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PATSY CUTLER - IRON COUNTY RECORDER
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REQUEST: SO UTAH TITLE CO/CEDAR CITY

HERITAGE HILLS

Declaration of Restrictions

STATE OF UTAH
COUNTY OF IRON

HERITAGE HILLS
DECLARATION OF COVENANT
AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (the "Declaration") is made this the 17th day of July, 2006, by OLD SPANISH TRAIL^{ESTATE}, LLC., or its Assigns/Successors, hereafter referred to as "Developer" and/or "Declarant".

WITNESSETH

WHEREAS, Developer is the fee simple owner of certain real property located in Iron County, Utah, as described in Exhibit A, and desires to create thereon an exclusive private residential community to be named "HERITAGE HILLS" which is to be developed as single family residences located on .30 - 2.5+ acre lots; and

WHEREAS, the property will be divided in parcels wherein each of the separate parcels will be subject to covenants, conditions and restrictions herein contained and shall be conveyed subject to the restrictions and covenants between itself and the several purchasers of the subject property, and thereafter to impose the restrictive covenants and conditions between and among the several purchasers; and

WHEREAS, Developer may subject additional adjacent property described herein to these covenants, conditions and restrictions through the development of future phases of this subdivision.

NOW THEREFORE, Declarant hereby declares and decrees as follows:

These restrictive covenants shall insure that a high quality building standard will be preserved in the best possible manner, that the property will be kept free and clear of any rubbish, trash, noxious or offensive activity, and that the owners' lots in the subdivision will be assured peaceful enjoyment of their respective lot.

CREATION OF COVENANT

The property herein described shall be hereafter held, sold, conveyed, leased, encumbered, improved and occupied subject to certain easements, restrictions, covenants, and conditions hereafter set forth which shall be covenants running with the land, in perpetuity, and which shall be binding upon all persons who acquire any interest therein, between Declarant and the several owners and purchasers, and between and among several owners and purchasers themselves, and the heirs, successors, and assigns of each. Notwithstanding the foregoing, no provision of these restrictive covenants and conditions shall be construed as to limit Developer's rights to complete development of this subdivision or any phase of the subdivision, or any future additional land to be incorporated into this subdivision, or to complete the improvements thereon, nor limit Developer's rights to maintain model homes, to perform construction within the Subdivision, to hold a sales or leasing office, or similar facilities on any lot owned by Developer nor limit Developers right to post signs incidental to construction, sales, and leasing.

STATEMENT OF PURPOSE AND ADDITION OF FUTURE LAND

As stated herein, it is Developer's desire for the use and benefit of itself, its successors and assigns, and for future property owners, to provide for the preservation and protection of values, and to insure the attractiveness of all properties within HERITAGE HILLS. To this end Developer desires to create an organization of property owners to which eventually the Association will be delegated and assigned the powers of owning, maintaining and administering the common area, if any, in HERITAGE HILLS, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created in order to efficiently preserve, protect and enhance the values and amenities in HERITAGE HILLS, to insure the

residents' enjoyment of the specific rights, privileges and easements in the common area, and to provide for the maintenance and upkeep of the common area.

The Developer reserves for itself and certain other parties the right to enlarge the subdivision by incorporating additional phases which shall be included into the Association governing the properties as well as the provisions of this Declaration in the manner hereinafter provided. The Owners of any lot shall agree not to contest expansion of the subdivision, or to add additional phases to the subdivision up to 126 lots, in whatever number of phases Developer determines appropriate.

Developer for itself, its successors and assigns, and for its future grantees, their heirs, successors and assigns, hereby does declare that the property described herein, and such additions as may be made subject to the provisions hereof, is and shall be held, transferred, sold and conveyed subject to this Declaration. This Declaration shall initially apply to those approximately 34 residential lots in HERITAGE HILLS PHASE 1, as shown on the certain plat map to be recorded in the Office of the Registrar of Deeds for Iron County, Utah, subject to Developer's right to append additional property.

ARTICLE I

DEFINITIONS

"Additional Property" Additional property shall mean that property which shall be added by Developer and which may be made a part of the subdivision expansion as set forth in this Declaration.

"Architectural Review" Architectural review shall mean the right of the committee to perform certain duties created and identified pursuant to Article III hereafter.

"Architectural Control Committee" or "ACC" shall be that Committee which controls, reviews and approves the construction and design of buildings upon the property.

“Association” shall mean and refer to HERITAGE HILLS ESTATES HOA, INC., a Utah non-profit corporation, its successors and assigns.

“Common Area” shall mean all real property, including the improvements thereto labeled as “Common Area” or “Open Space” on the Maps and all roads, trails, parks, retention basins, entry ways, entrance frontage and streets shown thereon (except for public roads and streets which have been accepted for maintenance by Iron County).

“Declarant” shall mean and refer to OLD SPANISH TRAIL ^{ESTATE}, LLC., its successors or assigns.

“Developer” shall mean and refer to OLD SPANISH TRAIL ^{ESTATE}, LLC., its successors or assigns.

“Development” shall mean and refer to HERITAGE HILLS, a residential development proposed to be developed on the Properties by the Declarant in several phases.

“Dwelling” shall mean and refer to a building located on a single lot designed and intended for the use and occupancy as a residence on a lot.

“Family” shall mean (1) a group of natural persons related to each other by blood or legally related to each other through marriage or adoption, or (2) a group of not more than three (3) persons not related, inclusive of their domestic servant, who maintain a common household in a residence on a lot.

“Lot” shall mean and refer to any plot of land, with delineated boundary lines, appearing on the Maps with the exception of the Common Area and any plots of land to be used by Developer in developing common facilities. The term “Improved Lot” shall mean any Lot upon which has been constructed any house or other dwelling. The term “Unimproved Lot” shall refer to any Lot which is not an Improved Lot.

“Maps” shall mean and refer to any current or future maps of the Properties as recorded (either now or hereinafter) in the Iron County, Utah , Office of Public Recorder.

“Member” shall mean and refer to all Lot Owners and to every other person or entity who holds membership in the Association.

“Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including the Developer if it owns any Lot and including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, except for those specific rights provided to a secured holder identified herein.

“Properties” shall mean and refer to the properties which are or may hereafter be made subject to this Declaration and brought within the jurisdiction of the Association.

ARTICLE II

USE RESTRICTIONS

Section 1. Residential Use. All Lots shall be used only for single family residential purposes and common recreational purposes auxiliary thereto and for no other purpose. The rezoning of any lot is not permissible. Only one family may occupy a Lot as a principal residence at any one time. There shall be no multiple unit dwellings of any kind, including but not limited to, basement apartments, duplexes, or apartment buildings. No condominiums of any kind are allowed. No time-sharing of any kind is allowed. No boarding houses or group housing or unrelated people of any kind are allowed unless otherwise defined herein, regardless of the method or structure of the occupancy arrangement. No apartments, student housing, residential treatment facilities, group housing, group homes, student housing, schools, treatment centers, youth correction and behavioral centers, or other forms or types of boarding housing of any kind shall be permitted. Buildings

constructed on the Lots are subject to the following general construction criteria in addition to the provisions of Article III hereof:

(a) Size. Every residential dwelling constructed on a Lot shall contain at least 1,800 square feet on the main floor of fully enclosed and air conditioned space exclusive of basements, roofed or unroofed porches, decks, patios, terraces, the attached two car garage, and accessory buildings. Pitch of roof and height of buildings and square feet per floor shall be controlled by the Architectural Control Committee and Design Guidelines.

(b) Location. No residential building or other building shall be located nor occupy any space nearer than ten (10) feet to any Lot line or in accordance with Parowan City Ordinances, whichever is greater. In order to assure that houses will be located favorably with regard to the topography of each Lot, the Developer or ACC reserves unto itself, its successors and assigns, the right to waive the above stated set back or sideline requirements without obtaining the permission of any other Lot Owner.

Section 2. Nuisance. No noxious or offensive activity shall be conducted upon any Lot or in any building thereon nor shall anything be done thereon or therein which is or may become an annoyance or nuisance to other Owners, including the permitting of noxious weeds and noisy animals. All lots shall be maintained such to assure that no weeds are permitted to go to seed nor to grow above 4 inches such as to become unsightly or deleterious to other lot owners. All front landscaping shall be brought to the edge of the road pavement.

Section 3. Temporary Structures. No structure of a temporary character shall be placed upon any Lot; provided, however that this prohibition shall not apply to shelters used by a contractor during the construction of the dwelling to be located on the Lot; provided further, however, that such permitted temporary shelters may not be used as residences or permitted to remain on the Lot after

completion of construction. Construction must be completed within a reasonable amount of time, but not to exceed one (1) year. Additional time may be granted only upon approval of the Developer or ACC.

Section 4. Antennas and Power Lines. No television, radio receiver, transmitter or other antennas which are visible from any street will be permitted without written approval from Developer or ACC, its successors and assigns. All telephone, electric and other wires of all kinds running from the transmission cables located within the utility easements reserved in this Declaration to any dwelling, building or other structure must be installed underground.

Section 5. Fuel Tanks/Garbage Containers. All fuel tanks and similar storage receptacles must be installed within accessory buildings or under ground. All outdoor receptacles for trash, rubbish or garbage shall either be installed underground, screened or placed so as not to be visible from any street or any other Lot, but such receptacles must also be convenient for collection

Section 6. Clothes Drying. No drying or airing of any clothing, rugs or bedding shall be permitted outdoors on any lot or any other unenclosed area (including porches and patios) which is visible from the street or any other Lot.

Section 7. Signs. No commercial signs other than a "for sale" sign not exceeding 2 feet by 2 feet, shall be erected or maintained on any Lot or shall be placed in any structure thereon or in any Unit so as to be visible from the Common Area, any street or from any adjacent lot except as may be permitted in writing by Developer or ACC or except as may required by legal proceedings. Property identification and similar signs having a surface area in excess of three (3) square feet may not be erected without the written permission of the Developer or ACC.

Section 8. Maintenance. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on his Lot.

All Lot Owners shall keep their lots free from all garbage, weeds refuse and debris.

Section 9. Planting of Trees. Within 2 years after a building permit has been issued, the Lot owner shall plant not less than six (6) trees with a base measuring three (3) inches in diameter at six inches above ground level and shall thereafter be maintained and nourished.

Section 10. Subdivision. No Lot shall be subdivided, nor its boundary lines changed, unless approved by the Developer or ACC. Each approved modified Lot shall thereafter constitute one Lot. The restrictions and covenants herein shall apply to the modified Lots resulting from said subdivision and addition.

Section 11. Reconstruction. Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building with reasonable promptness; provided, however, that any such reconstruction must be commenced within six (6) months from the date of such destructions or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within six (6) months of such destructions.

Section 12. Utilities. All plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to the sewer system. No septic tank sewage disposal system shall be permitted on any Lot. Each Lot shall connect to Parowan City's water distribution system.

Section 13. Divided Ownership. No Lot, any dwelling thereon, or any Unit shall be leased, purchased, sold, conveyed, owned, used or operated so as to constitute or create a condominium or timeshare estate or unit. No Lot, any dwelling thereon or Unit shall be owned by more than two individuals as joint tenants or tenants-in-common.

Section 14. Use of Property. No business or commercial activity to which the general

public is invited shall be conducted on any Lot.

Section 15. Buildings. No building shall be erected on any Lot other than a single-family dwelling, a guest home, barns, a detached garage and such appurtenant structures as may be approved from time to time by the Developer or ACC. All buildings and other structures shall be of new construction. In no event shall any prefabricated buildings, mobile home, modular home or existing residences or garages be moved onto any Lot. Log cabin kits are generally discouraged but may be allowed upon approval of the ACC after a complete review of the kit. All lots shall have at least a two car fully enclosed garage bays.

Section 16. Residence Use. Unless approved for residential use by the Developer or ACC, no structure other than a main residential dwelling or guest home shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 17. Natural Resources. No oil well drilling, development, or refining and no mineral quarrying or mining operations of any kind shall be permitted on any Lot.

Section 18. Garbage and Rubbish. No Lot shall be used or maintained as a dumping ground for rubbish or trash. All garbage and other waste shall be kept in sanitary containers. There shall be no burning or incineration of trash or garbage.

Section 19. Animals. The raising or keeping of swine, hogs, cattle, sheep or other commercial animals on any Lot are strictly prohibited. No horses shall be permitted on any lot smaller than twenty (2.0) acres and only in the manner set forth hereafter. An Owner may keep up to but not more than four (4) horses on any Lot which is larger than 2.0 acres. All horses allowed on a Lot larger than 2.0 acres, under the terms of these Restrictions, must be maintained within a properly fenced enclosure of not more than 1000 square feet, must have an enclosed stall/barns sufficient to house the horses and be constructed and maintained under such conditions as may be

designated, monitored and approved by the Developer or ACC. The Lot Owner shall assure that there are no obnoxious odors or smells, nor shall the horses be allowed to graze or trample down any lot, or portion thereof, to leave the Lot without ground cover except within the fenced enclosure. Domestic and certain other pets as approved by the ACC may be kept on the Property provided that the same are maintained within an approved enclosure or controlled on a leash or similar restraint. Barking by dogs shall not be tolerated.

Section 20. Hunting. All hunting shall be prohibited. The only exception shall be in accordance with any game management program established by the Association. Such activity will be regulated and strictly controlled by the Association to administer the game management program.

Section 21. Water Flow. Berms, dams, culverts and burrow pits and the like may be constructed provided that same do not impede the flow of water in creeks or streams on the Property and otherwise comply with all applicable governmental laws and regulations.

Section 22. Driveway. After the completion of construction of each residential dwelling on a Lot the Owner of such Lot shall have 90 days after the completion date to construct the driveway from the public road to the garage entrance. The driveway shall be paved with the same or superior materials as the subdivision public road.

Section 23. Fences. Each Lot Owner shall construct a four rail vinyl fence in accordance with the specifications established by the ACC. No interior chain link or barbed wire fences shall be erected on any Lot. Additional fencing in the rear for horse lots shall be solid core vinyl fencing with the obligation to install hotwire to assure retention of the horses. The vinyl fencing surrounding the property shall be constructed and completed prior to occupation of the residence.

Section 24. Entrance Features. At the entrance of each driveway lot, prior to completion and occupancy of the home, the Owner shall construct two entrance pedestals, one on each side of

the driveway at the entrance of the property, which shall be constructed of materials rock, brick or stucco material construction and lighted at top of each pedestal by a lighting fixture designated by Developer which shall be uniform throughout the subdivision. Each pedestal shall be approximately four feet in height, not including the light, and shall be designed and approved by the ACC in height and construction.

Section 25. Exterior Lights. Security lights shall be allowed. All exterior landscape and decorative lighting shall be approved by the ACC. Nothing shall be done in any part of the Property, nor shall any outside lighting or loud speakers or other sound-producing devices be used, which, in the judgment of the ACC, may be or become an unreasonable annoyance or nuisance to the other Owners.

Section 26. Vehicle Storage. No planes, trailers, boats, campers, abandoned cars or trucks, or mobile homes shall be parked or housed outside garages or in carports. All parking spaces for temporary visitors which will be visible from the roads shall be maintained in a clean manner. No vehicles shall be parked outside for more than 72 hours which are inoperable or not properly licensed and registered.

Section 27. Landscaping. To facilitate the maintenance of a natural mountain atmosphere, no trees, shrubs, or other natural landscape shall be disturbed except within 5 feet of the building pad or driveway without the approval of the Developer or ACC. All front yards shall be landscaped and completed within one (1) year of completion of the home and shall be landscaped up to the road such that there is no weeds or debris between the road and Owners lot. The rear yard shall be landscaped and completed within three years of completion of the home. All landscaping shall be performed in a professional manner.

Section 28. Farming. Cultivation of the land for commercial farming purposes is

prohibited. Personal gardens not visible from the roads or other lots are permitted.

Section 30. Barns and Outbuildings. Barns or other outbuildings to house animal units shall be approved prior to construction by Developer or ACC. All outbuildings shall be constructed of approved materials and completed in a tasteful manner.

Section 31. All Terrain Vehicles. All terrain vehicles, motorcycles, and other motorized vehicles are prohibited from operating on or about the common areas except as approved by the HOA.

Section 32. Rules and Regulations. The Developer and its successors and assigns may promulgate additional rules and regulations concerning the use and occupancy of the Lots and use of the Common Areas. All such rules and regulations shall be mailed to all Owners via first class mail, postage prepaid.

Section 33. Compliance. In the event that any Owner fails to comply with any of the restrictions set forth in this Article II or the rules and regulations subsequently promulgated by the Developer or ACC, or its successors or assigns, the Developer and its successors and assigns, or the authorized agents of Developer or its successors or assigns shall have the right, but not by obligation, to enter any Lot or Unit and undertake any necessary action in order to cure such Owner's default, or to initiate legal action to enforce the same. All expense and cost incurred by the Developer or its successors and assigns, or their authorized agents in curing such default shall be charged to the defaulting Owner, including all attorney fees and legal costs. The Developer or its successors and assigns and their authorized agents shall not be liable for any damage which may result from such entry unless such damage results from the willful misconduct of Developer, its successors or assigns

or their authorized agents.

ARTICLE III

ARCHITECTURAL CONTROL

Section 1. Architectural Review. For purposes of this Article III, the Developer shall function as the ACC and HOA, until the time when Developer has sold more than 66% of all Lots contained in this and any future phases of the Development. Thereafter, the Association's Board of Directors shall appoint three members to the Committee to carry out the functions set forth in this Article.

Section 2. Required Architectural Approval. No improvement or structure of any kind, including, without limitation, any building, fence, wall, swimming pool, screen enclosure, disposal system, sign, landscaping, recreational structure, external lighting, or other improvement shall be commenced, erected, placed or maintained upon any Lot, nor shall any addition, change or alteration to any of the foregoing be made, unless such have been submitted to, evaluated and approved in writing by the ACC as to harmony of external design and location in relation to surrounding structures and topography and as to the conformance with the architectural and landscape standards of the ACC, a copy of which shall be delivered to all Lot Owners as the same may from time to time be amended.

Section 3. Approval of Plans, Specifications, and Construction. Prior to commencement of any construction on any Lot, all proposed building plans, specifications, exterior color or finish, plot plans (showing the proposed location of such building or structure, drives and parking areas), and construction schedule shall be approved in writing by the ACC. All building plans and

specifications covering such construction shall be prepared by a qualified registered architect or reviewed and approved by a registered architect for the specific use of the Owner submitting the same. Upon written request by a Lot Owner for approval of plans, the ACC shall review the plans in accordance with the guidelines established by the ACC. Garages and other accessory buildings on any Lot must be constructed of the same or compatible materials as specified for the dwelling constructed thereon. Disapproval of plans, location or specifications may be based by the ACC upon any ground, including purely aesthetic considerations, which in its discretion it deems sufficient. No alterations may be made in such plans after approval by the ACC is given without the written consent of the ACC. One copy of all plans and related data shall be retained by the ACC for its records. The exterior of all structures must be completed within one (1) year after construction is commenced, except where such completion is delayed by strikes, fires, national emergencies or natural calamities. Any fees charged by the ACC, or any consultant employed by the ACC to review the plans, shall be paid by the applicant.

Section 4. General Design Guidelines. Preservation and appearance of the natural wilderness and high desert will be primary objectives of the design guidelines developed and monitored by the ACC. Earth tones and materials that blend into the surroundings will be encouraged. Bright colors and unnatural substances that do not blend with the natural surroundings will be discouraged. Realizing that residences with mountain views are a primary attraction of the property, appropriate and balanced height restrictions will be in effect and shall be determined in accordance with the location of each building upon the Lot. Fence, entrances, and structure guidelines are also set forth in Article II. All exterior siding shall be approved by the ACC.

ARTICLE IV

EASEMENTS

Section 1. Easements Reserved by Developer. Developer reserves unto itself, its successors and assigns, a perpetual easement over, upon, across and under an area ten (10) feet in width running along each boundary line of each Lot for the installation and maintenance of electrical and telephone wires, cables, conduits, sewer lines and mains, water lines and mains and other utility facilities in order that utility services may be provided to all Owners. Developer reserves unto itself, its successors and assigns easements to cut and maintain drainways for surface water wherever and whenever such action may appear to the Developer to be necessary in order to insure proper drainage of surface water while maintaining the overall appearance of the Development. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil or to take any other similar action reasonably necessary to provide utility installation and to insure proper drainage. All rights reserved by Developer may be exercised by any licensee or successor and assign of the Developer in order to provide or maintain any utility services and other facilities which form a part of the water system of the Development on any Lot designated for such use on a Map without permission of the Owner of such Lot.

Section 2. Easements for Ingress and Egress. Easements are hereby reserved and granted across all streets shown on the Maps for ingress and egress of the Developer, its successors and assigns, its licensees, public safety personnel and any authorized agents, employees or assigns of any of the foregoing for the purpose of constructing, maintaining, inspecting and repairing the streets to be built in the Common Areas and the utilities and drainage areas described in Section 1 of this Article. In addition, the Developer, the Association and such other entities shall have continuing easement to enter the Lots in order to maintain, inspect and repair all utilities, facilities and drainage areas located on the Lots. These easements include the right to disturb the structures located on each Lot in order to inspect, maintain and repair any utility facility located within or beneath such

structures.

Section 3. Obstruction. Within any easements described in this Article, no structure shall be placed or permitted to remain which may interfere with the installation or maintenance of utilities, or which may change the direction of flow of water through the drainage channels.

ARTICLE V

COVENANTS FOR MAINTENANCE AND SECURITY ASSESSMENTS

Section 1. Responsibility for Maintenance. Prior to the conveyance of any Common Areas to the Association as hereinafter may be provided, or for work performed for the general benefit of the Owners, the Developer shall be responsible for providing the services set forth in section 2 below and for collecting the assessments set forth in this Article. Upon the conveyance of any Common Areas to the Association, the Association shall thereafter provide the services set forth in Section 2 and collect the assessments set forth in this Article.

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used as follows:

- (a) to maintain and repair all roads and paths constructed within the Common Areas to the standard as such roads were in at the time of their completion, to maintain all landscaping adjacent to such roads in a manner consistent with the overall appearance of the Development, and to maintain and repair all street lights installed along such roads;
- (b) to pay all ad valorem taxes levied against the Common Areas and any property owned by the Association;
- (c) to pay the premiums on all hazard insurance carried by the owner of the Common Areas

and all public liability insurance carried by the Association pursuant to its Bylaws;

(d) to pay all legal, accounting and other professional fees incurred by the Developer or the Association in carrying out the duties as set forth herein or in the Bylaws; and

(e) to pay all costs in connection with the maintenance of the Association and common areas, to maintain a working capital and contingency fund, and to provide for the administration and enforcement of these declarations and restrictions;

(f) to employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association; and

(g) to pay for watering of common areas, maintain any common lot or amenities as required.

Section 3. Creation of the Lien and Personal Obligation for Assessments. The Developer, for each Lot hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the annual assessments in such amounts necessary so as to pay for the services set forth in Section 2 of this Article, to pay all water assessment by Parowan City, and charges and special assessments for capital improvements, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment charge is made. Each such assessment or charge, together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment charge is made. Each such assessment or charge, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment was due.

Section 4. Special Assessments for Capital Improvements and Emergencies. In addition to the annual assessments authorized above, the Developer or after conveyance of the Common

Areas, the Association may levy, in any year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and the common roadways serving the Development or for the purpose of meeting any unanticipated expenses related to the Common Areas. Such special assessments may be levied only after obtaining the written consent of the Owners of at least fifty-one percent (51%) of the aggregate number of lots then subject to the Declaration.

Section 5. Assessment Rate by Association.

(a) Both annual and special assessments must be fixed at a uniform rate for all Unimproved Lots. Both annual and special assessments must be fixed at a uniform rate for all Improved Lots.

(b) The amount of the aggregate annual assessments for each year shall be the amount necessary to fund the expenses described in Section 2 of this Article.

(c) Any annual increase in excess of one hundred (100) percent in subsection (b) of this Section may be levied only after obtaining the written consent of the Owners of at least sixty-six percent (66%) of the aggregate number of Lots then subject to the Declaration.

Section 6. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence for each Lot upon the installation of all utilities necessary to serve such Lot and upon the completion of the street on which such Lot fronts, or a later time as may be determined by the Developer. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Developer or, after the conveyance of the Common Areas, the Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner. The due

dates shall be established in such written notice.

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of sixteen percent (16%) per annum. In addition to such interest charge, the Board of Directors of the Association, to defray the costs arising because of late payment, shall have the right to assess a late payment in the amount it deems appropriate. The Developer or after the conveyance of the Common Areas, the Association, may bring an action at law against the delinquent Lot Owner or foreclose the lien against the Lot. All interest, late payment charges, costs and reasonable attorney's fees of such action or foreclosures shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Area or abandoning his Lot.

Section 8. 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 on a Lot or any mortgage or deed of trust to the Declarant. 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 the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

ARTICLE VI

ASSOCIATION

Section 1. Membership. Every Lot Owner shall be a Member of the Association and membership of a Lot Owner shall be appurtenant to and may not be separated from the ownership

of a Lot.

Section 2. Voting. All Lot Owners (excluding the Developer) shall be entitled to one (1) vote for each Lot owned. When more than one (1) person owns an interest (other than a leasehold or security interest) in any Lot all such persons shall be Members and the voting rights appurtenant to said Lot may be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Section 3. Board of Trustees. The Association shall be governed by at least three Board of Trustees in accordance with its Bylaws. Developer shall act as the Board of Trustees until 66% of the lots have been sold.

Section 4. Transfer of Common Area. At the election of the Developer, the Developer may convey the Common Areas to the Association at any time Developer deems appropriate except as otherwise provided herein. Upon such conveyance, the Association shall have all of the rights, duties, obligations, powers, and privileges as set forth herein in favor of the Developer.

ARTICLE VII

PROPERTY RIGHTS

Section 1. Use of Common Area. Notwithstanding any recordation of any map or any other action by Developer or the Association, any Common Areas shall remain private property and shall not be construed as dedicated to the use or enjoyment of the public.

Section 2. Owner's Rights to Use and Enjoy Common Areas. Each Owner shall have the right to use and enjoy any designated Common Areas which shall be appurtenant to and shall pass with the title to a Lot subject to the following:

- (a) the right of the Developer or its successor or assigns to promulgate any and enforce

reasonable regulations governing the use of the Common Area to insure the safety and rights of all Owners, including to limit use of ATV vehicles, animals or any other uses which are committing damage to the common areas;

(b) the right of the Developer or its successors or assigns to suspend the right to use the Common Areas by any owner for a period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and

(c) the right of the Developer of its successors or assigns to grant utility, drainage or other easements across the Common Areas.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. The Developer, the Association or any non-breaching Owner or any of them jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation of breach of such terms by any Owner or his agent. In addition to the foregoing, Developer or its assigns shall have the right, whenever there shall have been built on any Lot, any structure which is in violation of these restrictions, to enter upon such Lot and to correct or remove the violation. Such action shall not be deemed a trespass and Owner hereby permits such entrance upon the property by purchase of the Lot. The failure to enforce any right to do so hereafter, as to the same breach or as to a breach occurring prior or subsequent thereto, shall not bar or affect such enforcement.

Section 2. Severability. The invalidation by any Court of any restrictions contained in this Declaration shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

Section 3. Duration and Amendment. All of the covenants, restrictions and servitudes set forth herein shall run with the land. All Owners affected hereby, accepting the deed to such premises, accepts the same subject to said covenants, restrictions and servitudes and agrees for himself, his heirs, legal representatives, administrators, and assigns, to be bound by each of said covenants, restrictions, and servitudes jointly, separately, and severally. These covenants shall be in effect until January 1, 2025, and shall be automatically extended for successive periods of ten (10) years each, unless not less than three-fourths (3/4) of the Lot Owners agree to terminate or modify the same, in writing, signed and recorded in the Iron County, Utah, Public Registry at any time prior to the expiration of said term or any succeeding ten (10) year period.

Section 4. Supplemental Declarations. Developer for itself, its successors and assigns reserves the right to subject the property now owned by Developer and any property contiguous thereto to the provisions of this Declaration. Such addition(s) shall be made by filing of record Supplementary Declaration of Covenants and Restrictions, which shall identify the property to be included and which shall incorporate this Declaration by reference. All Lot Owner's waive any right to contest or object to such future additions.

Section 5. Ownership Fee. A separate ownership fee shall be required of all new property owners to be assessed by the Association, in amounts determined by the Association to be paid by the new Owner upon first acquisition of property within HERITAGE HILLS which property is subject to this Declaration of Restrictions.

Section 6. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of as residential community and for the maintenance of the Covered Property and the Common Areas. The Article and

Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 7. Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine and neuter.

Section 8. Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

Section 9. Attorneys' Fee. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Special Assessment with respect to the Lot involved in this action.

Section 10. Notices. Any notice to be given to an Owner or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice or,

if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice so deposited in the mail within Iron County, Utah, shall be deemed delivered forty-eight (48) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivery on all such co-Owners.

(b) Notice of a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice or, if no such address is furnished, to any office of the Mortgagee in Iron County, Utah, or if no such office is located in said County, to any office of such Mortgagee.

Section 11. Effect of Declaration . This Declaration is made with the intent to establish a general scheme for the use, occupancy and enjoyment of the Covered Property and each and every Lot and portion thereof. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

Section 12. Personal Covenant. To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant, or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

Section 13. Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the ACC or any other committee of the Association or any member of such Board or

committee shall be liable to any Member or the Association for any damages, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 14. Leases. Any agreement for the leasing or rental of a Lot (hereinafter in this Section referred to as a "lease") shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws and the Association Rules. Said lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the lease. All leases shall be in writing. Any Owner who shall lease his Lot shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, Bylaws and Association Rules.

Section 15. Construction By Declarant. Nothing in this Declaration shall limit the right of Declarant and its successors in interest to alter the Common Areas or the Lots, or to construct such additional improvements as Declarant and its successors in interest deem advisable prior to completion and sale of the entire phase in which such Lots or Common Areas are located. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Covered Property such structures and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title by a purchaser from Declarant to establish on the covered property additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the property development and disposal of the Project. Prospective

BEGINNING AT A POINT WHICH IS SITUATED N. 0°08'11" E. ALONG THE 1/4 SECTION LINE 330.01 FEET AND S. 89°13'27" W. 1124.39 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 22, TOWNSHIP 34 SOUTH, RANGE 9 WEST, SLB&M, THENCE S. 89°13'27" W. 228.70 FEET, THENCE N. 00°4'16" E. 1636.52 FEET TO A POINT OF CURVE, THENCE AROUND THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 67.00 FEET A DISTANCE OF 17.54 FEET (THE CHORD OF SAID CURVE BEARS N. 7°25'37" W. 17.49 FEET), THENCE N. 14°55'31" W. 50.87 FEET TO A POINT OF CURVE, THENCE AROUND THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 25.00 FEET A DISTANCE OF 39.31 FEET (THE CHORD OF SAID CURVE BEARS N. 59°58'07" W. 35.38 FEET) TO THE SOUTHERLY RIGHT-OF-WAY LINE OF OLD HIGHWAY 91, THENCE N. 74°59'16" E. ALONG SAID RIGHT-OF-WAY LINE 1152.15 FEET, THENCE S. 58°19'46" W. 182.47 FEET, THENCE S. 44°36'46" W. 203.29 FEET, THENCE S. 16°16'52" E. 263.23 FEET, THENCE S. 74°35'56" E. 185.17 FEET, THENCE S. 15°24'04" W. 175.00 FEET, THENCE N. 74°35'56" W. 81.00 FEET, THENCE S. 15°24'04" W. 101.85 FEET, THENCE S. 57°59'02" W. 248.97 FEET, THENCE S. 69°52'44" W. 268.15 FEET, THENCE S. 89°26'28" W. 135.71 FEET, THENCE S. 2°31'33" W. 1003.71 FEET TO THE POINT OF BEGINNING.

(Being a ~~Proposed Subdivision~~ Heritage Hills Subdivision, Phase 1)
