

CHERRY GROVE SUBDIVISION

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

DECLARATION: Kary L. Yates dba K. D. Excavation, being the Developer of Lots 1 through 71 (being all Lots) in the Cherry Grove Subdivision, a subdivision of a part of the Section 36, Township 2 South, Range 6 West Salt Lake Base and Meridian (such part being more particularly described on Exhibit "A" hereto and incorporated herein by this reference), being in Grantsville City, Tooele County, Utah, according to the plat thereof recorded as Entry Number _____ in Book _____, at Page _____ of the official Records of the Tooele County Recorder, does declare all such Lots are subject to the following covenants, conditions, restrictions, reservations, easements, assessments and liens of this declaration.

A. SCOPE

1. Purpose: The purpose of this declaration is to create, promote and maintain the quiet, safe, peaceful and attractive character of residences and neighborhoods in the subdivision, to establish and preserve a harmonious design for the subdivision, to protect and promote property values, and to establish procedures for the enforcement of this declaration.
2. Residential Use: All Lots in the subdivision shall be used only for the construction and occupancy of single family residences and for such uses as are customarily incidental thereto.

B. LIMITS ON USES

1. Prohibited Uses: No trailer, tent, garage or outbuilding shall be used as a temporary or permanent residence. No home or Lot shall be subject to time interval ownership. No illegal, noxious, or offensive activities shall be conducted on any Lot nor shall anything be done or any use made thereon or thereof which may be or become an unreasonable annoyance or nuisance to the occupant(s) of the other Lots within the subdivision by reason of unsightliness or the excessive emission of flumes, odors, glare, vibration, gases, radiation, liquid waste, smoke, or noise.
2. Building: No Lot shall be improved except with one dwelling unit. Each detached dwelling unit shall have an attached or fully enclosed garage adequate for a minimum of two (2) standard size automobiles. Unless otherwise specified in a Supplemental Declaration recorded after the date of this Declaration, square footage of such detached dwelling units (excluding basements) shall be a minimum 1,400 square feet on any single story (rambler)

home or 1,200 square feet on the main level for any 2 story home. Total square footage would include multi-level (except basements) living areas.

3. The subdivision has been planned to insure proper storm water drainage. All construction plans submitted to the Homeowners Association Architectural Control Committee (ACC) must comply with the subdivision drainage plan that has been approved by Grantsville City. A copy of this drainage plan is available from the developer upon request.
4. Approved Uses and Plans: The overall architectural style and detailing of each improvement (including each building) and the associated landscaping and site use is subject to ACC review and approval. Extraordinarily stylized or unique building shapes, or styles, such as geodesic domes, A-Frames, or cubic block homes are prohibited. The determination of whether or not a proposed Building is within this prohibited category of unique building styles shall rest with the ACC and such determinations shall be made in the sole and absolute discretion of the ACC, provided that in making such determination, the ACC may consult with owners of Lots in the immediate surrounding area of the Lot where the subject building is proposed. No Initial Construction, including any site preparation or excavation of the Lot or other preparatory construction of Improvements for such Initial Construction shall be undertaken, built, constructed, erected or placed on a Lot unless and until the plans, specifications and site plan therefor have been reviewed in advance and approved by the ACC in accordance with the provisions of this declaration. After Initial Construction, no other work of construction, excavation, or any material alteration to Improvements on a Lot shall be undertaken without obtaining the same advance approvals as are required with respect to Initial Construction. Two sets of site, building, (all four elevations) fencing and landscaping plans are to be submitted to the ACC for approval.
5. Easements: There is hereby reserved for the use and benefit of the Developer and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and occupant, and for the use and benefit of the Association, and their successors and assigns, for the purposes incident to such use, development and maintenance of the property, the following easements:
 - (a) For the installation and maintenance of public utility facilities of all kinds, including radio and television and transmission cables, the easements so designated on the recorded subdivision plan(s) for the Subdivision.
 - (b) Any additional easements, if any, as shown and designated on the recorded subdivision plat for the Subdivision.
6. The easement areas herein reserved shall be maintained by the Owner of the Lot upon which they are situated. No Improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use or purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.
7. Boats, Campers, and Other Vehicles: The parking or storage of commercial equipment, including, but not limited to, truck trailers or cabs, construction or excavation equipment, is prohibited. Parking on the lawn or unpaved portion of the Lot is prohibited. No boat, camper, RV, or inoperative vehicle shall be parked or stored at any time on a Lot unless wholly within an enclosed structure or adequately screened from view from the street fronting the Lot by an acceptable screening fence.
8. External Energy Devices: No energy producing devices including, but not limited to generators of any kind shall be constructed or maintained on any Lot without the prior written approval of the ACC, except for heat pumps or similar appliances shown on the plans approved by the ACC. Solar panel use and location shall not be permitted unless the ACC has provided written approval of size, placement, and nature of the installation.

9. Fences: No fence, wall, hedge, high planting, obstruction or other visual or privacy barrier (hereafter collectively "fence") of any kind shall be constructed on a Lot unless the plans and specifications therefor, including the location, design, material and color thereof have been approved in writing by the ACC prior to the construction or installation. OWNERS SHOULD NOT ORDER FENCE MATERIALS PRIOR TO ACC APPROVAL. All fences constructed on a Lot shall be in compliance with the applicable ordinances of the City of Grantsville and this declaration. All fences constructed on a Lot shall not project beyond the front yard setback or the principal building (whichever distance is greater) on the Lot. No fence higher than six feet (6') shall be allowed.
10. Exterior Materials and Colors: Exterior of the front of each home constructed shall be at least 20% masonry material. All exterior materials and colors shall be selected and used as approved by the ACC. All exterior finishes and/or colors shall be earth-tone, provided that subtle blue and gray tones may also be permitted, as approved by the ACC. No gravel roofs shall be permitted. Roof pitch shall be no less than 5:12.
11. The minimum set back from the front property line to the front vertical structure of the home shall be no less than thirty (30) feet.

C. MAINTENANCE

Maintenance: The following provisions shall govern the maintenance of Lots and all improvements thereon:

1. **The Common Area owned by the Homeowners Association shall be maintained by the Association. The developer hereby acknowledges that the City of Grantsville shall not maintain any property owned by the Homeowner's Association.**
2. Each Owner of a Lot shall maintain all improvements located thereon in good and sufficient repair and shall keep the Improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows unbroken and glazed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition. All damage to any Improvement shall be repaired as promptly as is reasonably possible.
3. All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.
4. Any event or condition on a Lot which, in the sole discretion of the ACC, creates an unsightly or blighting influence, shall be, in a manner satisfactory to the ACC, corrected, removed or screened from public view as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this declaration.
5. In the event that any owner shall permit any Improvement, including any landscaping, which is the responsibility of such owner to maintain, to fall into such disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Association and/or its assigns, upon thirty (30) days prior written notice to the owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot if necessary, for the purpose of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable and such Owner's Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may at the option of the Association, be levied as a

Limited Assessment against said Lot and shall be enforceable in the same manner as other assessments set forth in this declaration.

D. HOMEOWNER'S ASSOCIATION

Association: The Developer or its assigns, shall establish and organize the Cherry Grove Home Owners Association, Inc. The Association shall be a non-profit Utah corporation charged with the duties and vested with the powers allowed by law and as set forth in its Articles of Incorporation, its Bylaws and this declaration.

1. The affairs of the Association shall be conducted by the Board of Directors and such officers, managers and committees as the Board may appoint from time to time who shall, subject to the direction of the Board, be responsible for the day-to-day operations of the Association.
2. The Board may cause the Association, from time to time to adopt, amend and repeal rules and regulations for the administration of the Association and the use and enjoyment of common areas or property owned by the Association and to interpret any provision of this declaration. Such rules and regulations shall be known as the Cherry Grove Rules. Upon adoption, the Cherry Grove Rules shall have the same force and effect as if they were set forth in and were part of this declaration.
3. The Board shall cause the appointment of an Architectural Control Committee which shall conduct the review and enforcement processes concerning the provisions contained herein. This Committee shall be formed and perform its functions as described in the Association Bylaws.
4. No member of the Board or of any committee of the Association nor any officer, manager or employee of the Association shall be personally liable to any member, owner or any other person (including the Association itself) for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, any manager, any representative or employ of the Association or any committee, committee member or officer of the Association, provided, however, these limitations shall not apply where such act or omission constitutes gross negligence or intentional misconduct.
5. Each Owner of a Lot which is subject to assessment shall be a Member of the Association. Each such membership shall be appurtenant to and may not be separated from ownership of the Lot to which the membership is attributable. Joint ownership or ownership of an undivided interest in any Lot shall not cause there to be more memberships than the number of Lots established on the plat of this subdivision.
6. Voting rights and procedures for exercising voting rights, for transferring memberships in the Association and all other regulations regarding memberships in the Association shall be as may be provided in the Articles or Bylaws of the Association or in rules and regulations adopted by the Board.

Assessments: Developer, as the original owner of all Lots in the subdivision (other than exempt property) at the time the plat for the subdivision was recorded, hereby covenants and agrees, and each owner, by purchase or acquisition of a Lot in the subdivision (whether or not so expressed in the purchase contract, deed or similar document), is deemed to covenant and agree to pay to the Association assessments and charges assessed by the Association against such Lot (together with late charges, interest, costs and reasonable attorney's fees on delinquent assessments as provided in this declaration).

1. Costs included in assessments by the Association shall be allocated among the Lots in the subdivision based on criteria which the Board determines are fair and reasonable and under which all Lots which are relatively similar in location and use, as determined by the Board, are treated uniformly. Some costs may benefit all Lots while other costs may benefit only a certain portion of the subdivision. The Board may allocate some costs based on one set of criteria and other costs based on a different set of criteria. For example, the Board may allocate costs on criteria such as the number of memberships in the Association, or on the land area within the assessed Lots, or on the assessed values of Lots for property tax purposes, or on the intensity of use by the benefiting Lots and parcels, or on some formula designed to measure the amount and type of use, or other methods. Each year, the Board shall identify in its minutes the criteria and methods it uses to allocate costs for assessment purposes.
2. Assessments by the Association shall be made annually based on an annual budget approved by the Board. The budget shall be based on projections of estimated costs according to information readily available to the Board. In addition, special one-time assessments may be made where warranted by the circumstances.
3. Each assessment, together with late charges, interest, costs and reasonable attorney's fees on delinquent assessments, shall be a charge, continuing servitude and lien upon each Lot (and the improvements thereon) against which such assessment is made. Such lien shall be for the benefit of the Association.
4. In addition to being a charge against a Lot, each such assessment (together with interest, costs and reasonable attorney's fees) shall also be the personal obligation of the owner of such Lot at the time the assessment was due. However, such personal obligation for delinquent assessments shall not pass to the successors in title of such owner, unless expressly assumed by such successors.
5. Assessments by the Association can be made against Lots and parcels to pay for the costs of:
 - (a) repair, maintenance, alteration or construction and property taxes of any property in the subdivision owned by the Association, including, but not limited to, park-strips, roundabouts, project entrances, neighborhood entrances, sewer lift stations, landscape areas, parks, open spaces and waterways, drainage areas and water retention areas;
 - (b) purchase, repair, maintenance and operating any equipment acquired or owned by the Association;
 - (c) salaries, wages, payroll taxes and fringe benefits of employees of the Association;
 - (d) supplies and services needed by the Association;
 - (e) fees for accountants, attorneys or other professionals hired by the Association or any committee thereof;
 - (f) obtaining and maintaining liability, fire and casualty insurance;
 - (g) utilities and other public services required by the Association;
 - (h) providing communication or dissemination of information concerning the subdivision;

- (i) indemnification of trustees, officers, employees and agents of the Association;
 - (j) security for the subdivision.
6. Procedures for billing and collecting assessments shall be determined by the Board.
 7. The Association shall not be obligated to spend, in any year, all of the sums received by it in such year, whether from assessments or otherwise, and may carry forward as surplus any balances remaining. Further, the Association shall not be obligated to reduce the amount of assessments in a succeeding year if a surplus exists in a prior year.
 8. Assessments not paid when due shall be subject to a late charge determined by the Board to defray the costs of handling the delinquent payment and shall also bear interest at the rate of eighteen percent (18%) per annum until paid.

Enforcement: Enforcement of provisions of this declaration, including collection of assessments may be accomplished by any lawful means, including, but not limited to, the following:

1. an assessment of \$25.00 per day for each day a violation continues after written notice from the Association.
2. a proceeding at law or in equity against any person(s) violating or attempting to violate any provision, either to restrain violations or to recover damages;
3. an action at law to recover judgment against the person obligated to pay an assessment;
4. foreclosure of any assessment lien against the Lot under applicable prevailing Utah law relating to foreclosure, deeds of trust and mortgages on real estate (including, where applicable, the right to recover any deficiency) and, if foreclosed as a mortgage, the Lot may be redeemed after foreclosure sale as provided by law.
5. to evidence a lien for sums assessed pursuant to the declaration, the Association or its agent shall prepare a written notice of lien which sets forth the amount of the assessment, the date of assessment, the amount remaining unpaid, the name of the owner of the Lot subject to assessment, and a description of the Lot. Such notice, once signed by a person authorized by the Association, shall be recorded in the office of the County Recorder and a copy mailed to the Owner. A single notice of lien may be used for multiple lots to reduce recording fees. The lien may be foreclosed at any time after recording the notice of lien according to the procedures for exercise of powers of sale under deeds of trust or for foreclosure of mortgages under Utah law or in any other manner permitted by Utah law. Under any such procedures, the Owner shall pay all costs and expenses including, but not limited to, recording fees, filing fees, publications costs, court costs and reasonable attorney's fees, and all such costs and fees shall be secured by the lien whether or not set forth in the notice of lien.
6. So long as the Developer is a member of the Association, the Developer shall have the full power and authority to enforce all provisions of this declaration, for and on behalf of the Association, including the full power to delegate and substitute another in its place. After the Developer ceases to be a member of the Association, the Association shall have the full power and authority to enforce any provisions of this declaration on its own behalf.
7. An Owner, not at the time in default under this declaration, shall have the right at the Owner's expense, to enforce the provisions of this declaration by an appropriate action, whether in law or in equity.
8. Each remedy provided in this declaration shall be cumulative and not exclusive or exhaustive. Suit to recover a money judgment may be maintained without foreclosure and without waiving the lien securing the same.

9. During reasonable hours and upon reasonable notice to the owner or other occupant of a Lot, any member of the Board or Review Committee, or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot or parcel, and the improvements thereon, except for the interior portions of any completed residence, for the purpose of ascertaining whether or not the provisions of this declaration have been or are being complied with and such person shall not be deemed guilty of trespass by reason of such entry.
10. Any legal costs and expenses, including a reasonable attorney's fees, incurred in enforcing the provisions of this declaration shall be paid by the person against whom such provisions were enforced.

E. GENERAL PROVISIONS

1. The provisions of this declaration shall run with the land and shall be binding on all owners and on all persons claiming under them.
2. The ACC shall have the exclusive right to interpret provisions of this declaration with its decisions being final, conclusive and binding.
3. Invalidation of any provision of this declaration by court order shall not affect any other provisions, which shall remain in full force and effect.
4. Developer may terminate this declaration at any time that Developer continues to be a member in the Association by signing and filing for record a certificate of termination in the official Records of the Tooele County Recorder. Owners may terminate this declaration at any time by the affirmative vote of no less than 75% of all Lot owners, followed by the filing for record a certificate of termination in the official Records of the Tooele County Recorder.
5. This declaration may be amended as follows:
 - (a) For so long as the Developer is a member of the Association, it shall be entitled to unilaterally amend this declaration to correct minor errors and omissions or to clarify provisions.
 - (b) This declaration may be amended by any amendment approved in writing by the owners of not less than 75% of the Lots in the subdivision at the time of such amendment.
 - (c) Notwithstanding the foregoing, Developer may at anytime until all Lots in the subdivision have been improved with residences and sold to an occupant of such residence, amend this declaration to qualify the subdivision with lending institutions.
 - (d) Each amendment to this declaration shall be recorded in the official Records of Tooele County, Utah.
 - (e) Developer reserves the right to amend all or any part of this declaration to such an extent and with such language as may be requested by the Federal Housing Administration, Veterans Administration, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, or other governmental agency, to further amend to the extent requested by any federal, state or local government agency which requests such an amendment as a condition precedent to such agency's approval of this declaration; or by and federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot in the subdivision, or any portion thereof.

F. DEFINITIONS

ACC: The Architectural Control Committee appointed by the Association Board of Directors

Association: The Cherry Grove Homeowners Association, Inc.

Declarant: The undersigned owner, and his successors and assigns.

Developer: Kary L. Yates dba K. D. Excavation

Improvements: All structures and appurtenances thereto of all kinds and types, including but not limited to buildings, roads, driveways, parking Lots, sidewalks, walls, fences, screens, landscaping poles, signs, and lighting. Improvements shall not include those items which are located totally on the interior of a building and cannot be readily observed when outside thereof.

Initial Construction: The first construction of permanent Improvements on a Lot following the sale of that Lot by the Declarant to an Owner, and intended for residential occupancy.

Limited Assessment: An Assessment levied by the Association upon one or more Lots, but not upon all Lots within the Subdivision, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the Association to correct a condition prohibited or to cure an Owner's breach hereunder.

Lot: A portion of the Property which is a legally described tract or parcel of land within the Subdivision or which is designated as a Lot on any recorded subdivision plat.

Member: Any person(s) who is an Owner of any Lot within the Subdivision.

Owner: Any person(s) who is an Owner of any Lot within the Subdivision.

IN WITNESS WHEREOF: Kary L. Yates, dba K. D. Excavation, the Developer, being the Owner of all Lots in the Cherry Grove Subdivision, has signed this document as of the date indicated below.

3/14/00
DATE

By Kary L. Yates
Kary Yates Ky.

KARY L. YATES.

State of Utah)
Tooele County)

:ss.

The foregoing instrument was acknowledged before me on March 14, 2000, by Kary L. Yates, dba K. D. Excavation.

Susan P. Gustin
Notary Public

