

When Recorded Return To:
Lori Burgess
113 East 200 North, Suite 3
St. George, Utah 84770

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF TONAQUINT TERRACE SUBDIVISION, PHASE 1

KNOW ALL MEN BY THESE PRESENTS:

RECITALS

Whereas, the undersigned (hereafter "Declarant") is the owner of certain real property located in St. George, Washington County, State of Utah, identified as Tonaquint Terrace Subdivision, Phase 1, such property being more particularly described in Addendum A attached hereto and made a part hereof (hereafter "Property"); and

Whereas, Declarant has subdivided the Property into lots and common areas and shall cause such lots and common areas to be conveyed subject to certain protective covenants, conditions and restrictions as hereinafter set forth in this Declaration of Covenants, Conditions and Restrictions (hereafter "Declaration").

DECLARATION

NOW THEREFORE, Declarant hereby declares that all of the Property described in Addendum A shall be held, sold, used, occupied, and conveyed subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the plat of Tonaquint Terrace Subdivision, Phase 1, recorded concurrently herewith, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These covenants, conditions and restrictions shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any portion thereof, and shall inure to the benefit of each such party. The acceptance of any deed to or conveyance of any lot, part or portion of the Property by the grantees named therein or by their legal representatives, heirs, executors, administrators, successors or assigns, shall constitute their covenant and agreement with the Declarant and with one another to accept, hold, improve, use and convey the property described and conveyed in such deed or conveyance subject to this Declaration.

ARTICLE 1 - DEFINITIONS

The following definitions control in this Declaration.

Section 1.1. Association means the Tonaquint Terrace Owners Association, its successors and assigns.

Section 1.2. Board of Trustees means the governing body of the Association.

Section 1.3. Common Area means all real property (including the improvements thereto) owned or hereafter acquired by the Association for the common use and enjoyment of the Members and includes that portion of Property owned by the Association, shown on the Plat as Common Area. Common Area is dedicated to the common use and enjoyment of the Members, and is not dedicated for the use of the general public or other Lot Owners, except as specifically determined by the Trustees. Specifically exempted from Common Area are all lots and dedicated public streets that are identified on the Plat.

Common Area shall also include all land in which the Association has an easement right.

Section 1.4. Declarant means, jointly and severally, Quality Excavation. Inc., and the Declarant's heirs, successors and assigns.

Section 1.5. Declaration means this instrument, and any amendments thereto.

Section 1.6. Entire Membership means 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 1.7. HOA Lot means the separately numbered and individually described plots of land shown on any plat or plats recorded with regard to the Property and designated for private ownership as Lots 1 - 7, inclusive, but specifically excludes the Common Areas.

Section 1.8. Lot means a separately numbered and individually described plot of land shown on any plat or plats recorded with regard to the Property and designated for private ownership, but specifically excludes the Common Areas and HOA Lots.

Section 1.9. Member means every person or entity who holds membership in the Association. The Owners of the HOA Lots constitute the Members of the Association. Owners of other Lots within the Property shall not be Members.

Section 1.10. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

Section 1.11. Owner means the entity, person, or group of persons owning fee simple title to any lot which is within the Property. Regardless of the number of parties participating in ownership of each lot, the group of those parties shall be treated as one "Owner."

Section 1.12. Plat means the subdivision plat recorded herewith entitled "Tonaquint Terrace Subdivision, Phase 1" consisting of one sheet, prepared and certified by Bush & Gudgeon by James A. Raines, a Utah Registered Land Surveyor or any replacements thereof, or additions or amendments thereto.

Section 1.13. Property means that certain real property described on Addendum A hereto, and such additions and annexations thereto as may hereafter be subjected to this Declaration.

Section 1.13. Trustees means the members of the governing body of the Association.

ARTICLE 2 - PROPERTY RIGHTS

Section 2.1. Limited Application of Article The provisions of this Article 2 shall apply only to lots 1 - 7, which are defined above as the HOA Lots.

Section 2.2. Title to the Common Area. Prior to the conveyance of the first lot within the Property, Declarant will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, but subject to this Declaration and easements and rights-of-way of record. In accepting the deed, the Association covenants to fulfill all the terms of this Declaration, to maintain the Common Area in good repair and condition at all times and to operate the Common Area at its own expense in accordance with high standards.

Section 2.3. Owners' Easements of Enjoyment. Every HOA Lot Owner has a right and easement

of use and enjoyment in and to the Common Area. This easement is appurtenant to and passes with the title to every HOA Lot, subject to:

- (a) The right of the Association to limit the number of guests of Members using the Common Area;
- (b) The right of the Association to suspend the voting rights of a Member for any period during which any assessment or portion thereof against the Member's HOA Lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) 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;
- (d) The right of the Association, if there is no Class B membership, with the approval of sixty-seven percent (67%) of the Entire Membership, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency, authority, or utility;
- (e) 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;
- (f) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure;
- (g) The terms and conditions of this Declaration;
- (h) The right of the Association, through its Trustees, to adopt rules and regulations concerning use of the Common Area; and
- (i) The right of the Declarant to take such actions as it may deem necessary as long as the Declarant retains any right of expansion under this Declaration, including granting leases, easements, and modifying the improvements and design of the Common Area.

Section 2.4. Delegation of Use. An HOA Lot Owner or one having a right of use of facilities, is deemed to delegate any right of enjoyment to the Common Area and facilities to family Members, tenants, or contract purchasers who reside on the HOA Lot. Damage caused to the Common Area and facilities, including personal property owned by the Association, by a Member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by the Member, shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Area and facilities shall be an assessment charged to the HOA Lot Owner.

Section 2.5. Rules. The Board of Trustees shall have the authority to promulgate rules and regulations for the governance of the Association's property. These rules of the Association shall be compiled and copies shall be made available for inspection and copying by the Members.

Section 2.6. Lots. Each Lot and HOA Lot is owned in fee simple by the Owner.

ARTICLE 3 -- MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership. Every HOA Lot Owner is a Member of the Association. The term "Owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from HOA Lot ownership. Membership in the Association automatically transfers upon transfer of title by the record HOA Lot Owner to another person or entity.

Section 3.2. Voting Rights. The Association has two classes of voting membership:

CLASS A. Class A Members shall be all HOA Lot Owners with the exception of the Declarant, as defined in this Declaration. Class A Members are entitled to one vote for each HOA Lot owned. When more than one person holds an interest in any HOA Lot, the group of such persons shall be a single Member. The vote for such HOA Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any HOA 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 HOA Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-Owner of the same HOA 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 shall be the Declarant (as defined in this Declaration) Class B Members are entitled to five (5) votes for each HOA 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) conveyance of seventy-five percent (75%) of all HOA Lots and other Lots to purchasers;
- (b) the expiration of seven (7) years from the first conveyance of any HOA Lot or other Lot to a purchaser; 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) the Declarant's memberships appurtenant to the HOA Lots in the expansion area shall be Class B memberships. If Declarant exercises its option to add additional Lots of any character, 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 HOA Lots owned, even if previously converted to Class A status in prior phases and according to the terms hereof.

ARTICLE 4 - FINANCES AND OPERATIONS

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant and each subsequent Owner of any HOA Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (c) any other amount or assessment

levied or charged by the Association or Board of Trustees pursuant to this Declaration; and (d) interest, costs of collection and reasonable attorney fees, as hereinafter provided. All such amounts shall be a charge on the HOA Lot and shall be a continuing lien upon the HOA 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 HOA Lot 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 4.2. Purpose of Assessments. The assessments levied by the Association shall be used: (a) for the purpose of promoting the health, safety, and welfare of the Members; and (b) for the improvement, maintenance and repair of the Common Areas and services and facilities related thereto. The assessments must provide for, but are not limited to, the payment of taxes on Association Property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common Areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve accounts for repair, maintenance and replacement of those Common Areas which must be replaced on a periodic basis; and other amounts required by this Declaration or that the Board of Trustees shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Board of Trustees, for the payment of other charges, including, without limitation, maintenance, management, and water charges.

Section 4.3. Maximum Annual Assessment. Until January 1 following recording of this Declaration, the maximum annual assessment shall be One Hundred Dollars (\$100.00) per Lot. This amount shall be the basis of calculation for future maximum annual assessments. From and after the date referred to above, the maximum annual assessment may be increased each year by five percent (5%) above the maximum assessment for the previous year, without a vote of the membership. The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period. Such change may be made by the Board of Trustees if there is Class B membership. If there is no Class B membership, any such change shall have the assent of sixty-seven percent (67%) of the votes of the Entire Membership, voting in person or by proxy, at a meeting duly called for this purpose. The actual annual assessment need not increase annually however, the ability to increase assessments shall be cumulative with each passing year. The Board shall set the actual annual assessment on an annual basis. Notice shall be given to each owner as provided in Section 9.10. The Board must set the actual annual assessment to be an amount at or less than the maximum annual assessment.

Section 4.4. Special Assessments for Capital Improvements. In addition to the annual assessments, the Board may levy in any assessment year a special assessment, applicable to that 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 Area structures, fixtures and personal property related thereto. Such assessments may be levied by the Board of Trustees if there is Class B membership. If there is no Class B membership, special assessments must have the assent of sixty-seven percent (67%) of the votes of the Entire Membership authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

Section 4.5. 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 Common Areas from the activities of St. George City 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 4.6. Notice and Quorum for any Action Authorized Under Sections 4.3 and 4.4. Written notice of any meeting of Members called for the purpose of taking any action authorized under Sections 4.3 or 4.4 shall be sent to all Members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of the Entire 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 (½) 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 4.7. Uniform Rate of Assessment: Periodic Assessment. Both annual and special assessments must be fixed at a uniform rate for all HOA Lots; provided, however, that no assessments shall accrue against the Declarant so long as the Declarant has Class B membership. Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Trustees determine.

Section 4.8. 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. 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. This notice shall not be a prerequisite to the validity of the assessment. In the absence of a determination by the Trustees as to the amount of said assessment, the annual assessment shall be an amount equal to 90% of the maximum annual assessment determined as provided above. 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 Board shall prepare a roster of the HOA Lots and the assessments applicable thereto at the same time that it sets the amount of the annual assessment, which roster shall be kept by the Secretary-Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Member at reasonable times. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified HOA Lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

Section 4.9. 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 percent (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; (b) may foreclose the lien against an Owner's HOA Lot 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 Owner. There shall be added to the amount of

any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees, together with an amount equal to the reasonable rental value of the HOA Lot from the date of delinquency to the date of foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security. A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the HOA Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were a beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as trustee for purposes of the 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 the HOA Lot.

Section 4.10. 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 HOA Lot shall not affect the assessment lien. However, the sale or transfer of any HOA Lot 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 an HOA Lot or HOA Lot Owner from personal liability for assessments coming due after the Owner takes title or from the lien of such later assessments.

Section 4.11. 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 HOA Lot Owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. An HOA Lot Owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

Section 4.12. Exempt Property. The following property subject to this Declaration is exempt from the assessments created herein:

- (a) All property dedicated to and accepted by any local public authority;
- (b) All Common Area;
- (c) All Lots owned by Declarant and, as long as the Declarant has Class B membership status, all HOA Lots owned by the Declarant.

ARTICLE 5 - INSURANCE

Section 5.1. Casualty Insurance on Insurable Common Area. The Association may insure any property, whether real or personal, owned by the Association, against liability, loss, damage or hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

Section 5.2. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all HOA Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such HOA Lot Owners.

Section 5.3. Liability Insurance. The Trustees shall obtain a comprehensive policy of public liability insurance covering all of the Common Area for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

Section 5.4. Fidelity Insurance. The Trustees may elect to obtain fidelity coverage against dishonest acts on the part of managers, Trustees, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Members. In procuring fidelity insurance the Trustees shall seek a policy which shall: (a) name the Association as obligee or beneficiary, plus (b) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (c) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Section 5.5. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Trustees in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the Common Areas or Common Area improvements or facilities which may be damaged or destroyed.

ARTICLE 6 - ARCHITECTURAL CONTROL COMMITTEE

Section 6.1. Creation. The Declarant shall appoint an Architectural Control Committee (hereafter referred to as the "Committee") consisting of three persons, one of whom shall be knowledgeable in the area of residential development. The Declarant shall have the power to remove members of the Committee and fill vacancies on the Committee until the earliest of the following: (a) the Declarant relinquishes this power in writing; (b) ninety percent (90%) of all Lots and HOA Lots on the Property have been sold; or (c) residential structures have been constructed on seventy-five percent (75%) of all Lots and HOA Lots in all phases of Tonaquint Terrace Subdivision and such structures are legally occupied. When the Declarant ceases to have this power, it shall give written notice of this event to each property owner and thereafter the property owners in Tonaquint Terrace Subdivision, Phase 1 shall, within sixty (60) calendar days, elect new members of the Committee. Each Lot and HOA Lot Owner shall have one vote for each lot owned. The initial Committee members elected by the lot owners shall be elected for terms of three years. No member of the Committee shall receive any compensation or make any charge for services rendered. The Committee shall adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties. The Committee may fix the time and place for its regular meetings and such other meetings as may be necessary. The Committee shall meet monthly, or more or less often, on a regular basis as determined by the Committee. Written minutes shall be kept of Committee meetings and such minutes shall be open to lot owners for inspection at reasonable times upon

request. The Committee shall, by majority vote, elect one of its members as chairman and one of its members as secretary. The duties of each will be such as usually appertain to such offices.

Section 6.2. Approval of Plans. No construction, remodeling, addition or modification of any kind of any structure and no excavation, grading or modification of the topography of any lot within the Property may occur without the written consent of a majority of the Committee. Submission and approval of applications to engage in the above activities shall be governed by rules, regulations and standards adopted by the Committee. The initial rules and regulations, subject to amendment by the Committee, are attached as Addendum B. After termination of the right of the Declarant to appoint and remove Committee members as set forth in Section 6.1, any rule or regulation may be amended, adopted or repealed by majority vote of all lot owners, by one vote for each lot owned. The issuance of a permit or granting of any approval by any governmental entity with respect to any matter shall not bind or otherwise affect the power of the Committee to refuse to approve such matter. Applications for approval shall be passed upon by the Committee within thirty (30) days of submission. In the event the Committee has not acted upon an application within such thirty (30) day period, the application will be deemed to be approved. At the time of initial purchase of a Lot or HOA Lot, the purchaser shall deposit with Declarant the sum of \$3,000.00 to insure compliance with this Section. Upon the determination of the Committee that the provisions of this Section have been met, and after issuance of a certificate of occupancy for the building by the City of St. George, Utah, the deposit shall be returned, without interest, to the person making the deposit. In the event that the provisions of this Section are not complied with in any regard, the deposit shall be deemed forfeited to the Declarant and the Declarant shall be entitled to use such funds as deemed fit, including, but not limited to, the payment of costs and attorney fees incurred in enforcing this Section.

Section 6.3. Immunity from Liability. The Committee shall not be held liable for damages by reason of any action, inaction, approval or disapproval by it with respect to any request made pursuant to this Declaration. Any errors or omissions in the design, construction, improvement or landscaping of any structure or property, and any violation of this Declaration or of any law or regulation, are the sole responsibility of the lot owner and the applicable designer, architect, or contractor. The Committee's review of plans shall in no way be concerned with structural, engineering or mechanical integrity or soundness, nor compliance with applicable laws or regulations.

Section 6.4. Injunctive Relief. Purchasers or lot owners within Tonaquint Terrace Subdivision, Phase 1 acknowledge that any construction, remodeling, addition or modification of any kind of any structure and any excavation, grading or modification of the topography of any lot which occurs without the written consent of a majority of the Committee will cause irreparable harm to other owners and purchasers within Tonaquint Terrace Subdivision, Phase 1. Based thereon, any violation of this Article 6 by any person shall entitle the Committee, the Declarant, or the purchaser or owner of any lot within any phase of Tonaquint Terrace Subdivision, Phase 1 to enforce this provision through immediate injunctive relief through the appropriate court. By purchasing a lot within Tonaquint Terrace Subdivision, Phase 1, such purchaser or lot owner, for themselves and their agents, representatives, successors and assigns, waives any and all defenses to the granting of such injunctive relief. Additionally, any purchaser or lot owner of any lot within Tonaquint Terrace Subdivision, Phase 1 agrees that such injunctive relief is in addition to any other damages or claims which the Committee, the Declarant, or any purchaser or lot owner within Tonaquint Terrace Subdivision, Phase 1 may have hereunder or pursuant to law.

ARTICLE 7 - USE RESTRICTIONS

Section 7.1. Construction, Business and Sales. Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots or HOA Lots during the period of construction and sale of said lots and upon such portion of the premises as Declarant deems necessary including but not limited to a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Area and facilities thereon without charge during the sales and construction period to aid in its marketing activities.

Section 7.2. Land Use and Building Type. None of the Property or lots within the Property shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two stories in height and one "casita" style guest house attached by the roof line to the primary dwelling. Every dwelling shall have, as a minimum, a two-car garage. All residences shall have a concrete paved driveway connecting the parking with a street in such a way as to allow safe ingress and egress. All construction shall be of new materials, except that used stone may be used with the prior written approval of the Architectural Control Committee. In no event shall the total finished living area of any dwelling constructed on any lot within the Property and having a single level or a ground level and basement, be less than two thousand (2,000) square feet, exclusive of porches, balconies, patios and garages. The minimum total finished square footage of living area on the first level above ground of any dwelling having multiple levels above ground shall not be less than fifteen hundred (1,500) square feet. Living area shall be defined as that area containing lighting fixtures, permanent floor coverings, and painted, paper or vinyl-covered walls and ceilings.

Section 7.3. Exterior Building Materials. Exterior building materials shall be limited to rock and stucco, or a combination of the same. All soffit and fascia materials must be stucco. No wood, vinyl, aluminum, or hardboard siding shall be allowed. No log homes will be allowed. All exterior construction shall be of such colors as have been designated by the Declarant in the Declarant's color palette. A copy of the Declarant's color palette may be obtained from the Declarant or the Committee.

Section 7.4. Roofing Material. Roofing material shall be limited to slate, clay, or concrete tile in such colors as have been designated by the Declarant in the Declarant's color palette. A copy of the Declarant's color palette may be obtained from the Declarant or the Committee.

Section 7.5. Garages. All residences constructed on any lot within the Property shall be constructed with a fully enclosed, private, attached garage, built to accommodate not less than two (2), nor more than five (5) vehicles. The minimum size for any such garage shall be twenty (20) feet by twenty (20) feet. The height of the garage door headers shall not exceed eight (8) feet of clearance above the height of a normal passenger vehicle, pickup truck or sport utility vehicle. All garages shall be constructed of the same exterior materials, and shall be in harmony and architecturally compatible with, the residence constructed on the lot.

Section 7.6. Roof Mounted Heat Pumps and Solar Panels. No solar panels, heat pumps and/or air conditioning or heating units shall be allowed to be mounted on roofs. All such units shall be installed on

the ground in the side or rear yard of the lot and shall not be visible from any street.

Section 7.7. Driveways and Walkways. The primary driveway (that is the driveway leading from the street to the garage) and primary walkways (that is walkways leading from the street or driveway to the entrance of the residence), shall be constructed of concrete. All other driveways and walkways shall be constructed of a material commonly used for such purposes and approved by the Committee. In no event shall a driveway or walkway be constructed of dirt, sand, clay or road base material. Any RV or other parking pad proposed to be constructed to the side of a home or garage, must first be approved by the Committee in writing.

Section 7.8. Landscaping. Landscaping of the front and side yards of lots must be completed prior to occupancy. At the time of the original purchase of any Lot or HOA Lot, the purchaser shall deposit with the Declarant the sum of \$2,000.00. Such deposit shall be held by the Declarant to insure installation of the required landscaping, cleanup of the lot after construction, and repair to subdivision improvements. The deposit shall be returned to the person making the deposit upon the Committee's determination, after inspection, that all landscaping has been installed as approved by the Committee, that lot is in a clean condition, and that all subdivision improvements damaged during or in connection with construction activities have been properly repaired. In the event the front and side yard areas are not landscaped prior to occupancy, the lot is not cleaned after construction as deemed appropriate by the Committee, or damage done to subdivision improvements have not been properly repaired, the deposit shall be deemed forfeited to the Declarant and the Declarant shall be entitled to use such funds as deemed fit, including, but not limited to, the payment of costs and attorney fees incurred in enforcing this Section. The Declarant shall have no obligation to use such deposit for the installation of required landscaping, the cleaning of the lot, or the repair of subdivision improvements. Lots shall be landscaped such that all unpaved portions of street front or street side yards shall be planted in either grass, turf, other ground cover, or rock, all as acceptable to the Committee. Unless waived in writing by the Committee based upon special circumstances, front yard landscaping shall be planted with a minimum of twenty-five percent (25%) desert or xeriscape landscaping and a maximum of fifty percent (50%) of grass, turf or other ground cover. Landscaping shall be maintained at a reasonable standard compatible with other homes in the subdivision. Shrub and tree planting on corner lots shall be located so as not to create a hazard for the movement of vehicles along streets. No trees or shrubs shall be planted on any corner. Lots shall be kept free of all tall, noxious or offensive weeds and plant growth by the owner of said lots. Should excessive growth occur on any lot, the owner shall be notified by the Committee, in writing, of such condition and shall be given thirty (30) days to correct the same, after which time the Committee may order such correction affected, the expense of which shall be charged to the owner of the lot or lots.

Section 7.9. Fences, Walls and Barriers. Walls, fences and other barriers shall be constructed of materials manufactured for such purposes and erected in a proper and safe manner. Concrete, poured concrete, concrete block, cinder block, stone, or stucco of a color which blends with the exterior of the structure on the lot and which is of a color which has been designated by the Declarant in the Declarant's color palette may be used for landscaping or retaining purposes. A copy of the Declarant's color palette may be obtained from the Declarant or the Committee. Wrought iron may be used in connection with any of the foregoing as long as the portion of the fences, walls and barriers consisting of wrought iron does not exceed fifty percent (50%) of the total fence, wall or barrier. Poured concrete or concrete sections are allowed only if such materials are constructed with a finished surface. Except as otherwise provided herein, all perimeter walls, fences and barriers shall be constructed of cinder blocks of such color as has been designated by the Declarant in the Declarant's color palette. A copy of the Declarant's color palette may be obtained from the Declarant or the Committee. All walls, fences and barriers shall be kept and

maintained in a visually pleasing manner and in a state of good repair.

Section 7.10. Sight Distance at Intersections. No fence, wall, hedge, or shrub which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within a triangle formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street property lines extended. The same sight line limitations shall apply on a driveway or alley. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 7.11. Slope and Drainage Control. No structure, planting or material shall be placed or permitted to remain and no activities shall be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels. No change in the elevation of a lot shall be made and no change in the condition of the soil or level of the land of a lot shall be made which results in any permanent change in the flow and drainage of surface water which is detrimental to any other lot within the Property. Construction of improvements and installation of landscaping shall be done in such a way that drainage water is retained on the lot and/or conveyed to appropriate drainage facilities and as not to detrimentally drain onto or across any other lot. The slope control areas of each lot and all improvements in them shall be maintained continuously by the Owner of the lot, except for those improvements for which a public authority or utility company is responsible.

Section 7.12. Sewage Disposal. No individual sewage disposal system shall be permitted on any lot, part or portion of the Property.

Section 7.13. Preservation of Views. In planning, constructing, installing and maintaining any structure, improvement or landscaping on any lot, the Owner thereof shall take reasonable measures in an effort to not unduly restrict the views of surrounding lots and properties. In no case shall any structure exceed twenty feet (20') in height as measured from the main ground floor of the structure. Additionally, no structure shall exceed two stories in height above ground level.

Section 7.14. Building Location. All buildings shall be located on all lots so as to comply with any requirements noted on the Plat and so as not to be in violation of St. George City ordinances with respect to minimum setbacks. The above notwithstanding, in no event shall any portion of any building including eaves or steps, encroach upon any other lot. All construction shall be made only within designated and approved building pads.

Section 7.15. Prohibited Structures. No basement home, mobile home, or pre-manufactured home shall be placed, located or constructed on any lot. No structure of a temporary character, trailer, mobile home, basement with no upper structure, pre-manufactured home, tent, shack, garage, barn or any outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently. The storage of one (1) camper trailer belonging to the lot Owner shall be allowed provided such storage is confined to the rear yard area or garage, is behind a fenced area, and is not occupied in any fashion or manner.

Section 7.16. Signs. Except as otherwise provided herein, no signs of any kind shall be displayed to the public view on any lot except one sign of not more than one square foot for identification

(numbering) purposes. One sign of not more than two (2) square feet on each side may be used for advertising the lot for sale or rent or identifying the home during construction. Any sign used for advertising the lot or home thereon for sale or rent, or for identifying the home during construction, shall be of the style, size, color and design, and shall strictly conform in all respects with the sign depicted on Addendum C attached hereto and made a part hereof. Except as specifically provided in this Section 7.16, no signs, including but not limited to banners, flags or streamers of any nature, shall be allowed on any lot. The above notwithstanding, signs used by the Declarant to advertise the development and/or initial sale of any lot, part or portion of the Property shall be excluded from this restriction. During the construction of a residence on a lot, one sign, not more than sixteen (16) square feet in size per side, advertising or publicizing the contractor of the residence, shall be allowed. Any such sign shall be removed upon completion of construction.

Section 7.17. Care and Maintenance. Without limiting any other provision of this Declaration, each Owner shall maintain and keep such Owner's lot at all times in a safe, sound and sanitary condition and refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective lots. All structures, landscaping and improvements shall be maintained in good condition and repair at all times.

Section 7.18. Nuisances. No noxious or offensive activity shall be carried on, or be allowed to be carried on, upon any lot, part or portion of the Property, nor shall anything be done thereon which may become an annoyance to the neighborhood. This includes dogs or any other animals that are not kept within the boundaries of the owner's properties. No lot shall be used for any illegal purpose.

Section 7.19. Animals, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, part or portion of the Property, except that dogs, cats or other domesticated household pets, not exceeding two (2) of each, may be kept in a residence constructed on a lot, or on the lot in a suitable enclosure, provided that they are not kept on any lot so as to be visible from other lots or residences, and are not kept, bred or maintained for any commercial purpose. Such animals as are permitted shall be strictly controlled and kept pursuant to all applicable laws, ordinances, rules and regulations. Pets shall not be kept if they create noise or odors that, in the opinion of the Committee, constitutes a nuisance.

Section 7.20. Garbage and Refuse Disposal. No lot, part or portion of the Property shall be used or maintained as a dumping ground for rubbish, rubble, trash, garbage, or other waste. All trash, garbage, rubbish, rubble, or other waste shall be kept in sanitary containers which are emptied on at least a weekly basis. No unsightly materials or other objects are to be stored on any lot in view of the general public or neighboring lot owners. No rubbish, trash, papers, junk, or debris shall be burned upon any lot, part or portion of the Property.

Section 7.21. Storage of Materials. No lot, part or portion of the Property shall be used or maintained as storage for building materials except during construction of improvements on the lot. Once a dwelling is occupied or made available for sale, all building materials shall be removed or stored inside such dwelling.

Section 7.22. Inoperable Vehicles. No type of motor vehicle which is inoperable for any reason shall be permitted to be parked upon any street, lot, or part or portion of the Property, except in an approved, enclosed garage. In the event any inoperable motor vehicle remains outside upon any street, lot, or part or portion of the Property for a period exceeding thirty (30) days, the same may be removed after

ten (10) days written notice to the lot and vehicle owner. The cost and expense of such removal shall be borne by the lot owner and vehicle owner. As used in this section, “inoperable vehicle” shall mean any motor vehicle which is unable to be legally operated in a normal manner upon the streets under its own power, or is unlicensed or unregistered for a period of ninety (90) days or more. No automobile, recreational vehicle, commercial vehicle, other motorized vehicle, or any portion thereof, shall be dismantled, rebuilt, serviced, repaired or repainted on or in front of any lot unless performed within a completely enclosed garage or other permitted structure located on the lot which screens the sight and sound of such activity from the public streets and neighboring lots.

Section 7.23. Boats, Recreational, Trucks, Trailers and Other Vehicles. No boats, motorcycles, trailers, buses, motor homes, campers or other such vehicles shall be parked or stored upon any lot except on the side or back yard area. In no event shall any such vehicles be parked on the driveway or in the front yard area of any lot or on any street located within the Property. All such vehicles shall be properly registered and licensed, or meet such other governmental approval as may be required. Trailers and motor homes with a length in excess of fifty (50) feet and trucks of a gross vehicle weight over ten thousand (10,000) pounds are not allowed to be placed, parked, or stored upon any street, lot, or part or portion of the Property. All trailers and recreational vehicles must be placed within an enclosed garage or behind a privacy wall.

Section 7.24. Antennas. No external radio, television, dish or other antenna of any kind or nature, or device for the reception or transmission of radio, microwaves or other similar signals shall be constructed or maintained on any lot or residence in such a manner as to extend above the height of the residence on the lot nor shall such devices be located on any lot or on any residence on any lot so as to be visible from the street. Satellite dishes shall only be allowed in backyard areas and only if screened from view from streets and other lots.

Section 7.25. Oil and Mining Operations. No drilling, quarrying or mining operations of any kind shall be permitted upon, in or under any lot or part or portion of the Property, nor shall any oil or gas well, tank, tunnel, mineral excavation or shaft be permitted upon, in or under such lot or part or portion of the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot or part or portion of the Property.

Section 7.26. Commercial Activities Prohibited. Lots shall not be used for, or in connection with, the conduct of any trade, business, professional or commercial activity of any kind. However, this restriction shall not prohibit an owner or resident from (a) maintaining his personal professional library therein; (b) keeping his personal business or professional records or accounts therein; or (c) handling his personal business or professional telephone calls or correspondence therefrom.

Section 7.27. Re-subdivision or Combining of Lots. No lot within the Property shall be divided, subdivided, partitioned, parceled or broken up into smaller lots or units. In the event any person desires to combine two or more lots, either by use or plat amendment, approval shall first be obtained from the Committee. The responsibility to comply with all legal requirements and pay all costs associated with such combination shall be borne exclusively by the person desiring such combination of lots.

Section 7.28. Damages. Any damage inflicted upon existing improvements such as curbs, gutters, streets, sidewalks and such, by the purchaser or owner of any lot and/or their agents or builders, must be repaired as soon as possible after such damage is discovered, and the expense of such repair shall be borne by the lot purchaser or Owner.

Section 7.29. Use of Common Area. Owners are hereby prohibited and restricted from using any of the Common Area, other than as permitted in this Declaration or as may be allowed by the Trustees. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of the Owners of HOA Lots and is necessary for the protection of the interests of all said Owners in and to the Common Area. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Area and facilities thereon without charge during the sales and construction period to aid in its marketing activities.

ARTICLE 8 - EXPANSION

Declarant reserves the right, at its sole election, to expand the Property to include additional property more particularly described below, by unilateral action of Declarant without the consent of Owners, for a period of seven (7) years from the date of recording of this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah. The property, all or part of which may be included in one or more expansions, is located in Washington County, Utah, and is more particularly described as follows:

ALL PROPERTY LOCATED IN THE GENERAL VICINITY OF THE PROPERTY DESCRIBED IN ADDENDUM A, WHICH IS CONTIGUOUS TO ANY PHASE OF THE DEVELOPMENT.

Expansion shall occur by the Declarant filing:

a. an additional subdivision plat or plats creating additional lots and/or common areas 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

b. 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 development, similar to the homes already constructed, constructed out of similar materials, with similar lot size. 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 in such expansion area shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens, within a reasonable time after recording 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 Association property and facilities as provided for in this Declaration. Declarant's Class B ownership status shall extend to all lots in the expansion area. Otherwise, HOA Lot Owners in the original and expansion areas shall all have equal membership status in the Association. The liability for assessments of each HOA Lot and HOA Lot Owner in any expansion area shall be equal to the liability of each HOA Lot and HOA Lot Owner in the

original Property.

ARTICLE 9 - GENERAL PROVISIONS

Section 9.1. Enforcement. The Association, the Declarant or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any Owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing Owner a reasonable attorney's fee. The Trustees may levy a fine or penalty not to exceed fifty percent (50%) of the amount of the maximum annual assessment against any HOA Owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice, and opportunity for hearing.

Section 9.2. Declarant Immunity. By purchasing property within the subdivision, the lot purchaser and Owner assumes any and all risk of damage and personal injury and waives any and all known or unknown claims of whatever nature against the Declarant or its agents, employees, officers, representatives, successors and assigns with regard to the property purchased. Such waiver specifically includes, but is not limited to, any claims, damages, expense or loss caused by or related to any unforeseen surface or subsurface soil condition, soil compaction or lack thereof, rock falls, rock, block or other walls, or any other condition that may be associated with, or directly or indirectly related to, the purchase of such property or defects in design, construction, installation or management of improvements on such property. A waiver and release agreement in the form set forth on Addendum D and incorporated herein by reference shall be executed by all purchasers at the time any lot is first sold to any purchaser and shall be recorded as part of the closing of such sale. However, the assumption of liability and waiver and release set forth in this paragraph shall be effective against any and all purchasers or lot owners of any lot within the subdivision whether or not the waiver and release shown on Addendum D is signed and recorded.

Section 9.3. Severability. All of the conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired, and the Declarant, Association and Owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 9.4. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, or the Owner of any lot subject to this Declaration, and by their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) 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 9.5. Amendment. After the occurrence of one of the events set forth in Section 6.1 which terminates the Declarant's right to appoint and remove members of the Committee, this Declaration may be

amended by a written document signed by the Owners of two-thirds (2/3) of all lots in the subdivision. Until such time as one of the events set forth in Section 6.1 occurs which terminates the Declarant's right to appoint and remove members of the Committee, the Declarant is vested with the right to unilaterally amend this Declaration as may be reasonably necessary or desirable in the sole discretion of the Declarant.

Section 9.6. Declarant Exemption. The Declarant and all activities carried on by the Declarant in connection with the subdivision, development, sale, or related activity, with regard to the Property or any lot, is exempt and free from all restrictions and constraints in this Declaration.

Section 9.7. Violation as Nuisance. Every act or omission whereby any restriction, covenant or condition in this Declaration is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Declarant or any Owner or Owners of any lot or portion of the Property. Remedies under this Declaration shall be deemed cumulative and not exclusive.

Section 9.8. Enforcement. Each and all of the restrictions, covenants and conditions contained in this Declaration are for the benefit of the Declarant and the Owner or Owners of any lot or portion of the Property. Each restriction, covenant and condition shall inure to the benefit of and pass with each and every lot or portion of the Property and shall apply to and be binding upon each and every successor in interest thereto. The restrictions, covenants and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any such breach, or non-compliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Declarant or the Owner or Owners of any lot or portion of the Property; provided, however, that no such breach shall affect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent Owner of such lot or portion of the Property shall be bound and obligated by this Declaration, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise. Failure by the Declarant or any Owner or Owners of any lot or portion of the Property, or their respective legal representatives, heirs, successors, or assigns, to enforce any of the provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 9.9. Attorney Fees and Costs. In the event enforcement hereof is required against any person or entity, the prevailing party to such action shall be entitled to recover all costs and attorney fees so incurred, whether or not suit is filed, and at trial or on appeal.

Section 9.10. Notices. Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it. Such notices shall be deemed received upon actual receipt or five (5) days after mailing, whichever is sooner.

Section 9.11. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 9.12. Waivers. No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 9.13. Topical Headings. The topical headings contained in this Declaration are for

ADDENDUM A

BEGINNING AT A POINT N88°26'10"W 254.39 FEET ALONG THE SECTION LINE AND N1°33'49"E 89.65 FEET FROM THE SOUTHEAST CORNER OF SECTION 2, TOWNSHIP 43 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE N83°29'07"W 138.84 FEET; THENCE N83°40'13"W 50.00 FEET; THENCE N6°19'47"E 34.87 FEET; THENCE N83°40'13"W 120.28 FEET; THENCE N88°26'10"W 698.11 FEET; THENCE N88°33'35"W 51.90 FEET; THENCE N88°22'03"W 417.49 FEET; THENCE N81°10'33"W 363.44 FEET; THENCE N69°09'26"W 60.00 FEET TO A POINT ON AN 1180.00 FOOT, NON-TANGENT, RADIUS CURVE TO THE RIGHT, THE RADIUS POINT BEARS S69°09'26"E; THENCE NORTHEASTERLY 454.52 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 22°04'10" TO THE POINT OF TANGENCY; THENCE N42°54'44"E 86.21 FEET TO A POINT ON A 280.00 FOOT, NON-TANGENT, RADIUS CURVE TO THE LEFT, THE RADIUS POINT BEARS N49°03'46"E; THENCE SOUTHEASTERLY 39.02 FEET ALONG THE ARC OF SAID CURVE; THROUGH A CENTRAL ANGLE OF 7°59'02"; THENCE N40°05'59"E 122.62 FEET; THENCE S58°33'42"E 27.56 FEET; THENCE N36°03'37"E 111.87 FEET; THENCE N39°41'46"E 50.00 FEET TO A POINT ON A 125.00 FOOT, NON-TANGENT, RADIUS CURVE TO THE LEFT, THE RADIUS POINT BEARS N39°41'46"E; THENCE SOUTHEASTERLY 26.24 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 12°01'47"; THENCE N27°50'28"E 97.30 FEET; THENCE S88°26'10"E 726.55 FEET; THENCE S80°10'43"E 215.21 FEET TO A POINT ON THE WESTERLY BOUNDARY OF THAT PARTICULAR DEED RECORDED IN BOOK 706, PAGE 798, RECORDS OF WASHINGTON COUNTY; THENCE S10°50'55"W 18.63 FEET ALONG SAID BOUNDARY LINE; THENCE S79°09'05"E 454.00 FEET ALONG THE SOUTHERLY BOUNDARY LINE OF SAID DEED; THENCE S80°00'59"E 80.40 FEET TO A POINT ON A 1731.01 FOOT, NON-TANGENT, RADIUS CURVE TO THE LEFT, THE RADIUS POINT BEARS S80°00'59"E; THENCE SOUTHWESTERLY 94.61 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 3°07'54" TO THE POINT OF TANGENCY; THENCE S6°51'07"W 243.95 FEET TO A POINT ON "THE LEGACY NO. 1 TOWNHOME SUBDIVISION", RECORDS OF WASHINGTON COUNTY; THENCE N83°08'53"W 40.00 FEET ALONG SAID BOUNDARY; THENCE S6°51'07"W 243.04 FEET ALONG SAID BOUNDARY AND ALONG THE BOUNDARY LINE OF "LEGACY AT SOUTHGATE PHASE #6 AMENDED", RECORDS OF WASHINGTON COUNTY TO THE POINT OF A 6207.09 FOOT RADIUS CURVE TO THE LEFT, THENCE SOUTHWESTERLY 96.40 FEET ALONG THE ARC OF SAID CURVE AND SAID BOUNDARY LINE THROUGH A CENTRAL ANGLE OF 00°53'23"; THENCE S88°42'34"E 40.13 FEET ALONG SAID BOUNDARY LINE TO A POINT ON A 6167.09 FOOT, NON-TANGENT RADIUS CURVE TO THE LEFT, THE RADIUS POINT BEARS S84°00'27"E; THENCE LEAVING SAID BOUNDARY LINE SOUTHWESTERLY 42.33 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 00°23'35"; THENCE N84°24'02"W 80.40 FEET TO THE POINT OF BEGINNING.

CONTAINS 30.60 ACRES.

ADDENDUM B

RULES, REGULATIONS AND STANDARDS OF TONAQUINT TERRACE SUBDIVISION

While the controls exercised by the Architectural Control Committee (hereafter referred to as the “Committee”) must be maintained, the Committee does not intend to stifle innovative designs or architectural freedom. If any design elements of a prospective home appear to be in conflict with the controls or recommendations set forth, such conflicts must be resolved by the Committee and will, whenever possible, be resolved in favor of aesthetic and design quality.

The guidelines and restrictions contained herein are consistent with the provisions of the recorded covenants, conditions and restrictions of Tonaquint Terrace Subdivision (hereinafter “Covenants”). The Covenants are on record in the office of the Recorder, Washington County, Utah, at 87 North 200 East, St. George, Utah. Any violations of these guidelines or the Covenants may result in required changes to floor plans, colors, materials, etc. at the owner’s and/or contractor’s expense.

No construction may begin in Tonaquint Terrace Subdivision without the issuance of a building permit issued by the City of St. George. A set of drawings and specifications with the Committee’s stamp or signature of approval must be submitted to the City of St. George to obtain a permit. This stamp or signature of approval will be given upon compliance with all provisions stated in the Covenants and these rules, regulations and standards and by execution of a final agreement as established by these rules by the owner and contractor legally responsible for the proposed construction.

SECTION 1.

Two (2) complete sets of floor plans, outside elevations, and site plans as set forth and containing, at a minimum, the information listed below, shall be submitted to the Committee no less than ten (10) days prior to the desired date for commencement of construction. Both sets will be stamped or signed and returned, one for the City of St. George and one for construction use. The plans must contain all of the following:

A. SITE PLAN

1. Show scale and over-all dimensions.
2. Indicate lot number and street name.
3. Indicate setback from street (front yard minimum setback is twenty-five (25) feet and side yards minimum setbacks are ten (10) feet and eight (8) feet).
4. Indicate grade elevations at front corners of lot and finished floor elevations.
5. All finished floor elevations must be a minimum of twelve (12) inches above the crown of the road of the front street elevations. Finished floor elevations are to be consistent with existing homes on the adjacent lots. (In instances where the contour of the land prohibits compliance, a special examination of the site will be made by the Committee and determination will follow.)
6. Location of the HVAC unit shall be noted. No HVAC unit will be placed on the roof.

B. FLOOR PLAN

1. Show scale and over-all dimensions.
2. Indicate window and door locations and sizes.
3. Show location of all HVAC units, satellite dishes, and any other mechanical and/or non-mechanical devices. Locations of these items must be in the rear of the house and out of street view. (Special consideration will be given when rear installation is not feasible. In such situation, the unit must be screened from the street view with materials compatible with materials used in the construction of the house.)

C. ELEVATIONS

1. Note scale on plan.

D. COLOR SCHEMES AND EXTERIOR MATERIALS

1. Colors shall be selected from those colors contained in the Developer's approved color palette. A copy of the approved color palette may be obtained from the Declarant or the Committee. The Declarant and the Committee reserve the right to reject any scheme not consistent with the approved Declarant's color palette.
2. The general design expressed in the front of the house must continue to each side elevation.
3. Innovative designs used on the front of the house using stone other materials will be considered on an individual basis.

E. CONSTRUCTION AND MATERIALS WHICH ARE NOT ACCEPTABLE

1. Log house.
2. Pre-manufactured houses.
3. Earth or berm houses.
4. Re-located houses.
5. Wood, vinyl, brick, aluminum, or hardboard siding.

F. ACCEPTABLE ROOFING MATERIALS

1. Roofing materials must be slate, clay or concrete tile in those colors contained in the Developer's approved color palette. A copy of the approved color palette may be obtained from the Declarant or the Committee.

G. HEIGHT OF HOUSE

1. All houses proposed to be over one story in height will be examined by the Committee as to the aesthetic value for adjoining houses, lots and/or their views. The Committee has the right to restrict the height of any house, structure of landscaping if it unduly restricts a neighbor's view. In no case shall a house or other structure on the lot exceed twenty feet (20') in height as measured from the ground level.

H. SIZE OF HOUSE, LANDSCAPING, AND SPECIAL RESTRICTIONS

1. The outside measurement of the ground level of each house containing a single level, or of

each house containing a ground level and a basement level, will not be less than two thousand (2,000) square feet on the ground floor, exclusive of garages, porches, patios, and storage. The ground floor of a two story home, exclusive of garages, porches, patios, and storage, will not be less than fifteen hundred (1,500) square feet.

2. All storage units, garages, etc., are to have the same design and materials as the main dwelling.
3. All homes are to have a minimum two car attached garage.
4. Fences and swimming pools will follow the St. George zoning requirements.
5. All required landscaping (as outlined in paragraph 7.8 of the Covenants) will be completed prior to occupancy.
6. Campers, boats, pickups and other recreational and commercial vehicles must be kept in a garage or on a concrete (or other suitable material) pad at the side or in the rear of the house.
7. All walls around houses shall be of colored masonry materials in those colors contained in the Developer's approved color palette. A copy of the approved color palette may be obtained from the Declarant or the Committee. All walls shall conform to the St. George zoning requirements. No chain link, wood or wire fences or walls will be allowed.
8. Blasting of any kind will not be allowed.
9. In order to maintain the integrity of the development, no roof-top mounted air conditioning or heating equipment, or any other such device will be allowed.
10. Basements: A geotechnical investigation was performed by Applied Geotechnical Engineering Consultants, Inc. The results of the investigation and specific recommendations of construction are compiled in a report dated July 1, 2004. This report is available from the Developer and a copy is on file with the City of St. George. Owners, builders and contractors should become familiar with this report and comply with its recommendations. In addition, all homes must be constructed in accordance with the recommendations of a geo-technical engineer on a lot by lot basis.

I. EASEMENTS

1. Easements for installation and maintenance of utilities and drainage are reserved as shown on the recorded plat. Structures of any type are prohibited within these easements. Plants or other materials may be placed or permitted to remain within such easements which will not damage utilities, or which will not obstruct or retard the flow of water through drainage channels in the easements. 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 is responsible.

SECTION 2.

DURING THE COURSE OF CONSTRUCTION, OWNERS AND CONTRACTORS WILL COMPLY WITH THE FOLLOWING CONDITIONS AND AGREEMENTS.

A. Trash Receptacles and Debris Removal. Owners and contractors shall clean up all trash and debris at the end of each day. An approved trash receptacle must remain on the site at all times for this purpose to contain all lightweight materials or packaging. Trash receptacles must be emptied at least once a week (and more often if necessary) at an appropriate off-site facility.

B. Concrete Trucks. Concrete trucks may be washed out only on the lot being built upon and inside the construction area of such lot. No concrete trucks shall be washed out on any other lot within

the subdivision. The owner and contractor are responsible for containing all washout to preclude this water from entering washes and contaminating tree roots.

C. Cleanliness. During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from becoming a public eyesore, or affecting other parcels or any easement. Any cleanup costs incurred in enforcing these requirements shall be payable by the owner and contractor. Dirt, mud, or debris resulting from activity on each construction site shall be promptly removed.

D. Materials Storage. Construction materials shall be stored on the lot, only for such time as reasonably needed and in orderly array.

E. Sanitary Facilities. Each owner and contractor shall be responsible for providing adequate sanitary facilities for construction workers. Portable toilets must be provided.

F. Vehicles and Parking Areas. All construction vehicles shall be parked within the lot being built upon or on the public street.

G. Conservation of Native Landscape. The Committee shall have the right to protect major terrain features, rocks, or plants. Any trees or branches removed during construction must be promptly cleaned up and removed from the construction site.

H. Dust and Noise Control. The owner and contractor shall be responsible for controlling dust and noise from the construction site, including the removal of dirt and mud that is the result of construction activity on the site and the owner shall ensure that the contractor undertakes such responsibilities. The volume of stereos, radios or any equipment must be maintained at a LOW LEVEL that does not disturb the quiet peace and enjoyment of adjoining property owners or the surrounding neighborhood.

I. Material Deliveries. All building materials, equipment and machinery required to construct a residence must be delivered to and remain within the lot. This includes all building materials, earth moving equipment, trailers, generators, mixers, cranes, and any other equipment or machinery.

J. Firearms. Carrying any type of firearm on the Property by construction crews is prohibited.

K. Alcohol and Controlled Substances. The consumption of alcohol or use of any controlled substance on any construction site is prohibited.

L. Fires and Flammable Materials. Careless disposition of cigarettes and other flammable materials, as well as the build-up of potentially flammable materials constituting a fire hazard on the construction site, are prohibited.

M. Restoration of Property. Upon completion of construction, each owner and contractor shall clean his construction site and repair all property which has been damaged, including but not limited to, restoring natural contours, rocks, trees, and natural vegetation as approved or required by the Committee. Each owner and contractor involved with construction activities on any lot in the subdivision shall repair any damage to sidewalks, curbs, gutters, streets, culverts, drainage, pathways, or other subdivision improvements which was caused by construction, construction traffic, or other causes related to construction activities. The repair of such subdivision improvements shall be made as construction on the lot is completed and before the issuance of a certificate of occupancy by the City of St. George. The

deposit required by paragraph 7.8 of the Covenants shall not be refunded until the requirements of this paragraph are met.

N. Construction Signage. Temporary construction signs shall be limited to one sign per site not to exceed four (4) square feet of total surface area. The sign shall be free standing, not to exceed four (4) feet in height above natural grade, of a design as set forth in Addendum C to the Covenants, Conditions and Restrictions for the subdivision, and in a location within the site as approved by the Committee. Attachment of signs or similar material to trees or rocks is strictly prohibited.

O. Daily Operation. Daily working hours for each construction site shall be from 30 minutes before sunrise to 30 minutes after sunset.

ADDENDUM D

WAIVER AND RELEASE AGREEMENT

_____, (“Owner”) of Lot(s) _____, Tonaquint Terrace Subdivision, Phase ____, according to the official plat thereof recorded in the office of the Washington County Recorder, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree that it is their sole responsibility to obtain and comply with recommendations from competent geotechnical and engineering professionals with regard to the inspection of Lot(s) within the subdivision prior to purchase and construction on such Lot(s). Owner acknowledges and agrees that, except for warranties of title as set forth in the Lot Sales Contract between the Owner and the developer, the developer makes no warranties whatsoever with regard to the Lot(s) or the sale or transfer thereof, and Owner is specifically purchasing the Lot(s) **“AS IS” AND WITHOUT WARRANTY WHATSOEVER, INCLUDING ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.** In purchasing a Lot(s) within the subdivision, Owner represents that Owner has inspected the Lot(s) as deemed advisable by the Owner, is relying upon its own inspection of the Lot(s) in making a purchase of the same, and accepts the Lot(s) in its current condition. Owner, for themselves and their heirs, representatives, successors and assigns, waives, releases and agrees to hold harmless the developer and its agents, employees, officers, representatives, successors and assigns, from any and all known or unknown claims of whatever nature in any way related to such Lot(s), including, without limitation, claims or damages caused by or related to any unforeseen surface or subsurface soil condition, soil compaction or lack thereof, rock falls, rock, block or other walls installed by or for the developer, or claims related to or associated with the slope, elevation, or drainage of the Lot(s) and/or any adjoining lots or properties. Such waiver, release and hold harmless specifically includes, but is not limited to, any claims or any condition that may be associated with, or directly or indirectly related to, defects in the Lot(s) or in the design, construction, installation or management of improvements within, related to, or servicing the Lot(s).

All rock retaining walls built by or for the developer and all masonry or rock walls built by or for any lot owner shall be owned and maintained by the owner of the lot on or adjacent to which the wall is located, or the Tonaquint Terrace Owners Association, as the case may be. Neither the City of St. George nor the developer shall have any responsibility or liability whatsoever with regard to any aspect of any such walls, including defects therein.

This waiver and release is hereby made a part of the sale of the Lot(s) and the Land Sales Contract for the purchase and sale of such Lot(s) dated _____, 20 ____, shall survive the closing of any purchase transaction or transfer with regard to such Lot(s), and constitutes a covenant running with the land. The burdens and benefits under this waiver and release shall be binding upon the undersigned and their successors, representatives and assigns. Should any term or provision of this Waiver and Release Agreement be ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of this agreement shall nonetheless stand in full force and effect. Should any action be brought to enforce the terms of this agreement, the prevailing party shall be entitled to recover their costs and attorney fees incurred in such action, whether or not suit is commenced, and at trial or on appeal.

By signing below, the undersigned acknowledges that they have carefully read and reviewed the terms of this Waiver and Release Agreement and agree to its provisions.

OWNER(S)

Date

Date

