

**RESTRICTIVE COVENANTS AND DECLARATION OF  
USE RESTRICTIONS FOR  
FOSTER HILLS ESTATES SUBDIVISION  
PHASE III**

**KNOW ALL MEN BY THESE PRESENTS:** that Jarl Klungervik, and A. Kent Cottam owners of the following described real property located in Washington County, State of Utah, herein after referred to as "Foster Hills Estates Subdivision Phase III" and more particularly described as follows:

Beginning at the Northwest corner of Foster Hills Subdivision - Phase II, said point being S. 89°14'30" W. 1987.345 feet along the Section line and S. 00°00'00" E. 3.60 feet from the Northeast corner of Section 28, Township 42 South, Range 15 West, S.L.B. & M said point being on the Westerly Boundary of Foster Hills Subdivision - Phase II, and running thence along the boundary of said "Foster Hills Subdivision -Phase II" S. 00°26'25" E. 691.355 feet; thence leaving said subdivision S. 89°14'30" W. 592.41 feet; thence N. 00°00'00" E. 335.27 feet; thence N. 89°14'30" E. 339.83 feet; thence N. 00°26'25" W. 356.11 feet; thence N. 89°14'30" E. 250.00 feet to the point of beginning. Containing 6.593 acres.

WHEREAS, certain covenants and building and use restrictions must be established and observed to insure harmonious relationships, protect property values, eliminate hazardous conditions, and preserve the natural beauty of the area, whenever persons reside in the close proximity to one another.

NOW, THEREFORE, Jarl Klungervik, and A. Kent Cottam ("Declarant"), hereby declares that all of the lots in the above-described subdivision are held, conveyed, hypothecated, encumbered, leased, used, occupied and improved, subject to the following covenants, conditions, and restrictions:

1. PURPOSE. The purpose of these restrictions is to insure the use of the property for attractive residential purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the property, to establish a general plan of improvement, to enhance and protect the value of the property, and to maintain the desired tone of the community, and hereby to secure to each owner the full benefit and enjoyment of his home, with no greater restriction on the free and undisturbed use of his lot that is necessary to insure the same advantages to all lot owners.

2. USE. No single unit shall have less than one thousand three hundred square feet (1,300) in size on the main level exclusive of one-story open porches and garages and carports, for a one-story dwelling nor less than one thousand (1,000) square feet for a dwelling more than one story. The second story shall have a minimum of four hundred (400) square feet. All lots shall be used only for not more than one detached, single family dwelling not to exceed two stories in height. No other building shall be erected, altered, placed, or permitted to remain on any lot. All construction shall be of new materials, except that used brick may be used so long as it conforms with the building and subdivision ordinances of the City of St. George. All

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structures shall be constructed in accordance with the prevailing zoning and building ordinances of the City of St. George.

3. **LOT SIZE.** Lot sizes as described on the subdivision plat for Foster Hills Estates Subdivision, Phase III on file in the office of the Washington County Recorder, are considered minimum lot sizes and no person shall subdivide any lot as shown on the recorded plat of said subdivision into smaller parcels.

4. **BUILDING LOCATION.** Building location on lot as to set-back requirements shall be in accordance and in compliance with prevailing zoning and building ordinances of the City of St. George.

5. **CONSTRUCTION.** Construction of a home on each lot sold shall be commenced within six months of the date of purchase, and completed not later than 12 months from the date of purchase.

6. **LANDSCAPING.** All property shall be landscaped appropriately with lawns, trees, shrubs, etc., and all landscaping shall be maintained at a reasonable standard compatible with other lots in the subdivision. Shrub and tree plantings on corner lots shall be located so as not to create a hazard for the movement of vehicles along streets. Desert landscaping plans shall be approved by the architectural control committee.

7. **REMOVAL OF DEBRIS.** In the event the purchaser of a lot does not commence construction of a home on said lot within three months of the date of purchase, the lot owner shall be responsible to see that the lot is kept free of weeds and debris until such time as construction is completed, and landscaping put in place.

8. **GARBAGE AND REFUSE DISPOSAL.** No garbage or trash shall be kept, maintained or contained in or on any lot so as to be visible from another lot or from any street. No incinerators shall be kept or maintained in or on an lot. No refuse pile, garbage, or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on the lot. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All containers used for the storage or disposal of such material shall be kept in clean and sanitary condition.

9. **TEMPORARY OR OTHER STRUCTURES.** No structure of a temporary nature: trailer, bus, basement house, tent, shack, garage, or other outbuilding shall be used at any time as a residence either temporarily or permanently, nor shall any such structures be erected or placed on said property at any time. No old or second-hand structures shall be moved onto any of said lots, it being the intention hereof that all dwellings and other buildings to be erected on said lots, or within said subdivision, shall be new construction of good quality, workmanship, and materials. No see-through fences such as chain-link shall be permitted.

10. **EASEMENTS.** Easements for installation and maintenances of utilities, drainage facilities, and ingress and egress are reserved as shown upon the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which

may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or draining channels in the easements or which may impede ingress and egress. The easement area of each lot and all improvements on it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

11. **ANIMALS.** No animals, including horses or other domestic farm animals, fowl or reptiles of any kind may be kept, bred, or maintained in or upon any lot, except for household pets. No animals shall be kept, bred or raised within any lot for commercial purposes. IN no event shall any domestic pet be allowed to run free away from its owner's lot without a leash, or so as to create a nuisance.

12. **NUISANCES.** No owner shall permit or suffer anything to be done or kept about or within his lot which will obstruct or interfere with the rights of other owner, occupants, or persons authorized to use any lot, or annoy them by unreasonable noises or otherwise, nor will he commit or permit any nuisance or commit to comply with any illegal act to be committed therein. Each owner shall comply with any and all requirements of all health authorities and other governmental authorities having jurisdiction over the property subject to this declaration.

13. **VIOLATION OF LAW OR INSURANCE.** No lot owner shall permit anything to be done or kept in or upon his lot which will result in the cancellation of insurance thereon or which will result in the cancellation of insurance thereon or which would be in violation of any law.

14. **SAFE CONDITION.** Without limiting any other provision of this declaration, each owner shall maintain and keep his lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other owners of their respective lots.

15. **ANTENNAE.** No radio antennae, or devise for the reception or transmission of radio, microwave, or other similar signals shall be permitted on any lot, unless enclosed by a wall, fence or shrubbery so as not to be seen from any adjoining lots or from any street.

16. **MINING.** No portion of any lot shall be used in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

17. **FIRES.** Other than barbecues in properly constructed barbecues pits or grills and firepits, no open fires shall be permitted on the lots, nor shall any other similar activity or condition be permitted which would tend to create a nuisance or increase the insurance rates for any owner.

18. **ARCHITECTURAL CONTROLS.** No building shall be erected, placed, or altered on any lot until the construction plans showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and

finish grade elevation. No fence or wall shall be erected, placed, or altered on any lot nearer to any street than the minimum building setback line unless similarly approved. Architectural design shall be Southwest. All houses shall have a barn type roof. All plans will include a finished landscaped front yard by the time house has final city inspection.

19. ARCHITECTURAL CONTROL COMMITTEE. The Architectural Control Committee which is vested with the powers described herein shall consist of two persons: Jarl Klungervik and A. Kent Cottam. Prior to the commencement of any structure therefore completed, there shall first be filed with the Architectural Control Committee one complete set of building plans and specifications therefore, together with block or plot plan indicating the exact part of the building site the improvements will cover, and said work shall not commence unless the Architectural Control Committee shall endorse said plans as being in compliance with these covenants and/or otherwise approved by the committee. In the event said committee fails to approve or disapprove in writing said plans within fifteen (15) days after submission, then said approval shall not be required. When all lots in said tract have been sold by the Declarant, said plans and specifications shall be approved by an Architectural Control Committee appointed by a majority of owners lots in the subdivision herein described.

20. DRIVEWAYS. Driveways shall be constructed of cement.

21. DAMAGES. Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks and such, by the purchaser or owner and/or their agents of any particular lot in the subdivision must be repaired as soon as possible after such damage is discovered, and the expense of such repair shall be borne by the purchaser or owner, not the developer.

22. VIOLATION CONSTITUTES NUISANCE. Every act or omission whereby any restriction, condition or covenant as set forth in this declaration is violated in whole or in part is declared to be and shall constitute a nuisance, and may be abated by the Declarant, affected property owners, and such remedy shall be deemed to be cumulative and not exclusive.

23. DURATION. All of the covenants, conditions and restrictions set forth in the declaration shall take effect upon the recording of the same, and shall continue and remain in full force and effect at all times against said property and the owner thereof or any subsequent owners thereof, for a period of twenty (20) years from date of adoption period. Said covenants shall then be automatically renewed for successive periods of ten (10) years, except that following the initial twenty (20) year period, said requirements may be altered or changed or modified by a written agreement of not less than the majority of the lot holders of said subdivision. Such changes shall not include easements or other areas dedicated to public use.

24. VIOLATION AND DAMAGES. Any Deed, Lease, Conveyance, or Contract made in violation of the provisions hereof shall be void and owners of any lot in the subdivision, or any of the person claiming an interest therein, shall violate any of the covenants, conditions or restrictions herein contained, it shall be lawful for any other person or persons owning an interest any lot in the subdivision to prosecute and file proceedings at law or in equity against the person or persons violating or attempting to violate any of the covenants, conditions, or restrictions

hereof, either at law for damage, or in equity for an injunction, or other equitable relief. All costs and expenses of such proceedings as specified in the paragraph, including a reasonable attorney's fee, shall be taxed against the offending party or parties and shall be declared by the court to constitute a lien against the real estate of said party located within the subdivision and such lien may be enforced in such matter that the Court may order.

25. WAIVER. If violation of these covenants, conditions and restrictions is of continuing nature, the failure to prosecute such a violation for any period after such violation occurs shall not operate as a waiver of the right to subsequently prosecute with respect to said violation, nor bar the seeking of relief, injunctive, or otherwise, against other violations occurring on any other lot in the subdivision. It is further agreed that all of the covenants, conditions and restrictions set forth herein shall not be deemed changed or abandoned by change of conditions in the neighborhood, by acquiescence, by violation or act or failure to act by any lot owner or any other person.

26. COMPLIANCE WITH ZONING ORDINANCES OF THE CITY OF ST. GEORGE. All present and future successor lot owners agree to abide and conform to all St. George City ordinances then in effect, which pertain to this subdivision, unless otherwise modified by the covenants contained herein.

27. SAVINGS CLAUSE. If any provision hereof, or the application of any provision to any person or circumstances, shall be held invalid, the remainder of the Declaration, or the application of such provisions to persons or circumstances other than those to which it is held invalid shall be deemed valid.

28. ASSIGNMENTS OF POWERS. Any and all rights and powers of the Declarant herein contained may be delegated, transferee, or assigned. Wherever the term "Declarant" is used herein, it included assigns or successors in interest of the grantor.

IN WITNESS WHEREOF we have hereunto set our hands and seals this 10th day of NOVEMBER, 1993.

By Jan Klungervik  
Jan Klungervik

A. Kent Cottam  
A. Kent Cottam

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STATE OF Utah

County of Washington )  
SS.

On the 7th day of NOVEMBER, 1993, personally appeared before me JARL KLUNGERVIK, and A. KENT COTTAM the signers of the above and foregoing instrument, who being first duly sworn, acknowledged to me that they executed the same.

My Commission Expires: 7-14-97

*Melody D. Kesler*

Notary Public

Residing At *Santa Clara, Utah*

