

DESERT HILLS SUBDIVISION- PHASE 3

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

KNOW ALL MEN BY THESE PRESENTS:

Whereas, the undersigned (hereafter "Developer") is the owner of certain real property located in St. George, Washington County, State of Utah, identified as **Desert Hills Subdivision- Phase 3**, such property being more particularly described in Addendum "A" attached hereto and made a part thereof;

Whereas, Developer shall cause such property to be conveyed subject to certain protective covenants, conditions and restrictions as hereinafter set forth.

NOW THEREFORE, developer hereby declares that all of the properties described in Addendum "A" shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the properties and surrounding properties. These covenants, conditions and restrictions shall run with the properties and shall be binding on all parties having or acquiring any right, title or interest in the properties and shall inure to the benefit of each such party.

1. Land Use and Building Type: No property shall be used except for residential purposes. No Building shall be erected, altered, placed or permitted to remain on any property other than one detached single-family dwelling not to exceed two stories in height. Every dwelling shall have as a minimum a two-car garage. All residences shall have a concrete paved driveway connecting the parking with a street allowing safe ingress and egress. All construction shall be of new materials, except that used brick may be used with the prior written approval of the Architectural Control Committee (hereafter referred to as the "Committee"). **Absolutely no mobile homes, pre-manufactured homes, park models, or any such building type may be put on any lot at Desert Hills.** Each home must be of new construction and must be built on site.

2. Care and Maintenance of Lot: The owner of each lot shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements shall be maintained in good condition and repair at all times. If excessive weed growth

accumulates upon vacant lots, the owner shall be notified of such condition and shall be given thirty (30) days to correct the same, after which time the Committee may order such correction affected, the expense of which shall be charged to the owner of the undeveloped lot or lots.

3. Nuisances: No noxious or offensive activity shall be carried out on any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No lot shall be used for any illegal purpose. Any violation of these covenants shall be deemed a nuisance and shall be corrected immediately by the owner and if not corrected immediately shall be corrected by the Committee at the owner's expense.

4. Temporary Structures: No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently. No lumber, material or bulk materials shall be kept, stored or allowed to accumulate on any lot except building or other materials to be used in connection with any construction, alteration or improvement approved in accordance with the terms hereof.

5. Signs: No signs of any kind shall be displayed to the public view on any lot except one sign of not more than two square feet for identification (numbering) purposes or other signs as required by the City of St. George building department. One sign of not more than six square feet may be used for advertising the property for sale or rent or identifying the home during construction. Developer may install a large sign to be used as a sales and information tool during the development of Desert Hills phases.

6. Livestock and Poultry: No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets, in reasonable numbers, may be kept provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the owner's premises or on a leash under the handler's control. Pets shall not be kept if they create noise that, in the opinion of the Committee, constitutes a nuisance.

7. Garbage and Refuse Disposal: 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. Trash containers shall be kept from sight of street and neighboring lots. No unsightly materials or other objects are to be stored on any lot in view of the general public or neighboring lot owners. Dumping of any kind is prohibited.

8. Soil Conditions: This project area was the subject of a geo-technical investigation performed by Applied Geo Technical Engineering Consultants (AGEC). The results of this investigation are compiled in a report dated July 10, 2002. It is the sole responsibility of the buyer, owner, agents or assigns, to obtain competent professional engineering

advice concerning the soil conditions encountered on various lots within this subdivision, and to comply with their competent recommendations. Provision shall be made by the Architectural Control Committee to accommodate special construction and landscaping techniques as applicable to soil conditions.

9. Landscaping: In accordance with City of St. George Zoning Ordinance, all lots may be required to be landscaped prior to issuance of a Certificate of Occupancy. Landscaping shall be maintained at a reasonable standard compatible with other homes in the subdivision. Shrub and tree planting on corner lots shall be located so as not to create a hazard for the movement of vehicles along streets. No trees or shrubs shall be planted on any corner that will create a hazard for the movement of vehicles along streets, in accordance with local ordinances. Special care and consideration must be given to installation of drainage, landscaping and irrigation as it relates to soil conditions.

10. Planter Strips and Street Trees: Planter strips lying within the street right of way and fronting a lot, if applicable, shall be landscaped and continually maintained by the owner of such lot. Each side of a lot fronting a public street, inside the planter strip, shall be planted with at least one ash street tree, and shall be continually maintained by the owner. Planter strips shall be landscaped to standards set forth by the Committee and shall not be filled in with concrete or other hard paving surface outside the driveway area. The intent of this provision is to provide a streetscape with a beautiful canopy of trees.

11. Paving: All driveways, walkways, parking areas and other areas of similar nature shall be paved with concrete in accordance with the approved plans and specifications within 60 days of completion of buildings or improvements erected upon the subject lot. Any RV or other parking pad to be constructed to the side of the home/garage must first be approved by the Committee and must not be visible from the street or from any other lot.

12. Storage of Materials: During construction and for a period of 60 days after completion, a lot may be used for the storage of materials used in the construction of the building or improvement. The total storage period shall not exceed 90 days unless specifically approved by the Committee. All permanent trash collection containers shall be kept in a location not visible from the street or neighboring lots.

13. Fences, Walls, Hedges and Shrubs: In accordance with City of St. George Zoning Ordinances, rear yards may be required to be enclosed with a wall or fence prior to issuance of a Certificate of Occupancy. Fences, walls, and hedges may be erected or planted in rear yards and side yards not extending beyond the front line of the dwelling to a height not exceeding 6 feet unless otherwise approved by the Committee. Fences, walls and hedges may be erected or planted on remaining side yards and property lines not to exceed 4 feet. No fence, wall, hedge, shrub or other structure shall be placed along any front property line. No fence, wall, hedge, tree, plant, shrub or foliage shall be planted,

kept or maintained in such manner as, in the opinion of the Committee, shall create a serious potential hazard or aesthetically offensive appearance. Fences and walls must be concrete, block, brick, or wrought iron, and of a consistent, indigenous color indicated in the Rules and Regulations of the Committee. No wood or chain link fences will be allowed.

14. Sight Distance at Intersections: No fence, wall, or hedge, which obstructs sight lines at elevations between 2 and 6 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 property lines extended. The same sight line limitations shall apply on a driveway or alley. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

15. Vehicles: No recreational or other utility vehicles may be parked upon the driveways of each lot for longer than a forty-eight (48) hour period. Motor vehicles that are inoperable shall not be permitted to accumulate upon any street or lot or road areas adjacent thereto. **No automobile, boat, recreation or commercial vehicle, other motorized vehicle, or any portion thereof, shall be dismantled, rebuilt, serviced, repaired or repainted on or in front of any lot unless performed within a completely enclosed garage or other structure located on the lot which screens the sight and sound of such activity from the public streets and neighboring lots.** The foregoing restriction shall not be deemed to prevent temporary parking for loading or unloading of such vehicles. No boats, trailers, buses, motor homes, campers, recreational vehicles or other such vehicles shall be parked or stored upon any lot except within an enclosed garage or on a cement pad behind the required front lot line set-back area and out of sight of neighboring lots and shall not be visible from the public streets.

16. Public Streets: The streets of the project are public streets. Notwithstanding they are public streets, no owner shall park recreational and other utility vehicles, as described in declaration #14 above, on the public streets of the project other than as provided above. Public streets shall not be used for general parking for periods longer than twelve (12) hours. The intent of this provision is to maintain uncluttered and unobstructed streets.

17. Commercial Activities Prohibited: Lots shall not be used for, or in connection with, the conduct of any trade, business, professional or commercial activity of any kind. Home offices may be an exception if approved by the Committee.

18. Slope and Drainage Control: No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels. The slope control areas of each lot and

all improvements upon them shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible. Any damage to existing surface and subsurface drainage systems shall be repaired to the standards of the City of St. George without delay, and the cost shall be borne by the party who has inflicted damage.

19. Re-subdivision of Lots: No lot in this subdivision shall be divided, subdivided, partitioned, parceled or broken up into smaller lots or units, provided however, that two or more lots may be combined subject to the zoning regulations of the City of St. George and also as approved by the Committee.

20. Damages: Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks, drainage pipes or any other such improvement, by the purchaser or owner and/or their agents or builder of any particular lot in this subdivision must be repaired immediately after such damage is discovered, and the expense of such repair shall be borne by the purchaser or owner. No lot may be used for access to another lot without the written consent of the owner.

21. Architectural Control Committee: The developer shall appoint an Architectural Control Committee (hereafter referred to as "The Committee") consisting of three persons, one of which shall be knowledgeable in the area of residential development. The Developer shall have the power to create and fill vacancies on the Committee until the Developer shall relinquish this power or until 75% of the lots in the subdivision have been sold or when a structure has been constructed on 50% of the lots in **Desert Hills Subdivision- Phase 3** and such structures are occupied, whichever event first occurs. When the developer ceases to have this power, the property owners in **Desert Hills Subdivision- Phase 3** shall within 60 calendar days select new members of the Committee by one vote for each lot. The initial committee members shall be elected for terms of one, two, and three years each, and thereafter committee members shall be elected for terms of three years. No construction of any kind may occur without the written consent of the majority of the Committee. No member of the Committee shall receive any compensation or make any charge for services rendered. The Committee shall adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties and may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspection upon request. The Committee shall, by majority vote, elect one of its members as chairman and one of its members as secretary and the duties of each will be such as usually appertain to such offices. The Committee shall meet as often as needed on a regular basis as determined by the Committee. The Committee shall have power, by majority vote, to promulgate rules and regulations to guide it in its activities. The initial rules and regulations, subject to amendment by the Committee, are attached as **Addendum B**. By majority vote of the property owners, by one vote for each lot, any rule or regulation may be amended, adopted or repealed.

22. Severability: In the event that any provision, restriction, covenant or condition is found to be invalid by a court of competent jurisdiction, the remaining provisions, restrictions, covenants and conditions shall remain in full force and effect.

23. Duration: This Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of 25 years from the date of recordation of this Declaration, after which time this Declaration shall be automatically extended for successive periods of 10 years unless an instrument, signed by of the then owners of two thirds (2/3) of the lots, has been recorded agreeing to amend or terminate this Declaration.

24. Amendment: This Declaration may be amended by written document signed by the owners of two-thirds of the lots in the subdivision.

25. Exemption: The Developer is exempt from all constraints in this Declaration.

26. Expansion: The covenants, conditions, and restrictions contained herein may be applied to additional property. The Developer shall indicate its intent to have such property bound by these covenants, conditions and restrictions on the plat of such property, or by recording an additional set of covenants, and thereafter such additional property shall be considered as part of the Property in all respects. This right of the Developer shall be assignable to one or more assignees.

IN WITNESS WHEREOF, the undersigned, being the developer, has hereunto set its hand this 30th day of August, 2002.



Shadow Mountain Development Corporation
Paul S. Jensen, President
Developer

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 30th day of August 2002, before me personally appeared **Paul S. Jensen**, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the president of **Shadow Mountain Development Corporation**, a Utah corporation, and that the foregoing document was signed by him on behalf of that corporation by authority of its

bylaws or a resolution of its board of directors, and he acknowledged before me that the corporation executed the document and the document was the act of the corporation for its stated purpose.

Dee Wanlass
 NOTARY PUBLIC
 Address: St. George, UT
 My Commission Expires: 5-30-2004

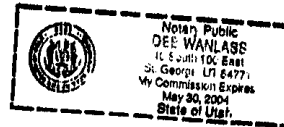
Lloyd Reid Pope
 Lloyd Reid Pope
 Developer



STATE OF UTAH)
)ss.
 COUNTY OF WASHINGTON)

On this 30th day of August, 2002, before me personally appeared **Lloyd Reid Pope**, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily for its stated purpose.

Dee Wanlass
 NOTARY PUBLIC
 Address: St. George, UT
 My Commission expires: 5-30-2004



ADDENDUM "A"

Beginning at a point North 88°51'13" West, 181.04 feet along the Section Line and South 00°00'00" West, 1414.36 feet from the Northeast Corner of Section 18, Township 43 South, Range 15 West, Salt Lake Base and Meridian, said point being on the Southeast Corner of Lot 110 of DESERT HILLS SUBDIVISION PHASE 2 as recorded in the Office of Washington County Recorder, said point also being on the Southerly Line of that parcel conveyed in Book 1203, Pages 68 and 69 as recorded in the Office of the Washington County Recorder; thence along the Southerly Line of said parcel South 88°46'35" East, 638.54 feet; thence South 01°13'25" West, 360.00 feet; thence North 88°46'35" West, 557.83 feet; thence South 25°10'19" West, 321.46 feet; thence South 37°51'01" West, 81.87 feet; thence North 51°21'09" West, 104.33 feet to a point on a 636.50 foot radius curve to the right (center bears North 51°21'09" West); thence Southwesterly through a central angle of 5°54'47" and along the arc of said curve 65.69 feet; thence North 45°26'22" West, 26.50 feet; thence South 44°33'38" West, 40.145 feet; thence North 45°26'22" West, 397.13 feet to the point of a 300.00 foot radius curve to the left; thence Northwesterly through a central angle of 39°02'33" and along the arc of said curve 204.43 feet to the point of tangency; thence North 84°28'55" West, 172.90 feet to the point of a 20.00 foot radius curve to the left; thence Southwesterly through a central angle of 88°58'25" and along the arc of said curve 31.06 feet to a point of a 2492.00 foot radius reverse curve to the right (center bears North 83°27'20" West); thence Southwesterly through a central angle of 00°34'26" and along the arc of said curve 24.95 feet; thence North 80°22'46" West, 50.05 feet to a point on a 2442.00 foot radius curve to the left (center bears North 82°55'59" West); thence Northeasterly through a central angle of 4°18'38" and along the arc of said curve 183.72 feet to the Southwest Corner of said DESERT HILLS SUBDIVISION PHASE 2; thence along the Southerly Boundary of said subdivision for the following Twelve (12) courses: South 86°37'39" East, 274.21 feet; thence North 01°10'21" West, 36.59 feet; thence North 88°49'39" East, 96.77 feet; thence South 88°44'03" East, 50.05 feet; thence North 88°49'39" East, 96.29 feet; thence North 83°24'00" East, 95.00 feet; thence North 70°55'12" East, 51.21 feet; thence North 83°24'00" East, 97.745 feet; thence North 08°57'34" West, 6.07 feet; thence North 74°51'15" East, 149.605 feet; thence North 15°08'45" West, 50.825 feet; thence North 74°51'15" East, 98.50 feet to the point of beginning.

* * *

ADDENDUM "B"**RULES AND REGULATIONS OF THE
ARCHITECTURAL CONTROL COMMITTEE**

While the controls exercised by the Architectural Control Committee (hereafter referred to as the "Committee") must be maintained, the Committee does not intend to stifle innovative designs or architectural freedom. If any design elements of a prospective home appear to be in conflict with the controls or recommendations set forth, such conflicts must be resolved by the Committee and will, whenever possible, be resolved in favor of aesthetic and design quality.

The guidelines and restrictions contained herein are consistent with the provisions of the recorded covenants of Desert Hills Subdivision- Phase 3. The protective covenants for Desert Hills Subdivision- Phase 3 are on record in the office of the Recorder, Washington County, Utah, at 197 East Tabernacle, St. George, Utah. Any violations of these guidelines, or the restrictions or protective covenants may result in required changes to floor plans, colors, materials, etc. at the owner and/or contractor's expense.

No construction may begin in Desert Hills Subdivision- Phase 3 without the issuance of a building permit issued by the City of St. George. A set of drawings and specifications with the Desert Hills Subdivision stamp of approval must be submitted to the building inspector to obtain a permit. Approval will be given upon compliance with all provisions stated in the protective covenants, conditions, and restrictions, these rules and regulations found in Section "A" and Section "B".

SECTION "A"

Three (3) complete sets of plans shall be submitted to the Committee and shall contain the minimum exhibits as listed below. Two (2) sets will be stamped and returned, one for the City Building Inspector and one for construction use.

1. SITE PLAN

- a. Show scale and over-all dimensions.
 - b. Indicate lot number and street name.
 - c. Indicate setback from street (front yard minimum setback is 20 feet, side yard minimum setbacks are 8 feet, rear yard minimum setbacks are 10 feet).
 - d. Indicate grade elevations at front corners of lot and finished floor elevations.
- All finished floor elevations must be a minimum of twelve (12) inches above the crown of the road of the front street elevations. Finished floor elevations are to be consistent

with existing homes on adjacent lots. (If the contour of the land prohibits compliance with this rule, examination and determination by the Committee shall be made.)

e. Location of the HVAC unit shall be noted. No HVAC unit shall be allowed on the roof.

2. FLOOR PLAN

a. Show scale and over-all dimensions.

b. Indicate window and door locations and sizes.

c. Show location of all HVAC units, satellite dishes, and any other mechanical and/or non-mechanical devices. Location of these items must be in the rear of the house or out of street view. (Special consideration will be given when rear installation is not feasible. In such a situation, the unit must be screened from the street view with landscaping or materials compatible with materials used in the construction of the house).

3. ELEVATIONS

a. Note scale on plan.

4. COLOR SCHEMES AND EXTERIOR MATERIALS

a. Colors shall be approved, subdued earth tones indigenous to the surrounding area. The color scheme should compliment the neighborhood. The Committee reserves the right to reject any color scheme it deems not consistent with the area.

b. The general design expressed in the front of the house must continue to each side elevation and to all out buildings.

c. Innovative designs used on the front of the house using stone, brick or other materials will be considered on an individual basis.

5. CONSTRUCTION AND MATERIALS NOT PERMITTED

a. Log house.

b. Pre-manufactured houses.

c. Earth or berm houses.

d. Re-located houses.

e. Wood, vinyl or aluminum siding.

6. ACCEPTABLE ROOFING MATERIALS

a. Roofing materials must be slate, clay or concrete tile.

b. The Committee will consider a house with a flat roof on an individual basis.

7. HEIGHT OF HOUSE

a. No house may exceed **thirty-five** feet in height from street frontage view.

b. All proposed houses over one story in height will be examined by the Committee as to the aesthetic value for adjoining houses and lots with respect to views. The Committee has the right to restrict the height of a house if it unduly restricts a neighbors' view.

8. SIZE OF HOUSE, LANDSCAPING, AND SPECIAL RESTRICTIONS

- a. The outside measurement of each house containing a single level, or of each house containing a ground level and a basement level, will not be less than thirteen hundred (1300) square feet on the main floor, exclusive of garages, porches, patios, and/or storage. The main floor of a two-story home, exclusive of garages, porches, patios, and/or storage, will not be less than 1250 square feet. The main floor of a basement or two-story home with special foundation and soil requirements as shown by soils investigation shall not be less than 1000 square feet, provided however the total square footage shall not be less than 1600 square feet, exclusive of the garage, porches, patios and/or storage.
- b. All storage units, detached garages, etc., are to have the same Committee approved color, design and materials as the main dwelling.
- c. All homes must have at minimum two-car garage, attached or detached.
- d. Fences and swimming pools must follow City of St. George zoning requirements.
- e. All front yard landscaping (or as outlined in #8 of the Declaration) must be completed within 60 days after the date of occupancy or as approved by City of St. George.
- f. Campers, boats, pickups, hot rods, and/or other recreational and commercial vehicles or trailers must be kept in a garage or on a concrete (or other suitable material) pad at the side behind the setback or in the rear of the house, and located out of view from the street or neighboring lots.
- g. All walls around houses (or as outlined in #13 of this declaration) shall be of masonry or other approved materials, shall conform to City of St. George zoning requirements, and shall be of a Committee approved color indigenous to the area. No chain link, or wood slat fences/walls will be allowed.
- h. Blasting of any kind will not be allowed.
- i. Roof mounted air conditioning or heating equipment will not be allowed. All air conditioning equipment, utility pipes, antennas and utility equipment shall be placed discreetly as possible and screened where possible by landscaping or fence materials.
- j. Soils test: It is the sole responsibility of the lot purchaser, their agents and assigns, to obtain and comply with a soils test and recommendation on foundation from a qualified Utah registered soils engineer prior to construction.

9. EASEMENTS

- a. Easements for installation and maintenance of utilities, drainage, and trail facilities are reserved as shown on the recorded plat. Structures of any type are prohibited within these easements. Plants or other materials may be placed or permitted to remain within such easements which will not damage utilities, or which will not obstruct or retard the flow of water through 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 is responsible.

SECTION "B"**DURING THE COURSE OF CONSTRUCTION, APPLICANT AND CONTRACTORS WILL COMPLY WITH THE FOLLOWING CONDITIONS AND AGREEMENTS:**

1. Daily. All garbage and construction materials must be kept in a container.
2. Daily. No material may be stored, piled or put on any adjacent lots, roads or natural areas.
3. Daily. The volume of stereos, radios or any equipment must be maintained at a low level that does not disturb the quiet, peace and enjoyment of adjoining property owners or the surrounding neighborhood.
4. Daily. All vehicles must drive over the curb and gutter and sidewalks of the lot under construction. Driving on adjacent lots without the owners written permission is prohibited. Any and all damage to adjacent lots will be repaired by the owner/agents of the lot under construction, even if a sub-contractor caused the damage.
5. Daily. No material may be removed from any lot, vacant area or surrounding natural areas without written permission of the property owner(s).
6. Daily. No dumping of any kind will be allowed upon any lot, vacant area, or surrounding area.
7. Daily. No trespassing upon natural areas surrounding this development without written permission of the property owner(s).