

00606811 Bk 1225 Pg 0158
RUSSELL SHIRTS & WASHINGTON CO RECORDER
1998 JUN 15 13:00 PM FEE \$38.00 BY BJ
FOR: TERRA TITLE CO

Desert Gardens Estates Phase 1

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS

TABLE OF CONTENTS

Article I	2
DEFINITIONS:	2
1. Owner	2
2. Developer	2
3. Residence	2
4. Declaration	2
5. Development	2
6. Lot	2
7. Conveyance	2
8. Yards'	2
Article II	2
1. Amendment	2
2. Availability	3
Article III	3
GENERAL RESTRICTIONS:	
1. Land Use and Building Type	3
2. Minimum Square Footage and Multilevel Restrictions	3
3. Garages and Carports	3
4. Lot Size	4
5. Building Location	4
6. Driveways and Walkways	4
7. Exterior Materials	4
8. Roofing Material	4
9. Architectural Restrictions	4
10. Easement's	5
11. Temporary or Other Structures	5
12. Nuisances'	5
13. Oil and Mining Operations	5
14. Animals'	5
15. Garbage and Refuse Disposal	5
16. Building Materials	6
17. Water Supply	6
18. Sewage Disposal	6
19. Boats, Recreational and Motor Vehicles	6
20. Antenna	6
21. Safe Condition	6
22. Site Distance at Intersections	6

23. Landscaping	6
24. Excavations and Fill	7
25. Outside Lighting Requirements	7
26. Damage to Street, Curb or Gutter	7
27. Storage or Utility Buildings	7
28. Dome Structures	7
29. Mobile, Modular, & Pre-Fab Homes	7
30. Walls and Other Barriers	7
31. Roof Mounted Heat Pumps and Solar Panels	8
32. Construction Completion	8
33. Time Sharing Prohibited	8
34. Leases	8
35. Signs	8
36. Inoperable Motor Vehicles	9
37. Trucks and Trailers	9
Article IV	9
DURATION, ENFORCEMENT, AMENDMENT:	
1. Duration of Restrictions	9
2. Notices	9
3. Construction and Severability	10
4. Violation Constitutes Nuisance	10
5. Enforcement	10
6. Right to Enforce	10
7. Architectural Control Committee	10
8. Assignment of Powers	11
9. Amendment	11
NOTARY PUBLIC	12

**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS OF:**

DESERT GARDENS ESTATES PHASE 1

KNOW ALL MEN BY THESE PRESENTS: That Blackmore Construction, Inc., a Utah Corporation, hereinafter referred to as the "Developer", is the owner or agent of the following described property, hereinafter referred to as "the property", located in Virgin, Washington County, Utah, to wit:

All of Desert Gardens Estates, according to the official plat thereof on file in the Office of the Washington County Recorder.

WHEREAS, it is the intention of the Developer to include all of the property in said plat, to divide the property into lots as shown on said plat, and to dedicate the streets shown on said plat to the City of Virgin. The easements indicated on said plat are hereby perpetually reserved for public utilities and for any other uses as designated thereon or set forth herein, and no structures other than for such utility or other indicated purposes are to be erected within the lines of said easements; and

WHEREAS, certain covenants, conditions and restrictions must be established and observed in order to insure harmonious relationships, protect property values, eliminate hazardous conditions, and preserve the natural beauty of the area.

NOW, THEREFORE, the Developer hereby declares that all of the property described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used occupied and improved, subject to the following limitations, covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the property and are established and agreed upon for the purposes of enhancing and protecting the value, desirability and attractiveness of the property and every lot, part or portion thereof. The acceptance of any deed to or conveyance of any lot, part or portion of the property by the grantees therein named or by their legal representatives, heirs, executors, administrators, successors or assigns, shall constitute their covenant and agreement with the Developer and its successors or assigns, and with each other to accept, hold, improve, use and convey the property described and conveyed in or by such deed of conveyance subject to said covenants, conditions and restrictions as follows, to wit:

ARTICLE I**DEFINITIONS**

1. **OWNER:** 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 property, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.
2. **DEVELOPER:** Developer shall mean and refer to Blackmore Construction, Inc., a Utah Corporation, and its successors and assigns.
3. **RESIDENCE:** Home shall mean and refer to the family dwelling constructed in the platted area of each lot.
4. **DECLARATION:** Declaration shall mean and refer to the Declaration of Protective Covenants, Conditions and Restrictions.
5. **DEVELOPMENT:** Development shall mean and refer to the property, and any additions thereto, including all future phases and improvements thereon.
6. **LOT:** Lot shall mean and refer to any plot of land shown upon any recorded subdivision map of the property.
7. **CONVEYANCE:** 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.
8. **YARDS:** The yard area of all lots shall be defined as follows: Front yard shall mean and refer to that portion of the lot which is located between the front lot line and a perpendicular line running from the front corners of the residence to the side lot lines; Back yard shall mean and refer to that portion of the lot which is located between the back lot line and a perpendicular line running from the back corners of the residence to the side lot lines; Side yards shall mean and refer to that portion of the lot which is located between the residence and the side lot line and the front and back yards. On a corner lot, both sides of the residence facing the streets shall be deemed the front of the residence for the purposes of defining the front corners of the residence.

ARTICLE II

1. **AMENDMENT:** The Developer reserves the right to amend this declaration as it may deem necessary, from time to time during the development phase of the subdivision, as defined herein, for the purpose of bringing this declaration into compliance with the rules and regulations of any lending institution or governmental agency created for the purpose of making, underwriting,

purchasing, or guaranteeing the repayment of loans for the purchase or construction of residential housing. This right of Developer to amend shall not require the vote or approval of any lot owner, and shall be independent of all other rights granted to or reserved by the Developer in this declaration and shall continue until all lots, in all phases of the subdivision, have been conveyed.

2. **AVAILABILITY:** Upon request, and during normal business hours, the Developer shall make available to all lot owners, lenders and the holders and insurers of first mortgages on any lot or residence located thereon, for the purpose of inspection or photocopying, current copies of this declaration, the Articles of Incorporation, and By-laws and other rules and regulations, (if applicable) governing the Development.

ARTICLE III

GENERAL RESTRICTIONS

1. **LAND USE AND BUILDING TYPE:** All lots shall be used for single family residential purposes no resident's use of a lot shall endanger the health or disturb the reasonable enjoyment of any other owner or resident. The only buildings or structures permitted to be erected, placed or permitted to be located on any lot within the subdivision shall be an attached single family dwelling, or other approved structure as defined herein. All construction shall be of new materials. All structures shall be constructed in accordance with the zoning and building ordinances of the Virgin Town, Utah, in effect from time to time. "Family" is defined to mean persons related by blood or marriage, by legal adoption, or by operation of law.
2. **MINIMUM SQUARE FOOTAGE AND MULTILEVEL RESTRICTIONS:** In no event shall the total finished square living area of any residence constructed on any lot within the subdivision, exclusive of porches, balconies, patios, and garages, be less than 1,600 square feet. The minimum total finished square footage of living area on the first level above ground and located within the area of a foundation for any residence constructed on any lot within the subdivision, exclusive of porches, balconies, patios, and garages, shall not be less than 1,200 square feet. No more than two stories above ground will be allowed under any condition.
3. **GARAGES:** All residences constructed on any lot in the subdivision shall be constructed with a fully enclosed, private attached garage, built to accommodate not less than one (2), nor more than four (4) vehicles. The minimum size for any such garage shall be 20 feet by 20 feet. The height of the garage door headers shall not exceed 12 feet. All garages shall be constructed of the same exterior materials as and in harmony and be architecturally compatible with the residence constructed on the lot. Plans for the construction of a detached garage shall first be submitted to the Architectural Control Committee for approval, according to the same procedures set forth herein for the approval of dwelling plans and shall in all respects comply

with the provisions of this declaration with respect to the construction of residences.

4. **LOT SIZE:** Lot sizes as described on the recorded plat of the subdivision are considered minimum lot sizes and no persons shall further subdivide any lot other than as shown on the recorded plat of said subdivision.
5. **BUILDING LOCATION:** All buildings shall be located on all lots so as not to be in violation of Virgin Town ordinances with respect to minimum setbacks. The above notwithstanding, in no event shall any portion of any building, including eaves or steps, encroach upon any other lot, except as herein stated. Minimum setback from the street shall be 30 feet, minimum setback from adjacent lots shall be 10 feet, and minimum setback in the rear shall be 20 feet.
6. **DRIVEWAY AND WALKWAYS:** The primary driveway, that is the driveway leading from the street to the garage, and primary walkways, that is walkways leading from the street or driveway to the entrance of the residence, shall be constructed of concrete, tile, brick pavers or gravel. All other driveways and walkways shall be constructed of a material commonly used for such purposes, however, in no event shall a driveway or walkway be constructed of dirt, sand, clay or road base material.
7. **EXTERIOR MATERIALS:** Exterior finish construction materials will be stucco or vinyl with accents of brick or tile or other finishes approved by the Architectural Contract Committee. The Architectural Control Committee reserves the right to suggest modifications to enhance the appearance of the structure. The following restrictions shall apply to all exterior construction materials: (1) stone or stone veneer shall not be used on or more than 50% of the exposed front exterior surface; (2) all exterior materials shall be new materials, with the exception of brick or brick vernier, which may be constructed of used brick; (3) no exposed wood construction shall be allowed; (4) the side of any structure shall be constructed of the same materials and match architecturally with the exposed front exterior surface of the structure; (5) structures constructed with more than 80% of the front exterior surface comprising stucco or stucco-like material must be approved by the Architectural Control Committee, said approval to be based on the appearance and style of the structure, reserving the Architectural Control Committee the right to suggest modifications to enhance the appearance of the structure.
8. **ROOFING MATERIAL:** Roofing material shall be limited to cement tile shingle. No asphalt shingles, or roof covering will be allowed in any form, with the exception of a strip or pathway of asphalt shingles as may be needed to install and service roof mounted heat pump or air conditioning units on tile roofs, in which event the asphalt shingles shall be of a #270 grade and weight, in a color to compliment or match the surrounding roof materials and of a width not to exceed three (3) feet on each side of the heat pump or air conditioning unit.
9. **ARCHITECTURAL RESTRICTIONS:** The following architectural restrictions shall apply to all dwelling units built on all lots: (1) the front exterior face of each dwelling shall be broken up with architectural accents per plans; (2) no flat roof, with or without facades, except rear patio

covers; (3) no mansard roofs; (4) all roof surfaces shall have a minimum slope of 5/12.

10. **EASEMENTS:** Easements for installation and maintenance of any and all utilities and drainage facilities are reserved as shown or stated on the recorded plat. Within these easements no structure, planing, or other materials shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or replacement of utilities, or which may change the direction or flow of drainage channels in the easements. The easement area of each lot and all improvements in 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. The title holder of each lot shall from time to time grant rights over, across, on, under and upon these easements for such additional uses of services as may be provided from time to time by a public authority or private utility company. Developer or any public authority shall have the right of access to such easements for the purpose of installing, repairing, maintaining, removing or replacing any such utilities or portions thereof and for removing and clearing any vegetation which could interfere with such utilities or drainage as aforesaid.
11. **TEMPORARY OR OTHER STRUCTURES:** No structure of a temporary nature and no trailer, bus, basement, tent, shack, garage, or other outbuildings shall be used at any time as a residence, either temporarily or permanently, nor shall any such structures be erected or placed on any lot at any time. No old or second-hand structure shall be moved onto any said lots, it being the intention that all dwellings and other buildings be erected on said lots, or within said subdivision, shall be new construction of good quality, workmanship, and materials.
12. **NUISANCES:** No noxious or offensive activity shall be carried on upon any lot, part or portion of the property, nor shall any thing be done thereon which may become an annoyance to the neighborhood.
13. **OIL AND MINING OPERATIONS:** No oil drilling, quarrying or mining operations of any kind shall be permitted upon or in any lot, part or portion of the property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in such lot, part or portion of the property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot or portion of the property.
14. **ANIMALS:** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, part or portion of the property except that dogs, cats or other domesticated household pets may be kept in a residence constructed on a lot, or on a lot in a suitable enclosure and they are not kept, bred or maintained for any commercial purpose. Virgin Town may allow up to two (2) horses per acre. Such animals as are permitted shall be strictly controlled and kept pursuant to all applicable laws and ordinances.
15. **GARBAGE AND REFUSE DISPOSAL:** No lot, part or portion of the property, shall be used or maintained as dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste shall not be kept except in sanitary containers.

16. **BUILDING MATERIALS:** No lot, part or portion of the property shall be used or maintained as a storage for building materials except during a construction phase. Once a dwelling is occupied or made available for sale, all building materials shall be removed or stored inside such dwelling.
17. **WATER SUPPLY:** No individual water supply system shall be used or permitted to be used on any lot, part or portion of the property.
18. **SEWAGE DISPOSAL:** All septic tank systems shall meet Southern Utah Health Department rules and regulations.
19. **BOATS, RECREATIONAL AND MOTOR VEHICLES:** No boats, motorcycles, trailers, buses, motor homes, campers or other vehicles shall be parked or stored upon any lot except in the side or back yard area. In no event shall any such vehicles be parked on the driveway or in the front yard area of any lot or on any street located within the subdivision for more than a 24 hour period. All such vehicles shall be properly registered and licensed, or meet such other governmental approval as may be required.
20. **ANTENNA:** No external radio, television, dish or other antenna of any kind or nature, or device for the reception or transmission of radio, microwaves or other similar signals shall be constructed or maintained on any lot or residence in such a manner as to extend above the height of the residence on the lot nor shall such devices be located on any lot or any residence on any lot so as to be visible from the street fronting said lot. Satellite dishes shall only be allowed in backyard areas and only is screened from the view of other lots.
21. **SAFE CONDITION:** Without limiting any other provision of this declaration, each owner shall maintain and keep such owner's 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.
22. **SITE DISTANCE AT INTERSECTIONS:** No structure, fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 30 feet from the intersection of the street lines or in the case of a rounded property corner from the intersection from the street property lines extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at such height to prevent obstruction of such sight lines.
23. **LANDSCAPING:** Within six (6) months after the completion of construction of the residence upon a lot, the owner shall complete the landscaping in the front yard. Landscaping shall include, but not be limited to, the planting of lawn, grass, trees, or other appropriate ground cover or shrubbery. No poisonous or noxious plants or vegetation shall be allowed, including, but not limited to, plants such as oleanders. The planting of trees, shrubs and grass are

encouraged. Landscaping using a desert or arid motif is permitted. All landscaping and yards shall be kept and maintained in an orderly and sightly manner, free of weeds and garbage. Should any lot owner fail to comply with the provisions of this section, the Architectural Control Committee shall have the right to seek an order from a court of proper jurisdiction requiring specific performance to comply with the provisions hereof, and shall also have the authority to complete or clean up the landscaping and require the lot owner to pay a reasonable amount for such completion or clean up. All attorney's fees and costs incurred in any such action, and all expenses incurred in connection with such completion shall constitute a lien on such lot owner's lot, and shall also be a personal obligation of said lot owner, enforceable at law, until such payment is therefor made.

24. **EXCAVATIONS AND FILL:** Except for excavations for an approved foundation, basement or walk-out basement, no excavations or removal of dirt are permitted on any lot below 12 inches below the curb height on such lot. The surface of no lot shall be raised above the natural surface, that being the surface on the date of purchase, or 18 inches above the level of the road, whichever is greater.
25. **OUTSIDE LIGHTING REQUIREMENTS:** Any light used to illuminate garages, patios, parking areas, driveways, walkways, or for any other purpose shall be so arranged as to reflect light away from adjacent residences and away from the vision of passing motorists.
26. **DAMAGE TO STREET, CURB OR GUTTER:** Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks and such by the purchasers or owner and/or their agent of any lot must be repaired within ninety (90) days after such damage is discovered, and the expense of such repair shall be borne by the purchaser or owner.
27. **STORAGE OR UTILITY BUILDINGS:** All storage or utility buildings, or such structures intended for such uses larger than 180 square feet, must be built in the same architectural style and constructed from the same exterior construction materials as the residential dwelling on the lot. Plans for the construction of such buildings shall be submitted to the Architectural Control Committee in the same manner as with residential structures and be subject to its approval as set forth in this declaration. All structures smaller than 180 square feet shall be behind a solid approved fence.
28. **DOMES STRUCTURES:** No dome structures of any type are allowed.
29. **MOBILE, MODULAR, AND PRE-FAB HOMES:** No mobile, manufactured modular or pre-fab home shall be placed on any lot, part or portion of the property.
30. **WALLS AND OTHER BARRIERS:** Walls, fences and barriers shall be constructed of materials manufactured for such purposes and erected in a proper and safe manner. Prior to construction, plans for walls, fences, and barriers shall be submitted the Architectural Control Committee for approval. Permitted materials shall be concrete colored block, matching the development's color

blend. No wire mesh or chain link is allowed as a fencing material. Walls and fences shall not exceed three (3) feet in height in the front yard, back to the 25 foot set back line. Back walls and fences in the side and back yards shall not exceed six (6) feet in height. All walls and fences must comply in all respects with Virgin City ordinances. All walls, fences and barriers shall be kept and maintained in a visually pleasing manner and a state of good repair, and the owner's failure to do so may result in action by the Architectural Control Committee to enforce the conditions herein contained.

Further, it is mutually agreed and binding upon the owners of each lot, that any required repair or maintenance of any wall or structure which is a part of the common wall, or party wall, between dwelling units, will be kept in good repair and the cost of such repair will be shared equally between the owners of the adjoining properties affected by said repair or maintenance.

31. **ROOF MOUNTED HEAT PUMPS AND SOLAR PANELS:** Solar panels, heat pumps and/or air conditioning units shall be allowed to be mounted on roofs only if they are placed on the side or back slope of the home essentially hidden from the street in front of the lot.
32. **CONSTRUCTION COMPLETION:** Once construction on a residence is commenced, construction shall proceed in a substantial manner until the residence is completed. Construction shall be completed, that is the residence shall be certified for occupancy within 12 months from the date of start of construction.
33. **TIME SHARING PROHIBITED:** Neither the Developer nor the owner of any lot shall allow or permit any form of time-share ownership.
34. **LEASES:** In a lease or rental agreement between a lot owner and lessee, lessor shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this declaration, and that any failure by lessee to comply with the terms of this declaration shall be a default under the terms of the lease. Furthermore, all such leases shall be in writing and shall include language to the effect that the lessee has received a copy of this declaration and had read and understands them, and agrees to be bound by their terms. In no event shall a lease agreement be for a term less than 30 days.
35. **SIGNS:** No billboard or sign of any character shall be erected, posted, painted or displayed upon or about any lot, part or portion of the property. No sign of any kind, except signs used for the advertisement of a lot or residence for sale or rent, limited to one sign per lot of not more than five square feet in size, shall be used, placed, or displayed to the public view on any lot, part or portion of the property. The above notwithstanding, signs used by the Developer to advertise the development and/or initial sale of any lot, part or portion of the property shall be excluded from this restriction. During the construction of a residence on a lot, one sign, not more than 16 square feet in size, will be allowed. Any such sign shall be removed upon the completion of construction, as defined herein. The architectural Control Committee shall have the power to remove or cause the removal of any billboard or sign erected in violation to this section, and any

cost or expense incurred in conjunction with removal shall be borne by the lot owner.

36. **INOPERABLE MOTOR VEHICLES:** No type of motor vehicle which is inoperable for any reason shall be permitted to be parked upon any street, lot, part or portion of the property, except in an approved, enclosed garage. In the event any inoperable motor vehicle remains outside upon any street, lot, part or portion of the property for a period exceeding 30 days, the Developer, or Architectural Control Committee may remove the inoperable motor vehicle after a 10 day written notice. The cost and expense of such removal shall be borne by the lot owner on which or in front of which the inoperable vehicle was parked. For the purpose of this section, "inoperable motor vehicle" shall mean any motor vehicle which is unable to be operated in a normal manner upon the streets under its own power, or is not licensed or unregistered for a period of not less than 90 days.
37. **TRUCKS AND TRAILERS:** Trailers and motor homes with a length in excess of 50 feet and trucks of a gross vehicle weight over 10,000 pounds are not allowed to be placed, parked, or stored upon any street, lot, part or portion of the property.

ARTICLE IV

DURATION, ENFORCEMENT, AMENDMENT

1. **DURATION OF RESTRICTIONS:** The covenants and restrictions contained herein shall run with and bind the land for a period of 50 years from the date this document is recorded, after which such time said covenants and restrictions shall be automatically extended for successive periods of 10 years each, subject to amendment as herein set forth. During the development phase (defined below) the covenants and restrictions contained herein may be modified, amended or repealed in whole or in part any time from time to time by the developer or his successors or assigns, by recorded instrument. The "development" phase shall be the time from the date of the recording of the plat of the first phase of the subdivision until such time as Developer transfers legal title to more than 90% of the number of lots in all phase of the subdivision to bona fide purchasers.

Upon completion of the development phase, as defined above, the covenants and restrictions contained herein may be amended by a recorded instrument signed by no less than the owners of 75% of the number of lots. Any amendment after the completion of the development phase shall require a 30 day written notice of any such proposed amendment be sent to every owner of any lot, part or portion of the property.

2. **NOTICES:** Any notice required under the provisions of this document to be sent to any lot owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such owner.

3. **CONSTRUCTION AND SEVERABILITY:** All other restrictions, covenants and conditions contained in this document shall be construed together. Invalidation of any one of said restrictions, covenants or conditions, or any part thereof, shall in no wise affect the enforceability or applicability of any of the remaining restrictions, covenants or conditions, or parts thereof.
4. **VIOLATION CONSTITUTES NUISANCE:** Every act or omission whereby any restriction, covenant or conditions in this document set forth is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Developer or any owner or owners from time to time of any lot or portion of the property. Remedies hereunder shall be deemed cumulative and not exclusive.
5. **ENFORCEMENT:** Each and all other restrictions, covenants and conditions contained in this document is and are for the benefit of the Developer, and of the owner or owners from time to time of any lot, part or portion of the property, each such restrictive covenant and condition shall inure to the benefit of and pass with each and every lot, part or portion of the property, and shall apply to and be binding upon each and every successor in interest. Said restrictions, covenants and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof or the continuance of any such breach may be enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Developer, owner or owners or the Architectural Control Committee from time to time of any lot party or portion of the property; provided, however, that no such breach shall effect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent owner of said lot, part or portion of the property shall be bound and obligated by said restrictions, covenants and conditions, whether such ownership is obtained by foreclosure at a trustee's sale, or otherwise.
6. **RIGHT TO ENFORCE:** The provisions contained in this declaration shall bind and shall enure to the benefit of and be enforceable by the Developer, by the Architectural Control Committee, by the owner or owners from time to time of any lot, part or portion of the property, their and each of their legal representative, heirs, successors, or assigns, and their failure to enforce any of said restrictions, covenants, or conditions shall in no event be deemed a waiver of the right to do so thereafter. In the event any covenant, condition or restriction contained herein is inconsistent or in conflict with restrictions set forth in the subdivision building, zoning or other ordinances of the City of Virgin, the ordinances shall govern so long as the restrictions contained in said ordinances are more restrictive than the terms of this declaration. Where the terms of this declaration are more restrictive than those contained in the ordinances contained in the City of Virgin, the covenants, conditions and restrictions contained in this declaration shall govern.
7. **ARCHITECTURAL CONTROL COMMITTEE:** The Architectural Control Committee which is vested with the powers described herein shall consist initially of at least three persons appointed by the Developer, without regard as to whether or not said persons reside within the development. In the event any member of the Architectural Control Committee is unable to

serve or act upon matters brought before the Architectural Control Committee, for whatever reason, the Developer may appoint temporary members of the Architectural Control Committee to act in their stead. Prior to the commencement of any excavation, construction or remodeling of any structure or of any addition of any structure, there shall first be filed with the Architectural Control Committee two complete sets of building plans and specifications, together with a site or plot plan indicating the exact part of the building site which the building site improvements will cover, and no such work shall commence unless and until the Architectural Control Committee shall endorse on one set of such plans its written approval that such plans are in compliance with the covenants, conditions and restrictions herein set forth and with the standards herein or hereafter established by said committee pursuant hereto. Said committee shall have the right to refuse to approve any such plans or specifications and shall have the right in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of said building or other structure so planned and the outlook from adjacent or neighboring property. The committee may promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications pursuant to this section. The second set of such plans shall be filed as a permanent record with the Architectural Control Committee. In the event said committee fails to approve or disapprove in writing any such plans within 15 days after their submission thereof to the committee, then such approval shall be deemed to have been given. The Developer shall have the right to appoint all members of the Architectural Control Committee until such time as title to more than 90% of the number of lots in the development have been conveyed to bona fide purchasers. When title to more than 90% of all of the lots in the development has been conveyed by the Developer, a majority of the owners of lots, part or portion of the property subject to this declaration shall elect and appoint member so of the Architectural Control Committee, which committee shall thereafter be vested with the powers described herein and shall have jurisdiction over all of the properties subject to this declaration.

8. **ASSIGNMENT OF POWERS:** Any and all rights and power of the Developer herein contained may be delegated, transferred or assigned. Wherever the term "Developer" is used herein, it includes Developer and its successors and assigns.
9. **AMENDMENT:** Except as otherwise provided herein, this declaration may be amended by an instrument signed by not less than seventy five percent of the owners of all lots, which amendment shall be effective upon recording 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 lot owners and all holders of first mortgage liens, as heretofore provided.

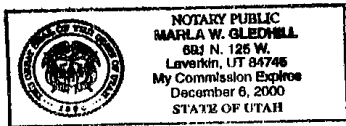
IN WITNESS WHEREOF, the undersigned has hereunto executed this document this 8th day
of June, 1998.

Blackmore Construction, Inc.
A Utah Corporation, Developer

James B. Blackmore
By: James Blackmore, President

STATE OF UTAH)
 SS
COUNTY OF WASHINGTON)

On the 8th day of June, 1998, personally appeared before me James Blackmore,
President of Blackmore Construction, Inc., a Utah Corporation, who being first by me duly sworn
did say that they executed the foregoing instrument for and on behalf of said corporation by authority
of a resolution of its Board of Directors for the uses and purposes set forth therein.



Marla W. Gledhill
NOTARY PUBLIC