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DECLARATION



\*W1949739\*

PROTECTIVE COVENANTS

BURCH CREEK HEIGHTS PHASE 4

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E# 1949739 BK2389 PG920  
DOUG CROFTS, WEBER COUNTY RECORDER  
20-JUN-03 159 PM FEE \$24.00 DEP SGC  
REC FOR: R.C.HUNTER.ENTERPRISES

DECLARATION

DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS, AND EASEMENTS  
AFFECTING PROPERTY OF  
BURCH CREEK HEIGHTS PHASE 4  
WEBER COUNTY, STATE OF UTAH

THIS DECLARATION, by R. C. HUNTER ENTERPRISES, INC., hereinafter referred to as "DECLARANT".

WITNESSETH:

WHEREAS, DECLARANT is legal and beneficial owner of real property described in Article I of this declaration and is desirous of subjecting said real property to the restrictions, covenants, reservations, and easements hereinafter set forth:

NOW THEREFORE, DECLARANT hereby declares that the property described in and referred to in Article I hereof is held and shall be held, sold, conveyed, leased, occupied, resided upon, hypothecated, and mortgaged subject to the following agreements, restrictions, conditions, and covenants between themselves and the several owners and purchasers of said property and their heirs, successors, and assigns.

THEREFORE, all of said restrictions, conditions, covenants and agreements contained herein are made for the direct, mutual, and reciprocal benefit of each and create mutual and equitable servitude upon each of said lots in favor of every other lot created on the aforesaid and to create reciprocal rights and obligations between the respective owners of all of the lots so created, and to create a privity of contract and estate between the grantor and the grantees of said lots their heirs, successors, and assigns, as to each said lot, and to operate as covenants running with the land for the benefit of all other lots, as follows:

ARTICLE I  
PROPERTY DESCRIPTION

The property referred to above and hereinafter is located in South Ogden City, Weber County, State of Utah, and is more particularly described as follows, to wit:

BURCH CREEK HEIGHTS PHASE 4  
SOUTH OGDEN CITY  
WEBER COUNTY, STATE OF UTAH

07-624-0001 TO 0013  
07-625-0001 TO 0012

No property other than that described herein shall be deemed subject to this Declaration unless and until specifically made subject thereto.

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ARTICLE II  
ARCHITECTURAL CONTROL COMMITTEE

1. **MEMBERSHIP.** The architectural Control Committee is composed of Roscoe C. Hunter, Brad C. Hunter and Diana H. Childs. A majority of the Committee may designate a representative to act for it. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The Committee shall be composed of at least three (3) members at all times and may release and appoint new members to said Committee with majority approval.

2. **TERM.** The Committee shall remain in existence until such time as all of the lots in said subdivision are built upon.

3. **FUNCTION.** The function of said Committee shall be to pass upon, approve, or reject any plans or specifications for structures to be erected on lots in said tract, so that all structures conform to the restrictions and general plans of the Declarant for the improvement and development of the whole tract. Nothing in this paragraph shall be construed as authorizing or empowering the Committee to change or waive any restriction(s) set forth in this Declaration, except as herein specifically provided.

No building shall be placed or altered on any lot until the construction plans, and plot plan of the proposed structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design 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, unless similarly approved.

4. **PROCEDURE.** The Committee's disapproval shall be in writing. In the event the Committee or its designated representative shall fail to approve or disapprove within thirty (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.

5. **ENFORCEMENT.** Enforcement shall be affected by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either by restraining the violation or recovery of damages. Either the Architectural Control Committee or any property owner affected by any violation of these covenants is hereby authorized and empowered by bring such action.

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ARTICLE III  
IMPROVEMENTS

1. **TYPE OF STRUCTURE.** All lots shall be used only for single family dwellings and residential purposes. Any one-story residence shall contain not less than 1700 square feet of living area, exclusive of porches, garages, and patios. Any two-story residence shall contain not less than 1400 square feet of living area on the ground level, with the second level no less than 1000 square feet of living area, unless otherwise approved by the Architectural Control Committee. All dwellings must have private garages for not more than 4 vehicles and not less than 2 vehicles. **NO CARPORTS.** No temporary structures, barns, basements, trailers, or other out buildings shall be permitted. All construction must be done on site, (pre-fabricated homes are not permitted) by a duly licensed general contractor, unless otherwise approved by the Architectural Control Committee.

2. **LANDSCAPING.** All family dwellings are to be landscaped totally within two (2) years after construction begins.

3. **BUILDING LOCATION.** All single family dwellings shall be located on the lot in a way as to comply with appropriate zoning or ordinances pertaining to the area and conform with the "setback" line established by the City/Zoning Ordinances.

ARTICLE IV  
RESTRICTIONS

The use, development, ownership, transfer, and hypothecation of all lots and land within the property described in Article I hereof shall be subject to the following restrictions:

1. **PRIVATE RESIDENCE.** Said premise shall be used for private residence purpose only, except as hereinafter set forth. No structure of any kind shall be erected, placed or altered on any lot until the construction plans and specifications hereof have been approved by the Architectural Control Committee as detailed above. All buildings shall be completed within a period of one (1) year from the date said building was started and within two (2) years from the sale of the lot.

2. **BUILDING EXTERIORS.** All building exteriors must be constructed with a minimum of the following material. **FRONT, SIDES, and REAR:** 50% brick, stone or glass. The remaining percentages of the Front, Sides, and Rear exterior material must be approved by the Architectural Control Committee. **ALUMINUM OR VINYL SIDING WILL NOT BE ALLOWED.**

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3. **GARBAGE AND REFUSE DISPOSAL.** No lots shall be used for or maintained as a dumping ground for rubbish, trash, vegetation clippings, or other waste. Any containers or equipment commonly used for storage and disposal of such disposal shall be kept in a clean and sanitary condition. Each lot and its abutting street shall be kept free of trash, weeds and refuse by the property owner at the owner's expense. If in the opinion of the Architectural Control Committee, the property owner is not maintaining, otherwise allowing the property to become unsightly or is maintaining objects of trash and rubbish or other materials which in the opinion of the Architectural Control Committee are degrading the value of the surrounding property, then such materials shall be removed and kept out of the view of the general public at lot owners expense.

4. **AUDIO AND VISUAL.** No audio or visual equipment, such as TV, radio, or communication antennas will be permitted or placed on any structure where they are in view of the public. No satellite receiving dishes will be allowed on any front or side yards. Any and all such equipment will only be permitted in back yard areas.

5. **SIGNS.** No signs of any kind shall be displayed for public view on any lot or structure except to advertise the property for sale, or by the builder during construction to advertise the construction side and identify the builder.

6. **RECREATIONAL VEHICLES.** No recreational vehicles, such as boats, mobile homes, snowmobiles, trailers of any kind, motorcycles, or related equipment, shall be parked or stored on any lot or front street to a lot, for more than forty-eight (48) hours in any (7) day period, unless stored inside a garage or related structure approved by the Architectural Control Committee, out of public view.

7. **PROHIBITED VEHICLES.** No commercial vehicles, school buses, trucks with more than (6) tires and trucks heavier than one ton, shall be parked or stored on any lot or front street to a lot, except during construction period and or delivery and repair services. Mechanical work on vehicles is not allowed in front yards, or side yards unless screened from the street.

8. **PETS, ANIMALS, ETC.** Only domestic household pets, such as dogs, or cats, not to exceed two (2) in number, may be kept located or maintained on any lot. No livestock, poultry or fowl shall be kept on any lot, nor shall such be raised, bred, or otherwise maintained for any commercial purpose.

9. **LANDSCAPING.** All lots shall be fully landscaped as previously approved by the Architectural Control Committee and must be kept, maintained and developed in such a fashion as to enhance the esthetic value of the area and so as to not become a nuisance or otherwise detract from surrounding land owners. All trees, lawns, shrubs, fencing or any other permanent structure or planted material installed by the owner, shall be properly

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nurtured and maintained or replaced as necessary at the owners expense. All lot areas must be landscaped and be clear of any unsightly material such as weeds, discarded building materials, etc. within one year after final inspection for occupancy has taken place by the applicable City Inspector, and must be so maintained year round.

10. **ROOFING.** Allowable roofing material shall be as follows: Wood, Tile, Concrete or Asphalt. NOTE: Asphalt shingles shall be of an ARCHITECTURAL grade and design with a minimum of 25 YEAR warranty. The Architectural Control Committee must approve all roofing material and color. ROOF PITCH MUST BE AT LEAST 5/12.

11. **NUISANCES.** No obnoxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or surrounding neighbors. No clotheslines or drying yard shall be permitted unless approved by the Architectural Control Committee. Window mounted air conditioning units will NOT be allowed. No weeds, underbrush, or other unsightly growths shall be permitted to grow or remain upon the premises, and no refuse pile or unsightly objects shall be allowed to be placed or suffer to remain anywhere thereon. No automobiles, trailers, or other vehicles are to be stored on the streets, or front, side or back of the lots unless they are in running condition, properly licensed, and are being regularly used. No oil or mining operations of any kind or sort will be allowed on or in any lot or structure. No related equipment will be allowed on or in any lot or streets fronting lots on a permanent basis. No lot or public street shall be used for storage of backhoes, trucks, caterpillars, or trailers used relative thereto, or any other equipment used in heavy excavation or construction. In the event that any owner of any property in the subdivision shall fail or refuse to keep such premises free from weeds, underbrush, or refuse piles or other unsightly growths or objects, then the Architectural Control Committee or its designs may enter upon such lands and remove the nuisance at the expense of the owner and such entrance shall not be deemed a trespass and in the event of such removal a lien shall arise and be created in favor of the Architectural Control Committee and against such lot for the full amount chargeable to such lot and such amount shall be due and payable within thirty (30) days after the owner is billed therefor.

12. **FENCING.** No fence or other similar structure shall be erected in any required front yard of a dwelling to a height in excess of three and one-half feet, nor shall any fence or other similar structure be erected in any side or rear yard in excess of six feet. Any fence or other similar structure erected on a corner lot shall not exceed three and one-half feet when it borders a street or front yard of an adjoining lot. All fences require a building permit from City.

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13. **WATER DISCHARGE.** Persons owning, occupying, or having control of any premises, shall not permit irrigation, or water from the roof or eaves of any house, building or other structure or from any source under the control of such person, to be discharged and spread upon the surface of any sidewalk, street or adjoining lot. This is intended to require that the owner maintain water on his property.

14. **SETBACK EASEMENTS.** Side yard pads used for the storage of vehicles or other material, either temporarily or permanently, shall be constructed within the side or back yard and screened from view from the street.

ARTICLE V  
GENERAL PROVISIONS

1. **REMEDIES FOR VIOLATIONS/ENFORCEMENT.** For a violation or a breach of any of these reservations, covenants, and restrictions by any person, or by virtue of any judicial proceedings, the subdivider, Architectural Control Committee and the lot owners, or any of them severally, shall have the right to proceed at law or in equity to compel in compliance with the terms hereof or to prevent the violation or breach of any of the covenants or restrictions contained herein. In addition to the foregoing right, the subdivider or Architectural Control Committee shall have the right, whenever there shall have been built on any lot any structure which is in violation of these restrictions, to enter upon the property where such violation of these restrictions exists, and summarily abate or remove the same at the expense of the owner, and any such entry and abatement or removal shall not be deemed a trespass. The failure promptly to enforce any of the reservations, restrictions or covenants contained herein shall not bar their enforcement. Should the owner fail, neglect, or refuse to satisfy and discharge any lien arising hereunder within thirty (30) days, the subdivider or the Architectural Control Committee, its successors and assigns, shall have the right to interest on such liens at the rate of twelve percent (12%) per annum and shall be entitled to receive all costs of collection including a reasonable attorney's fee.

2. **EASEMENTS.** Easements for installation and maintenance of utilities and drainage facilities are reserved, as shown on the recorded plats of the subdivision. No structure, planting or other material shall be placed or permitted to remain in such a way as to damage, or interfere with the installation and or maintenance of easements for utilities and drainage facilities.

3. **BINDING EFFECT/TERM.** These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded, after which time, said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument

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signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part. At any time prior to the end of the first thirty year period, a majority of seventy-five (75%) of all lot owners may agree to alter, amend, abolish or otherwise change these covenants, by doing so in writing and filing the same with the County Recorders Office.

4. **RE-SUBDIVISION.** None of the said lots may be re-subdivided, unless approved in writing by the Architectural Control Committee and one half of the lot owners.

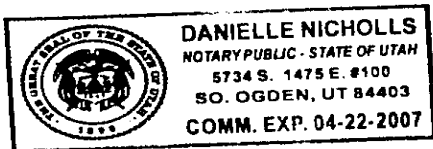
5. **SEVERABILITY.** It is expressly agreed that in the event any covenant, condition or restriction herein before contained or any portion thereof is held invalid or void by a court of competent jurisdiction, such invalidity or voidance shall in no way effect any valid covenant, condition, or restriction and such void or invalid term shall be severed from this document and the remainder shall remain in full force and effect.

6. **ACCEPTANCE OF RESTRICTIONS.** All purchases of property described above, by acceptance of contracts or deeds for any lots or any portion thereof, which are included in this document, shall be conclusively deemed to have consented and agreed to all restrictions, conditions, covenants and agreements set forth herein.

R.C. Hunter Enterprises, Inc.

By: *Brad C. Hunter*  
Brad C. Hunter  
President

On the 20th day of June, 2003, personally appeared before me, Brad C. Hunter, who being duly sworn, did say that he is the President of R.C. Hunter Enterprises, Inc., and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and the said Brad C. Hunter acknowledged to me that said corporation executed the same.



*Danielle Nicholls*  
my comm expires: 4/22/2007  
residing at: South Ogden