

3/11/96  
**RETURNED**  
Mainline Construction Inc  
APR - 3 1996

**Declaration**

E 1238552 B 1986 P 377  
CAROL DEAN PAGE, DAVIS CNTY RECORDER  
1996 APR 3 1:11 PM FEE 53.00 DEP JB  
REC'D FOR BONNEVILLE TITLE COMPANY, INC

**Of**

**Covenants, Conditions and Restrictions**  
**of Smithtowne Subdivision No. 1**

12-235 + Lot  
0001 thru 0022

This declaration, made on the date hereafter set forth by Mainline Construction, Inc. A Utah corporation hereafter referred to as "Declarant".

**Witnesseth:**

Whereas, Declarant is the owner of a certain property in Clearfield, County of Davis, State of Utah, which is more particularly described as follows:

A part of the Northeast Quarter Section 2, Township 4 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey in Clearfield City, Davis County, Utah:

Beginning at a point on the south line of 300 North Street 799.00 feet South 89 55'46" East along the Section line at 33.00 feet south 0 11'45" West from the North Quarter Corner of said section 2; and running thence South 0 11'45" West 426.60 feet along the Easterly line of 360 West Street; thence South 89 55'46" East 127.57 feet; thence South 0 11'45" west 438.16 feet to a point on the North Boundary of Pheasant Creek subdivision, Phase 2 as it is staked on the ground; thence North 84 32'04" West 263.68 feet along said North Boundary Line Subdivision to the East Boundary of Yorkshire Place Subdivision No. 2 in Clearfield City, Davis County, Utah; thence North 0 11'45" East 567.97 feet along the East Boundary of Yorkshire Place Subdivision No.2, No. 3 and No.4; thence south 89 55'46" East 85.00 feet to a point on the Westerly line of Street; thence north 0 11'45" East 272.00 feet along said westerly line of street to the South line of 300 North Street; thence South 89 55'56" East East 50.00 feet along said line of Street to the point of Beginning.

Contains 3.358 Acres.

Now, therefore, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of , and which all run with real property and the binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

**ARTICLE I**

3075 N Clearfield Road  
Layton 84041

**DEFINITIONS**

**SECTION 1.** "Association" shall mean and refer to SMITHTOWNE HOME OWNERS ASSOCIATION, it's successors and assigns.

**SECTION 2.** "Owner" shall mean and refer to recorded owner whether one or more persons or entities, of a fee simple title onto any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as a security for the performance of an obligation.

**SECTION 3.** "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto may hereafter be brought within the jurisdiction of the association.

**SECTION 4.** "Common Area" shall mean all real property owned by the association for the common use and enjoyment of the owners. The common area at the time of the conveyance of the first lot is all the property described as follows:

A part of the Northeast Quarter Section 2, Township 4 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey in Clearfield city, Davis County, Utah:  
Beginning at a point on the south line of 300 North Street 799.00 feet South 89 55'46" East along the Section line at 33.00 feet south 0 11'45" West from the North Quarter Corner of said Section 2; and running thence South 0 11'45" West 425.60 feet along the Easterly line of 360 West Street; thence South 89 55'56" East 127.57 feet; thence South 0 11'45" west 438.16 feet to a point on the North Boundary of Pheasant Creek Subdivision, Phase 2 as it is staked on the ground; thence North 84 32'04" West 263.68 feet along said North Boundary Line of Subdivision to the East Boundary of Yorkshire Place Subdivision No. 2 in Clearfield City, Davis County, Utah; thence North 0 11'45" East 567.97 feet along the East Boundary of Yorkshire Place Subdivision No. 2, No. 3 and No. 4; thence south 89 55'46" East 85.00 feet to a point on the Westerly line Street; thence North 0 11'45" East 272.00 feet along said westerly line of street to the South line of 300 North Street; thence South 89 55'46" East 50.00 feet along said line of Street to the point of Beginning.

Contains 3.358 Acres.

Excepting therefrom Lots 1 through 22, inclusive, Smithtowne Subdivision <sup>No. 1</sup> and includes driveways, playgrounds, open areas, the common areas and facilities set forth as such on the subdivision plat, and all others parts of the property necessary or convenient to the existence, maintenance and safety of the common area or normally in common use.

**SECTION 5.** "Lots" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the properties with the exception of the Common Areas.

**SECTION 6.** "Declarant" shall mean and refer to Mainline Construction, Inc., its successors and

assigns, if such successors of assigns should accept more than one undeveloped lot from the Declarant for the purpose of development.

## ARTICLE II

### SECTION 1. OWNERS EASEMENT AND ENJOYMENT:

Every owner shall have a right and easement of enjoyment in and to the common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (A) The rights of the association to charge reasonable and other fees for the use of any recreational facility situated upon the common area.
- (B) The right of the association to suspend the voting rights and right to use of recreational facility by an owner for any period during which an assessment is unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations.
- (C) The right of the association to dedicate or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless instrument signed by (2/3) of each class members agreeing to such dedication or transfer has been recorded.

### SECTION 2. DECLARATION OF USE

Any owner may delegate, in accordance with the bylaws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on property.

## ARTICLE III

### Membership and Voting Rights

#### SECTION 1.

Every owner of lots which is subject to assessment shall be a member of the association. Membership shall be appurtenant and may not be separated from the ownership of any lot which is subject to assessment.

#### SECTION 2.

The association shall have classes of voting membership

**CLASS A:** Class A members shall all be owners with the exception of the "Declarant" and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all

such persons shall be members. 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.

**CLASS B:** The class B member shall be the "Declarant" and shall be entitled to three (3) votes for each lot owned.

**ARTICLE IV**

**Covenant for Maintenance Assessments**

**SECTION 1: Creation of the lien and personal Obligation of Assessments:**

The "Declarant", for each lot owner within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefore, whether or not it shall be expressed in such deed, is deemed to covenant and agrees to pay the association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereafter provided.

The annual and special assessments, together with interest cost, and reasonable attorneys fees shall be a charge upon the land and shall be a continuing lien upon the property against which each such assessment is made. Each and such assessment, together with interest, cost, and reasonable attorney fees shall also be the personal obligation of the person who was the owner of such property at the time when assessment fell due. The personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by then in writing.

**SECTION 2. Purpose of Assessments:**

The assessments levied by the association shall be exclusively to promote the health, recreation, safety, and welfare of the residents in the Properties and for the improvements and maintenance of the common area, and of the homes situated upon the properties. The assessments shall also be used to pay the property taxes on the common areas.

**SECTION 3. Maximum annual assessments:**

Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment will be \_\_\_\_\_ \$ \_\_\_\_\_ per lot.

- (A) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment by be increased each year not more than 3% above the maximum assessment for the previous year without a vote of the membership.
- (B) From and after January 1 of the year immediately following the conveyance of the

first lot to an owner, the maximum annual assessment may be increased above 3% by a vote of two thirds (2/3) of each class of members who are voting person or by absentee ballot. At a meeting duly called for this purpose.

(C) The board of directors may fix the annual assessment at an amount not in excess of the maximum.

**SECTION 4. Special Assessments for Capitol Improvement:**

In addition to the annual assessment authorized above, the association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of capitol improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessments shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by absentee ballot at a meeting duly called for this purpose.

**SECTION 5. Notice and Quorum for any Action Authorized under section 3 and 4.**

Written notice of any meeting called for this purpose of taking any action authorized under section 3 or 4 shall be sent to all members not less than 30 (thirty) days nor more that 60 (sixty) days in advance of the meeting. At the first such meeting called, the presents of members or absentee ballots entitle to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the preceding shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meetings shall be held more that 60 (sixty) days following the preceding meeting.

**SECTION 6. Uniform rate of assessment.**

Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis in advance.

**SECTION 7. Date of commencement of annual assessment; Due dates:**

The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area the first annual adjustment shall be adjusted according to the number of months remaining in the calendar year. The board of directors shall fix the amount of the annual assessment against each lot at least 30 (thirty) days in advance of each annual assessment period. Written notice of annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the board of directors. The Association shall upon demand, and for any reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

**SECTION 8. Effect of non-payment of assessments; Remedies of the association:**

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of thirteen percent (13%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common area abandonment of his lot.

**SECTION 9. Subordination of the lien to the mortgages.**

The lien of the assessment provided for herein shall be subordinated to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which come due prior to such sale or transfer shall relieve such lots from liability for any assessment thereafter becoming due or from the lien thereof.

**ARTICLE V**

**Exterior Maintenance.**

In addition to maintenance upon the common area, the association shall provide exterior maintenance upon each lot which is subject to assessment hereunder as follow: paint, repair, replace and care for rooms, gutters, downspout, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements, such exterior improvements maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair is caused through willful or negligent act of the owner, his family, guest, or invites, the cost of such maintenance or repairs shall be added to and become part of the assessment to which such lot is subject.

**ARTICLE VI**

**Architectural Control**

No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relationship to surrounding structures and topography by the board of directors of the association, or by an Architectural committee composed of three (3) or more representatives appointed by the board. In the event said board or its designated 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 this Article will be deemed to have been fully complied with.

ARTICLE VII

General Provisions

**SECTION 1. Enforcement.**

The Association, or any owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by provisions of this declaration. Failure by the association or by any owner to enforce any covenant or restrictions herein contained shall in no event be deemed as a waiver of the right to do so thereafter.

**SECTION 2. Severability.**

Invalidation of any one of these covenants or restriction or court order will not affect any other provision with shall remain in full force and effect.

**SECTION 3. Amendment.**

The covenants and restrictions of this declaration shall run with and bind the land, two (2) terms of twenty (20) years from the date of declaration is recorded, after which time they shall be automatically extended for successive period of ten (10) years. This declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the lot owners, and thereafter by an instrument signed by not less that seventy-five percent (75%) of lot owners. Any amendment must be recorded. All amendment to this Declarations shall be consistent with the ordinance of Clearfield City applicable thereto in effect at the time the amendment is made.

**SECTION 4. Annexation.**

Additional land may be annexed by Declarant without the consent of the members within five (5) years of the date of this instrument. Otherwise, additional residential property and common area may be annexed to the properties with the consent of two-thirds (2/3) of each class of members.

~~Subd. No. 1~~  
Subd. No. 1

These covenants, conditions and restrictions of Smithtowne, ~~Utah~~, Clearfield, Utah were made and adopted on April 2, 1996, in connection with finalizing subdivision approval and recordation of plat. In witness whereof, we, being owners of Mainline Construction, Inc., have hereunto set our hands this 2nd day of April, 1996.

[Signature] 4/2/96  
Date

Stuart Smith  
President, Mainline Construction, Inc.

[Signature] 4-2-96  
Date

Don Sowell  
Vice President, Mainline Construction, Inc.

State of Utah }  
ss.

County of Davis }  
On this the 2nd day of April, 1996, A.D., personally appeared before me,  
Stuart Smith and Don Sowell who being duly  
sworn, did say, each for himself, that he, the said Stuart Smith is the president, and  
he, the said Don Sowell is the vice president of Mainline Construction, Inc., and  
that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its  
board of directors, and said Stuart Smith and Don Sowell  
each duly acknowledged to me that the said corporation executed the same.

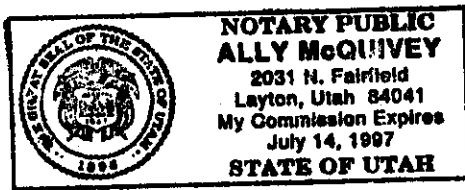
[Signature]

Notary Public

My Commission Expires: July 14, 1997

Residing at: 2031 N. Fairfield

Layton UT 84041





# SMITHTOWNE HOME OWNER ASSOCIATION RULES AND REGULATION

(Effective upon recordation)

These rules and regulations are subject to change by a 2/3 majority vote of the homeowners, a special election, or at the annual election.

## 1. GENERAL RULES

- A. Smithtowne Home Owners Association (hereafter referred to as the Association), is a, **single family, residential living area**. The housing of more than one immediate family is prohibited. Home occupations and businesses which do not comply with Clearfield City planning and zoning ordinances are strictly prohibited. Subd. No. 1 ~~XX~~
- B. Complaints regarding the management of: Smithtowne, <sup>Subd. No. 1</sup> suggestions; needed repairs; or items of concern should be submitted in written form, dated, and placed with the board of directors. This will enable the board of directors to compile a record file of all the actions received and actions taken. To be considered for the agenda in the monthly meeting (which is the first Tuesday of each month). The written document must be submitted, ten days prior to the regular scheduled monthly meeting. These meetings will follow an agenda. Meetings will follow strict Robert rules or order.
- C. When a unit is leased or rented or otherwise made available to another resident, the owner is responsible for rendering payment of the monthly fees and any other assessments.
- D. Assessments can only be levied after a 2/3 majority vote at a special election or the regularly annual election.
- E. The owner shall be responsible for the action of their children, tenants, or guest. Any damage to common area structures caused by the children, tenants, or guest shall be repaired with the cost born by the home owner. In the case of any lease or sublease, the home owner must provide the tenant with a copy of the Bylaws and Rules and Regulations, as well as execute in writing an agreement by the tenant to perform and comply with all the provisions of the declarations and rules, and regulations promulgated pursuant thereto. The home owner will get this form signed and presented to the Smithtowne <sup>Subd. No. 1</sup> board of directors before the tenant moves in. ~~XX~~
- F. The homeowner must obtain prior written approval from the board of directors for all structural alterations, improvements or additions. The request must be in writing and in sufficient detail to permit objective evaluation by the Clearfield city building inspector and accompanied with a building permit. Any damage caused by remodeling, will be the responsibility of the homeowner, causing the damage and shall be made post haste not to exceed forty eight (48) hours or the directors may take actions for repairs.
- G. Additional T.V. antennas, radio aerials, satellite disc, solar panels, or similar device shall not be installed on the outside of the building.
- H. Directors are responsible for maintenance of the common areas, to include removal and or replacement of trees and shrubs. Residents may purchase and plant trees only after first obtaining approval from the committee of directors. Flowers may be planted by the resident, adjacent to their units, as long as disturbed area remains free of weeds, and then returned to the original maintenance free landscaping after gardening is discontinued.
- I. It will be the duty of all residents to keep their unit clean and free of insects and mice. Should the Directors be forced to come in and clean up the unit of insects, mice or other offensive odors, the owner will be held responsible for the cost.

- J. All exterior maintenance and repair will be the responsibility of the association.
- K. All exterior maintenance and repair will be the responsibility of the association.
- L. All hoses must be removed from the outside water faucets during freezing weather to avoid damage to plumbing. Damage caused by failure to follow rules will be the responsibility of the individual home owner.

## 2. PET RULES

- A. A pet for the purpose of these rules, is a dog or cat. Other animals such as pigs, ducks, chickens, doves, pigeons, and reptiles are prohibited. The final decision for the acceptability of a pet is obtained by the committee or directors. Not pets shall be kept in Smithtowne except those kept in accordance with the following rules;
- Subd. No. 1 ~~SS~~
1. No homeowner, tenant, or occupant shall bring into Smithtowne or keep more than two (2) pets at any time.
  2. All unauthorized pets retained in Smithtowne must be licensed and vaccinated for rabies or any other disease as required by the Clearfield City, Davis County, or Utah State authorities.
- Subd. No. 1 ~~SS~~
- Subd. No. 1 ~~SS~~
- B. Pets will not be allowed to run free under any circumstances. When outside the homeowner's or occupant's unit, the pet owner must accompany the pet and be prepared to pick up and dispose of any pet droppings in a container that would not spill into the dumpsters or an appropriate waste container. Being prepared is construed to mean carrying appropriate equipment to pick up pet droppings. Pet owners who violate this rule will be assessed a \$75.00 fine for each violation. A ticket will be issued and enforced by the directors.
- C. Each pet owner will take proper precautions to insure their pet(s) are absolutely under their control and are not permitted to bark or make other noises that will disturb others. Violations of this rule will be referred to the Clearfield city Police and/or the Clearfield Animal Control Officer.
- D. Occupants who keep the pets on their patios will clean up the droppings and mess daily to make sure not odor or unsanitary conditions are allowed to exist to offend their neighbors or other home owners.
- E. All pet rules and regulations to follow with the Clearfield city ordinances as changes occur.

## 3. LEASE AND RENTAL POLICY

★ Subd. No. 1 ~~SS~~

A lease for a single family is permitted, subject to approval by the board of directors. the Owner is responsible for furnishing tenants with copies of the bylaws and current rules and regulations of Smithtowne, and for assuring that the tenants understand the current rules and regulations, and agree to abide by these rules and regulations, as well as the ordinance of the city of Clearfield, and the statutes of the state of Utah. The unit owner is responsible for any damage to the association or private party caused by the tenant or guest. The board of directors has the power to terminate a lease or rental agreement in the case of flagrant violations of Article and Covenants. Bylaws, Rules and Regulations, or misconduct or violations of city or state laws.

## 4. RULE VIOLATION POLICY

- A. When a violation of these rules occurs, the Board of Directors will give written notification of the violation to the homeowner or tenant and the home owner or tenant will be given up to ten (10) days to resolve the violation or to give notice to the association to appear the violation citation. If there is no response, or if the violation(s) continue, the board of directors will assess a \$10 fine per

violation against the home owner or resident, and can additionally take action to remedy the violation, with the cost to be paid by the homeowner. (Example: clean up pet droppings, tow-away vehicles, etc.) . Imposed fines must be paid to Smithtowne within 10 days of the assessment of the fine. Fines will go in to the general maintenance fund. Subd. No. 1 ~~SS~~

B. Any expense incurred with enforcing the rules or assessments made against the homeowners for violations, and or fines shall be eligible to be entered as a lien against the unit. The cost of recording the lien with the county and the cost of releasing the lien when the assessment and interest are paid, will be paid by the homeowner. In the event foreclosure becomes necessary; a \$1000.00 handling fee plus reasonable Attorney fees will be assessed. Proper notice will be given and foreclosure proceedings will begin subject to any underlying mortgage. Eviction of tenant, homeowner then final sale of property.

C. The failure of the board, to insist and enforce strict performance of any term, covenant, condition, of the declaration, rules, regulations, agreements, or determination, shall not constitute, nor be construed as a waiver or relinquishment of any other right which the board may have to perform their duties.

5. BOARD MEETINGS

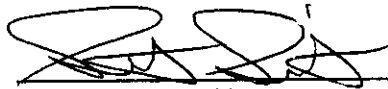
Meetings will be conducted under strict guidelines of Roberts rules of order. Will follow a preplanned agenda. Will be scheduled 30 days in advance. To be placed on the agenda, subject and or individual must give written notice, and must be submitted to the director no less that ten (10) days in advance.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting President of Mainline Construction, Inc., a Utah Corporation, and that the foregoing constitute the General Rules and Regulations on Smithtowne Subdivision No. 1 ~~SS~~

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said association this 27th day of March 27, 1996.

  
\_\_\_\_\_  
Stuart Smith, President