

Lanning Porter  
1970 E. Fulton Street Cir.  
Salt Lake City 84102

03-155-0001, 0052  
03-236-0001 TARD 0017

Ent 199052 Bk 888 Pg 694  
Date 9-Apr-2004 1:40PM Fee \$28.00  
LuAnn Adams - Filed By mm  
Box Elder Co., UT  
For LANNING PORTER

28

### **Declaration of Protective Covenants, Conditions, and Restrictions for the *Pointe Perry* project.**

**WHEREAS**, Pointe Perry, LLC, a Utah Limited Liability Company, is the Declarant and recorded owner or heir of the property described in the attached legal description (see attachment 1).

**WHEREAS**, Declarant desires to create thereon a commercial development to afford each landowner and tenant a compatible structural and landscape theme for a respective common interest.

**WHEREAS**, Declarant desires to insure the values and amenities in the development, prevent any future impairment thereof, provide for the maintenance of any common areas, and subject all the real property to the covenants, restrictions, conditions, easements, charges, and liens hereinafter set forth, each of which is for the benefit of each property and each owner or tenant thereof.

**WHEREAS**, Declarant deems it appropriate for the efficient preservation of the value and amenities in the development to create a separate association, of which all land owners shall be members, to transfer and assign all the powers and duties of enforcing, maintaining and administering the covenants and restrictions contained herein. After the recording of these protective covenants Pointe Perry, LLC shall create a separate entity, to be initially entitled Pointe Perry Property Association LLC, (hereinafter Association). As soon thereafter as Pointe Perry, LLC shall solely determine, Pointe Perry, LLC shall further assign to that Association all its right under the terms of these protective covenants. Pointe Perry, LLC shall also create an Architectural Control Committee, (hereinafter ACC), for the purpose of reviewing building and site plans, architectural style, color, materials, etc. The ACC will have the sole right to approve or disapprove build, site, sign, and landscape plans which do not conform to the spirit and intent of these CC&Rs.

**NOW, THEREFORE**, Pointe Perry, LLC hereby declares that all of the property described above (may at times herein referred to as lands, lots, tracts, subdivision, or property) shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved, subject to the following limitations, restrictions and covenants, all of which are declared and agreed to be in furtherance of the plan for the mixed use development, improvement, and sale of the lands and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the lands and every part thereof. All of the limitations, restrictions and covenants shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the described lands or any part thereof.

## 1.A. Commercial Area Covenants

A-1. Land Use and Building Type. No lot shall be used except for commercial purposes. All buildings erected, altered, placed or permitted to remain on any lot shall be maintained in its appearance so as not to detract from the visual attractiveness of the development. No building shall be used for any purpose that creates an unsafe or unsightly nuisance to the neighboring buildings within the development.

A-2. Building Size. All building structures shall be sized in balance with the master plan. Buildings must be sized according to their allotted parking requirements as determined by the ACC and Perry City requirements..

A-3. Quality and Structure Material. All structures on any lot shall be built of substantially new materials. No used structures shall be relocated or placed on any lot except as may be approved by the ACC for the purpose of enhancing the *Outdoors theme* of the park. Front elevations of each building must contain not less than 30% brick, stucco, wood, or stone. The ACC must approve all hard and soft materials. Doors and windows are excluded from the percentage calculations. Roofing materials must be approved by the ACC. No building or structure of a temporary nature: trailer, garage, container, or other out-building shall be erected or maintained on any lot at any time except for purposes of construction. Furthermore, no permanent building shall be permitted on any lot unless erected on a solid foundation of concrete or rock. Parking lots and driveways shall be constructed of concrete, brick, stone, blacktop, or other suitable surfaces as may be approved by the ACC. Each lot owner or assigned tenant shall be responsible for the construction and maintenance of prescribed private sidewalks and accompanying lighting within that owner's lot.

A-4. Continuity of Construction. All structures must be completed insofar as the exterior finish is concerned within twenty-four (24) months from the date of the issuance of the building permit. All improvements commenced on the lot shall be prosecuted diligently to completion and shall be completed within twenty-four (24) months of commencement, unless an exception is granted by the ACC in writing. If an improvement is commenced and construction is then abandoned for more than ninety days or if construction is not completed within the required period, then after notice a fine of not less than \$100 dollars per day shall be imposed as a lien against the lot. The owner and successors agree that the Association may record such a lien against the property.

A-5. Easements. Easements for installation and maintenance of utilities, roads, public landscape or parking, signage, and drainage facilities are reserved as noted 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 easement purposes mentioned here. All easements shall be maintained by the owner of the lot through which the easement

passes; except for those improvements, if any, for which a public authority, utility company, or the Association is responsible. Roads as approved by Perry City will be dedicated.

A-6. Signs. Sign shall be in accordance with city ordinances. All signage shall be professionally constructed so as not distract from the general attractiveness of the development. No signage shall exceed 40 feet in height. To the greatest extent possible, signage lighting shall be constructed and directed in such a way as to minimize indirect impacts to migratory birds. No sign shall be placed in a position that unreasonably or negatively impacts the adjacent property owners or the adjacent bird refuge. Signs may be professionally attached to certain buildings only upon the consent of the building's owner and upon approval of the ACC. Signage attached to a building must not be removed without restorative repair to the wall from where the sign was taken. Temporary signs, banners, political advertising, etc., must be approved in writing by the Association and may not remain on any building or site for more than 30 days. The Association must approve any exceptions for temporary signage in writing. The developer may construct "park entry signs" at the development's entrance areas or in other areas as may be chosen by the developer. Such advertising space may be leased to members of the Association.

A-7. Nuisances. No noxious or offensive activity, including disturbing noises, offensive odors, or unsightly accumulations, shall exist or be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to adjacent property owners.

A-8. Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish or debris. Trash, garbage or other waste shall be kept in sanitary rodent/scavenger proof containers that prevent the attraction, concentration, and access of predatory animals. All containers used for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Containers shall be placed within a three-wall compound with gate, where such walls shall be constructed of brick, stucco, wood, or stone, matching the building it serves. During construction, excess building materials and debris shall not be permitted to accumulate.

A-9. Construction and Maintenance of Lots, Parking, and Sidewalks. Each lot owner or its assigned tenant shall be responsible for the construction and maintenance of all parking areas, buffers and sidewalks within that lot; except as may be determined otherwise by the ACC. All lots, whether improved or unimproved, must be kept free of rubbish, weeds, trash and debris of any kind and must be maintained in such manner as to not detract from the development Pointe Perry as a whole. Buffers immediately between a private landowner and the Bird Refuge must be maintained by the owner in accordance with guidelines established by the Army Corps of Engineers. Unsightly potholes, accumulations

of gravel, broken curbs, etc, upon private land must be repaired or cleaned by the owner or tenant in a timely manner.

A-10. Public vs. Private parking. All lot owners shall agree to make portions of their parking lots available for public use according to the master plan. No lots shall restrict public access at any time or on any day, except as is required to maintain private business needs. Any exceptions to this policy must be granted by the ACC.

A-11. Landscaping. All landscape plans must be approved by the ACC. All landscaping within Pointe Perry shall be in harmony with its master plan. All site plans must include a detailed landscape plan, including types and quantities of all trees and bushes. Each building lot owner shall consult with the lead landscape architect for Pointe Perry as designated by the Developer, and shall work with him in good faith to accomplish the objectives of the project in creating a landscape harmony throughout the development. The owner of each lot shall be required to substantially complete all his intended landscaping within eight (8) months after completion of the building. Grass, trees, flowers, water features, and other landscaping must be diligently maintained, avoiding dryness, overgrowth, noxious weeds, and unsafe or uncomely conditions of any kind. Each property owner shall be solely responsible for the maintenance of their lot, unless otherwise contracted to the Association or one of its assigned maintenance contractors. Any and all designated wetland areas are to be protected and maintained according to law. The Association shall maintain all common areas of both wetlands and uplands through an annual, quarterly, or monthly assessment of fees from each property owner. Such maintenance fees shall run with the land.

A-12. Exterior Lighting. All buildings shall incorporate an exterior lighting package that provides for ease of identity of the buildings after sunset and for landscape, parking, pedestrian, and signage needs as may be determined by the property owner and the ACC. Lighting shall be designed to minimize impacts to the adjacent Bear River Migratory Bird Refuge. To reduce scatter, such lighting shall be directed downward and away from the refuge, to the extent possible. Canopy/soffit lighting, other than pole-mounted light, should incorporate ceiling-recessed down lights with baffles to minimize lateral light scatter. Wall mounted or building mounted area lighting fixtures shall not be mounted higher than 12 feet above grade directly below the fixture. Pole mounted area symmetrical and asymmetrical lighting shall not be mounted more than 16 feet above grade directly below the fixture. All pathway/walkway lighting shall not be mounded more than 10 feet above grade directly below the fixture. Entrance roadway lighting mounted on poles shall not exceed 25 feet in height.

A-13. Architectural Control. No buildings, walls, fences, signs, or landscaping shall be implemented or erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location and detail of the proposed

structure or landscape on the lot are approved by the ACC and the Perry City Planning Commission.

A-14. Public Access. All common areas shall be open to the public unless otherwise determined by the Association and/or the ACC.

A-15. Shared parking. Areas designated as shared parking shall be unrestricted unless otherwise approved in writing by the Association.

A-16. Common Area Maintenance. All common area landscaping, including wetlands, within Pointe Perry shall be maintained by a service contract to be implemented by the Developer or the Association. Such maintenance shall be funded through a common area maintenance fee assessed to each property owner or their tenant, according to their pro rata share of the development.

A-17. Fences. No fence shall be erected without prior approval from the ACC. Privately owned property and common area property contiguous to the Bear River Migratory Bird Refuge shall have installed a border fence that minimizes animal trespass between the project and the refuge.

B. Architectural Control Committee

B-1. Membership. The ACC shall be composed of at least three members. Initially, that committee shall be composed of Roland N. (Rollie) Walker, Lorin Walker, and a person that the two of them shall unanimously subsequently agree on. In the event that any member ceases to serve, then a member of the Association in this park shall replace him or her. A majority of the ACC may designate a representative to act for it. In case of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor, consistent with the membership requirements. Neither the members of the ACC nor its designated representative shall be entitled to compensation for the services performed pursuant to the Declaration.

B-2. Procedure. All plans and specifications submitted to the ACC must be submitted in triplicate and accompanied by a written request for approval. The committee's approval or disapproval shall be in writing and returned to the one making submission with a copy to Perry City, together with a notation of approval or disapproval and the date thereof affixed to one copy of such plans and specifications. In the event the ACC, or its designated representative, fails to approve or disapprove such plans and specifications within thirty (30) days after the same have been submitted to it, or in any event if no suit to enjoin the construction has been commenced before completion thereof, approval will not be required and the related covenants herein shall be deemed to have been complied with in full.

B-3. Variances. The ACC shall have the option of permitting variances to the building, structures, signage, and landscaping, most particularly where size and shape of lot or topography make strict application of the restrictions impractical or difficult. The prime concern of the ACC will be that designs, exterior finishes, and location harmonize with and compliment the Pointe Perry Outdoor Theme to the fullest extent practicable. Request for variances shall be made to the ACC in writing, and the ACC's decision shall be made within thirty (30) days of the request. The Perry City Planning Commission must approve proposed variances to city-approved items.

B-4. Finality. ACC and Perry City decisions shall be final and binding upon all parties concerned.

B-5. Non-Liability of Committee Members. Neither the ACC nor any member thereof shall be liable to the association, or to any owner for any loss, damage or injury arising out of or in any way connected with the performance of the committee's duties hereunder, unless due to willful misconduct or bad faith. The ACC shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration, or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the above described area known as Pointe Perry. The ACC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes, signage designs and placement, and similar features. The ACC approval processes shall not be deemed as approval for structural safety or conformance with building codes or any other local, state, or federal building requirements.

B-6. Non-Liability of Declarant. Declarant nor its assigns shall be liable for any damages or consequences resulting from the nature of the land, wind, fire, earthquakes, floods, or other past, present or future acts of nature.

1. C. General Provisions

C-1. 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 fifteen (15) years from the date of recordation of the Declaration, after which time the covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument in writing signed by a majority of the then owners of the lots within the park has been recorded, agreeing to change the covenants in whole or in part.

C-2. Amendment. Except as otherwise provided in Paragraph C-1, above, this Declaration can be amended at any time by a recorded writing executed by a majority of the members in the Association or by the Developer in coordination with the Perry City Planning Commission as approved by the Perry City Council until such Association is formed.

C-3. Enforcement. Enforcement shall be by proceedings at law or in equity either to restrain violation or to recover damages against any person or persons violating or attempting to violate any of the covenants contained within this Declaration. The ACC and the Association have no implied duty for such enforcement as such covenants are running with the land. Any court proceedings shall take place in the state of Utah.

C-4. Conflict and Severability. In the event any of the provisions of this Declaration are in conflict with the then existing zoning or building ordinances or codes of Box Elder County, the City of Perry, or the statutes of the State of Utah or the United States of America, such ordinances, codes, or statutes shall control. Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect. No purchaser or owner of any parcel shall convey his interest under this Declaration or in the Association, and no member of the Association shall convey, transfer, sell, assign or otherwise dispose of his or her membership rights in the Association, without at the same time conveying, selling and transferring his or her interest in the parcel to which his or her membership attaches, and the membership shall be transferred only to a new owner or purchaser of the parcel to which membership is attached.

C-5. Consent to Recordation of Plat. At any time or from time to time upon the request of Declarant, each owner shall consent in writing to the recordation of a plat for the Property, and hereby irrevocably constitutes Declarant as his attorney-in-fact (which power of attorney shall be deemed coupled with an interest) for purposes of executing such plats on behalf of each owner, provided that such plat shall not change the location or boundaries of any owner's parcel or the roadway, and that each Parcel thereon satisfies the minimum acreage requirement set forth herein. Such a plat may, however, extend the roadway. The plat must be recorded prior to the sale of any lot. No changes to the recorded plat may be made without approval of the Perry City Planning Commission and the Perry City Council.

C-6. Not a Public Dedication. Approved city roads shall be dedicated to the public. Otherwise, nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public purposes whatsoever, it being the intention of the Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

C-7. Attorney's Fees. In the event that any party hereof brings or commences legal proceedings to enforce any of the terms of the Declaration against any other party with an interest in the Property, the successful party in such action shall then be entitled to receive and shall receive from the defaulting party or parties a reasonable sum as attorney's fees and cost, to be fixed by the court in the same act.

Date: 4/08/04, 2004

Pointe Perry, LLC

By: 

A manager

ACKNOWLEDGEMENT BY LIMITED LIABILITY COMPANY

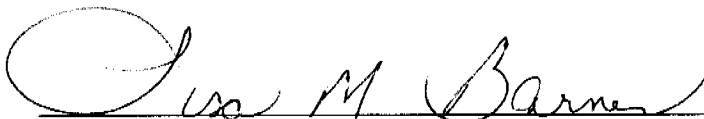
STATE OF ~~UTAH~~ Idaho )

:SS

County of ~~Box Elder~~ Jefferson

On this 8<sup>th</sup> day of April, 2004 before me the undersigned, a notary public in and for the State of Utah, personally appeared Roland N. Walker, known or identified to me to be one of the managers in the Limited Liability Company of Pointe Perry, LLC., and acknowledged to me that he executed the same in the name of the limited liability company.

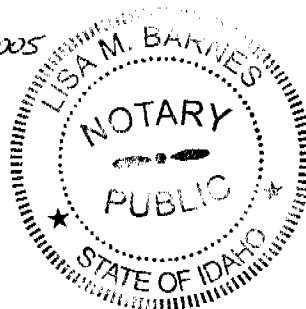
IN WITNESS WHEREOF, I have hereunto set my hand the day and year first above written.



NOTARY PUBLIC FOR BOX ELDER COUNTY

Residing at: Hamer, Idaho

Commission Expires: 6-10-2005





January 23, 2004

## Overall Boundary Description Pointe Perry Subdivision

A PART OF SECTION 27 AND THE NORTH HALF OF SECTION 34, TOWNSHIP 9 NORTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN, U.S. SURVEY:

BEGINNING AT A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE 15 LOCATED NORTH 89°30'33" EAST 2768.15 FEET ALONG THE NORTH LINE OF SAID SECTION 27 AND SOUTH 00°00'00" WEST 1365.66 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 27; RUNNING THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING FOUR COURSES: (1) TO THE RIGHT ALONG THE ARC OF A 5609.58 FOOT RADIUS CURVE, A DISTANCE OF 140.55 FEET, CHORD BEARS SOUTH 11°31'46" EAST 140.54 FEET; (2) SOUTH 04°03'25" EAST 646.38 FEET; (3) TO THE RIGHT ALONG THE ARC OF A 1095.92 FOOT RADIUS CURVE A DISTANCE OF 346.00 FEET, CHORD BEARS SOUTH 04°59'14" WEST 344.57 FEET; (4) SOUTH 14°01'54" WEST 122.00 FEET; THENCE NORTH 90°00'00" WEST 98.00 FEET; THENCE SOUTH 00°00'00" WEST 161.74 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE 15 AND OF A FRONTAGE ROAD; THENCE SOUTH 14°01'53" WEST 440.07 FEET ALONG THE SAID WESTERLY RIGHT-OF-WAY LINE TO THE INTERSECTION OF SAID WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE 15 AND THE WESTERLY RIGHT-OF-WAY LINE OF THE OLD CENTRAL PACIFIC RAILROAD, SAID POINT BEING LOCATED NORTH 00°31'01" EAST 2033.89 FEET ALONG THE EAST LINE OF SAID SECTION 27 AND NORTH 90°00'00" WEST 2735.58 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 27; THENCE CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF SAID FRONTAGE ROAD THE FOLLOWING FOUR (4) COURSES: (1) SOUTH 14°01'53" WEST 116.50 FEET; (2) TO THE RIGHT ALONG THE ARC OF A 77.46 FOOT RADIUS CURVE, A DISTANCE OF 93.70 FEET. CHORD BEARS SOUTH 48°15'17" WEST 88.09 FEET; (3) SOUTH 81°28'31" WEST 29.90 FEET; (4) TO THE LEFT ALONG THE ARC OF A 528.00 FOOT RADIUS CURVE, A DISTANCE OF 319.71 FEET, CHORD BEARS SOUTH 64°07'42" WEST 314.85 FEET; THENCE SOUTH 11°14'51" WEST 75.76 FEET; THENCE SOUTH 37°01'22" EAST 30.78 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SAID FRONTAGE ROAD; THENCE NORTH 87°26'42" EAST 107.70 FEET; THENCE SOUTH 85°44'49" EAST 303.02 FEET; THENCE SOUTH 02°33'13" EAST 1012.52 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF SAID FRONTAGE ROAD; THENCE NORTH 69°33'22" WEST 110.89 FEET TO THE WESTERLY RIGHT-OF-WAY LINE; THENCE ALONG SAID RIGHT OF WAY LINE THE FOLLOWING FOUR (4) COURSES: (1) TO THE RIGHT ALONG THE ARC OF A 807.00 FOOT RADIUS CURVE, A DISTANCE OF 550.19 FEET, CHORD BEARS SOUTH 13°52' 22" EAST 539.59 FEET; (2) SOUTH 05°23'16" WEST 17.75 FEET; (3) SOUTH 84°20'38" EAST 27.45 FEET; (4) SOUTH 03°54'27" WEST 1353.41 FEET; THENCE NORTH 86°55'59" WEST 191.77 FEET; THENCE NORTH 87°44'25" WEST 552.57 FEET; THENCE NORTH 00°25'24" EAST 256.37 FEET; THENCE NORTH 58°54'38" EAST 421.00 FEET; THENCE NORTH 24°34'10" WEST 332.32 FEET; THENCE NORTH 89°34'26" WEST 80.00 FEET; THENCE NORTH 00°25'24" EAST 132.00 FEET; THENCE NORTH 68°43'59" WEST 611.00 FEET; THENCE NORTH 06°27'19" WEST 110.71 FEET; THENCE NORTH 08°35'29" EAST 180.53 FEET; THENCE NORTH 16°06'19" WEST 291.65 FEET; THENCE SOUTH 88°09'05" WEST 64.34 FEET; THENCE NORTH 43°00'35" WEST 42.58 FEET; THENCE NORTH 04°53'47" EAST 72.91 FEET; THENCE NORTH 44°59'05" WEST 149.66 FEET; THENCE NORTH 09°07'31" WEST 117.72 FEET; THENCE NORTH 19°00'20" WEST 172.57 FEET TO AN EXISTING FENCE LINE BEING THE PREVIOUS GRANTORS PROPERTY LINE; THENCE SOUTH 87°15'35" EAST 262.49 FEET ALONG SAID FENCE; THENCE NORTH 13°25'58" WEST 330.73 FEET; THENCE NORTH 19°38'32" WEST 414.60

FEET; THENCE NORTH 36°58'17" WEST 365.28 FEET; THENCE NORTH 45°00'59" EAST 273.97 FEET; THENCE NORTH 87°59'09" EAST 331.13 FEET; THENCE NORTH 85°04'12" EAST 308.60 FEET; THENCE NORTH 29°03'53" EAST 96.56 FEET; THENCE NORTH 80°14'06" EAST 101.31 FEET; THENCE NORTH 10°58'47" EAST 106.26 FEET; THENCE NORTH 09°56'45" EAST 210.20 FEET; THENCE NORTH 88°39'23" EAST 214.80 FEET; THENCE NORTH 01°20'37" WEST 377.37 FEET; THENCE SOUTH 75°41'16" EAST 260.87 FEET; THENCE SOUTH 61°29'01" EAST 62.96 FEET; THENCE NORTH 78°02'05" EAST 170.62 FEET TO A POINT 33.00 FEET WEST OF AND PERPENDICULAR TO THE CENTERLINE OF THE OLD CENTRAL PACIFIC RAILROAD; THENCE PARALLEL TO SAID CENTERLINE TO THE LEFT ALONG THE ARC OF A 5696.58 FOOT RADIUS CURVE A DISTANCE OF 851.25 FEET, CHORD BEARS NORTH 16°14'46" WEST 850.46 FEET; THENCE NORTH 70°06'44" EAST 400.81 FEET TO THE POINT OF BEGINNING.

BASIS OF BEARING: THE SECTION LINE BETWEEN THE SE CORNER OF SECTION 27 TO THE NE CORNER OF SECTION 27, WHICH BEARS N 00°03'23" W.

CONTAINS: 106.70 ACRES.