

DECLARATION OF COVENANTS AND BY-LAWS

St. George, Utah

DOCUMENT
HERBERT S. SEXTLEY
WASHINGTON COUNTY CLERK
BY *[Signature]*
1987 JUN -5 AM 8 58
316239
REQUEST: SOUTHERN UTAH TITLE
BOOK 454 PAGE 604-624
FEE 29.00 APS

THIS DECLARATION of covenants and by-laws, hereafter called "DECLARATION", is made and executed in St. George, Washington County, State of Utah, on this 4 day of June, 1987, by
Ronald D Bracken Ronald Kelly Larson
Lori L Swain David M Young

WITNESSETH:

WHEREAS, the Declarant is the owner of "Heritage Lane Townhomes" in the city of St. George, County of Washington, State of Utah, which is more particularly described as follows:

BEGINNING at a point S87°17'24"W, 690.88 feet from the proposed control monument located on the center section line and the 900 South control line (N89°58'22"W, 690.56 feet along said line and S0°47'52"E, 33.00 feet to the south right-of-way line of 900 South Street) said control monument also being S1°13'13"E, 1357.16 feet from the N1/4 corner of section 32, T42S, R15W, SLB&M; thence S0°47'52"E, 110.00 feet; thence S89°12'08"W, 69.51 feet; thence S30°00'00"W, 9.57 feet; thence N89°58'22"W, 47.03 feet; thence N60°00'00"W, 12.00 feet; thence S30°00'00"W, 68.00 feet; thence N70°00'00"W, 65.00 feet; thence N0°47'52"W, 150.00 feet; thence S89°58'22"E, 227.74 feet along the south line of 900 south street to the point of beginning.

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WHEREAS, Declarant is the owner of certain townhouse and other improvements that are to be constructed upon the property, and it is the desire and intention of the Declarant to sell and convey the same to various purchasers, and

WHEREAS, Declarant will convey and said properties subject to certain protective covenants and by-laws as hereinafter set forth:

NOW THEREFORE, Declarant hereby declares that all the property described above shall be held, sold, and conveyed subject to the following covenants and by-laws which are for the purpose of protecting the value and desirability thereof, and which shall run with the real property and be binding on all parties having any rights, titles, or interests in the described property of any part thereof, their heirs, successors, and assigns, and shall insure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

The following terms used in the Declaration shall have the meaning hereinafter set forth:

1. "Association" shall mean and refer to Heritage Lane Townhome Association, its successors and assigns acting in accordance with this declaration and by-laws.

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2. "Townhouse", or "Townhome" shall mean the ownership of a single-family dwelling unit in a multi-unit project, and shall include ownership of a Townhouse as described on the recorded Townhouse Plat accompanying this document.
3. "Townhouse Owner" shall mean the person or persons owning a Townhouse Unit as described on the Plat accompanying this document.
4. "Unit Number" shall mean the number, letter, or combination thereof designating the Townhouse unit in the declaration and in the record of survey map.
5. "Majority" shall mean the owners of more than fifty percent of the Townhouse units.
6. "Common Area" shall mean all real property owned by the Association or hereafter acquired for the common use and enjoyment of the owners, and not dedicated for use by the general public, specifically exempting therefrom all units as defined herein which shall be deeded to grantees of Declarant as an Association. The Declarant may increase the amount of the Common Area by filing additional subdivision plats in the Washington County Recorder's office and stating thereon that said land is subject to this Declaration and by deeding additional property to the Homeowners' Association.
7. "Limited Common Area" shall mean and include those common areas and facilities designated in the declaration as reserved for use of a certain townhouse unit or units to the exclusion of other units.

ARTICLE 2

CREATION OF TOWNHOUSE OWNERS ASSOCIATION

1. MEMBERSHIP: Every person or persons who is the owner of

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record of a fee or undivided fee interest in any unit which is subject by covenant and by laws of record to assessment by the Association shall be a member of the Association. No owner shall have more than one (1) membership. Membership shall be appurtenant to and may not be separate from ownership of any Townhouse unit which is subject to assessment by the Association. Ownership of such Townhouse unit shall be the sole qualification for membership.

2. METHOD OF CALLING MEETINGS: Meetings of the Townhouse Owners Association shall be of two types; these shall be:

(a) General Meetings of the entire Townhouse Owners Association shall be held not less than one time per year. Said meeting to be determined by the board of directors of said Association and members to be notified of said meeting in the same manner as provided for in Article 4-3-C of this Declaration. Additional meetings may be called in the same manner as provided herein and at the discretion of the board of directors.

(b) Board of Director Meetings shall be held on a regularly scheduled basis not less than quarterly. The time and place of such meetings shall be made known to all owners of record of Townhouse Units, and all meetings shall be open to any member of the Association.

3. QUORUM TO DO BUSINESS: At all regularly scheduled Association meetings and all special Association meetings, a quorum to do business shall consist of two-thirds of the Association members, and all action required Association

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approval. The action shall be approved by not less than two-thirds of the Association members present at same meeting.

4. SELECTION OF BOARD OF DIRECTORS: The first meeting of the Association shall be presided over by the Declarant of these covenants and by-laws. At this meeting said Declarant shall organize a Board of Directors of the Association. Said board shall consist of three members of the Association who shall be nominated by other members of the Association and shall be voted upon and elected by a majority vote.

(a) The terms of election of the original Board of Directors shall be specifically set down at the election meeting. One board member shall be elected for one year, one board member shall be elected for two years, and one board member shall be elected for three years.

(b) At subsequent annual meetings of the Association membership, one member of the Board of Directors whose term shall expire that year shall be replaced, or may be reappointed to a new term.

(c) All subsequent meetings and business of the Association shall be conducted by the Board of Directors until a date selected by the Board of Directors and during which period the by-laws relative to the election of Directors shall be suspended but which date shall not be longer than ninety (90) days after transfer of title to all units to be constructed.

5. RECORDS TO BE KEPT: One member of the Board of Directors of the Association shall be appointed by that board to serve, as Association Secretary.

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(a) Records shall be kept of all meetings held by the Association and by the Board of Directors. ~~Said minutes shall be made~~ available for review by any member of the Association at any reasonable time.

(b) Records shall also be kept by the Board of Directors of the financial status of the Association, and a financial statement shall be prepared and submitted to all Association members at the annual Association meeting.

ARTICLE 3

PROPERTY RIGHTS

1. USE OF COMMON AREA: Every member shall have a right and enjoyment of easement in and to the common area, and such easement shall be appurtenant to and shall pass with the title to every assessed unit and shall be subject to the following provisions:
 - (a) The right of the Association to borrow money for the purpose of improving the common areas and facilities.
 - (b) The right of the Association to suspend the voting rights and the right to use the common area by a member for any period during which any assessment against this Townhouse unit remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.
 - (c) Each of the units shall be occupied only by one family.

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its servants, and guests as a private residence and for on other purpose.

(d) The common areas shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the use of the owners.

(e) No use or practice shall be permitted in the Townhouse area which is the source of annoyance to any owner or which interferes with the peaceful possession and proper use of the property by its owners. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage allowed to accumulate nor any fire hazard allowed to exist. No unit owner shall permit any use of his unit or of the common areas which will increase the rate of insurance upon the Townhouse property.

(f) Until the Declarant has completed and sold all of the units, neither the unit owners nor the Board of Directors shall interfere with the completion of the contemplated improvements and sale of the units. The Declarant may make such use of the unsold units and common areas as may facilitate such completion and sale, including but not limited to the maintenance of a sales office, the showing of the property, and the display of signs.

(g) The Board of Directors and its duly authorized agents shall have the right to enter any and all of the units in case of an emergency originating in or threatening such unit or any other part of the Project, whether or not the owners or occupant thereof is present at the time. The Board and its duly authorized agents shall also have the right to enter into any and all of

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said units at all reasonable times as required for the purpose of making necessary repairs upon the common areas and facilities of the Project and for the purpose of performing emergency installation, alterations, or repairs to the mechanical or electrical devices or installation located therein or thereon; provided, however, such emergency installation, alterations, or repairs are necessary to prevent damage or threatened damage to other units in the Project; and provided further that the unit owner affected by such entry shall first be notified thereof if available and if time permits.

(h) No immoral, improper, offensive, or unlawful use shall be made of the Townhouse or any part thereof.

2. PARKING RIGHTS OF TOWNHOUSE OWNERS: Ownership of each unit shall entitle the owner or owners thereof to the use of the common driveway, with the right of ingress and egress in and upon said driveway to private garages. Parking by others in such a manner as to prevent ingress and egress to said parking area shall be prohibited.

3. PATIOS: Each owner shall have the exclusive right to the use of a patio area located adjacent to their unit and shown on the plat.

4. TITLE TO COMMON AREA: The Declarant hereby covenants that it will convey by fee simple title, clear of all encumbrances and liens, title to the common area to the Association.

ARTICLE 4

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BY-LAWS FOR MAINTENANCE OF PROPERTIES

1. ASSESSMENTS: The Declarant, for each Townhouse owned, and the owner of any unit by acceptance of the deed therefore, is deemed to covenant and agree to pay the Association an annual assessment and/or special assessment to be established and collected from time to time as hereinafter provided. Each such assessment shall be the personal obligation of the person who was the owner of such property at the time the assessment was due. The obligation shall not pass to the successor in title unless expressly assumed by them.

2. PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety, and welfare of the residents of the property and particularly for the improvement and maintenance of the property service, and facilities devoted to this purpose. They shall include, but are not limited to, funds for the cost of the Association of all taxes, insurance, repairs, replacements, and maintenance of the common areas and of the maintenance of the common areas and of the maintenance of the exteriors of the Townhouse units as may be authorized by the Association. They may also include other activities such as caring for the grounds, landscaping, garbage pick-up, maintenance of water and sewer systems or other services that the Board of Directors of the Association shall determine to be necessary to meet the obligations of the Association.

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3. AMOUNT OF ANNUAL ASSESSMENTS:

- (a) For the first year immediately following the conveyance of the first Townhouse unit to any owner, the maximum annual assessment shall be \$ 480.00 per year per unit.
- (b) Following the first year the maximum assessment may be increased, not more than 10% above the previous year without the vote of the membership.
- (c) Any additional increase shall have the approval of two-thirds of the members of the Association and a meeting shall be called for this purpose, and written notice shall be sent to all Association members not less than 30 days and not more than 60 days in advance of the meeting.
- (d) In addition to the annual assessment authorized above, the Association may levy in any assessment year a special assessment for that year only for the purpose of deferring in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvement upon the common area provided that any such assessment shall have the approval of two-thirds of the members of the Association at a meeting called and held in the same manner as outlined in (c) above.

- (e) In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other common or limited common areas from the activities of the City of St. George in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

4. COMMENCEMENT OF ANNUAL ASSESSMENTS:

- (a) The annual assessments provided Herein shall commence on the first day of the month following the transfer and recording of title to any unit to a purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the calander year.

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(b) Each unit owner, tenant or occupant of a unit shall comply with the provisions of the Act, this Declaration, the By-laws, and the rules and regulations, all agreements and determinations lawfully made and/or entered into by the Board of Directors or the unit owners when acting in accordance with their authority; and any failure to comply with any of the provisions thereof shall be grounds for an action by the Board of Directors to recover any loss or damage resulting therefrom or injunctive relief.

5. EFFECT OF NONPAYMENT OF ASSESSMENTS: Assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days, the assessment shall bear interest from the date of delinquency at the estimated bank rate of interest for consumer loans; and the Association may bring action of law against the owner or owners to pay the same and interest costs. Reasonable attorney fees of any such action shall be added to the amount of assessment. In addition, the rights and privileges of the member to use the common area may be withheld as provided in Article 3-1-C above. Each member of the Board of Directors shall be indemnified and held harmless by the unit owners against all cost, expense, and liabilities whatsoever, including without limitation, attorney's fees, reasonably incurred in connection with any proceeding to which the board member may become involved by reason of being or having been a member of said Board.

6. PERCENT OF OWNERSHIP: The owner or owners of each Townhouse unit shall hold an equal percentage of right and interest in the

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proceeds of any and all insurance policies which it may have had in force on said premises as of the date of such destruction or/ damage. In the event the Townhouse project is destroyed or damaged to the extent of more than 75% of the replacement value thereof, the unit owners shall, at a meeting duly called by the Board of Directors for the purpose, determine whether or not said premises should be rebuilt, repaired or disposed of.

In the event the cost of such repairing, rebuilding, or restoring the Townhouse project shall exceed the amount realized by the Board of Directors from the *process of any insurance policy or policies*, the unit owners shall contribute to such cost in relation to the percentage of ownership in the Townhouse project.

9. ARCHITECTURAL CONTROL: No building, fence wall patio, or other structure shall be erected or maintained, nor shall any exterior addition to or alteration therein be made to any *Townhouse unit until the plan and specifications of the same* shall have been submitted to and approved by the Board of Directors of the Association.

10. TYPE OF CONSTRUCTION: All structures erected on the property shall be of new construction. No building or structure shall be moved from other locations onto the property, and no structures of a temporary nature shall be used on a portion of the property.

11. SIGNS: No advertising signs shall be permitted on the property except for a sign advertising for rent or for sale of

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an individual Townhouse unit and such sign shall not be greater than 6 sq. ft. in area. An identifying sign may be displayed on the exterior of any Townhouse unit provided said sign shall not be in excess of one square foot in area.

12. LAND USE OF TOWNHOUSE UNITS: Except for land designed for common area, all Townhouse units shall be used for residential purposes only. No business or activities of any kind whatsoever shall be conducted in any unit or on any portion of said property.

13. NO ANIMALS: No animals, livestock, or poultry of any kind shall be raised or kept in any unit or in the common area except household pets may be kept, provided that they are first approved by the Board of Directors of the Association and are kept in compliance with all laws and regulations of the City of St. George as they now exist or may be hereinafter adopted.

14. SERVICE AREAS: All rubbish, trash, and garbage shall be regularly removed from the premises and shall not be allowed to accumulate. Clothes lines shall be confined to patio areas.

15. LANDSCAPING: No landscaping gardening shall be done, except as is installed during initial construction of the building or as may be later authorized by the Association.

16. MAINTENANCE: Maintenance and up-keep of all common areas and the exterior of all buildings shall be the responsibility of the Association.

17. MAINTENANCE OF UNITS: Each Unit owner, at his expense, shall keep the interior of his unit and its equipment and appurtenances in good order, condition, and repair and in a clean and sanitary condition, and shall do all redecorating and painting

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which may at any time be necessary to maintain the good appearance of his unit. --

ARTICLE 5

VALIDITY OF RESTRICTIONS

1. VALIDITY: All of the covenants and by-laws of this Declaration shall be construed together; but if any time it shall be held that any one of the said conditions, covenants, or by-laws or any part thereof is invalidated or for any reason is not enforceable, no other covenant or by-law or any part thereof shall be impaired or made unenforceable.

2. DURATION: The covenants and by-laws of this Declaration shall run with and bind the land and shall insure to the benefit of and be enforceable by the Association or the owners of any Townhouse unit subject to this Declaration and their legal representatives, heirs, successors, and assigns for a period of 20 years from the date the Declaration is recorded after which time said covenants and by-laws shall be automatically extended for successive periods of 10 years. Covenants and by-laws may be amended by a vote of not less than two-thirds of the unit owners in the manner provided for herein.

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ARTICLE 6

ANNEXATION OF ADDITIONAL PROPERTIES

1. "Annexation by Declarant." Declarant reserves the right and option to expand HERITAGE LANE TOWNHOMES, PHASE 1, A PLANNED UNIT DEVELOPMENT SUB-DIVISION and annex additional land as set forth herein. A part, parts or all of the following described property in the County of Washington, State of Utah, may be annexed to HERITAGE LANE TOWNHOMES, PHASE 1, SUBDIVISION a planned unit development, by Declarant, without the consent of Association members, for a period terminating Jan 1, 1993. The additional land that may be annexed by the Delarant is described on Addendum "A" attached hereto and made a part hereof.

In the event the Declarant, within the time period set forth in this Article, files other subdivision plat (s) creating additional planned unit developments in the aforescribed property under the name and style of HERITAGE LANE TOWNHOMES, PHASE 1, SUBDIVISION, and states on said plat (s) the intention to have the property described on said plat subject to the terms, covenants and conditions of this Declaration, then, upon recording of said plat, the property described therein shall be subject to this Declaration. The terms, covenants and conditions contained herein run not only to, with and from the property described herein, but by this reference to said plat or plats, also to, with and from all adjoining additions thereto made pursuant to this Article.

2. "Limitation on Annexation." Developer's right to annex said land to the property shall be subject o the following limitation.

- a. The annexed land must be a part of the land described above.

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- b. Declarant shall not effectuate any annexation of land which would cause the total number of units existing on, or planned for, on the property to exceed .
- c. Any additional planned unit developments annexed hereto by the Declarant shall be comprised exclusively of residential single family dwellings, architecturally compatible to the existing Townhomes; substantially similar to the Townhomes already constructed; constructed out of similar materials. The Declarant shall have the sole discretion to develop the Common Area in said addition (s) and to include any facilities or amenities thereon that Declarant deems necessary.
- d. If additional planned unit developments are created by the Declarant pursuant to the terms of this Article, the lot owners in said addition (s) shall be members of the Association and shall have the same rights to the use and enjoyment of the property and facilities of the Association as any other member, either an owner in the HERITAGE LANE TOWNHOMES, PHASE 1, SUBDIVISION, or otherwise. The Common Area in any such additional planned unit development (s) as set forth therein shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens prior to the conveyance of the first Lot on said plat and the Association must accept the deed to said Common Area.
- e. Any units to be added by annexation shall be architecturally compatible with HERITAGE LANE TOWNHOMES, PHASE 1, as determined

by the Declarant in his sole discretion, but no assurances can be given as to the precise design, layout, site design, or materials to be used in construction, or the precise common area and related improvements, or limited common areas.

3. "Supplementary Declaration." The declarant reserves the right, subject to the time period set forth in this article, to record with the filing of other subdivision plats creating additional planned unit developments, a supplementary declaration with the filing of said additional plats. Such supplementary declaration may contain such complimentary additions and modifications of the covenants, conditions, and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the plan of this Declaration.

4. "Declarant's Right to Amend" Until all portions and phases included in the development, or until the right to enlarge the development through the addition of tracts or subdivisions terminates, whichever even first occurs, developer shall have, and is hereby vested with, the right to unilaterally amend the declaration as may be reasonable necessary or desirable; (i) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances of information; (ii) to better insure, in light of existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; or (iii) to facilitate the practical, technical, administrative, or functional integration of any additional tract of subdivision into the development.

ARTICLE 7

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ASSIGNMENT OF POWER

Any and all rights and powers of Declarant herein contained may be delegated, transferred, or assigned. "Declarant" shall include all assigns or successors in interest of Declarant.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 4 day of June

1987.

David M. Young
David M. Young
Declarant

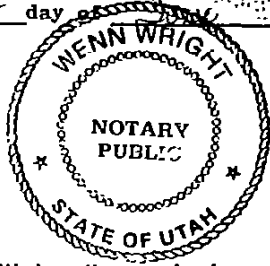
Lori L. Swain
Lori L. Swain
Declarant

Ronald D. Bracken
Declarant
Ronald D. Bracken

Ronald Kelly Larson
Declarant
Ronald Kelly Larson

Subscribed and sworn before me this 4th day of June 1987

WENN WRIGHT
Notary Public



Residing in Washington County, State of Utah. My commission expires 11-2-88

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ADDENDUM "A"

Beginning at a point S89°12'08"W, 690.32 feet along the 1/16 line from the NE Corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, T42S, R15W, SLB&M; thence S0°47'52"E, 908.00 feet; thence S89°12'08"W, 227.32 feet; thence N0°47'52"W, 908.00 feet to a point on 1/16 line; thence N89°12'08"E, 227.32 feet to the point of beginning. Containing 4.74 acres.

Subject to and together with a joint use easement for ingress, egress and utilities over, under and across a strip of land 29.0' in width, the centerline of which is described as follows:

Beginning at a point S89°12'08"W, 707.32 feet along the 1/16 line from the NE Corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, T42S, R15W, SLB&M; said point of beginning being within 900 South Street; thence S0°47'52"E, 101.31 feet; thence S33°34'31"W, 37.19 feet; to the Centerline of the Entrance Road and Road A; thence S30°W, 60.00 feet along the entrance road to the south boundary of Phase I.

Less that area described on the HERITAGE LANE TOWNHOMES, PHASE 1, SUBDIVISION PLAT.

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