class B voting status for all Lots owned, even if previously converted to Class A status in prior phases and according to the terms hereof.

Section 3. Changes in Voting Procedure. If Declarant shall exercise its option to add additional Lots by platting additional phases as provided in Article X herein, then at such time as additional subdivision plats are filed, the voting shall be adjusted accordingly, so that Declarant regains Class B voting status for all Lots owned, even if previously converted to Class A status in prior phases and according to the terms hereof.

ARTICLE IV – COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. 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) emergency assessments, (f) any other amount or assessment levied or charged by the Association or Board of Directors 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 Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to a Lot Owner's successor in title unless expressly assumed by the successor in title. For the purposes of assessment pursuant to this Article, Lot shall mean (i) a single Lot; and (ii) in such cases where the same Owner owns two contiguous Lots upon which a single family residence has been constructed, the two contiguous Lots shall be deemed to be one Lot.

Section 2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of taxes and insurance on the Common and Limited Common Areas, if any; management and supervision of the Common and Limited Common Areas, if any; repair and maintenance of the common areas; to establish and fund a reserve to cover major repair or replacement of improvements within the Common and Limited Common Areas, if any; 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, 2001, the maximum annual assessment shall be Nine Hundred Dollars (\$900) per Lot.

(1) From and after January 1, 2003, the maximum annual assessment may be increased each year by the Board of Directors not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

(2) From and after January 1, 2003, the maximum annual assessment may be increased more than ten percent (10%) only by a vote of two-thirds (2/3) of the Entire Membership 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.

(3) The Board of Directors shall fix the annual assessment at an amount not to exceed the maximum annual assessment.

(4) Each Lot that has been conveyed to an Owner shall be assessed according to the schedule set forth above which assessment shall commence on the date of issuance of a certificate of occupancy for a Home on a Lot. For the purpose of assessment, Lots owned by Declarant shall accrue no assessment unless Declarant constructs a home on a Lot and it is occupied for a permanent residence. The Declarant or its assigns shall have the obligation to subsidize the Association until control of the Association, as provided in Article III, passes to Lot Owners. Subsidization shall be defined as: "The payment of a reasonable fee to meet the needs of the Association for ordinary and necessary maintenance expenses upon the Common and Limited Common Areas, if any, but which amount shall not include the payment of reserves for capital replacement." In no event shall the subsidy required of the Declarant hereunder exceed the monthly assessment that otherwise would be chargeable under this Section 3.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Board 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, if any, including fixtures and personal property related thereto and for such other purposes reasonably necessary to fulfill the intent of this Declaration. If there is no Class B membership, special assessments must have the assent of two-thirds (2/3) of the votes of the Entire Membership authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

Section 5. Additional Assessments. In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to Common and Limited Common Areas, if any, from the activities of the City of St. George or other utility provider in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground

or otherwise is in the City or other utility provider up to and including the meters for individual Lots, and that they are installed and shall be maintained to City or utility provider specifications.

Section 6. 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 5 of this Article IV shall be sent to all Members not less than thirty (30) days, no more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast two-thirds (2/3) of all the votes of the Entire 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 7. Emergency Assessments Notwithstanding anything contained in this Article IV, the Board, without membership approval, may increase Annual Assessments or levy Special Assessments necessary for an emergency situation. For purposes of this section, an emergency situation is one in which the Board finds one of the following:

- (1) an expense required by an order of a court;
- (2) an expense necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered; or
- (3) an expense necessary to repair, maintain or cover actual Association expenses for the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increases in utility rates; landscape or maintenance contract services; etc), provided, however, that prior to the imposition or collection of such Assessment, the Board shall pass a resolution containing the written findings as to the necessity of such expense involved and why the expense was not or could not have been reasonably foreseen or accurately predicted in the budgeting process and the resolution shall be distributed to the Members with the notice of the Assessment. If such expense was created by an unbudgeted utility, maintenance, etc., increase, the Assessment created thereby shall be discontinued by the Board by a similar resolution, if such expense is subsequently reduced, or the next succeeding annual budget incorporates said increase into the annual assessment.

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, as determined by the Board of Directors.

Section 9. Regular Assessments, Due Dates. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. A 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 Directors on a monthly, quarterly or annual basis, or some combination thereof.

The Association shall, upon demand, and for a reasonable charge, 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 required by the Board for the issuance of these certificates. Such certificate, shall be conclusive evidence of the status of any assessment therein reflected.

Section 10. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessments not paid within thirty (30) days after the due date thereof shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such other rate as the Directors shall determine appropriate) until paid. The Association shall have the remedies provided in the subsections below if payment is not made when due.

- (1) **Remedies.** For delinquent assessments the Association shall be entitled to (a) bring an action at law against the Owner, personally obligated to pay such delinquent assessment without waiving the lien or assessment; or (b) 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) withhold, interrupt, or terminate any or all services performed by the Association on behalf of the delinquent member.
- (2) **Additional Remedies.** In addition to the remedies stated above, Directors may assess a late fee for each delinquent installment which shall not exceed twenty-five percent (25%) of the installment.
- (3) **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.

(4) **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 from the liens and charges hereof, by non-use of any Common and Limited Common Areas, if any, or abandonment of the 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:

- (1) All Properties dedicated to and accepted by any local public authority;
- (2) The Common and Limited Common Areas, if any; and
- (3) All Lots owned by Declarant.

Section 14. Working Capital Fund. Upon acquisition of record title to a Lot by the first Owner thereof, other than Declarant or a builder, a contribution shall be made at closing by or on behalf of the Lot purchaser to the working capital of the Association in an amount equal to three months installments of the annual assessment at the rate in effect at the time of the purchase. Payment of this amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of any assessment. The Association shall maintain the working capital funds in segregated accounts for repair, maintenance and replacement of those Common and Limited Common Areas, if any, which must be replaced on a periodic basis, to meet unforeseen expenditures, unbudgeted maintenance or repairs or to acquire additional equipment or services for the benefit of the Members. Such payments to this fund shall not be refundable. Declarant may not use any working capital funds to defray any of its expenses, or to make up any budget deficits.

ARTICLE V – SEPARATION WALLS AND INTERIOR LOT WALLS

Section 1. Separation Walls. Declarant may construct block landscaping walls which border the development project and separate same from other developments, public rights-of-way, and adjacent Lots. Such walls shall be deemed Separation Walls.

Separation Walls shall further be defined as the perimeter wall serving as a rear-lot wall of each Lot backing onto the perimeter property line of the Project. It is the intent of the Declarant that all Separation Walls be owned and maintained by the Owner of each Lot. Separation Walls, by definition, shall also include other yard/privacy walls and fences constructed by Declarant or Lot Owner as part of individual home construction.

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

Section 3. Repair and Maintenance. The owner of each lot shall be responsible for the cost of reasonable repair and maintenance of Separation Walls surrounding Owner's Lot. The Association shall have the right to

enter upon any Owner's Lot for the purpose of repairing and maintaining Separation Walls in the event the owner does not repair the damage in a timely manner. The cost of such repair by the Association shall be a lien upon such Owner's Lot and shall be added to the annual assessment as provided in Article IV. No changes or alterations to Separation Walls shall be made by Lot Owners without prior written approval of the Architectural Committee.

Section 4. Destruction by Fire or Other Casualty. If a Separation Wall is destroyed or damaged by fire or other casualty the Owner of the Lot shall bear the responsibility to restore the wall.

Section 5. Decoration. No Owner whose Lot includes a portion of a Separation Wall backing against Tuweap Drive Public Right-of-Way shall paint, construct additions to, color, or otherwise decorate the exterior surface of said Separation Wall. Any Owner found in violation hereof shall bear the whole cost of refurbishing and restoring the wall to its original condition, consistent with other portions of the Separation Walls.

Section 6. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by negligent or willful acts causes a Separation Wall to be exposed to the elements shall bear the cost of furnishing the necessary protection against such elements.

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

Section 8. Applicability. This Article shall be applicable to walls built by Declarant for the purposes stated in Section 1 and shall apply to additional rear-yard walls and fences or enclosures constructed by Owners, as approved by the Architectural Committee, and as provided in Article VI, Section 2(6).

Section 9. Drainage. The Owner of each lot shall not allow irrigation or other drainage water originating on Owner's Lot to drain on to a neighboring lot. All such drainage shall be contained on Owner's Lot and moved to the public street drainage fronting Owner's Lot. In keeping with this provision, the Owner of each lot shall contain drainage in such a way as to not allow said drainage to undermine the footing of separation walls around the Owner's lot which are shared by an adjacent lot Owner.

ARTICLE VI – ARCHITECTURAL CONTROL AND LAND USE RESTRICTIONS

Section 1. Architectural Committee. The Board of Directors of the Association may appoint a three (3) member Architectural Committee, (the "AC") the function of which shall be to insure that all exteriors of homes and landscaping and Separation Walls within the Property harmonize with existing surroundings and structures. The AC members need not be Owners. If such a committee is not appointed, the Board itself shall perform the duties required of the AC. The Declarant shall have the right to act as the AC, or shall have the right to appoint members of the AC, until the happening of any of the following events, whichever occurs earlier:

(a) upon conveyance of ninety percent (90%) of all Lots, including those in any expansion areas, to purchasers;

(b) the expiration of seven (7) years from the first lot conveyance to a purchaser; or

(c) by express written action of the Declarant.

(1) **Submission to Committee.** No home, accessory or addition to a home, landscaping, or other improvement of a Lot which is visible from the Common and Limited Common Areas, if any, or public streets 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 AC. The Owner of each Lot shall make landscaping improvements to the enclosed rear-yard area of each Lot that is contained by the Lot Separation Walls. Rear-yard structures of any kind must comply with the provisions of this Article VI.

(2) **Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the AC 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 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 AC, or the Board, as the case may be, shall act in accordance with such guidelines and procedures.

(3) **Approval Procedure.** Any plans and specifications submitted to the AC 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.

(4) **Construction.** Once begun, any improvements, construction, landscaping, or alterations approved by the AC shall be diligently pursued to completion as mutually agreed. In the event the work is begun and

remains uncompleted for a period of six (6) months, the Association may undertake to complete the exterior work of the construction. The cost thereof shall be a lien upon such Owner's Lot and shall be added to the annual assessment as provided in Article IV. 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 and Limited Common Areas, if any, in the vicinity of the activity.

(5) **Disclaimer of Liability.** Neither the AC, nor any member thereof acting in good faith, shall be liable to the Association or any Owner for any damage, loss, or prejudice suffered or claimed on account of:

(a) The approval or rejection of, or the failure to approve or reject, any plans, drawings or specifications;

(b) The development or manner of development of any of the property; or

(c) Any engineering or other defect in approved plans and specifications.

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

(7) **Exception for Declarant.** The provisions of this Article VI 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 and Limited Common Areas, if any, and which occurs at any time during the expiration of seven (7) years from the first lot conveyance to a purchaser. Declarant shall further have the right to designate the location and design of any Common and Limited Common Areas amenities, if any. However, Declarant shall not be required to provide any such amenities by virtue of this Section.

Section 2. Land Use Restrictions.

(1) **Building Type:** 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 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 on any Lot within the project shall be a detached single family dwelling, with an enclosed private garage for not less than two (2) nor more than four (4) vehicles. The height of the garage door header shall be limited to the height of the roof line of the house and shall not in any event exceed ten (10) feet. No carport or other outdoor or partially enclosed parking facility shall be permitted except as provided in Article XI, Section 9. All construction shall be of new materials and in conformance with the building and subdivision ordinances of the City of St. George. All structures shall be constructed in accordance with the zoning and building ordinances of St. George City. "Family" is defined to mean persons related by blood or marriage, by legal adoption, or by operation of law.

(2) **Soils Test:** The Declarant or its assign has performed a geotechnical/soil test study on the area of the Project in accordance with the St. George City subdivision ordinance. The Lot purchaser may, at his/her own expense, obtain any additional soils test studies and recommendation on foundation from a Utah registered soils engineer prior to construction. The AC may require that a Lot Owner obtain a soils test and recommendation on foundation prior to any final approval. Furthermore, the AC may condition final approval following the recommendations set forth in the soils test document.

(3) **Building Location.** No building shall be located on any Lot nearer to the front line than twenty-five (25) feet measured to the foundation of such building; nor nearer than ten (10) feet to the rear Lot line; Side yards are to conform to existing ordinances of not less than ten (10) feet on one side and eight (8) feet on the other side, except for corner lots which shall be offset as required by St. George City. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of a building for the purpose of determining such distances, provided, however, that this shall not be construed to permit any portion of a building, including such eaves, steps of open porches, to encroach upon another Lot.

(4) **Driveways:** Driveways shall be constructed out of concrete or other hard materials as approved by the AC. Driveways consisting of cinders, sand, gravel, asphalt, or dirt shall not be permitted on any Lot. There shall be sufficient driveway parking of not less than two (2) vehicles per Lot parked side-by-side.

(5) **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, or areas falling under Association maintenance responsibility.

(6) **Separation Walls, Yard Walls and Fences:** Separation Walls, yard walls and/or fences shall be of concrete block of a type and color conforming to that as originally provided by the Declarant during or following the construction of the Owner's home, shall be of a color which blends with the exterior of the structure on the Lot, shall not be painted, and shall be approved by the AC. No chain link, wire, or wood fences are permitted. Gates shall be fabricated steel or vinyl/PVC. The AC may consider approval of aesthetically compatible fences and walls which are not more than six (6) feet in height (as measured from the interior of the Lot), located in a rear-yard, on the perimeter of a patio or open porch and which do not extend beyond the front or rear yard setback lines. Walls or fences are intended to enhance the privacy of the residents of such Lot, and should not unreasonably interfere with the view from any neighboring Lot. Where a fence or wall is located along an interior property line separating two Lots and there is a difference in grade of the two Lots, the fence or wall may be erected or allowed only to the maximum height permitted from the grade of the highest Lot. Fences may not be beamed for the purpose of increasing allowable height. 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.

(7) **Mailboxes:** If a "cluster-type" box is not provided, mailbox posts shall be shared by Lot Owners and shall be located on a common boundary line. The mailboxes shall conform to postal regulations and to the style and construction as set forth in the plans and specifications maintained at the Association office and shall be approved by the AC. No pipe, wood, or small black posts are allowed. Replacement of cluster-type or shared boxes shall be of a type, style, color and function as the original box. In the event an exact replacement is not available, the Owner shall submit a request for a substitute box to the AC for approval. The decision of the AC shall be binding.

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

(9) **Site Review:** Prior to the commencement of construction of any dwelling, garage, storage building, fence, wall, pool, or other improvements on any Lot of this Project, plot plans and/or construction drawings shall be submitted and approved by the AC. This provision shall include landscaping of rear-yards.

(10) **Landscaping:** Front and side-yard landscaping (to a line 20 feet back of the front foundation line of the home) must be installed prior to receipt of a Certificate of Occupancy from the City or prior to occupancy of the home. In keeping with St. George City's Shade Tree Ordinance, the landscaping of each front yard shall include at least one (1) deciduous tree; however, the planting of more than one tree is encouraged. The AC shall establish an approved list of trees which may be planted in Stone Gate at Seven Hills; exceptions to this list may only be planted with prior written approval by the AC. Within six (6) months after the completion of the construction of any home upon a Lot, the Owner must have substantially completed the landscaping of the rear portion (i.e., all other portions not considered the "front yard") of the Lot. All rear-yard landscaping shall be done appropriately with xeriscaping to facilitate water conservation, lawn areas or accents, trees, shrubs, planting beds, etc. All rear-yard landscaping must include a clock-controlled irrigation system. All rear-yard landscaping shall be maintained by each Lot Owner at a reasonable standard compatible with front yard maintenance by the Association and with other homes in the Project, it being the intent of this covenant that the responsibility for and cost of yard maintenance shall solely belong to each Lot Owner, except that the Association may provide front-yard maintenance. Shrub and tree planting on corner Lots shall be located so as not to create a hazard for the movement of vehicles along streets, in accordance with local ordinances. All landscaping must be approved by the AC. In the event a Lot Owner delays the installation of rear-yard landscaping beyond the time the Declarant has landscaped the front-yard, and in the event the Owner's own physical labor or Owner's contractor damages the front-yard landscaping prior to occupancy, the Lot Owner, at his/her own expense, shall restore the front-yard landscaping to its original condition.

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

(11) **Architectural Controls:** No building shall be erected, placed, or altered on any Lot until the construction plans and specifications and plans showing the location of the structure have been approved by the AC as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line unless similarly approved.

(12) **Residence/ Minimum Square Footage and Building Height:** All single level homes shall have a total square footage of living area on the main level above ground and located within the area of a foundation for any residential dwelling constructed on any Lot within the Project, exclusive of porches, balconies, patios, decks and garages, shall be not less than 1,350 square feet. Two story homes, having two-stories above pad level, shall have a lower level of not less than 1,200 square feet and an upper level not less than 600 square feet, excluding garages.

Building height shall be measured from the elevation of the Lot to the highest point of the roof line of a home. Single-story homes shall not exceed 25 feet in height. Two-story homes, as approved by the AC, shall not exceed 35 feet in height.

(13) **Construction Materials:** In order to promote a harmonious community development and protect the character of the neighborhood, the following guidelines are applicable to the Property:

(a) Home style, design, alterations, and additions will conform to standards established by the AC.

(b) Exterior construction materials will be limited to stone veneer, brick, or brick veneer, stucco, including synthetic stuccos, or other materials approved for use by the AC from time to time, and shall be in colors and of materials indigenous to the area and as otherwise approved by the AC. Stucco shall be in combination with brick or stone wainscoting or other architectural elements on the front of the home. Vinyl siding, as such, may not be used as an exterior finish material for the home except in the finishing of gable ends and similar architectural features. Aluminum siding material may be used in the finishing of soffit and fascia; it may not be used as an exterior finish material of the home.

(c) Roofing materials will be limited to tile. No asphalt shingles, built up roofs, or wood shakes will be allowed. No mansard roofs will be allowed. Dome structures of any type will not be allowed.

(d) All air conditioning equipment, utility pipes, satellite antennas and utility equipment shall be placed discreetly as possible and screened where possible with landscaping or fence materials. Roof mount heating or air conditioning equipment will not be allowed.

(14) **Maintenance of Lot During Construction - Fine:** As relates to construction of improvements submitted to and approved by the AC and in accordance with this Article, contractors or subcontractors as Owner's builders must provide on-site dumpsters during construction and are required to clean up the site daily to maintain a clean worksite during construction. Dirt or mud from the construction site or elsewhere, dispersed, directly or indirectly, on the public streets within the Project must be cleaned up within twenty-four (24) hours by the contractor or subcontractor, as Owner's builders. Contractors or subcontractors, as Owner's builders, shall be responsible for replacement of any concrete cracked anywhere within the Project as a result of construction activities. The Association may levy a Five Hundred Dollar (\$500.00) fine against a violator of this provision. The fine shall be a charge against the Owner and shall be a continuing lien on the Lot as provided in Article IV.

(15) **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.

(16) **Individual Trash Collection Containers:** Each Lot Owner shall use the standard, approved St. George City trash container for garbage collection, and shall use same in accordance with City policies. Other such containers, as permitted by the St. George City, may be used. All containers that are used shall be kept in repair and shall not be placed on the street for collection in a broken condition. All trash collection containers shall be kept neatly by Lot Owner's at the side or, where possible, in the rear-yard.

Section 3. Damages. Any damage inflicted on any existing improvements in the Project, including but not limited to curbs, gutters, streets, concrete sidewalks, landscaping or walls by an Owner or an Owner's guests, assignees, agents or independent contractors 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 performed by the Association and the cost thereof shall be a lien on the Lot as provided in Article IV.

ARTICLE VII – OPERATION AND MAINTENANCE

Section 1. Maintenance of Common Areas. The Common Areas, if any, 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 Entrance Islands and Other Landscaping Statements in Public Rights-of-Way. The Declarant may, at Declarant's sole election to so do, construct and landscape center islands and/or other landscape features in or adjacent to the entrance areas and within other public rights-of-way in and adjacent to the Project. The islands may include, by way of example and not of requirement or limitation, trees, decorative shrubs and other landscaping. The islands lie within a public right-of-way and are not deemed Common Area of the Project. The Association does not own, but shall be responsible to maintain the islands in a good and orderly manner, enhancing thereby the entrance(s) to the project.

Section 3. Maintenance of Perimeter Wall. The Perimeter Wall which is comprised of rear yard walls of individual lots shall be of colored, concrete block construction. Along Tuweap Drive, the Declarant shall landscape the area outside of the perimeter, which area is part of the Public Right-of-Way for Tuweap Drive. Said area, not including the actual wall, shall be maintained by the City of St. George under a Maintenance Agreement between Declarant and the City.

Section 4. Maintenance By Owner. So long as the Declarant shall retain a Lot upon which to build a home, the Association shall be solely responsible for maintenance of the front yard landscaping of each Lot, which front yard includes 20 feet of each side yard behind the front foundation line. A Lot Owner is solely responsible for providing a continuous supply of water and power to the front yard irrigation system for use by the Association in maintaining the front yard landscaping. Front Yard is defined as that area lying between the public street and the streetside surface of each side-yard/rear-yard fence. Each Owner shall be solely responsible for maintenance of the Lot area contained within the rear-yard and side-yard fenced area. Each Owner shall also be responsible for the maintenance of the exterior of the home. In the event an Owner fails to perform this maintenance in a manner consistent with the terms of this Declaration, the Directors shall have the right to enter upon such Lot to have maintenance performed on the Lot and exterior of the home in the event Owner fails to meet the obligations of maintenance as herein set forth and as may be established from time to time by the Board. The cost of such maintenance shall be added to and become part of the assessment to which such Lot is subject, as provided by Article IV.

Section 5. Utilities. The Association shall not be under any obligation to contract and pay for a bulk-rate monthly cable-TV service. Each Lot Owner shall be solely responsible for cable-TV or satellite-TV service and the payment of fees therefor. Each Lot Owner shall be solely responsible for fees associated with services for electrical, water, 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 St. George or other entity furnishing such service.

Section 6. 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 and Limited Common Areas, if any, or to the Common and Limited Common Areas property, if any, as a result of the construction activities of the Declarant or its agents.

Section 7. Access at Reasonable Hours. For the purpose solely of performing the maintenance required by this Article VII, the Association, or its duly authorized agents or employees, shall have the right to enter upon any Lot at reasonable daytime hours to perform said maintenance.

Section 8. Management Agreements. The Board may employ a manger or other persons who may contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association in relation to the Common and Limited Common Areas, if any. Any contract with a personal firm appointed as a manager or managing agent shall be terminable by the Association for cause upon ten (10) days written notice thereof. Any such contract, and any other contract with a third-party, wherein the third-party is to furnish goods or services for any Common and Limited Common Areas, if any, or the Association shall be limited to a duration of one (1) year; provided, however, that said contracts may be renewable for successive one (1) year periods with Board approval.

ARTICLE VIII – EASEMENTS

Section 1. Encroachments. Each Lot and the Common and Limited Common Areas, if any, 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 the same, shall and does exist.

Section 2. Utilities. There is hereby granted and conveyed to the City of St. George, cable television companies, Questar Gas Company, telephone companies, and other governmental or quasi-governmental entities, their successors and assigns, a blanket easement upon, across, over and under all of the said Common and Limited Common Areas, if any, for ingress, egress, installation, replacement, repair and maintenance of 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 utility provider to construct and maintain the necessary equipment, and to affix and maintain electrical, cable television and/or telephone wires, circuits and conduits on, across and under the Common and Limited Common Areas, if any.

Section 3. Police, Fire, Ambulance. An easement is further granted to all police, fire protection, ambulance, trash collection and all similar persons to enter upon Common and Limited Common Areas, if any, in the performance of their duties. Should any company furnishing a service conveyed by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said property without conflicting with the terms hereof.

Section 4. 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 and Limited Common Areas, if any, and any Lot to perform the duties of maintenance and repair of the home, yard and landscape area, or Common and Limited Common Areas, if any. The Declarant expressly reserves to itself, its successors and assigns, a perpetual easement and right, at their own risk, to cross the Common and Limited Common Areas, if any, existing 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.

ARTICLE IX – INSURANCE

Section 1. Insurance on Lots and Homes. THE ASSOCIATION HAS NO DUTY OR RESPONSIBILITY TO PROCURE OR MAINTAIN ANY FIRE, LIABILITY, FLOOD, EARTHQUAKE OR SIMILAR CASUALTY COVERAGE FOR LOTS OR HOMES, OR FOR THE CONTENTS OF ANY HOME. THE ASSOCIATION ALSO HAS NO DUTY TO INSURE AGAINST ANY NEGLIGENT ACTS OR EVENTS OCCURRING AT OR ON ANY LOT OR IN ANY HOME.

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

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

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

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

(3) **Fidelity Coverage.** A fidelity policy or policies to protect against dishonest acts on the part of a Director(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:

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

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

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

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

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

(6) **Rebuilding After Damage or Destruction.** In the event of damage or destruction by fire or other casualty to any Common and Limited Common Areas properties covered by insurance written in the name of the Association as trustee for the Owners, the Board of Directors shall, upon receipt of insurance proceeds, contract to rebuild or repair such damage or destroyed portions of the 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 Directors. The Board of Directors shall advertise for sealed bids with any licensed contractors. The contractors shall be required to provide a full performance and payment bond for the repair, construction, or rebuilding of destroyed property. In the event the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, or both, to the same condition as formerly, the Board of Directors shall levy a special assessment against all Owners in such proportions as the Board of Directors deems fair and equitable in light of the damage sustained.

ARTICLE 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 more particularly described in Exhibit B attached hereto and incorporated herein for a period terminating after the expiration of seven (7) years from the first Lot conveyance to a purchaser.

In the event the Declarant, within the time period set forth in this Article, files other plat(s) creating additional subdivisions in the Exhibit B property under the name and style of "Stone Gate at Seven Hills Subdivision - Phase I" 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. The terms, covenants and conditions contained herein run not only to, with and from the Property described herein, but by this reference to said plat or plats, also to, with and from all adjoining additions thereto made pursuant to this Article.

Declarant's Class B membership status shall extend to all Lots in the expansion properties.

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

- (a) The annexed land must be a part of the land described in Exhibit B attached hereto.
- (b) Any additional subdivision annexed hereto by the Declarant shall be comprised exclusively of Lots for detached residential single-family dwellings. The Declarant shall have the sole discretion to develop the Common and Limited Common Areas, if any, 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 as an Owner in Stone Gate at Seven Hills Subdivision - Phase 1, or otherwise. The Common and Limited Common Areas, if any, in any such additional subdivision(s) as set forth therein shall be deeded by the Declarant to the Association not later than the conveyance of the last Lot on said plat, and the Association must accept the deed to said Common and Limited Common Areas, if any.

ARTICLE XI – USE RESTRICTIONS

Section 1. Residential Use. No Owner shall occupy or use his home, 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/renters or guests.

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

Section 3. Uses Permitted by Declarant During Construction. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant on the building of any home to maintain, during the period of construction and sale of said home, upon such portion of the Properties 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 homes, including, but without limitation, a business office, storage area, construction yard, signs, model homes and sales office.

Section 4. Household Pets Permitted. Pets are a privilege in Stone Gate at Seven Hills, not a right. All pets must be registered with the Association by using the approved registration form which is available from the Association. Failure to register a pet shall result in a two-hundred fifty dollar (\$250.00) fine, which shall be a lien upon such Owner's Lot and shall be added to the annual assessment provided in Article IV. No animals, livestock or poultry of any kind may be raised, bred, or kept on any Lot or in the Common and Limited Common Areas, if any, except that dogs, cats or other household pets, no more than two (2) in number, as approved by the Directors, may be kept in homes, or upon any Lot, subject to the rules and regulations adopted by the Board of Directors. All dogs or cats, while not in a home or in the rear-yard area of a Lot, shall be on a leash and shall at no time be allowed to run free or be unattended while not in the Owner's rear yard. Dogs and other pets may be kept in rear-yards; provided, however, that a pet owner, being solely responsible for the conduct and actions of his pet, shall not allow his dog (or other pets) to disturb the peace, quiet and enjoyment of the Owners of Stone Gate at Seven Hills. Household pets shall not be bred on the premises of any Lot as a commercial venture. No more than two approved animals/pets may be kept on the premises of any Lot at any one time, without express written approval of the Board of Directors or appointee. Animal owners shall not allow their pets to defecate or urinate on Common and Limited Common Areas, if any, front yard landscaping maintained by the Association, or on Lots belonging to others. Pet owners shall immediately clean up after their pets.

Section 5. Obstruction of the Common and Limited Common Areas. There shall be no obstruction of the Common and Limited Common Areas, if any. Nothing shall be stored in the Common and Limited Common Areas, if any, without the prior written consent of the Board of Directors.

Section 6. Oil and Mining Operations. No drilling, quarrying or mining operations of any kind shall be permitted upon or in any Lot or upon the Common and Limited Common Areas, if any.

Section 7. Alteration of Common and Limited Common Areas. Nothing shall be altered, constructed, or removed from the Common and Limited Common Areas, if any, except with the written consent of the Board of Directors.

Section 8. Lease Occupancy or Other Temporary Occupancy No Owner shall lease a Home for transient or hotel purposes. Timeshare is prohibited. No Home shall be made subject to any timeshare program, interval ownership, or similar program whereby the right to exclusive use of the Home rotates among multiple owners or members of a program on a fixed or floating time schedule over a period of years.

By operation of law, an Owner may rent or lease the Owner's Home to another individual(s). Notwithstanding, any Owner so doing shall comply with the provisions of this Section 8.

(a) Any temporary or other occupancy, other than by the titled Owner, the Owner's family, friends, and invited guests, must be for a period of at least six (6) months. No Owner may designate a tenant as family, friends or invited guests in order to avoid the intent of this Section 8.

(b) Each such occupancy shall be established between the parties by a written lease/rental/occupancy agreement, a copy of which shall be submitted by the Owner to the Board of Directors, or appointee, together with a signed copy of the Temporary Occupancy Notification Form (available from the Directors). Notwithstanding anything herein, any occupancy that is for a period of longer than two (2) consecutive weeks must comply with the provisions of this Section 8.

(c) Any lease agreement between an Owner and a lessee/renter shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, and all rules and regulations enacted by the Board of Directors. The lease agreement must further provide that any failure by lessee/renter to comply with the terms of such documents and rules and regulations shall be a default under the lease.

(d) The Temporary Occupancy Notification Form may require the following information: (a) that the Owner has conducted credit and reference checks and concluded, thereby, that the lessee/renter will be a responsible, qualified renter; and (b) that the lessee has read this Declaration, the Association rules and regulations, and such other documents as published by the Association from time to time, and, by signature of the lessee/renter, agrees to abide by same. The Temporary Occupancy Notification Form shall also bear the signature of the Owner, indicating thereby that the Owner has performed all of the above. Failure of the Owner to provide a copy of a properly referenced lease/rental agreement and Lease Notification Form to the Association shall result in the Association imposing on the Owner a fine of two-hundred fifty dollars (\$250.00), which shall be a lien upon such Owner's Lot and shall be added to the annual assessment as provided in Article IV, (and permits the Association to pursue any remedy of law available to it in the enforcement of this provision.) (A modified version of the Temporary Occupancy Notification Form may be used in cases of family, friends and guests occupying the Home for a period longer than two (2) consecutive weeks.)

Notwithstanding any other rights of enforcement under the Declaration, the Bylaws of the Association, all rules and regulations enacted by the Board of Directors, or by applicable law, the Association may impose a fifty-dollar (\$50.00) fine on the Owner, which shall constitute a lien upon such Owner's Lot and shall be added to the annual assessment for that Owner's Lot as provided in Article IV, for each violation by Owner's lessee/renter of the Declaration, the Bylaws of the Association or any rules or regulations enacted by the Board of Directors. Such fine shall be imposed after a ten (10) day notice is given to the Owner of such violation, which notice shall be deemed given on the date such notice is mailed, prepaid, first class U.S. mail, to Owner's address as shown on the County Recorder's ownership records. The Association may impose an additional fifty dollar (\$50.00) fine on the Owner for each day such violation continues after the ten (10) day notice period provided herein, which additional fines shall constitute a lien upon such Owners Lot and shall be added to the annual assessment as provided in Article IV. (Notice shall also be deemed given by hand-delivery to Owner.)

Section 9. Recreational and Other Vehicles. No recreational or other utility vehicles may be parked within the Common Area, if any, or upon the driveways of any Lot for longer than a forty-eight (48) hour period in any 7-day period. In no event shall any recreational vehicle, boat, camper, trailer, tent trailer, utility trailer, or mobile home be used for camping or for overnight accommodations by the Lot Owner or by the Lot Owner's guests in or on the driveways or front side-yards of a Lot. Other than as provided above, recreational and other utility vehicles must be parked behind the front foundation line of a home. Notwithstanding that an Owner may temporarily store the above referenced items in the side-yard behind the front side-yard wall, the intent of this Section 9 is to maintain an attractive streetscape in the Project. Awnings, tarps, or other covering systems must receive approval of the AC. The streets of the Project are public streets. Notwithstanding they are public streets, no Owner shall park recreational and other utility vehicles, as described above, on the public streets of the Project other than as provided above. The intent of this Section 9 is to afford all Owners the enjoyment of an uncluttered streetscape.

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 or other Owners.

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. Antennas. No television, radio, satellite dishes, or other external antennas 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 AC and said AC shall have the right to designate an approved satellite dish and further shall have the right to remove or cause removal of any antennas, satellite dishes, or other external antennas erected, placed, or maintained without said prior approval. In the event cable-TV is made available through a bulk contract to the Association, no Owner receiving AC approval for a satellite dish may seek financial relief from the portion of the monthly Association fee attributable to cable-TV, by virtue of non-use thereof.

ARTICLE XII – 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 inconsistent or in conflict with restrictions set forth in the subdivision, building, zoning or other ordinances of the City of St. George, 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 St. George, 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 restrictions contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or restrictions, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or restriction, or any part thereof, shall be thereby affected or impaired; and 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, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants 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 "Stone Gate at Seven Hills Subdivision" land are developed, or until the right to enlarge the Project through the addition of tracts of land or subdivisions terminates, whichever event first occurs, Declarant shall have, and is hereby vested with the right to unilaterally amend this Declaration and or the Plat, or allow a lot line adjustment according to law, as may be reasonably necessary or desirable at the sole discretion of Declarant.

Section 2. Lot Owners Right to Amend. Subject to Section 1 above, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than sixty percent (60%) of the Entire Membership, and thereafter, by an instrument signed by not less than fifty-one percent (51%) of the Entire Membership, which amendment shall be effective upon recordation in the Office of the Recorder of Washington County, State of Utah. Prior to any material amendment to this Declaration, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the members will vote on said amendment.

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

DECLARANT,
Ence Bros. Construction, Inc.,


KIM C. ENCE, President

STATE OF UTAH

COUNTY OF WASHINGTON)
) ss.

On this 8th day of September, 2004, before me personally appeared **Kim C. Ence** whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the president of Ence Bros. Construction, Inc. a corporation, and that the foregoing document was signed by him on behalf of that corporation by authority of its bylaws or of a resolution of its board of directors, and he acknowledged before me that the corporation executed the document and the document was the act of the corporation for its stated purpose.


NOTARY PUBLIC

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EXHIBIT "A"

Stone Gate at Seven Hills Phase 1

Beginning at a point located N 89°20'18" W along the section line 1341.43 feet from the Southeast corner of Section 15, Township 42 South, Range 16 West, Salt Lake Base and Meridian, said point also being the East 1/16 corner of said Section 15 and running thence N 89°20'18" W along the section line 571.17 feet to a point on the Northerly right of way of Sunset Boulevard; thence N 69°13'08" W along said right of way 105.70 feet; thence N 1°08'06" E 452.20 feet; thence S 88°51'54" E 125.00 feet; thence N 1°08'06" E 10.00 feet; thence S 88°51'54" E 420.00 feet; thence N 1°08'06" E 9.40 feet; thence S 88°51'54" E 125.77 feet; thence S 1°08'38" W along the 1/16 line 502.43 feet to the point of beginning. Contains 7.59 acres.