

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

OF

HILLSIDE TERRACE

A PLANNED UNIT DEVELOPMENT

THIS DECLARATION of covenants, conditions and restrictions, hereafter called "Declaration," is made and executed in St George, Washington County, State of Utah, this _____ day of _____, 1993, by THE WARREN FAMILY TRUST, Trustees Robert F Warren and Pearl M Warren, hereafter called "Declarant"

R E C I T A L S

A Declarant is the owner of certain property in the County of Washington, State of Utah, which is more particularly described as follows
Beginning at a point which lies N 0°07'31" E 2260 57 feet along the center section line and N 89°46'00" E 38 38 feet from the South 1/4 corner of Section 24, Township 41 South, Range 13 West, Salt Lake Base and Meridian, and running thence S 89°46'00" W 549 21 feet to a point on the Easterly right of way of Valley View Drive, said point being also on a curve to the right, the radius point of which bears N 68°58'38" E, 325 00 feet distant, thence Northwesterly along said right of way and the arc of said curve through a central angle of 12°50'23", a distance of 72 83 feet to the point of tangency, thence N 8°11'00" W 224 27 feet along said right of way to the point of a 1125 00 foot radius curve to the left, thence Northwesterly along said right of way and the arc of said curve through a central angle of 14°15'30", a distance of 279 96

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feet to the point of tangency, thence N 22°26'30" W 55 37 feet along said right of way, thence N 89°30'00" E 692 02 feet, thence S 0°13'01" E 616 61 feet to the point of beginning Contains 8 59 acres

Such land and improvements thereon being hereafter referred to as the "Properties" or 'Project," and

B Declarant desires to provide for the preservation of the values in said Project and for the maintenance of open spaces, and to accomplish this end, desires to subject the real property described herein to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and the subsequent owners thereof, and

C Declarant has deemed it desirable, for the efficient preservation of the values in said Project, to create an Association to which will be delegated and assigned the powers and duties of maintaining and administering and enforcing the within covenants, conditions, restrictions and assessments hereinafter created, and

D Declarant has formed or will form Hillside Terrace Homeowners Association, a Utah non-profit corporation,

NOW, THEREFORE, Declarant, as the current owner of the Project, hereby declares that all of the above-described property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of said property and which shall be construed as covenants of equitable servitude, which shall run with the real property and shall be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof

ARTICLE I
DEFINITIONS

Section 1 "Board of Trustees" shall mean and refer to the governing board of the Homeowners Association defined above

Section 2 "Common Area" shall mean all real property (including the improvements thereto) now owned by the Homeowners Association or hereafter acquired for the common use and enjoyment of the members and not dedicated for use by the general public, to-wit

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specifically exempting therefrom Lots 1 through 42 as designated on that Official Plat of Hillside Terrace, A Planned Unit Development, said Official Plat recorded in the Office of the Washington County Recorder Common Area shall specifically include, but shall not be limited to the Project sidewalks (if any), curb and gutter, and roads

The Homeowners Association may increase the Common Area by purchasing additional adjacent land and (1) filing additional subdivision plats in the Washington County Recorder's office and stating thereon that said land is subject to this Declaration and any amendments thereto and (2) amending this Declaration and the Homeowners' Association Bylaws to include such additional land in the legal description of the Project

Section 3 "Conveyance" shall mean and refer to actual conveyance of fee title to any Lot to any owner by a warranty deed or other document of title and shall not mean the mere execution of an installment sales contract

Section 4 "Declarant" shall mean and refer to the Warren Family Trust, Trustees Robert F Warren and Pearl M Warren, its successors and assigns, if such successors or assigns shall acquire more than one undeveloped Lot from the Declarant for the purpose of development

Section 5 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the office of the Recorder of Washington County, State of Utah

Section 6 "Homeowners Association" shall mean and refer to HILLSIDE TERRACE HOMEOWNERS ASSOCIATION, its successors and assigns, a Utah non-profit corporation. The Homeowners Association shall operate in accordance with the "Bylaws of Hillside Terrace Homeowners Association," hereafter referred to as "Bylaws."

Section 7 "Living Unit" or "Unit" shall mean and refer to a structure which is designated and intended for use and occupancy as a single family residence, together with all improvements located on a lot concerned and which are used in conjunction with such residence

Section 8 "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area

Section 9 "Member" shall mean and refer to every person or entity who holds membership in the Homeowners Association

Section 10 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the

Properties, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation

Section 11 "Properties" and "Project" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Homeowners Association

Section 12 "Townhome" shall mean and refer to a single family dwelling unit constructed by Declarant on a Lot

ARTICLE II

PROPERTY RIGHTS

Section 1 Owners' Easements of Enjoyment Every lot owner shall have a right and easement of use and enjoyment in and to the Common Area, 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 Homeowners Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said property, the rights of such mortgage in said property to be subordinate to the rights of the Owners hereunder,
- (b) The right of the Homeowners Association to suspend the voting rights of a member for (1) any period during which any assessment against his Lot remains unpaid and (2) a period of not to exceed sixty (60) days for any infraction of its published Rules and Regulations
- (c) With the approval of all the holders of first mortgage liens on lots, and two-thirds of the owners, the right of the Homeowners Association to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as

may be agreed to by the members. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area by the Homeowners Association shall not be deemed a transfer within the meaning of this clause. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by two-thirds (2/3) of each class of members and has been recorded.

- (d) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.
- (e) The right of the Declarant and of the Association to grant and reserve easements and rights-of-way through, under, over and across the Common Area, for the installation, maintenance and inspection of lines and appurterances for public or private utilities and the construction of Townhomes in the Project.
- (f) The right of the Association to make, publish and enforce reasonable rules pertaining to the regulation and use of all common areas by owners, guests, invitees and tenants of owners.

Section 2 Delegation of Use Any member or contract purchaser who resides on the property may designate, in accordance with the Bylaws, his right of enjoyment to the Common Area to the members of his family, his tenants or his guests. All such use by family members, tenants, contract purchasers or guests shall be subject to this Declaration, the Bylaws and the Rules and Regulations to be promulgated by the Board of Trustees.

Section 3 Title to the Common Area The Declarant covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Homeowners Association prior to the conveyance of the first Lot, except, (i) any

state of facts an accurate survey may show, (ii) covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration, (iii) easements and rights-of-way of record, and (iv) a covenant 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 shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns. The conveyance of title to the Homeowners Association shall be by Warranty Deed and accompanied with a Policy of Title Insurance insuring title to the Common Area in the name of the Homeowners Association, subject only to those exceptions noted herein.

Section 4 Limitation of Homeowners Association The Association shall not be entitled to take any of the following actions unless at least two-thirds (2/3) of the first mortgagees (based on one vote for each mortgage owned) or two-thirds (2/3) of the owners (other than the Declarant) shall have first given their prior written approval

- (a) To act, or by omitting to act, to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas owned, directly or indirectly, by the Homeowners Association for the benefit of the lots. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas is not a transfer within the meaning of this clause.
- (b) To act, or by omitting to act, to change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of lots or living units, the exterior maintenance of the lots or living units, the maintenance of the Common Areas, or the upkeep of the Common Areas.
- (c) To fail to maintain or require to be maintained fire and extended coverage on insurable Common Areas on a current replacement cost

basis in an amount equal to at least one hundred percent (100%) of the insurable value (based on current replacement cost)

- (d) To use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement, or reconstruction of the Common Areas
- (e) To purchase additional adjacent land as Common Area

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1 Membership Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment

Section 2 Board of Trustees The Board of Trustees shall initially consist of three (3) members. Declarant reserves the right to appoint some or all the Board of Trustees and to exercise all powers and responsibilities associated with the Board of Trustees until December 31, 1996

Section 3 Classes of Membership The Association shall have two classes of membership

- (a) Class A Class A member(s) shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person owns an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.
- (b) Class B. The Class B member(s) shall be the Declarant 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

- 1 When 75% of lots owned in the Project by Declarant are sold, or
- 2 On December 31, 1997

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1 Creation of the Lien and Personal Obligation of Assessments The Declarant and members, for each Lot owned 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 such Deed, is deemed to covenant and agree to pay to the Association (1) annual assessments and (b) special assessments, such assessments to be levied, fixed, established and collected from time to time as hereinbelow provided. The assessments, together with interest, costs and reasonable attorney's fees, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such Lot at the time when the assessment became 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 Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of residents of the property. The use made by the Association of funds obtained from assessments may include payment of the cost of taxes and insurance on the Common Areas, management and supervision of the Common Areas, repair and maintenance of the common areas, establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas, and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Bylaws.

Section 3 Basis and Maximum of Annual Assessments Until December 1, 1995, the maximum annual assessment shall be Two Hundred Forty Dollars (\$240.00) per Lot

- (a) The Board of Trustees shall fix the annual assessment at an amount not in excess of the maximum
- (b) From and after December 1, 1995, the maximum annual assessment may be increased each year not more than fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership
- (c) From and after December 1, 1995, the maximum annual assessment may be increased more than fifteen percent (15%) only by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken incident to a merger or consolidation which the Association is authorized to participate in under its Articles of Incorporation.
- (d) From and after December 1, 1999, the maximum annual assessment then being levied may be decreased if the Board of Trustees determines that a sufficient reserve is in place and two-thirds (2/3) of each class of members who are voting in person or by proxy approve of a specific decrease in the assessment
- (e) Each living unit which is certified for occupancy by the City of LaVerkin and which has been conveyed to an owner shall be assessed according to the schedule set forth above. For the purpose of assessment, the term "owner" shall exclude the Declarant, who shall

pay no annual assessment unless a unit constructed on a lot is occupied for a permanent residence

Section 4 Special Assessments In addition to the annual assessments authorized above, 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, reconstruction, repair or replacement of any capital improvement, upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose

Section 5 Reserve Fund The Association shall maintain a reserve, funded by annual assessments Special assessments as provided for in Section 4 will be allowed only after the reserve fund has been expended and not replenished or the fund has been pledged to pay part of the repair or replacement of the improvements in the Common Area

Section 6 Notice and Quorum for any Action Authorized Under Sections 3 and 5 Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than thirty (30) days, no more than sixty (60) days, in advance of the meeting At the first such meeting called, the presence of members or of proxies entitled to cast sixty-six and two thirds percent (66-2/3%) of all the votes of each class of member-ship shall constitute a quorum If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting

Section 7. Rate of Assessment. Annual and special assessments shall be fixed at uniform rates for all lots and may be collected on a monthly basis

Section 8 Regular Assessments, Due Dates The Board of Trustees 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 subject thereto. The due dates for payment of said assessment shall be established by the Board of Trustees

The Association shall, upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Furthermore, a first mortgage holder, upon request, is entitled to a written certificate from the Association advising of any default by the Lot owner of any obligation not cured within sixty (60) days. A reasonable charge may be made by the Board of Trustees for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid

Section 9 Effect of Non-Payment of Assessments, Remedies of the Association Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, or such other rate as the Board of Trustees may establish from time to time. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs of suit, and reasonable attorney's fees incurred shall be added to the amount of such assessment. Notwithstanding any other remedy provided for collection of assessments, the Association shall reserve the right, after giving the owner ten (10) days written notice, to withhold and interrupt service of utilities to any such unit on which the assessment is delinquent in excess of thirty (30) days from its due date.

Each such owner, by his acceptance of a deed to a Lot, hereby expressly grants to the Association, its successors, assigns, or agents the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or trust deed lien on real property, and such owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other lot owners. The Association, acting on behalf of the lot owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, sell and convey the same.

Section 10 Non-use and Abandonment No owner may waive or escape personal liability for the assessments provided for herein, nor release the Lot owned by him from the liens and charges hereof, by non-use of any Common Area or abandonment of his Lot.

Section 11 Subordination of the Lien to Mortgages The lien created hereunder upon any Lot shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any first mortgage (meaning a mortgage with first priority over other mortgages) or equivalent security interest on any Lot, made in good faith and for value, recorded prior to the date any such assessment becomes due. Any holder of a first mortgage lien or equivalent security interest on a Lot who comes into possession by virtue of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take said Lot and the improvements appurtenant thereto free of any claims for unpaid assessment charges against said Lot which accrue prior to the time such holder comes into possession of the Lot, except for the claims for a share of such expenses or charge resulting from a reallocation of such assessment or charges to all

lots including the mortgaged Lot. Any first mortgagee, who obtains title to a lot in the development pursuant to the remedies in the mortgage/deed of trust or through foreclosure of the mortgage/deed of trust or any other security instrument, shall not be liable for more than six (6) months of the lot's unpaid dues or charges which have accrued before the acquisition of title to the lot by the mortgagee through foreclosure. However, no such sale or transfer shall relieve such Lot from liability for any assessments which thereafter become due or from the lien thereof.

Section 12 Exempt Property The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All Properties dedicated to and accepted by any local public authority,
- (b) The Common Area

Section 13 Management Agreements The Board may employ a manager or other persons who may contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. Any contract with a person or firm appointed as a manager or managing agent shall be terminable by the Association for cause upon thirty (30) days' written notice thereof. Any such contract, and any other contract (except prepaid casualty and/or liability insurance policies of not to exceed three (3) years' duration where the policy permits short term cancellation by the insured) with a third person wherein the third person is to furnish goods or services for any Common Area or the Homeowners Association, shall be limited to a duration of one (1) year, provided, however, that such contracts may be renewable for successive one (1) year periods with the approval, for each such period, by a vote or written consent of a majority of each class of members of the Homeowners Association.

Section 14 Insurance Assessments The Board of Trustees, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the buildings, including all townhomes, unless the owners thereof have supplied proof

of adequate coverage to the Board of Trustees complete satisfaction and approval, which shall not be unreasonably withheld, against loss or damage by fire or other hazard. The Board shall, in addition thereto, obtain a broad form public liability policy covering all Common Area for all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. All fire and extended coverage on the improvements located on the Common Area shall include coverage to cover the replacement value of all such improvements.

Premiums for all such insurance coverage, including insurance on townhomes obtained by the Board of Trustees, shall be written in the name of the Homeowners Association as Trustee for each of the townhome owners in the same proportions as the square footage of each townhome bears to the total square footage of all the townhomes combined. Insurance on individual townhomes obtained by the Board of Trustees on townhomes shall not be a part of the common expense, but shall be an expense of the specific townhome or townhomes so covered and a debt owed by the owners, and shall be collectible by a lawful procedure permitted by the laws of the State of Utah.

In addition, if said debt is not paid within twenty (20) days after notice of such debt, such amount shall automatically become a lien upon such owner's lot and townhome and shall continue to be such a lien until fully paid. This lien shall be subordinate to liens as set forth in Section 11 above and shall be enforceable in the same manner as any lien created by failure to pay the maintenance assessments. In addition to the aforementioned insurance required to be carried by the owners and/or the Association, any owner may, if he wishes, at his own expense, insure his own townhome unit for his own benefit and carry any and all other insurance he deems advisable. It shall be the individual responsibility of each owner at his own

expense to provide, as he sees fit, homeowner's liability insurance, theft, and other insurance covering contents and all personal property damage and loss

In the event of damage or destruction by fire or other casualty to any properties covered by insurance written in the name of the Association, the Board of Trustees shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the properties to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, whose accounts are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least two thirds (2/3) of the members of the Board of Trustees. The Board of Trustees shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction, or rebuilding of such destroyed building or buildings

In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Trustees shall levy a special assessment against all owners of the damaged townhomes in such proportions as the Board of Trustees deem fair and equitable in light of the damage sustained by such townhomes. Such payments shall be made to all such owners and their mortgagees in proportion to their percentage interests

In the event of damage or destruction by fire or other casualty to any townhome or other property covered by insurance written in the name of an individual owner, said owner shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to repair or rebuild such damaged or destroyed portions of the exterior of the townhome in good workmanlike manner and in conformance with the original plans and specifications of said townhome. In

the event such owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the townhome area within thirty (30) days, the Association, by and through its Board of Trustees, is hereby irrevocably authorized by such owner to repair and rebuild any such townhome in a good and workmanlike manner in conformance with the original plans and specifications of the townhome. The owner shall then repay the Association the amount actually expended for such repairs, and the Association shall have a lien securing the payment of insurance premiums from the date of the loss, and subject to foreclosures as above provided.

ARTICLE V

ARCHITECTURAL CONTROL/STRUCTURAL RESTRICTIONS

Section 1 Architectural Control Committee The Board of Trustees of the Association shall appoint a three (3) member committee (hereinafter sometimes referred to as "ACC") the function of which shall be to insure that all exteriors of living units and landscaping within the property harmonize with existing surroundings and structures. The committee must be composed of owners. If such a committee is not appointed, the board itself shall perform the duties required of the committee.

Section 2 Submission to Committee No living unit, accessory or addition to a living unit, landscaping, or other improvement of a lot which is visible from the Common Areas shall be constructed, maintained, or accomplished, and no alteration, repainting or refurbishing of the exterior of any living unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee.

Section 3 Standard In deciding whether to approve or disapprove plans and specifications submitted to it, the committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on lots within the

property conform to and harmonize with existing surroundings and structures. The board may formulate general guidelines and procedures. The adopted guidelines and procedures shall be incorporated in the book of rules and regulations adopted by the board and the Architectural Control Committee, or the board, as the case may be, shall act in accordance with such guidelines and procedures.

Section 4 Structural Restrictions The Board shall require

- (a) Stucco That the exterior of a living unit, accessory or addition to a living unit be stucco, be of the following color, lot, and base manufactured by LaHabra Meadowbrook, lot 48, base 100,
- (b) Roof Tile That the shingles for a living unit, accessory, or addition to a living unit be concrete tile – Tradename Lifetile, No 608
- (c) Square Footage All living units shall be not less than 950 square feet

Section 5 Approval Procedure Any plans and specifications submitted to the committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the committee fails to take any action within such period, it shall be deemed to have approved the material submitted.

Section 6 Construction Once begun, any improvements, construction, landscaping, or alterations approved by the committee shall be diligently pursued to completion. If reasonably necessary to enable such improvement, construction, landscaping or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupancy of unimproved portions of the Common Area in the vicinity of the activity.

Section 7 Disclaimer of Liability Neither the Architectural Control Committee, nor any member thereof acting in good faith, shall be liable to the Association or any owner for any damage, loss, or prejudice suffered or claimed on account of

- (a) The approval or rejection of, or the failure to approve or reject, any plans, drawings or specifications,
- (b) The development or manner of development of any of the property, or
- (c) Any engineering or other defect in approved plans and specifications

Section 8 Non-Waiver The approval of the Architectural Control Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Control Committee to disapprove any similar plans and specifications subsequently submitted

Section 9 Exception for Declarant The foregoing provisions of this Article shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any lot or on any part of the Common Areas and which occurs at any time during the three (3) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Washington County, Utah.

Section 10 Declarant's Obligation Declarant hereby covenants in favor of each owner that all living units erected by it, or caused to be erected by it, and all improvement of the Common Areas accomplished by it shall be architecturally compatible with respect to one another

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply Each wall which is built as a part of the original construction of the homes upon the properties and placed on the dividing line between residences 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 of 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, 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

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, and the decision shall be by a majority of all the arbitrators

ARTICLE VII

OPERATION AND MAINTENANCE

Section 1 Maintenance of Common Areas, Lots and Living Units Each lot, living unit, accessory or addition to a living unit, including driveways, fences, exteriors of living units, accessory or additions to living units, shall be maintained by the owner thereof so as not to detract from the overall appearance of the development and so as not to affect adversely the value or use of any other lot or

living unit The Association shall have no obligation regarding maintenance or care of lots or living units except as provided in Section 2 of this Article VI

Section 2 Operation and Maintenance by Association The Association, by its duly delegated representative, shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them functional in conjunction with the Lots and to keep them clean, attractive and generally in good condition and repair The Association shall maintain, repair and restore those improvements located upon the Common Areas, including, but not limited to, the following roadways, curbs and sidewalks (if any) The patio areas, if any, of each Living Unit may be used and decorated at the discretion of owner so long as the use and decoration does not adversely affect other Unit owners. Notwithstanding the provisions regarding Lot and Living Unit maintenance by Owners, in the event an Owner of any Lot in the Property shall fail to maintain his Lot or Living Unit in a manner satisfactory to the Architectural Control Committee or the Board, after approval of a majority vote of the Board of Trustees, the Homeowners Association shall have the right, through its agents, employees, or through an independent contractor, to enter upon such Lot and repair, maintain, restore the portion of the Lot maintainable by the Owner and any other improvements erected thereon, excluding the interior of the Living Unit The costs incurred by the Homeowners Association in maintaining, repairing or restoring those portions of the Lot maintainable by the Owner shall then be added to and become an assessment and lien against the Lot as described in Article IV, Section 1 of this Declaration.

Section 3 Utilities The Association shall not pay for the monthly cable TV service, sewer, and garbage pick-up for each lot Each lot owner shall pay for all utility services which are separately billed or metered to individual lots by the City of St George or other party furnishing such service

Section 4 Indemnification by Declarant The Declarant, by this instrument and recording of same, agrees to indemnify the Association against loss or damage arising or accruing on the Common Areas or to the Common Area property as a result of the construction activities of the Declarant or his agents

ARTICLE VIII

EASEMENTS

Section 1 Minor Encroachments Each Lot and the Common Area shall be subject to an easement for encroachment created by construction, repair, shifting, settling or movement, and overhangs as designed or constructed by the Declarant A valid easement for said encroachment and for the maintenance of same, so long as it stands, shall and does exist

Section 2 Utilities Easement There is hereby granted and conveyed to the City of LaVerkin, providers of cable television and utilities (including natural gas and electricity), their successors and assigns, a blanket easement upon, across, over and under all of the said Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities at such location or locations as said utilities deem appropriate By virtue of this easement, it shall be expressly permissible for the providing electrical, cable television and/or telephone company to construct and maintain the necessary equipment on said property and to affix and maintain electrical, cable television and/or telephone wires, circuits and conduits on, across and under the Common Area

An easement is further granted to all police, fire protection, ambulance, trash collection and all similar persons to enter upon the streets and Common Area in the performance of their duties Notwithstanding anything to the contrary contained in this Article, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said property except as initially planned and approved by the Declarant or thereafter approved by the Board of Trustees Should any company

furnishing a service conveyed by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said property without conflicting with the terms hereof

An easement is further granted to the City of LaVerkin, its successors and assigns, for a main waterline located as provided on any recorded subdivision map of the Properties

Section 3 Easements for Ingress and Egress An easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or to cross over the Common Area, Limited Common Area and any Lot to perform the duties of maintenance and repair of the Townhome, yard and landscape area, or Common Area provided for herein. The Declarant expressly reserves to itself, its successors and assigns, a perpetual easement and right, at their own risk, to cross the Common Area by the streets, roads, paths, walkways, established or hereafter established on said property by the Declarant, for the purpose of having access for ingress and egress to such other adjacent property upon which Declarant has or may create additional planned unit development Lots or townhomes

ARTICLE IX

USE RESTRICTIONS

Section 1 Residential Use No owner shall occupy or use his Townhome, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the owner and the owner's family or the owner's lessees or guests

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

Section 3 Uses Permitted by Declarant During Construction Notwith-

standing any provisions herein contained to the contrary, it shall be expressly permissible for Declarant on the building of said Townhomes to maintain during the period of construction and sale of said Townhomes, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of said Townhomes, including, but without limitation, a business office, storage area, construction yard, signs, model Townhomes and sales office

Section 4 Household Pets Permitted No animals, livestock or poultry of any kind may be raised, bred, or kept on any Lot or in the Common Area, except that dogs, cats or other household pets may be kept in Townhomes, or upon any Lot, subject to the rules and regulations adopted by the Board of Trustees. All dogs or cats in the Common Area shall be on a leash

Section 5 Signs No signs of any kind, except real estate and "for sale" signs, shall be displayed to the public view on or from any Lot or the Common Area, unless displayed by the Declarant or its successors

Section 6 Obstruction of the Common Area There shall be no obstruction of the Common Area Nothing shall be stored in the Common Area without the prior consent of the Board of Trustees No motorized vehicles can be parked on the Common Area, except upon application to the Board of Trustees, which board may allow exemptions from this restriction against parking on Common Areas only for a lot owner's family, friends and guests on special occasions and holidays

Section 7 Prohibited Uses No noxious or offensive activities shall be carried on in any Lot or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the owners

Section 8 Oil and Mining Operations No drilling, quarrying or mining operations of any kind shall be permitted upon or in any Lot or upon the Common Area

Section 9 Alteration of Common Area Nothing shall be altered or constructed, or removed from the Common Area, except with the written consent of the Board of Trustees

Section 10 Time Sharing Prohibited Neither the Declarant nor the owner of any Lot shall allow or permit any form of time sharing ownership

Section 11 Leases Any lease agreement between a Townhome owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, Articles of Incorporation of the Association, the Bylaws of said Association and all Rules and Regulations, and that any failure by lessee to comply with the terms of such documents and rules shall be a default under the lease Furthermore, all leases shall be in writing and a copy of each signed lease shall be left with the secretary of the Homeowners Association by the homeowner

Section 12 Recreational Vehicles No recreational vehicles may be parked within the Common Areas or upon the driveways of each unit for longer than a twenty-four (24) hour period In no event shall any recreational vehicle, camper, trailer, tent trailer, or mobile home be used for camping or for overnight accommodations by the lot owner or by the lot owner's guests in and on the Common Areas of the development or on the driveways of the townhome units No recreational vehicle may be parked forward of the front foundation of a living unit, except as allowed by the "twenty-four hour rule" as provided in the first sentence of this section and Section 6 of this Article

ARTICLE X

GENERAL PROVISIONS

Section 1 Enforcement The Association, or the Declarant or its successors in interest, or any owner, shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all restrictions, conditions,

covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, Bylaws or Articles of Incorporation. Specifically, the aggrieved party may seek to recover damages and for injunctive relief. Failure by the Association to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2 Severability, Construction and Validity of Restrictions All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired, and the Declarant and lot owners, their successors, heirs and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason become unenforceable.

Section 3 Duration The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each.

Section 4 Gender and Grammar The singular wherever used in this Declaration shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 5 Conflicts In case of any conflict between this Declaration as the same may be amended from time to time, and the Articles of Incorporation and the Bylaws of the Association, as they may be amended from time to time, the provisions of this Declaration shall be controlling

ARTICLE XI
AMENDMENT

Except as otherwise provided herein, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy percent (70%) of the lot owners, and thereafter, by an instrument signed by not less than sixty percent (60%) of the lot owners, which amendment shall be effective upon recordation in the Office of the Recorder of Washington County, State of Utah. Prior to any material amendment to this Declaration, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the members will vote on said amendment

ARTICLE XII

INITIAL REGISTERED AGENT AND INITIAL REGISTERED OFFICE

The address of the initial registered office of the Homeowners Association shall be 1175 East Redwood Tree Street, St George, Utah 84770. The name of the registered agent at that address is Roy Jacobsen

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set his hand and seal the day and year first above written

Declarant

WARREN FAMILY TRUST
By Trustees



ROBERT F. WARREN

Pearl M Warren
PEARL M WARREN

NEVADA (W)
STATE OF UTAH,
CLARK ss
County of Washington)

On the 4th day of May, 1993, before me ROBERT F WARREN and PEARL M WARREN, who being by me duly sworn, did say that they are the Trustees of the Warren Family Trust, and that said instrument was signed in behalf of said Trust and said Robert F Warren and Pearl M Warren acknowledged before me that they did execute the foregoing instrument

IN WITNESS WHEREOF, I have hereunto set my hand and seal this

4th day of May, 1993

J. Hightower
Notary Public
Residing at Las Vegas, NV

My Commission Expires

