

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
OF  
THE HILLS

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REGISTERED TO THE PUBLIC  
RECORDS  
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680-700  
SOUTHERN UTAH TITLE CO.

THIS DECLARATION of Covenants, Conditions and Restrictions is made on the date hereinafter set forth to establish a planned unit development known as The Hills.

RECITALS

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

WHEREAS, Declarant will convey the properties subject to certain protective covenants, conditions, restrictions, reservations, assessments, charges and liens as hereinafter set forth, and

WHEREAS, it is the desire and intention of Declarant to construct townhomes on the properties and sell and convey the same to various purchasers.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the properties described below shall be held, sold and conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and the map recorded herewith entitled "The Hills No. 1," consisting of one sheet, prepared and certified by Terry W. Abplanalp, a Utah Registered Land Surveyor, which are all for the purpose of protecting the value and desirability of, and which shall be construed as covenants of equitable servitude and shall run with the properties and be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof:

A PARCEL OF LAND IN THE NE 1/4 OF SECTION 5, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF FORT PIERCE DRIVE, SAID POINT BEING N89°55'43" E ALONG THE CENTER SECTION LINE (BASIS OF BEARING PER WASHINGTON COUNTY AREA REFERENCE PLAT DATED 1974) 1005.94 FEET AND N0°01'20"W 79.96 FEET FROM THE CENTER OF SECTION 5, TOWNSHIP 43 SOUTH, RANGE 15 W, SALT LAKE BASE AND MERIDIAN AS REFERENCE ON EARLIER BLOOMINGTON HILLS SUBDIVISION PLATS AND RUNNING THENCE N0°01'20"W 259.04

287996

FEET TO A POINT OF A 151.65 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 49.66 FEET TO A POINT OF A 105.03 FOOT RADIUS REVERSE CURVE TO THE RIGHT, THE RADIUS OF WHICH BEARS N71°12'56"E FROM SAID POINT; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE 39.45 FEET TO A POINT OF A 25.00 FOOT RADIUS REVERSE CURVE TO THE LEFT, THE RADIUS OF WHICH BEARS N87°15'42"W FROM SAID POINT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 31.96 FEET; THENCE N19°30'E 25.00 FEET; THENCE S70°30'E 229.26 FEET; THENCE S7°00'W 15.21 FEET; THENCE S24°00'E 166.53 FEET TO A POINT ON A 280.00 FOOT RADIUS CURVE TO THE LEFT ON THE NORTHERLY LINE OF FORT PIERCE DRIVE ACCORDING TO THE 1982 AMENDED PLAT THEREOF, THE RADIUS OF SAID CURVE BEARS S46°36'E FROM SAID POINT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND NORTHERLY LINE 54.08 FEET; THENCE S32°20'W 7.40 FEET TO A POINT OF A 220.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND NORTHERLY LINE OF SAID FORT PIERCE DRIVE 221.17 FEET; THENCE S89°56'W ALONG SAID NORTHERLY LINE 33.27 FEET TO THE POINT OF A 270.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE WESTERLY ALONG THE ARC OF SAID CURVE AND NORTHERLY LINE 4.05 FEET TO THE POINT OF BEGINNING. CONTAINS 1.711 ACRES, MORE OR LESS.

## ARTICLE I

### DEFINITIONS

Section 1. Declaration shall mean and refer to this instrument, and any amendments.

Section 2. Plat or Map shall mean and refer to the subdivision plat recorded herewith captioned "The Hills No. 1," or any replacements thereof, or additions thereto.

Section 3. Properties shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be subjected to this Declaration.

Section 4. Common Area shall mean and refer to that portion of property owned by the Association and shown on the plat as dedicated to the common use and enjoyment of the owners.

Section 5. Limited Common Area shall mean and refer to that portion of property owned by the Association and shown on the plat as dedicated to the exclusive use and enjoyment of the owners of the lots to which such limited

common area is adjacent and/or appurtenant, subject to rights of the Association, as herein set forth.

Section 6. Lot shall mean and refer to any separately numbered and individually described plot of land shown on the plat, designated for private ownership, and shall exclude the common and limited common areas.

Section 7. Townhome shall mean and refer to a single family dwelling, with or without walls or roofs in common with other single family dwelling units, and shall include fee title to the real property lying directly beneath said single family dwelling.

Section 8. Owner shall mean and refer to the entity, person, or group of persons owning fee simple title to any lot which is within the properties. Regardless of the number of parties participating in ownership of each unit, those parties shall be treated, as a group, as one "owner."

Section 9. Association shall mean and refer to The Hills, its successors and assigns.

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

Section 11. Trustees shall mean and refer to the governing body of the Association.

Section 12. Declarant shall mean and refer to Clark H. Spilker and his heirs, successors and assigns.

## ARTICLE II

### EXPANSION PROPERTIES

Declarant reserves the right to expand 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 which may be included in any expansion is more particularly described in Exhibit A, incorporated herein by this reference.

Expansion shall occur by the Declarant filing additional subdivision plats creating additional planned unit developments on the property described above, stating on said plats the intention to have the property described on said plat bound by the terms, covenants and conditions of this Declaration. Upon recording of such a plat, the property described therein shall be subject to this Declaration.

Any additional planned unit developments annexed hereto by the Declarant shall be exclusively for residential single family dwellings,

architecturally compatible to the existing townhomes, substantially identical to the townhomes already constructed, constructed out of similar materials, with substantially similar lot size. The maximum number of lots to be added shall be 85. The Declarant shall have the sole discretion as to development of the common area in any expansion and may include any facilities or amenities thereon that Declarant deems necessary and such common areas shall be owned by the Association. Additional common and limited common area shall be added in any expansion to maintain a ratio of common and limited common area to total lot area similar to the ratio which now exists. The common area in such additional planned unit developments as set forth herein shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens within one (1) year of the date of recordation of the expansion plat and the Association must accept the deed to said common area.

Owners of Lots in any expansion 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, and present members shall have the same rights to use of any common areas in expansion areas as owners in the expansion.

### ARTICLE III

#### PROPERTY RIGHTS

Section 1. Title to the Common Area The Declarant, its successors and assigns, will convey fee simple title to the common area and limited common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, subject to covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration, easements and rights-of-way of record, and a covenant by the Association to maintain the common area in good repair and condition at all times and to operate the same at its own expense in accordance with high standards, which covenants shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns.

Section 2. Owners' Easements of Enjoyment Every owner shall have a right and easement of use and enjoyment in and to the common area which easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area.

(b) The right of the Association to limit the number of guests of members using the common area.

(c) The right of the Association to suspend the voting rights of a member for any period during which any assessment against his lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) With the approval of all first mortgagees on lots and two-thirds (2/3) of the owners, the right of the Association 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. The granting of easements for public utilities or other public purposes consistent with the intended use of such common area by the Association shall not be deemed a transfer within the meaning of the next preceding clause, and shall not require the prior written assent of the first mortgagees but shall require the written assent of two-thirds (2/3) of each class of members.

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

(f) The right of each individual unit owner to the exclusive use of the limited common area adjacent and appurtenant to his respective lot, and the right of each owner to exclusive use of the parking area, if any, designated with his lot number on the plat.

**Section 3. Limited Common Area** Ownership of each lot shall entitle the owner thereof to the exclusive use of the limited common area adjacent and appurtenant thereto.

**Section 4. Delegation of Use** Any owner may delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

#### ARTICLE IV

#### MEMBERSHIP AND VOTING RIGHTS

**Section 1. Membership** Every person or entity who is owner of any lot shall be a member of the Association. The term "owner" shall include contract purchasers but shall not include persons or entities who hold an interest merely as security for the performance of an obligation unless and until said holder has acquired title pursuant to foreclosure or proceedings in lieu of foreclosure. Membership shall be appurtenant to and may not be separated from ownership of any lot. Membership in the Association shall automatically transfer upon transfer of title by the record owner to another person or entity.

**Section 2. Voting Rights** The Association shall have two classes of voting membership:

**CLASS A.** Class A members shall be all members with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, the group of such persons shall be a member. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the lot concerned unless written objection is made prior to said meeting, or verbal objection at said meeting, by another co-owner of the same lot. In the

event 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 the Declaration,) and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) the expiration of seven (7) years after the date on which the Declaration is filed for record in the office of the county recorder of Washington County, Utah.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant for each lot owned by him within the properties hereby covenants and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges; and, (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with interest, costs of collection and a reasonable attorney's fee, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs of collection and a reasonable attorney's fee, as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors-in-title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the common areas and of the townhomes situated upon the properties, including but not limited to, the payment of taxes and insurance thereon, the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas, the payment of the cost of repairing, replacing, and maintaining the exteriors of each lot as provided in Article VIII the payment of administrative expenses of the Association, and the establishment of a reserve account for repair, maintenance and replacement of those common and limited common areas which must be replaced on a

periodic basis and to provide for payment of insurance and other charges as herein specified, and may be used, at the discretion of the Trustees, for the payment of trash collection, sewer and water costs and other charges required by this declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association.

**Section 3. Basis and Maximum Annual Assessments** Until January 1, following recording of this Declaration, the maximum annual assessment shall be Nine Hundred Sixty-four Dollars (\$964.00) per lot. This amount shall be the basis of calculation for future maximum annual assessments.

(a) From and after the date referred to above the maximum annual assessment may be increased once a year by the Trustees without a vote of the members by an amount equivalent to the decrease in the real value of the amount stated above, as determined by reference to the change in U.S. City Average Consumer Price Index for all Urban Consumers published by the U.S. Department of Labor, Bureau of Labor Statistics, as it changed from January 1, 1986, to the date of fixing the maximum assessment by the Trustees.

(b) From and after the above-referenced date the maximum annual assessment may be increased above the Annual Cost of Living percentage increase by a vote of two-thirds (2/3) of each class of members voting, in person or by proxy, at a meeting duly called for this purpose.

(c) The maximum annual assessment shall be increased automatically, without vote, by an amount equal to actual increases in the amounts payable for taxes, special assessments and other governmental assessments or charges.

(d) The Trustees may, after consideration of current and future needs of the Association, fix the annual assessment at an amount not to exceed the maximum.

**Section 4. Special Assessments for Capital Improvements** In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of common or limited common area structures, fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of all of the members authorized to vote, in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance of said meeting and shall set forth the purpose of the meeting.

**Section 5. Change in Basis and Maximum of Annual Assessments** The Association may change the basis and maximum of the assessments fixed by Section 3 hereof prospectively for any annual period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members, voting in person or by proxy, at a meeting duly called for this purpose; provided, further that the limitations of Section 3 hereof as to the maximum

increase shall not apply to any change in the basis and maximum of the assessments undertaken by the members pursuant to this section.

**Section 6. Notice and Quorum for Any Action Authorized Under Sections 3, 4 and 5** Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 3, 4 or 5 shall be sent to all members at least thirty (30) days in advance of said meeting. At the first meeting called, pursuant to Sections 3 and 5 hereof, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at such a meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3 and 5, and the required quorum at any such subsequent meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In meetings called pursuant to Section 4, presence of members or of proxies of two-thirds (2/3) of all members authorized to vote shall constitute a quorum.

**Section 7. Uniform Rate of Assessment: Periodic Assessment** Both annual and special assessments must be fixed at a uniform rate for all lots. This method of determining the assessments, dues and charges may not be changed without the prior written approval of all first mortgagees.

Both annual and special assessments may be collected on a monthly basis.

**Section 8. Date of Commencement of Annual Assessments: Duties of Trustees: Due Dates: Adjustment of Assessments in Certain Cases** The annual assessment provided for herein shall commence to accrue on the date fixed by the Trustees of the Association to be the date of commencement. The Trustees shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of the commencement of the assessment period.

The first annual assessments 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. Receipt of notice shall not be a pre-requisite to validity of the assessment.

The due dates shall be established by the Trustees, upon which dates the assessments for any year shall become due and payable; provided, that the Trustees may provide for the payment of annual and special assessments in twelve (12) equal monthly installments throughout the assessment year. The due date of any special assessments authorized herein shall be fixed by the Trustees, subject to the same notice and payment requirements pertaining to annual assessments.

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



The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified 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.

A first mortgage holder, upon request, is entitled to a written certificate from the Association advising of any default in the performance by an owner of any obligation not cured within sixty (60) days.

**Section 9. Effect of Non-Payment of Assessment; Remedies of the Association** Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such different rate as the Trustees shall determine appropriate) until paid.

The Association may bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or may foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, or may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member, and there shall be added to the amount of such delinquent assessment the costs and expenses of said action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the unit from time to time of commencement of the foreclosure and the Association shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the other security.

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

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or by abandonment of his lot.

**Section 10. Subordination of the Lien to Mortgages** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish so much of the lien of such assessment as to payments which became due more than six months prior to such sale or transfer. No such sale or transfer shall relieve such lot or owner from liability for assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Properties The following property subject to this declaration shall be exempted from the assessment, charge and lien created herein:

- (a) Any properties dedicated and accepted by the local public authority and devoted to public use;
- (b) All common and limited common area;
- (c) All properties exempted entirely from taxation by the laws of the State of Utah.

However, no land or improvement devoted to dwelling use shall be exempt from said assessment, charge and lien.

Section 12. Insurance and Insurance Assessments The Trustees of the Association, or their duly authorized agents, shall have the authority to, and shall obtain and continue in effect:

(a) a "master" or "blanket" policy of property insurance equal to full replacement value (exclusive of land, foundation, excavation and other like items) of the lots, common area, limited common area, and improvements thereon including an agreed amount endorsement or its equivalent, if available, or an inflation guard endorsement, affording protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage and such other risks as are customarily covered in similar projects. In the alternative to the obtaining of the insurance specified in this subparagraph (a), the Association may:

i) require each owner to obtain a policy of insurance equal to full replacement value (exclusive of land, foundation, excavation and other like items) of his lot and improvements thereon, or its equivalent, if available, or an inflation guard endorsement, affording protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage and such other risks as are customarily covered in similar projects with an endorsement listing the "Association, for the use and benefit of the unit owners" as an additional named insured with a provision that the policy may not be cancelled upon less than thirty days written notice to the Association

ii) obtain a policy of insurance equal to full replacement value (exclusive of land, foundation, excavation and other like items) of the common area, limited common areas and improvements thereon, or its equivalent, if available, or an inflation guard endorsement, affording protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage and such other risks as are customarily covered in similar projects with an endorsement listing the "Association, for the use and benefit of

the unit owners" as an additional named insured with a provision that the policy may not be cancelled upon less than thirty days written notice to the Association

- (b) a comprehensive policy of public liability insurance covering all of the common and limited common property for at least \$1,000,000.00 per occurrence for personal injury and/or property damage. Such liability insurance policy 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.
- (c) maintain fidelity coverage against dishonest acts on the part of managers, trustees, officers, employees or volunteers responsible for handling funds held and collected for the benefit of the owners or members. Said fidelity insurance shall (1) name the Association as beneficiary, and (2) be written in an amount not less than 150% of the annual operating expenses and reserves of the Association, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Any insurance obtained pursuant to subparagraphs (a), (b) or (c) above shall provide that:

- (a) the named insured under any such policies shall be the Association, as a trustee for the lot owners and shall have standard mortgagee clauses;
- (b) insurance coverage may not be brought into contribution with insurance purchased by the lot owners or their mortgagees;
- (c) coverage must not be prejudiced by (i) any act or neglect of the lot owners when such act or neglect is not within the control of the Association or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control;
- (d) coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to any and all insureds, including holders of first mortgages;
- (e) the insurer shall waive subrogation as to any and all claims against the Association, the owner of any lots and/or their respective agents, employees or tenants, and of any defenses based on co-insurance or on invalidity arising from the acts of the insured;
- (f) any provisions that the carrier may elect to restore damage in lieu of a cash settlement shall not be exercisable without the prior written approval of the Association or when in conflict with any requirement of law.

Premiums for insurance obtained by the Trustees pursuant to this section shall be a common expense of the Association and shall be collectable from members of the Association as part of the annual assessments.

Each owner shall insure his own personal property and may insure his real property for his own benefit.

Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirement for planned

unit development projects established by Federal National Mortgage Association and Government National Mortgage Association, so long as either is a mortgagee or owner of a lot within the project, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.

**Section 13. Damage or Destruction** In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Trustees shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild, restore, or repair such damaged or destroyed portions of the development to its former condition. Unless at least seventy-five percent (75%) of the owners or first mortgagees have given their prior written approval the Association shall not be entitled to use insurance proceeds for other than the repair, replacement or reconstruction of the damaged or destroyed property.

In the event damage to the common area exceeds Ten Thousand Dollars (\$10,000.00) the Association shall forthwith notify all first mortgagees in writing. In the event damage to a townhome exceeds One Thousand Dollars (\$1,000.00) the Association shall notify the first mortgagee.

In the event the insurance proceeds are insufficient to pay all the costs of repairing, restoring or rebuilding the Trustees shall be empowered to levy a special assessment against all owners of damaged townhomes or owners with damaged adjacent common area in such proportion as the Trustees deem equitable to make up any deficiency for repair of townhomes or limited common area, and the Trustees shall further be empowered to levy a special assessment against all owners to make up any deficiency for repair or rebuilding of the common area or limited common area.

**Section 14. Payments by First Mortgagees** First mortgagees of lots may jointly or singly pay taxes or other charges which are in default and which have or may become a charge against any common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such common property and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**Section 15. Management** Any agreement for professional management of the property by the developer, sponsor or builder may not exceed three years duration and must provide for termination by either party without cause and without payment of a termination fee on ninety days or less written notice.

## ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply Each wall which is built as a part of the original construction upon the properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing Notwithstanding any other provision of this article, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

Section 5. Right to Contribution Runs with Land The right of any owner to contribution from any other owner under this article shall be appurtenant to the land and shall pass to such owner's successors-in-title.

Section 6. Arbitration In the event of any dispute arising concerning a party wall, or under the provisions of this article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator within ten (10) days of their selection, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Trustees of the Association shall select an arbitrator for the refusing party.

## ARTICLE VII

ARCHITECTURAL CONTROL COMMITTEE

No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustees. In the event said Trustees, or their designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with article will be deemed to have been made.

Notwithstanding the foregoing, without the prior written approval of at least two-thirds (2/3) of the owners or first mortgagees, neither the Association nor the Architectural Control Committee shall, by act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance or maintenance of units, the maintenance of the common and limited common areas, including walls, fences, driveways, lawns and plantings.

## ARTICLE VIII

EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance In addition to maintenance upon the common area and limited common area, the Association shall provide exterior maintenance upon each lot, including, but not limited to the following: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, fences, street signs, lights, mailboxes, trees, shrubs, grass, walks, driveways and other exterior improvements. Notwithstanding the foregoing, each owner shall be solely responsible for maintenance to glass, doors and screens on his lot.

Section 2. Assessment of Cost The cost of such exterior maintenance shall be assessed against the lot upon which such maintenance is done and shall be added to and become part of the annual maintenance assessment or charge to which such lot is subject under Article V hereof and, as part of such annual assessment or charge, it shall be a lien and obligation of the owner and shall become due and payable in all respects as provided in Article V hereof, provided that the Trustees, when establishing the annual assessment against each lot for any assessment year as required under Article V hereof, may add thereto the estimated cost of the exterior maintenance for that year but shall,

thereafter, make such adjustment with the owner as is necessary to reflect the actual cost thereof.

**Section 3. Access at Reasonable Hours** For the purpose solely of performing the exterior maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot or limited common area at reasonable hours.

## ARTICLE IX

### USE RESTRICTIONS

**Section 1. General Use Restrictions** All of the properties which are subject to this declaration of covenants, conditions and restrictions are hereby restricted to residential dwellings, buildings in connection therewith, including but not limited to community buildings. All buildings or structures erected in the properties shall be of new construction and no buildings or structures shall be removed from other locations to the properties and no subsequent buildings or structures dissimilar to those initially constructed shall be built on any lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time.

**Section 2. Construction, Business and Sales** Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of 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.

**Section 3. Signs; Commercial Activity** Except for one "For Rent" or "For Sale" sign of not more than five (5) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any lot or any portion of the properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

**Section 4. Quiet Enjoyment** No noxious or offensive activity shall be carried on upon any part of the properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

or which shall in any way interfere with the quiet enjoyment of each of the owners or which shall in any way increase the rate of insurance.

**Section 5. Animals** No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said lots, except that dogs, cats or other household pets, two or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in an annoyance or are obnoxious, by noise, smell or otherwise, to unit owners. All pets must be kept in the lots or on a leash when in the common areas.

**Section 6. Use of Common Area** Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said common area, other than as permitted in this declaration of covenants or as may be allowed by the Trustees of the Association. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of lots in the properties 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 properties 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, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

**Section 7. Planting and Gardening** No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Trustees. Planting and gardening may be done in the limited common area adjacent to each lot.

**Section 8. External Apparatus** No lot owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Trustees.

**Section 9. Exterior Television or Other Antennas** No exterior radio or other antennas, except one television antenna per lot, shall be placed, allowed or maintained upon any lot or upon any structure or portion of the improvements situated and located upon the properties without prior written approval and the authorization of the Trustees.

**Section 10. Garbage Removal** All rubbish, trash and garbage shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

**Section 11. Oil and Mining Operations** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the properties of any lot. No derrick, lift, shaft or other



structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the properties or any lot.

Section 12. Interior Utilities All utilities, fixtures and equipment installed within a lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a lot, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other lots or owners.

Section 13. Leases Any lease agreement between an owner and a lessee shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, Articles of Incorporation, Bylaws and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease.

## ARTICLE X

### EASEMENTS

Section 1. Encroachments Each lot and the property included in the common and limited common areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing lots is partially or totally destroyed, and then rebuilt, the owners of the lots so affected agree that minor encroachments of parts of the adjacent lots or common or limited common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Utilities There is hereby created a blanket easement upon, across, over and under all of the properties for ingress, egress, limited to water, sewers, gas, telephone and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for all public utilities serving the properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the properties except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Association. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said property without

conflicting with the terms hereof. All utilities that are installed in, upon, under or through the common areas of the properties shall be maintained by the Association.

**Section 3. Police, Fire and Ambulance Service** An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and common and limited common area in the performance of their duties.

**Section 4. Maintenance by Association** An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the common and limited common areas and any lot to perform the duties of maintenance and repair.

**Section 5. Other Easements** The easements provided for in this Article shall in no way affect any other recorded easement.

## ARTICLE XI

### GENERAL PROVISIONS

**Section 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, 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 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, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee.

**Section 2. Severability** All of said 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 3. Duration** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal 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 4. Amendment** The covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the owners. Amendments affecting the rights of first mortgagees shall require their written approval. Prior to making any material amendment thirty (30) days written notice must be given to all holders of liens of first priority, setting forth the nature of the amendment and the date of the members' meeting to vote thereon. Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.

**Section 5. 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.

**Section 6. Gender and Grammer** 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 7. 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 8. Topical Headings** The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

## ARTICLE XII

### ASSIGNMENT OF POWERS

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned.

287996

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 24 day of Jan, 1986.

By Clark H. Spilker  
Clark H. Spilker

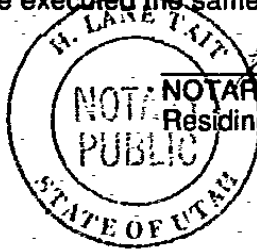
STATE OF UTAH

COUNTY OF WASHINGTON

On the 24 day of January, 1986, personally appeared before me Clark H. Spilker, the signer of the above instrument, who duly acknowledged to me that he executed the same.

My Commission Expires:

5-7-87



H. Lake Tit  
Residing at: St George, U.T.

Beginning at a point on the North line of Fort Pierce Drive said point being N89°55'43"E along the center section line (basis of bearing per Washington County Area Reference Plat dated 1974) 900.00 feet and N0°04'17"W 103.384 feet from the center of Section 5, Township 43 South, Range 15 West, Salt Lake Base and Meridian as referenced on earlier Bloomington Hills subdivision plats and running thence N7°43'24"W 198.09 feet; thence N39°54'09"W 60.04 feet; thence N10°19'37"W 100.20 feet; thence N1°22'05"W 117.90 feet; thence N40°55'43"E 104.32 feet to the Southwest corner of the property previously conveyed to James E. and Linda Cottam by a Warranty Deed recorded as Entry No. 166610 dated March 21, 1975 in the office of the Washington County Recorder; thence S70°30'E along an existing fence line 369.92 feet; thence S7°00'W 79.89 feet to the Northeast corner of The Hills No. 1 planned development; thence along the Northerly and Westerly lines of said planned development for (6) six courses as follows: N70°30'W 229.26 feet; S19°30'W 25.00 feet to a point of a 25.0 foot radius curve to the right, the center of which bears S19°30'W from said point; Southeastery along the arc of said curve 31.96 feet to a point of a 105.03 foot radius reverse curve to the left, the center of which bears S87°15'42"E from said point; Southerly along the arc of said curve 39.45 feet to a point of a 151.65 foot radius reverse curve to the right, the center of which bears S71°12'56"W from said point; Southeastery along the arc of said curve 49.66 feet to a point of tangency; and S0°01'20"E 259.04 feet to a point on a 270.0 foot radius curve to the right on the North line of Fort Pierce Drive according to the 1982 amended plat thereof, the radius of said curve bears N0°47'32"E from said point; thence Northwesterly along the arc of said curve and Northerly line 109.31 feet to the point of beginning. Contains 2.21 acres, more or less.

wrkd6