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DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF PADRE LAKES TOWNHOMES

THIS IS A DECLARATION of Covenants, Conditions and Restrictions which establishes a planned unit development known as Padre Lakes Townhomes.

RECITALS

Declarant is the owner of certain real property (the "properties") in St. George, Washington County, Utah, which is more particularly described below.

Declarant will convey the properties subject to certain protective covenants, conditions, restrictions, reservations, assessments, charges and liens as hereinafter set forth.

It is the desire and intention of Declarant to construct townhomes and sell and convey the same to various purchasers, and to convey common area to an Association in which the townhome owners will be members.

DECLARATION

Declarant hereby declares that all of the properties described below shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the Map recorded concurrently. This is for the purpose of protecting the value and desirability of the properties. This Declaration and the Map shall be construed as covenants of equitable servitude, shall run with the properties and be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

The Properties are located in St. George, Washington County, Utah, and are described as:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE

ARTICLE I -- DEFINITIONS

The following definitions control in this Declaration. These terms, though defined, are generally not capitalized in the Declaration.

Section 1. Declaration means this instrument, and any amendments.

Section 2. Plat or Map means the subdivision plat recorded herewith entitled "Padre Lakes Townhomes — Phase I," consisting of one sheet, prepared and certified by Lloyd Ried Pope, a Utah Registered Land Surveyor" or any replacements thereof, or additions thereto.

Section 3. Property or Properties means that certain real property hereinbefore described, and such additions thereto as may hereafter be subjected to this Declaration.

Section 4. Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the common use and enjoyment of the owners.

Section 5. Limited Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is adjacent and/or appurtenant. Limited Common Area is subject to rights of the Association set forth in this Declaration.

Section 6. Lot means a separately numbered and individually described plot of land shown on the plat designated for private ownership, but specifically excludes the common and limited common areas.

AMENDMENT TO DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF PADRE LAKES TOWNHOMES

THIS AMENDMENT TO THE DECLARATION of Covenants Conditions and Restrictions of Padre Lakes Townhomes is made pursuant to Article XI, Section 4, and executed this 22nd day of September, 1994, AND AMENDS THE DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF PADRE LAKES TOWNHOMES, recorded April 14, 1994, as Entry No. 463799, in Book 811, at Pages 024-040, records of Washington County, and affects the property attached in Exhibit A, attached hereto.

Article II Section 6 is hereby amended to read as follows:

ARTICLE II -- PROPERTY RIGHTS

Section 6. Lot. Each lot is owned in fee simple by the owner. However, area within the surveyed lot boundaries but outside the townhome walls shall be treated as limited common area for use purposes, and as exterior area for maintenance purposes. The purpose of laying out a lot larger than the townhome is to allow flexibility in the original townhome construction. After the initial construction on a lot, subsequent construction, if any, may occupy any portion of the surveyed lot, subject to all other provisions of this Declaration. An owner may construct appurtenant structures and personal landscaping outside the boundaries of the towhome and within the rear area of the surveyed boundaries of the lot, subject to approval of the Architectural Control Committee, as outlined in Article VI herein.

Article VI is hereby amended to read as follows:

ARTICLE VI -- ARCHITECTURAL CONTROL COMMITTEE

The Trustees may appoint an Architectural Control Committee composed of three (3) or more representatives and until such appointment is made in writing the Trustees shall function in that capacity. No structure, building, fence, wall or addition, extension or expansion of any of the foregoing nor any exterior addition or change or alteration, including color changes, of any lot or townhome shall be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee. In the event said committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this article will be deemed to have been made. The Architectural Control Committee shall consider the harmony of external design and location in relation to surrounding structures and topography. However, an owner's request to construct appurtenant structures and personal landscaping outside the boundaries of the towhome and within the rear area of the surveyed boundaries of the lot shall be approved unless the action constitutes a violation of law or the use restrictions of this Declaration, or the rules and regulations of the Association.

Notwithstanding the foregoing, without the prior written approval of at least sixty-seven percent (67%) of the owners, neither the Association nor the Architectural Control Committee shall have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of townhomes and lots, and the maintenance of the common and limited common areas, including walls, fences, driveways, lawns and plantings.

The Declarant shall not be required to comply with the provisions of this paragraph in the initial construction of the Properties.

Section 7. Townhome means a single family dwelling, with or without walls or roofs in common with other single family dwelling lots. "Townhome" includes fee title to the real property lying directly beneath the single family dwelling, within lot boundary lines.

Section 8. Owner means the entity, person, or group of persons owning fee simple title to any lot which is within the properties. Regardless of the number of parties participating in ownership of each lot, the group of those parties shall be treated as one "owner."

Section 9. Association means Padre Lakes Townhomes Association, its successors and assigns.

Section 10. Member means every person or entity who holds membership in the Association. Every member is an owner, and every owner is a member.

Section 11. Trustees means the governing body of the Association.

Section 12. Declarant means Layton P. Ott, Paul Jensen, Corinne Jensen and Ence Excavation & General Engineering, Inc., and the Declarants' heirs, successors and assigns.

Section 13. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

ARTICLE II – PROPERTY RIGHTS

Section 1. Title to the Common Area The Declarant will convey fee simple title to the common area and limited common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, but subject to this Declaration, and easements and rights-of-way of record. In accepting the deed, the Association will covenant to fulfill all the terms of this Declaration, to maintain the common area in good repair and condition at all times and to operate the common area at its own expense in accordance with high standards.

Section 2. Owners' Easements of Enjoyment Every owner has a right and easement of use and enjoyment in and to the common area. This easement is appurtenant to and passes with the title to every lot, subject to:

(a) The right of the Association to charge reasonable admission, use, service and other fees for the use of any service or recreational storage, or parking facility situated upon the common area. No fees shall be charged for parking specifically designated on the plat as appurtenant to a lot.

(b) The right of the Association to limit the number of guests of members using the common area.

(c) The right of the Association to suspend the voting rights and/or common utility service of a member for any period during which any assessment or portion thereof against his lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) The right of the Association to enter into agreements or leases which provide for use of the common areas and facilities by a similar Association in consideration for use of the common areas and facilities of the other Association, or for cash consideration;

(e) The right of the Association with the approval of sixty-seven percent (67%) of each class of owners, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the common area to any private individual, corporate entity, public agency, authority, or utility.

(f) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the common area by the Association.

(g) The right of the Association to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.

(h) The terms and conditions of this Declaration.

(i) The right of the Association, through its Trustees, to adopt rules and regulations concerning use of the common area.

Section 3. Limited Common Area A lot owner is entitled to the exclusive use of the limited common area adjacent and appurtenant thereto, if any, and to exclusive use of the parking area, if any, designated with his lot number on the plat. The Association, through its Trustees, may adopt rules and regulations concerning use of the limited common area. Limited common area is subject to the rights of the Association set forth in this Declaration.

Section 4. Delegation of Use An owner is deemed to delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. No one who is non-resident shall have any such delegable right of enjoyment.

Section 5. Rules. The Board of Trustees shall have the authority to promulgate rules and regulations for the governance of the Properties, and persons within the Properties. These rules of the Association shall be compiled and copies shall be made available for inspection and copying by the Trustees.

Section 6. Lot. Each lot is owned in fee simple by the owner. However, area within the surveyed lot boundaries but outside the originally constructed townhome walls shall be treated as limited common area for use purposes, and as exterior area for maintenance purposes. The purpose of laying out a lot larger than the townhome is to allow flexibility in the original townhome construction. After the initial construction on a lot, subsequent construction, if any, may occupy any portion of the lot, subject to all other provisions of this Declaration.

Section 7. Combination of Lots. In the event two or more adjacent lots are held in identical ownership, the lots may be combined for use and construction purposes. The common or limited common areas which are between the private ownership areas in each of the adjacent lots may be occupied for construction of a single townhome, the owner having an easement for this purpose under, across and over such common and limited common areas. For example, if lots 39 and 40 of the original plat were owned by the same owner, and the owner desired to construct a single townhome, the townhome could occupy the area between lots 39 and 40 (east of lot 39 and west of lot 40) which is designated on the plat as common area. The owner would be required to respect the common and limited common areas in the other, non-adjacent, boundaries of the lots.

In the event of such townhome construction across common or limited common areas between adjacent lots, all easement and rights of the Association, its members and third parties, such as utilities, in such area which had been exercised prior to construction of the townhome would remain in place, in perpetuity. However, all easement and other rights which had not been used prior to construction of the townhome could not thereafter be exercised.

In the event of such a combination of lots, each lot shall continue to be an individual assessment.

ARTICLE III – MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership Every owner is a member of the Association. The term "owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from lot ownership. Membership in the Association automatically transfers upon transfer of title by the record owner to another person or entity.

Section 2. Voting Rights The Association has two classes of voting membership:

CLASS A. Class A members are all members with the exception of the Declarant. Class A members are entitled to one vote for each lot owned. When more than one person holds an interest in any lot, the group of such persons shall be a member. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the lot concerned unless written objection is made

prior to that meeting, or verbal objection is made at that meeting, by another co-owner of the same lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

CLASS B. The Class B member is the Declarant. The Class B member is entitled to three (3) votes for each lot owned. The Class B membership will cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) upon conveyance of seventy-five percent (75%) of the lots subject to this Declaration to purchasers; or
(b) the expiration of seven (7) years from the first lot conveyance to a purchaser.

In the case of expansion (as provided under the Declaration) which occurs while the Declarant has Class B membership, the Declarants' memberships appurtenant to the lots in the expansion area shall be Class B memberships.

ARTICLE IV – FINANCES AND OPERATIONS

Section 1. Creation of the Lien and Personal Obligation of Assessments The Declarant and each subsequent owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this Declaration, and (4) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

Section 2. Purpose of Assessments The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties and (b) for the improvement and maintenance of properties, services, and facilities devoted to this purpose. The assessments must provide for but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those common and limited common areas which must be replaced on a periodic basis; and other amounts required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Trustees, for the payment of other charges including, without limitation, maintenance, management, utility, cable television, trash collection, sewer and water charges.

Section 3. Maximum Annual Assessment Until January 1 following recording of this Declaration, the maximum annual assessment shall be One Thousand Two Hundred Dollars ($1,200.00) per lot. This amount shall be the basis of calculation for future maximum annual assessments.

(a) From and after the date referred to above the maximum annual assessment shall be increased each year by five percent (5%) above the maximum assessment for the previous year, without a vote of the membership.
(b) The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period provided that any such change shall have the assent of sixty-seven percent (67%) of the votes of each class of members, voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements In addition to the annual assessments, the Association may levy in any assessment year a special assessment, applicable to that

year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of common or limited common area structures, fixtures and personal property related thereto. Special assessments must have the assent of sixty-seven percent (67%) of the votes of each class of the members authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

Section 5. Additional Assessments In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other common or limited common areas from the activities of the City of St. George in maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3, 4 and 5 Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 3, 4 or 5 shall be sent to all members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half 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. Uniform Rate of Assessment; Periodic Assessment Both annual and special assessments must be fixed at a uniform rate for all lots; provided, however, that assessments shall not accrue against the Declarant so long as the Declarant has Class B membership on the condition that the Declarant shall fund any fiscal deficiency in the operations of the Association until the termination of Class B Membership. This method of determining the assessments, dues and charges may not be changed without the prior written approval of all first mortgagees.

Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Trustees determine.

Section 8. Date of Commencement of Annual Assessments; Due Dates The annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination by the Trustees as to the amount of said assessment, the annual assessment shall be an amount equal to 90% of the maximum annual assessment provided above.

At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. This notice shall not be a pre-requisite to validity of the assessment.

The assessment due dates shall be established by the Trustees. The Trustees may provide for the payment of annual and special assessments in equal installments throughout the assessment year.

The Trustees shall prepare a roster of the properties and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any member at reasonable times.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

Section 9. Effect of Non-Payment of Assessment - Remedies of the Association Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Trustees shall determine appropriate) until paid. In addition, the Trustees may

assess a late fee for each delinquent installment which shall not exceed ten per cent (10%) of the installment.

The Trustees may, in the name of the Association, (a) bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or (b) may foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the lot from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the lot of an owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or by abandonment of his lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender or insured by the Federal Housing Administration or the Veterans Administration if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a lot or owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

Section 11. Books, Records and Audit The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by lot owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A lot owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

ARTICLE V -- INSURANCE

Section 1. Casualty Insurance on Insurable Common Area The Trustees shall keep all insurable improvements and fixtures of the common area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the common area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

In addition to casualty insurance on the Common Area, the Trustees may elect to obtain and continue in effect, on behalf of all owners, adequate blanket casualty and fire insurance in such form as the Trustees deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Townhomes including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the

regular annual assessments as levied by the Association. The insurance coverage with respect to the Townhomes shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the owners.

Section 2. Replacement or Repair of Property In the event of damage to or destruction of any part of the common area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all lot owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such lot owner.

In the event that the Association is maintaining blanket casualty and fire insurance on the Townhomes, the Association shall repair or replace the same to the extent of the insurance proceeds available.

In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Trustees are empowered to and shall represent the members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each owner for this purpose.

Section 3. Liability Insurance The Trustees shall obtain a comprehensive policy of public liability insurance covering all of the common and limited common property for at least $1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the common areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an owner because of negligent acts of the Association or other owners.

Section 4. Fidelity Insurance The Trustees may elect to obtain fidelity coverage against dishonest acts on the part of managers, Trustees, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the owners or members. In procuring fidelity insurance the Trustees shall seek a policy which shall (1) name the Association as obligee or beneficiary, plus (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Section 5. Annual review of Policies All insurance policies shall be reviewed at least annually by the Trustees in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damages or destroyed.

ARTICLE VI -- ARCHITECTURAL CONTROL COMMITTEE

No structure, building, fence, wall or addition, extension or expansion of any of the foregoing shall be commenced, erected or maintained upon the properties. No exterior addition or change or alteration, or any change of color to the stucco, of any lot or townhome shall be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustees. In the event said Trustees, or their designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this article will be deemed to have been made.

Notwithstanding the foregoing, without the prior written approval of at least sixty-seven percent (67%) of the owners, neither the Association nor the Architectural Control Committee shall have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of townhomes and lots, and the maintenance of the common and limited common areas, including walls, fences, driveways, lawns and plantings.

The Declarant shall not be required to comply with the provisions of this paragraph in the initial construction of the Properties.

ARTICLE VII – EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance by Owner Each owner shall be responsible for maintenance to the exterior of the townhome owned and in the limited common area adjacent and appurtenant to the lot. The Trustees shall, however, in the default of the owner to perform maintenance which is the owner's responsibility, and after a two-thirds (2/3) vote, and after ten days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon each townhome and lot, and the limited common area adjacent and appurtenant thereto. The cost of such maintenance shall be assessed against the lot or townhome.

Section 2. Exterior Maintenance by Association The Association shall be responsible for maintenance upon the common area, the limited common area which is not adjacent to any lot, and the area of any lot outside the walls of the townhome which is of the same character as surrounding common or limited common area. The cost of such maintenance shall be a common expense.

Section 3. Access at Reasonable Hours For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot or limited common area at reasonable hours.

Section 4. Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the area of a lot outside the walls of the townhome, and the limited common areas adjacent and appurtenant to the townhomes may be altered by Rule of the Association.

ARTICLE VIII – USE RESTRICTIONS

Section 1. Construction, Business and Sales Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of lots during the period of construction and sale of said lots and upon such portion of the premises as Declarant deems necessary including but not limited to a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 2. General Use Restrictions All of the properties which are subject to this declaration are hereby restricted to residential dwellings, and buildings in connection therewith, including but not limited to community buildings on the common property. All buildings or structures erected in the properties shall be of new construction and no buildings or structures shall be removed from other locations to the properties. After the initial construction on a lot, no subsequent building or structure dissimilar to that initially constructed shall be built on that lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time.

Section 3. Signs; Commercial Activity Except for one "For Rent" or "For Sale" sign of not more than two (2) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any lot or any portion of the properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the

properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

Section 4. Quiet Enjoyment No noxious or offensive activity shall be carried on upon any part of the properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners or which shall in any way increase the rate of insurance.

Section 5. Animals No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said lots, except that dogs, cats or other household pets, two or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in an annoyance or are obnoxious, by noise, smell or otherwise, to lot owners. All pets must be kept in the lots or on a leash when in the common areas. This provision may be made more restrictive by Rule of the Association.

Section 6. Use of Common Area Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said common area, other than as permitted in this declaration of covenants or as may be allowed by the Trustees. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of lots in the properties and is necessary for the protection of the interests of all said owners in and to the common area.

As part of the overall program of development of the properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 7. Parking. No motor vehicle which is inoperable shall be allowed within the Properties, and any motor vehicle which remains parked over 72 hours shall be subject to removal by the Association, at the owner's expense. If parking spaces are designated on the plat with numbers corresponding to Lot numbers, each such space is for the exclusive use of the lot owner with the corresponding number. If parking areas are not designated on the plat with lot numbers, the Trustees may assign vehicle parking space for each lot. Parking spaces within the Properties shall be used for parking of motor vehicles actually used by the owner or his immediate family or guests for personal use and not for commercial use, and for guest parking. Recreational vehicles, boats, travel trailers and similar property may not be parked within the Properties unless permitted by rule of the Association.

Section 8. Planting and Gardening No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Trustees.

Section 9. External Apparatus No lot owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Trustees.

Section 10. Exterior Television or Other Antennas No exterior radio or other antennas, except one television antenna which shall not exceed four feet in height, per lot, shall be placed, allowed or maintained upon any lot or upon any structure or portion of the improvements situated and located upon the properties without prior written approval of the Trustees.

Section 11. Garbage Removal All rubbish, trash and garbage shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

Section 12. Oil and Mining Operations No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the properties of any lot. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the properties or any lot.

Section 13. Interior Utilities All utilities, fixtures and equipment installed within a lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a lot, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other lots or owners.

Section 14. Leases Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease.

ARTICLE IX – EASEMENTS

Section 1. Encroachments Each lot and the property included in the common and limited common areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing lots is partially or totally destroyed, and then rebuilt, the owners of the lots so affected agree that minor encroachments of parts of the adjacent lots or common or limited common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Utilities There is hereby created a blanket easement upon, across, over and under all of the properties for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the properties in such a way as to unreasonably encroach upon or limit the use of the common area or limited common area or any structure thereon. In the initial exercise of easement rights under this Section, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this Section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said property without conflicting with the terms hereof. All utilities that are installed in, upon, under or through the common areas of the properties shall be maintained under the direction of the Association.

Section 3. Police, Fire and Ambulance Service An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and common and limited common area in the performance of their duties.

Section 4. Maintenance by Association An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the common and limited common areas and any lot to perform the duties of maintenance and repair.

Section 5. Other Easements The easements provided for in this Article shall in no way affect any other recorded easement.

ARTICLE X -- EXPANSION

Declarant reserves the right, at its sole election, to expand the Properties to include additional property more particularly described below by unilateral action of Declarant without the consent of owners, but subject to applicable requirements of the Federal Housing Administration or Veterans Administration, for a period of seven (7) years from the date of recording of this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah.

The property, all or part of which may be included in one or more expansions, is located in Washington County, Utah, and is more particularly described as follows:

SEE EXHIBIT "B" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE

Expansion shall occur by the Declarant filing:

1. an additional subdivision plat or plats creating additional planned unit developments on the property described above, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of this Declaration upon the filing of a Declaration of Annexation and

2. a Declaration of Annexation (after satisfying conditions hereafter stated), which shall state the Declarants' intention to have the area described therein subject to this Declaration and, if required, that Federal Housing Administration or Veterans Administration approval has been given. Upon the recording of such a Declaration of Annexation the property described therein shall be subject to this Declaration.

Any additional properties annexed hereto by the Declarant shall be exclusively for residential single family dwellings, architecturally compatible to the existing townhomes, similar to the townhomes already constructed, constructed out of similar materials, with similar lot size. The maximum number of lots to be added shall be 175. The Declarant shall have the sole discretion as to development of the common area in any expansion area and may include any facilities or amenities thereon that Declarant deems necessary and such common areas shall be owned by the Association.

The common area and limited common area in such area shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens, prior to recordation of the Declaration of Annexation and the Association shall accept the deed to said areas. Owners in the original and expansion areas shall have the same rights to the use and enjoyment of the property and facilities of the Association. If, at the time of the expansion, the Declarant has Class B ownership status, that status shall extend to all lots in the expansion area. Otherwise, owners in the original and expansion areas shall all have equal membership status in the Association. The liability for assessments of each lot and lot owner in any expansion area shall be equal to the liability of each lot and lot owner in the original properties.

ARTICLE XI -- GENERAL PROVISIONS

Section 1. Enforcement The Association, the Declarant or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee. The Trustees may levy a fine or penalty not to exceed 10% of the amount of the maximum annual assessment against any owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice.

Section 2. Severability All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

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 representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 4. Amendment The covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the owners. Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.

Notwithstanding the foregoing, the Declarant reserves the right for so long as he shall have Class B membership status, to unilaterally amend the Declaration to comply with City, State or other laws, or regulations or requirements of holders, insurers, or guarantors of first mortgages, subject to compliance with applicable guidelines of the Federal Housing Administration or Veterans Administration.

Section 5. Notices Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 6. Gender and Grammar The singular, wherever used herein, 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 7. Waivers No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 8. Topical Headings The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

ARTICLE XII -- ASSIGNMENT OF POWERS

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 4th day of April, 1994.

Declarant
ENCE EXCAVATION & GENERAL ENGINEERING, INC.

By _____
Jay Ence, President

_____
LAYTON P. OTT

_____
PAUL S. JENSEN

_____
CORINNE O. JENSEN

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 4th day of April, 1994, before me personally appeared Jay Ence, 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 Ence Excavation & General Engineering, Inc., a corporation, and that the foregoing document was signed by him on behalf of that corporation by authority of its bylaws or of 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.

Belinda L. Farnsworth
NOTARY PUBLIC
Address: St. George
My Commission Expires: 10-15-94

BELINDA L FARNSWORTH
Notary Public
STATE OF UTAH
My Commission Expires
October 15, 1994
35 N. 300 W., St. George, UT 84770

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 4th day of April, 1994, before me personally appeared Layton P. Ott, 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.

Belinda L. Farnsworth
NOTARY PUBLIC
Address: St. George
My Commission Expires: 10-15-94

BELINDA L FARNSWORTH
Notary Public
STATE OF UTAH
My Commission Expires
October 15, 1994
35 N. 300 W., St. George, UT 84770

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 4th day of April, 1994, before me personally appeared Paul S. Jensen and Corinne O. Jensen, personally known to me or proved to me on the basis of satisfactory evidence to be the persons whose names are signed on the preceding document, and acknowledged before me that they signed it voluntarily for its stated purpose.

Belinda L. Farnsworth
NOTARY PUBLIC
Address: St. George
My Commission Expires: 10-15-94

MC/DC/DN:E:Ence Ex 724406 Padre Lakes:cc&r 120893 724406 dc

BELINDA L FARNSWORTH
Notary Public
STATE OF UTAH
My Commission Expires
October 15, 1994
35 N. 300 W., St. George, UT 84770

EXHIBIT "A"

BEGINNING AT A POINT ON THE EAST BOUNDARY LINE OF "CANYON CLIFF SUBDIVISION --PHASE II", SAID POINT BEING N 88°34'11" E 2724.12 FEET ALONG THE CENTER SECTION LINE TO THE CENTER OF SECTION 5 AND S 00°10'03" W 175.73 FEET ALONG THE CENTER SECTION LINE FROM THE WEST 1/4 CORNER OF SECTION 5, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE & MERIDIAN & RUNNING THENCE N 88°34'11" E 503.19 FEET; THENCE S 01°25'49" E 90.08 FEET; THENCE S 14°14'11" W 31.16 FEET; THENCE S 01°25'49" E 82.00 FEET; THENCE N 88°34'11" E 21.95 FEET; THENCE S 00°10'03" W 264.86 FEET; THENCE S 32°22'11" W 39.71 FEET; THENCE S 00°10'03" W 78.98 FEET; THENCE N 89°49'57" W 109.00 FEET; THENCE N 60°51'30" W 180.09 FEET; THENCE N 89°49'57" W 65.25 FEET; THENCE N 67°51'37" W 31.24 FEET; THENCE N 89°49'57" W 140.23 FEET TO A POINT ON THE CENTER SECTION LINE, SAID POINT ALSO BEING ON THE EASTERLY BOUNDARY OF SAID CANYON CLIFFS SUBDIVISION – PHASE I; THENCE ALONG SAID CENTER SECTION LINE N 00°10'03" E 466.11 FEET TO THE POINT OF BEGINNING.

CONTAINING 6.051 ACRES

EXHIBIT "B"

PADRE LAKES EXPANDABLE AREA

NW1/4, SE1/4 of Section 5, Township 42 South, Range 16 West, Salt Lake Base & Meridian.

Less & excepting Padre Lakes Townhomes - Phase I as shown below.

BOUNDARY DESCRIPTION

BEGINNING AT A POINT ON THE EAST BOUNDARY LINE OF "CANYON CLIFF SUBDIVISION –PHASE II", SAID POINT BEING N 88°34'11" E 2724.12 FEET ALONG THE CENTER SECTION LINE TO THE CENTER OF SECTION 5 AND S 00°10'03" W 175.73 FEET ALONG THE CENTER SECTION LINE FROM THE WEST 1/4 CORNER OF SECTION 5, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE & MERIDIAN: AND RUNNING THENCE N 88°34'11" E 503.19' FEET; THENCE S 01°25'49" E 90.08 FEET; THENCE S 14°14'11" W 31.16 FEET; THENCE S 01°25'49" E 82.00 FEET; THENCE N 88°34'11" E 21.95 FEET; THENCE S 00°10'03" W 264.86 FEET; THENCE S 32°22'11" W 39.71 FEET; THENCE S 00°10'03" W 78.98 FEET; THENCE N 89°49'57" W 109.00 FEET; THENCE N 60°51'30" W 180.09 FEET; THENCE N 89°49'57" W 65.25 FEET; THENCE N 67°51'37" W 31.24 FEET' THENCE N 89°49'57" W 140.23 FEET TO A POINT ON THE CENTER SECTION LINE, SAID POINT ALSO BEING ON THE EASTERLY BOUNDARY OF CANYON CLIFFS SUBDIVISION – PHASE II; THENCE ALONG SAID CENTER SECTION LINE N 00°10'03" E 466.11 FEET TO THE POINT OF BEGINNING.

DATED THIS 22nd day of September, 1994.

ENCE EXCAVATION & GENERAL ENGINEERING, INC.

By _____
Jay Ence, President

_____
LAYTON P. OTT

_____
PAUL S. JENSEN

_____
CORINNE O. JENSEN

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 22nd day of September, 1994, before me personally appeared **Jay Ence**, 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 Ence Excavation & General Engineering, Inc., a corporation, and that the foregoing document was signed by him on behalf of that corporation by authority of its bylaws or of 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.

_____
NOTARY PUBLIC
Address: St. George, Utah
My Commission Expires: 11-04-96

PAULA J. HALL
Notary Public
STATE OF UTAH
My Comm. Expires NOV 4,1996
1031 N 1900 WEST ST. GEORGE UT 84770

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 22nd day of September, 1994, before me personally appeared **Layton P. Ott**, 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.

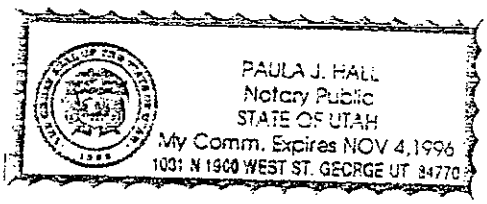
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1031 N 1900 WEST ST. GEORGE UT 84770

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 22nd day of September, 1994, before me personally appeared **Paul S. Jensen and Corinne O. Jensen**, personally known to me or proved to me on the basis of satisfactory evidence to be the persons whose names are signed on the preceding document, and acknowledged before me that they signed it voluntarily for its stated purpose.

Paula J. Hall
NOTARY PUBLIC
Address: St. George, Utah
My Commission Expires: 11-04-96



MC/DC/DN:E:Ence Ex 724406 Padre Lakes:amendcc&r 072794 724406 dc