

11-417-0001 thru 0028

**DECLARATION OF BUILDING & USE RESTRICTION
OF
BOYNTON PLACE SUBDIVISION
ESTATES**

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JAMES ASHAUER, DAVIS CNTY RECORDER
1998 JUN 19 4:28 PM FEE 50.00 DEF EMA
REC'D FOR BONNEVILLE TITLE COMPANY, INC

PART A: PREAMBLE

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, THE UNDERSIGNED, being the owner of the following described real property located in Davis, County, State of Utah, to-wit:

Lots 1 through 28, inclusive, Boynton Place ^{ESTATES} Subdivision, according to the official records of the County Recorder's office of Davis County, State of Utah.

Do hereby establish the nature of the use and enjoyment of all lots in said subdivision and declare that all conveyances of said lots shall be made subject to the following conditions, restrictions and stipulations:

PART B: RESIDENTIAL AREA COVENANTS

1. Land Use and Building Type. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two stories in height and private garages for not less than three vehicles. The Architectural Control Committee may allow a private garage for two vehicles under special conditions and at their discretion. All construction to be of new materials, except that used brick may be used with prior written approval of the Architectural Control Committee. Said premises shall be used for private resident purposes only except as hereinafter set forth, and no structure of any kind shall be moved upon said premises, nor shall any incomplete building be permitted to remain incomplete for a period in excess of one year from the date the building was started unless approved by the Architectural Control Committee.

2. Architectural Control. No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the front building setback line unless similarly approved. Approval shall be as provided in Part C.

3. Dwelling, Quality and Size. The intention and purpose of the covenants to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size. The minimum permitted dwelling size shall be as follows:

(a) The ground floor square feet area of the main structure, exclusive of garage and any one-story open porches, shall not be less than 2,100 square feet for a one-story dwelling.

(b) In a two-story home, which is two stories above the curb level, the combined area of the ground story level and the story above ground-story level, exclusive of garage and any one-story open porches, shall total not less than 2,600 square feet.

(c) In a multi-level home (i.e. three or four level split), the top two levels of the main structure, exclusive of garage and any one story open porches, shall not be less than 2,800 square feet.

(d) No building shall be erected or placed on any lot having less than 80% brick or native stone or at least 30% brick or native stone, with the balance being stucco. The total area considered for percentage purposes shall be measured from level to a height of 9 feet.

(e) All exterior materials and colors must be approved by the Architectural Control Committee prior to commencement of construction.

(f) Aluminum or vinyl siding shall be allowed in soffit and fascia areas, and in other areas only as approved by the Architectural Control Committee.

(g) Roofing materials shall be cedar shake, tile, or architectural grade asphalt shingle (30 year type) or as approved by the Architectural Control Committee.

The purpose of these covenants is to assure that all dwellings shall be of a quality of workmanship and materials substantially the same as or better than that which can be produced at the date that these covenants are recorded. The minimum square footage cited in this paragraph can be waived if prior written approval of the Architectural Control Committee is obtained and the lot size and topography justifies the waiver, and all other covenants contained in this declaration are met.

The Architectural Control Committee reserves the right to be "subjective" in approving or disapproving the construction of any home to be built in the subdivision in order to enhance and protect the value, desirability, and attractiveness of the lots. It is contemplated by this declaration, and agreed to by all lot owners, that there will be variations and adjustments made by the Architectural Control Committee in approving or disapproving building plans. The process of approval by the Architectural Control Committee will be subjective, but not arbitrary, in approving building plans in substantial conformity with these Protective Covenants.

4. Building Location.

(a) Any dwelling or improvements erected or placed on the lot shall be situated within the side yard, set back and rear lot line as required by city ordinances. Detached garages or other permitted accessory buildings may not encroach upon any easements.

(b) For the purpose of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of any building on a lot to encroach upon another lot.

(c) No dwelling shall be erected or placed on any lot having a width of less than 85 feet at the point where it is proposed to locate the part of the dwelling closest to the front street.

(d) No building shall be erected or placed on any lot having an area of less than 20,000 square feet.

5. Easement. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may 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 lot, except for those improvements for which a public authority or utility company is responsible.

6. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No clothes drying or storage of any articles which are unsightly in the opinion of the Architectural Control Committee will be permitted on patios or in other open areas, unless the patio or area is enclosed and designed for such purpose. No automobiles, trailers, boats, or other vehicles are to be parked or stored on the front or side street of the lots unless they are in running condition, properly licensed and are being regularly used. Automobiles must be moved every 24 hours. All RV's stored or parked on the lot must be located to the side or in the rear of the home and must be concealed from the front of the street. All roof mounted heating and cooling equipment must be set back to the back side of the roof out of view from the street. All TV antennas are to be placed in the attic out of view. Satellite dishes are to be hidden from view from the street. Within one year of occupancy of each and every home built in the subdivision, the front and side yards, and within two years of occupancy, the back yard, shall be planted in lawn or other acceptable landscaping so as not to negatively impact the aesthetics of the subdivision. "Acceptable landscaping" and "lawn" shall be interpreted by the then existing Architectural Control Committee which will reflect the majority view of the then-existing homeowners in the subdivision.

7. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out buildings shall be used on any lot at any time as a residence either temporarily or permanently. No mobile homes are permitted.

8. Private Residence, Moving of Structures, Incomplete Building. Said premises shall be used for private residence purposes only, except as hereafter set forth, and no structure of any kind shall be moved from any other prior residence upon said premises. No incomplete building shall be allowed to remain incomplete for a period in excess of one year from the date the building is started unless approved, in writing, by the Architectural Control Committee. Manufactured homes, mobile homes, and modular units are not permitted, regardless of whether such structures are permanently fixed to the premises.

9. Signs. No sign of any kind shall be displayed to the public view on any lot except signs used by a builder to advertise the property during the construction and sales period, or signs used by a property owner advertising the property for sale.

10. 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 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 leash under handler's control. If the County allows, under a conditional use permit, livestock, including horses, to be kept on half acre lots or greater, all such livestock shall be confined to the rear of the entire home by livestock approved pole fencing located at least three feet from the side and rear property lines to avoid consumption of neighbors' vegetation.

11. 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. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each lot and its abutting street are to be kept free of trash, weeds and other refuse by the lot owner. No unsightly materials or other objects are to be stored on any lot in view of the general public.

12. Fences and Walks. No fence, wall, or other object of similar design may be constructed on any lot near the front lot line and the front house line, nor shall any fence, wall, or other object of similar design be constructed on any lot to a height greater than 6 feet, unless approved by the Architectural Control Committee.

13. Sight Distance at Intersection. No fence, wall, hedge, or shrub planting 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 25 feet from the intersection of the street lines or in case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on a driveway or alley pavement. 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.

14. 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 any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or gas shall be erected, maintained, or permitted upon any lot.

15. Landscaping. Trees, lawns, shrubs, or other plantings shall be properly nurtured and maintained or replaced at the property owner's expense upon request of the Architectural Control Committee.

16. 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 or obstruct or retard the flow of water through drainage channels. The slope control areas of each lot and all improvements in 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.

PART C: ARCHITECTURAL CONTROL COMMITTEE

1. Membership. In the event of death or resignation of any member of the Architectural Control Committee, the remaining members of the Committee shall have full authority to select a successor. Neither the members of the Committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. A majority of the committee may designate a representative to act for it. At such time that all lots owned by the initial owner/developer are sold, the aforementioned owner/developer shall be released from responsibility of the committee. At any time after all lots owned by the initial owner/developer are sold, the record owners of a two-thirds majority of the then recorded owners of the lots shall have the power, through a duly recorded written instrument, to change the membership of the Committee or to withdraw from the committee or restore to it any of its powers and duties. The Architectural Control Committee is composed of:

Danny C. Bridenstine
David R. Brown
Chad Stokes

2. Procedure. Lot owner to submit 2 sets of plans to the Architectural Control Committee on or before 20 days prior to commencing construction. The Architectural Control Committee will review and either approve the plans, or return them to the lot owner with comments. If approved, one set will be stamped approved and returned to owner, and the second set retained by the Architectural Control Committee file. The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within 30 days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required, and the related covenants shall be deemed to have been fully complied with.

3. Immunity. Notwithstanding the foregoing provisions, the Architectural Control Committee shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in this declaration, and no member of the Architectural Control Committee shall have any liability, responsibility, or obligation, whatsoever, for any decisions or lack thereof, in the carrying out of the duties as a member of such committee. Such committee and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of the declaration shall rest with the homeowner. Each homeowner agrees to save, defend, and hold harmless the Architectural Control Committee and each of its members on account of any activities of the Architectural Control Committee relating to such owner's property or buildings to be constructed on his or her property.

PART D: GENERAL PROVISIONS

1. Accepted Owner Activities. Nothing in this Declaration shall prevent Owners', Owners' developer transferees or the employees, contractors, or sub-contractors of Owners or Owners' developer transferee from doing on any part or parts of the subdivision whatever they determined may be reasonably necessary or advisable in connection with the development of the subdivision, including, but not limited to, construction and maintenance of such structures, including model homes, as may be reasonably necessary for the completion of the development of the subdivision; conducting the business of establishing the subdivision as a residential community in the disposing of lots by sale, lease, or otherwise; and the maintaining of such sign or signs on any of the lots owned or controlled by the Owner or the Owners' developer transferee as may be reasonable necessary or lease of subdivision lots. As used in this section, the words, "Owners' developer transferee" specifically exclude individual purchases of improved lots.

2. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded, after which time, said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a two-thirds (2/3) majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

3. Enforcement. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. The rights granted herein to enforce this Declaration of Protective Covenants shall

be cumulative and are not intended to exclude any other remedies which may be available to any other person in law or in equity. Any person or persons who bring a successful action to enforce this declaration shall be entitled to an award for reasonable attorney's fees and costs incurred in prosecuting such action.

4. Severability. Invalidation of any portion of these covenants by judgment or court order shall in no wise affect any of the other provisions herein which shall remain in full force and effect as if these covenants had been executed and recorded with the invalid portions eliminated.

5. Acceptance of Restrictions. All purchasers of property described above shall, by acceptance of delivery of any deed, or by purchasing under a contract, or by acquiring any interest in any lot listed herein, or any portion thereof, be conclusively deemed to have consented and agreed to all restrictions, conditions, covenants and agreements set forth herein.

6. Modification. This Declaration of Protective Covenants may be modified, amended, supplemented, or canceled by an instrument signed by a two-thirds (2/3) majority of the then owners of record of all lots in the Boynton Place Subdivision.

Dated this 22 day of May, 1998.

Signed:

Danny C. Bidlustine

Lou D. Larsen, Trustee

Russell H. Earl

Norahy A. Earl

STATE OF UTAH)
) : SS
COUNTY OF Davis)

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On the 22 day of May, 1998, personally appeared before me, the undersigned Notary Public, the signers of this document, FOUR (4) in number who are the owners of Boynton Place Subdivision, and who being by me duly sworn say that they are the same and that they executed the above and foregoing instrument.

IN WITNESS WHEREOF I have herewith set my hand and affixed my seal this 22 day of May, 1998.

Nobalee W. Rhoades
Notary Public

8-14-98
My Commission Expires

