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Foothill Park, L.C.
3214 North University Ave. Suite 615
Provo, Utah 84604

FNT 150870:2003 PG 1 of 6
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2003 Sep 15 12:56 pm FEE 103.00 BY SFS
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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS EASEMENTS, RESERVATIONS AND RESTRICTIONS

FOOTHILL PARK PHASE A SUBDIVISION
Provo City, Utah County, Utah

THIS DECLARATION (the "Declaration") is made as of this 15th day of SEPTEMBER, 2003 by FOOTHILL PARK L.C., a Utah limited liability company (the "Declarant"), in its capacity as an owner and as the developer of the real property herein described to which this Declaration is applicable.

- A. On or about SEPTEMBER 15th, 2003, Declarant, as record owner of certain undeveloped real property located in the City of Provo, Utah County, Utah (the "property") received approval to develop the property into single family residential lots.
- B. Declarant desires now to place protective covenants, conditions, easements, reservations and restrictions of record on the Subdivision as set forth herein.

NOW THEREFORE, Declarant hereby declares that all of the property described below (sometimes herein referred to as "lands", "lots", "tract", "Subdivision" or "property") shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved, subject to the following covenants, conditions, easements, reservations and restrictions, all of which are declared and agreed to be in furtherance of the plan for the subdivision improvement, and sale of the property and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the property and every part thereof. All of the provisions of this Declaration will be deemed to be covenants or equitable servitudes, as the case may be, running with the land and shall be binding upon all parties having or acquiring any right, title or interest in the described land or any part thereof.

ARTICLE I- PROPERTY

The property subject to the provisions of this Declaration is located in Provo City, Utah County, Utah and is described as follows:

Plat "A"

All of lots 1-83 inclusive, Foothill Park Subdivision, Provo City, Utah County, Utah according to the official plat thereof as recorded in the office of the County Recorder Utah County.

ARTICLE II- RESIDENTIAL AREA COVENANTS

- 2.1 **Subdivision Design Concept.** It is intended hereby to create a single family residential development of vernacular Provo City architect as further defined by the Provo City which are all of a compatible design, size and value. All homes shall exhibit architectural design compatible with the Provo City vernacular architecture, detail and the use of above-average new materials (except for used brick) with conventional construction methods. Pre-fabrication or pre-constructed homes will not be permitted.
- 2.2 **Occupancy Limitations.** Occupancy in the Project is limited to families only, as defined by Title 14 of the Provo City Code, provided, however, that the number of related or unrelated persons who constitute a family as set forth in subparagraph (2)(c) of the

definition of "Family" in section 14.06.020, Provo City Code, shall be limited to two persons only.

- 2.3 Architectural Control.** No structure or building shall be erected, placed or altered on any lot until the construction plans and specification and a plan showing the location of the proposed structure on the lot have been approved by the Architectural Control Committee (the "ACC") as hereinafter provided, as to quality of workmanship and materials, harmony of exterior design with existing structures, and as to location with respect to topography and finish grade elevation. All submissions to the ACC shall be stamped by a licensed architect with a statement of what architectural elements and materials are compatible with the particular vernacular Provo architecture. No accessory buildings, fences or walls shall be erected, placed or altered on any lot unless similarly approved. No residential dwelling shall contain less square footage than the minimums set forth in this Declaration, unless by reason of lot size, set-back lines etc., the ACC shall approve a lesser amount.
- 2.3.1 Approval of Provo City Design Review Committee.** The construction plans for each dwelling built in the Footlill Park subdivision shall be approved by the Provo City Design Review Committee prior to the issuing of a building permit for the construction of said dwelling.
- 2.4 Designs to Discourage Improper Use.** In Approving Construction plans for each dwelling units the ACC shall ensure that the dwelling units in the Project are designed and constructed in a manner that will discourage future occupancy, use or reconstruction which is prohibited by the provisions of Title 14 Provo City Code.
- 2.5 Dwelling Quality and Size.** The following sections shall serve as minimum guidelines only:
- 2.5.1** The lots shall be used for residential purposes only which shall include property used for churches, parks, and public schools. No dwelling shall be erected, altered, placed or permitted to remain on any lot other than one (1) single family dwelling, not to exceed two (2) stories in height in addition to a basement (if any) or attic area and must include a private garage on grade for not less than two (2) automobiles (minimum 600 sq. ft.). Open storage will not be permitted. Detached garages, accessory buildings or carports built in addition to the required garage will be allowed only if approved by the ACC and if the architecture and exterior materials used are the same as the adjoining home. No overnight parking on the streets.
- 2.5.2** For a single story dwelling, the main floor finished living area above grade will not be less than one thousand six hundred (1,600) square feet exclusive of balconies, porches, and garages. In the event that the minimum square footage requirements of Provo City is greater than those set forth in this Declaration then the Provo City square footage requirements shall supersede those set forth herein.
- 2.5.3** For a one and one-half (1 ½) story and a two (2) story dwelling, the finished living area on the floors above grade will not total less than two thousand (2,000) square feet, with not less than sixteen hundred (1600) square feet on the main level exclusive of balconies, porches, and garages. . In the event that the minimum square footage requirements of Provo City is greater than those set forth in this Declaration then the Provo City square footage requirements shall supersede those set forth herein.
- 2.5.4** For multi-level dwellings approved by the ACC, the finished living area above grade will not total less than twenty two hundred (2,200) square feet exclusive of balconies, porches, and garages; provided, however, that one and one-half (1 ½) story and two (2) story dwellings may be approved with the exception that not more than four hundred (400) square feet of finished living area over the garage may count toward the main floor requirement. . In the event that the minimum square footage requirements of Provo City is greater than those set forth in this Declaration then the Provo City square footage requirements shall supersede those set forth herein.

- 2.5.5** All homes with roof lines that use open gable ends on the main sections shall have not less than a 5/12 pitch and all homes with hip roof lines on the main sections shall have not less than a 7/12 pitch, or as approved by the ACC and as is consistent with the architectural intent as demonstrated by the Architect. All roofing material will be of either Wood Shake/Shingle or 30 year Architectural Grade asphalt shingle or equivalent. No rooftop, window or wall mount evaporative coolers will be allowed.
- 2.5.6** The exterior material of each structure shall consist of materials consistent with the architectural style and no vinyl or aluminum or metal siding shall be allowed. Exterior materials and color boards must be presented to the ACC for review and approval.

2.4 Timely Construction . Construction on all homes must commence within one (1) year of the ACC approval or such approval will lapse. All homes under construction must be completed pursuant to the plans and specifications submitted to the ACC within one (1) year from the commencement of any construction with dates to be determined by the records of Provo City as to building permits, inspections, etc.

2.5 Uniform Mail Boxes. On each lot upon which a dwelling is constructed the owner shall install, at the owner's expense within 30 days of completion of said dwelling, a mail box which must conform to ACC and Provo City standards as to size, style and location.

2.6 Landscaping. All yards (front, rear, and side) must be landscaped prior to occupancy if occupancy occurs between 15 April and 15 October of the year in which occupancy occurs. If occupancy occurs before or after the dates as noted above, a minimum of \$7,500 will be escrowed with the Declarant or its' Title Company until the time of year allows for the installation of the landscaping. Chain-link fencing will not be allowed. Landscaping shall be deemed to include grass, shrubbery, trees and an underground sprinkling system capable of properly irrigating the entire yard. On lots which exceed 19,000 square feet in area, the rear yard landscaping requirement shall be limited to that portion of the lot extending from the rear of the dwelling for a distance of 50 feet only and extending from the sides of the dwelling for a distance of 30 feet only, with the balance not required to be landscaped, but only to be maintained and kept free from weeds and debris. All owners will keep and maintain their yards in a neat, clean and orderly condition and appearance.

2.7 Signs. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than six (6) square feet advertising the lot for sale or rent, or similar size signs used by a Builder or real estate agent to advertise the property during the construction and sales period. This provision shall not impair Declarant's right to utilize larger signage for permanent entrance statements or for advertisement during construction, development and marketing of the Subdivision. All signs are subject to and must meet the requirements of the Provo City Code.

2.8 Livestock, Poultry and Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except for dogs, cats, and other domesticated household pets, provided that they are not kept, bred, or maintained for any commercial purpose and, provided further, that all pets kept outside must be restrained in a humane manner. Kennels, runs and leash areas must be kept clean and sanitary. No pets may be kept in unreasonable numbers.

2.9 No Parking Allowed on Public Streets. There will be no parking allowed on the public streets throughout the Foothill Park subdivision. No parking signs shall be installed by Provo City and Provo City shall enforce the no parking requirement through its normal procedures.

2.10 Trail Access. The Foothill Park subdivision plat filed with Provo City provides for certain access for the general public through the subdivision to the parks and trails to the east of the subdivision. It shall be the responsibility of the Foothill Park Home Owners Association to maintain the access corridors designated on the recorded plat.

ARTICLE III- ARCHITECTURAL CONTROL COMMITTEE ("ACC")

3.1 Membership. The ACC shall be composed of three (3) individuals of the Declarant's choosing who may or may not be lot owners. A majority of the ACC may designate a representative to act for it. In case of a vacancy on the ACC which remains unfilled by Declarant, the remaining members shall have full authority to designate a successor. The members of the ACC and its designated representatives shall be entitled to compensation for services performed pursuant to this Declaration. All owners and prospective owners of lots in Foothill Park subdivision shall hold members of the ACC harmless of any action taken by the ACC for and in behalf of the lot owner and the Declarant when acting in their capacity as a member of the ACC. Individual members of the ACC assumes no personal liability for actions taken by the ACC as a whole. Unless previously relinquished by Declarant, the then record owners of at least two-thirds (2/3) of the lots within the subdivision shall have the power, through a duly recorded written instrument, to alter the membership of the ACC and any its powers and duties.

The initial members of the ACC shall be composed of the following individuals who shall serve until they are removed or replaced:

Gary Brinton
 Charles Hanna
 Debbie Hooge

3.2 Procedures. All plans, specifications and plot plans, and a statement of architectural intent, including exterior material and color selections, must be submitted to the ACC in duplicate and be accompanied by a written request for approval. Until Declarant relinquishes its right to choose members of the ACC, the address for submittals to the ACC pursuant to this Declaration shall be 80 North 850 East, Lehi, Utah 84043. The ACC's approval or disapproval shall be in writing and returned to the one making submission, together with a notation of approval, disapproval and/or corrections and modifications and the date thereof affixed to one copy of such plans and specifications. In the event the ACC fails to approve or disapprove such plans and specifications within thirty (30) days after the same have been submitted to it, then the plans shall be deemed approved. By approval of such plans neither the ACC nor the Declarant assumes any obligation as to the build-ability thereof or the suitability of the land for placement of full basements.

ARTICLE IV- DETENTION BASIN

4.1 Detention Basin - Changes. Any changes to the Detention Basin and structures, including change of use or modifications to Common Areas in or around the Detention Basin structure, proposed plans are to be submitted to the City for preapproval. Approval from the City will be needed prior to the change of use or the proposed modification of these Common Areas.

4.2 Detention Basin - Maintenance. The Detention Basins hydraulic related features will be the responsibility of the City to maintain. All other non hydraulic Detention Basin system, drainage ways, channels and related features including landscaping will be the responsibility of the Foothill Park Home Owners Association to maintain.

4.3 Detention Basin – Access. The City is to be granted access to all Common Area in and around the Detention Basin and other City storm drainage related features for the purpose of maintenance.

ARTICLE V- GENERAL PROVISIONS

5.1 Enforcement. Enforcement of the provisions of this Declaration shall be by proceedings at law or in equity to restrain violation and/or to recover damages against any person or persons violating or attempting to violate any of the provisions contained within this Declaration. The ACC or any of the lot owners shall have the right, but not the obligation, of enforcement and described in this Section 4.1.

5.2 Term. The provisions of this Declaration shall run with the land for a period of twenty-five (25) years from the date of its recording and shall be renewed and automatically continue thereafter for successive periods of ten (10) years each, unless at any time an amendment to or revisions of this Declaration is executed and recorded pursuant to Section 4.3, below, as defined therein.

5.3 Amendment. This Declaration may be amended in whole or in part by a written instrument executed by the then record owners of two-thirds (2/3) of the lots within the Subdivision and upon recording the same with the Recorder of Utah County, Utah. The written consent of Provo City Department of Community Development shall be required to amend this Declaration.


5.4 Nuisances No noxious or offensive activity will 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, including any violation of Section 2.7, above. No lot shall be used or maintained as a dumping ground for rubbish or debris. Owners of vacant lots shall keep their lots free and clear of weeds or debris. No structures of a temporary nature nor any trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any lot at any time as a residence either temporarily or permanently. Each lot owner shall be responsible for maintaining the sidewalk, curb and gutter in front of each lot and will repair any damage thereto related to construction or otherwise. No owner contractor shall leave building or landscaping materials within the road right-of-way (including sidewalks) for any prolonged period of time.

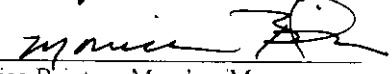
5.5 Interpretation In interpreting the provisions hereof as they pertain to municipal zoning or subdivision ordinances, if there are any discrepancies with the Provo City zoning and subdivision ordinances, as amended from time to time, then the Provo city zoning and subdivision ordinances shall control such interpretation, including the meaning of any terms or definitions used herein.

5.6 Covenants to Run with Land. This Declarations and all the provisions hereof are declared to be and shall constitute covenants which run with the land, or equitable servitudes, as the case may be, and shall be binding upon and inure to the benefit of Declarant and any and all parties who have acquired or who shall hereafter acquire any interest in a lot, their respective grantees, transferees, mortgagees, tenants, heirs, devisees, personal representatives, successors and assigns. Each present and future owner, mortgagee, tenant or occupant of a lot or dwelling shall be subject to and shall comply with the provisions of the Declaration. Each party acquiring any interest in a lot or dwelling thereby consents to and agrees to be bound by all of the provisions in this Declaration.

IN WITNESS WHEREOF, Declarant executes this Declaration as of the day and year first above written and further attests that Declarant is the record owner of lots within the Subdivision excess of two-third (2/3) of the total thereof.

FOOTHILL PARK, L.C.

By: 
Gary R. Brinton, Member/Manager

By: 
Monica Brinton, Member/Manager

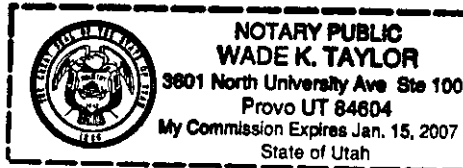
STATE OF UTAH)

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COUNTY OF UTAH)

On this 15th SEPTEMBER day of ~~July~~, 2003, personally appeared before me, Gary R. Brinton and Monica Brinton who, being by me duly sworn, did say that they executed the within instrument on behalf of FOOTHILL PARK, L.C. in the capacities indicated.

Wade K. Taylor
NOTARY PUBLIC



[Handwritten mark]