

KATIE L. DIXON
RECORDER
SALT LAKE COUNTY,
UTAH

JUN 6 1 45 PM '80

3441186

54⁰⁰

McCHESNEY TITLE CO.

\$ REF David Done

DECLARATION OF RESTRICTIVE COVENANTS,
AGREEMENTS, AND CONDITIONS AFFECTING
THE REAL PROPERTY KNOWN AS BENCHMARK
SUBDIVISION

TO WHOM IT MAY CONCERN

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the undersigned is the legal and beneficial owner of a certain tract of land situated in Salt Lake County, State of Utah, described as follows:

All of Lots 1 through 87, inclusive, BENCHMARK SUBDIVISION, according to the official plat thereof, as recorded in the office of the County Recorder of said County.

WHEREAS, the undersigned is about to sell the property described heretofore, which it desires to subject, pursuant to a general plan of improvement, to certain restrictions, conditions, covenants and agreements between the several purchasers of said property themselves as hereinafter set forth:

NOW, THEREFORE, the undersigned declares that the property described heretofore is held and shall be sold, conveyed, leased, occupied, resided upon, hypothecated and held subject to the following restrictions, conditions, covenants and agreements between itself and the several owners and purchasers of said property and between themselves and their heirs, successors and assigns:

1. MUTUAL AND RECIPROCAL BENEFITS, ETC.: All of said restrictions, conditions covenants and agreements shall be made for the direct and mutual and reciprocal benefit of each and every lot created on the above described property and shall be intended to create a mutual and equitable servitude upon each of said lots in favor of each other lot created on the aforesaid property 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 grantees of said lots, their heirs, successors and assigns, and shall, as to the owners of each lot in said tract, their heirs, successors and assigns, operate as covenants running with the land for the benefit of all other lots in said tract.

2. PERSONS BOUND BY THESE RESTRICTIONS AND COVENANTS: All covenants and restrictions herein stated shall run with the land and all owners, purchasers or occupants thereof shall be acceptance of contracts or deeds by conclusively deemed to have consented and agreed with the present and future owners of said land and with his or their successors and assigns to conform to and observe the following covenants, restrictions and stipulations as to the use thereof and construction of residences and improvements thereon for a period from the date hereof to January 1, 2005, at which time said covenants and restrictions shall be automatically extended for successive periods of 10 years, unless, by a vote of a majority of the then owners of said lots, it is agreed to amend or release said covenants in whole in part by an appropriate agreement in writing specifying the restriction(s) amended or released and by filing

BOOK 5108 PAGE 1140

said agreement with the office of the Salt Lake County Recorder. Provided, however, any amendment or release regarding paragraph three shall require a unanimous vote. Notwithstanding the above-described provision for releasing restrictions from the property, the covenants and restrictions contained therein respecting raising or otherwise changing the height of the grade and identified as paragraph 16(D) of these covenants and restrictions shall not be amended or released at any time.

3. LAND USE AND BUILDING TYPE: No lot shall be used except for residential and related purposes. No building shall be erected, altered, or permitted to remain on any lot other than one detached single-family dwelling. And a private garage for not more than three (3) vehicles. No building shall be erected to a height in excess of twenty-five (25) feet, except that at the sole discretion of the Supervising Committee a height of thirty-five (35) feet may be allowed as an exception on certain lots. No dwelling shall be erected to a height less than one (1) full story above grade. The Architectural and Structural Control Committee shall have power to further limit the number of stories and the height of structures as to all lots in its sole and exclusive discretion. Every detached single family dwelling, exclusive of garages and open porches, erected on any one of the above described residential lots shall have a minimum area above the ground of 1,250 square feet for a single level residence and 900 square feet for each floor for a multi-level residence. All construction shall be of new materials except for approved "used brick". Such accessory buildings as are approved by the Architectural and Structural Control Committee may also be permitted.

4. MOVING OF STRUCTURES: No structure of any kind shall be moved from any other place to the property.

5. DILIGENCE IN BUILDING: When the erection of any residence or other structure is once begun, work thereon must be prosecuted diligently and completed within 12 months. No building shall remain incomplete for any reason for a period in excess of eleven (11) months from the date that site excavation commenced.

6. COMPLIANCE WITH ZONING ORDINANCES OF SALT LAKE CITY: All buildings in said subdivision shall be placed and used upon said lots in accordance with the present provisions of Salt Lake City Zoning Ordinances relating to Zone R-1, or as the same may be hereinafter amended, unless otherwise modified or restricted by these covenants herein.

7. TEMPORARY STRUCTURES: No trailer, basement, tent, shack or other out-building shall be placed upon or used at any time within said subdivision as a temporary or permanent residence.

8. NUISANCES:

A. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be an annoyance or nuisance to the neighborhood.

B. Pets. No barn, coop, shed, sty or building of any type shall be constructed for the purpose of housing pigs, cows, sheep, goats, horses, poultry, or any other livestock, and none of the foregoing shall be kept, maintained or permitted at any place within the limits of said subdivision, excepting only a reasonable number of common household pets. Pets shall at all times be under property control and supervision of their owners.

C. Storage. No storage of any articles, materials, equipment or vehicles, including boats, of any nature is permitted in the front yard or side yard portion of any lot except that regularly used passenger cars and light pick-up trucks may be parked upon driveway areas. Trailers, trucks, campers, boats, and all types of accessory equipment are permitted to be stored or repaired only in garages.

D. Signs. Except for signs displayed by the developer during the construction and lot sales period, no sign, other than name plates, shall be displayed to the public view on any lot except one sign not exceeding four square feet advertising the sale or lease of a lot.

E. Drilling and Mining. There shall be no oil drilling, mining, quarrying or related operations of any kind permitted upon any lot.

F. Rubbish. No rubbish shall be stored or allowed to accumulate anywhere in said subdivision, except in sanitary containers.

G. Transmitting and Receiving Equipment. No external radio, citizens' band, ham radio or any other transmitting and/or receiving antennas or equipment shall be placed upon any structure or lot; provided, however, a television antenna may be placed on a structure at a height to be specifically approved by the Committee.

H. Air Conditioning. No swamp coolers will be permitted. Air conditioning shall be provided only by a central air conditioning system.

I. Construction Debris. All lot owners shall properly maintain their lots during the construction period so as to insure that no "spoils" from construction or any other debris are permitted to locate on any adjoining lot or any public right of way. Lot owners shall take whatever action is necessary to prevent run-off to and resultant erosion of adjoining public or private property. Lot owners agree that the undersigned or the Architectural and Structural Control Committee shall be empowered to clean up any and all "spoils" or construction debris which are located upon any adjoining public or private resulting from activities of a lot owner, his builder or any other person employed or otherwise controlled by owner and record a mechanic's lien against the owner's property to secure the repayment of all sums expended by said Committee or the undersigned in cleaning up and removing said "spoils" and debris from adjoining public or private property if same is not voluntarily cleaned up and removed by owner within 48 hours of written notice from the undersigned or said Committee identifying the required clean up and removal work.

9. EASEMENTS: Such easements and rights of way shall be reserved to the undersigned, its successors and assigns, in and over said real property for the erection construction and maintenance and operation therein or thereon of drainage pipes or conduits and pipes, conduits, poles, wires and other means of conveying to and from lots in said tract, gas, electricity, power, water, telephone and telegraph services sewage and other things for convenience to the owners of lots in said tract, as may be shown on the subdivision plat. No structures of any kind shall be erected over any of such easements except upon written permission of the undersigned, its successors or assigns.

10. SET BACKS: No dwelling house or other structure shall be constructed or situated on any of said lots created except in conformity with the "set back" lines as established in each instance by the Committee and in conformity with any additional

"set back" lines which may be fixed by the undersigned, its successors and assigns, in the recorded subdivision plat, contracts or deeds to any or all of the lots created on said property. The "set back" of any building, or other structure, as to any line, shall be deemed to be the minimum distance between said building, or other structure, and said line; the "set back" of any building, or other structure as to any street, shall be deemed to be the minimum distance between said building, or other structure, and the nearest line of said street.

11. MANNER OF VOTING: In voting, pursuant to the provisions of paragraphs two or twelve hereof, each lot owner of record shall be entitled to one vote for each lot owned by him, and the action resulting from such vote is to be evidenced by a written instrument signed and acknowledged by such lot owners. Any vote resulting in the amendment or repeal of the Declaration shall be recorded in the County Recorder's Office of the County of Salt Lake, State of Utah.

12. ARCHITECTURAL AND STRUCTURAL SUPERVISING COMMITTEE: An architectural and Structural Control Committee (hereinafter "the Committee"), consisting of three (3) members is hereby created, and the undersigned may fill vacancies in the Committee and remove members thereof at its pleasure, provided, however, that when 90% of the lots in the subdivision have been sold, (either deeded or sold under contract of sale) thereafter, upon written designation of 85% of those who are owners (either by contract of purchase, or in fee) of lots in said tract, of some person or persons whom such owners desire to make a member or members of said Committee, the undersigned will appoint such person or persons to the Committee, and if necessary, will remove from said Committee existing members hereof in order to create vacancies for the new appointment provided further, however, that one person designated by the undersigned shall always remain a member of said Committee if the undersigned so desires. The functions of said Committee shall be in addition to the functions elsewhere in the Declaration set forth, to pass upon, approve or reject any plans, or specifications for structure to be erected on lots in the subdivision, so that all structures shall conform to the restrictions and general plans of the undersigned, and of the Committee, 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 restrictions which are set forth in this Declaration except as herein specifically provided. The Committee may act by any two (2) of its members, and any authorization approval or power made by the Committee must be in writing signed by at least two (2) members.

13. ARCHITECTURAL AND STRUCTURAL CONTROL COMMITTEE MEMBERS:

KENNETH P. ALEXANDER

LOUIS M. HAYNIE

HENRY D. MOYLE

14. ARCHITECTURAL AND STRUCTURAL CONTROL:

A. Approval Required: No building or structure, including a tennis court or swimming pool shall be erected, remodeled or placed on any lot without the written approval as to location, height, design and harmony with existing structures first having been obtained from the Committee. No construction of any kind or nature on any of the lots shall be commenced until either sidewalk or curb grade has been established.

No fence or wall shall be erected on any lot nearer to the street than the minimum building setback line unless similarly approved. No existing natural vegetation shall be removed unless similarly approved.

B. Structural Guidelines: Footings, foundations, walls, floor diaphragms and other earth retaining structures must be designed to resist all lateral forces. Complete details of these structural elements together with recommended construction procedures must contain the seal and signatures of a professional engineer licensed by the State of Utah before consideration will be given by the Committee. The Committee's approval will in no way be deemed as passing upon the engineering and structural adequacy of the said design. Said design's adequacy will be the sole responsibility of the professional engineers whose seal and signature accompanies said design.

C. Architectural Guidelines: The following architectural guidelines shall apply to all lots in the Benchmark Subdivision affected hereby:

1. Harmony in building: The exterior material of all homes shall be either wood, stucco, brick, or stone. The roofing materials shall be either wood shingles, composition shingles, tile roofs or gravel roofs in natural colors.

2. Landscaping: No landscaping shall be started on said property nor any planting of trees take place until the plans and specifications therefor have been first approved in writing by the Committee. Landscaping must be commenced within one month of the date the house is ready for occupancy (or by April 30th of the following year if a house is ready for occupancy after October 15th) and must be completed in a manner sufficient to stabilize the site to the satisfaction of the Committee within nine months of the date the house is approved for occupancy. No landscaping plan will be approved unless the front yard and side yard have and the owner of said residential lot installs underground automated sprinkling system. Said system shall extend to the grass in the public portion of property between the curb and gutter and sidewalk in front or to the side of his or her lot. See paragraph 16, Additional Covenants.

3. Color harmony: Exterior colors must be approved by the Architectural Committee in order that harmony with the surrounding environment and with existing homes may be assured. The use of natural earth tones shall be encouraged, along with the use of wood and stone as materials. The use of bland, unpainted concrete or blocks and painted or unpainted metals is prohibited on exterior surfaces.

4. Retaining walls: All retaining walls must be approved by the Committee. The Committee will not be required to approve the use of unfaced concrete retaining walls. The Committee will encourage the use of rock-faced walls and walls screened by vegetation. Railroad ties and large rocks may be used for landscaping purposes but not as structural slope retention devices. See Paragraph 14 B, Structural Guidelines.

5. Site plan: The direction which homes on corner lots shall face must be approved by the Committee. Lot owners must determine the depth and location of the sewer from the Salt Lake City Sewer Department prior to designing their exterior house elevations.

6. Fences: Fences shall be constructed on coordination with the general architecture and character of the surrounding area. The materials used shall be the same as or similar to those used in the building of homes, and should compliment the architecture of the home. The height of fences shall be in conformity with Salt Lake City ordinances. Under no circumstances will any "chain link" fencing of any type, brand or made be allowed to be constructed on any property within the described Benchmark Subdivision.

7. Exterior Lighting: Some form of exterior lighting shall be required for each lot in order to provide neighborhood lighting on the whole. Lighting of residential house numbers shall be encouraged to insure night time visibility.

8. Scale lot layout: No building or structure shall receive approval from the Committee until a 1/4 inch scale lot layout and house plan has been submitted to the Committee for its approval. In addition, all elevations with respect to improvements must be shown in quarter scale.

9. Samples: Prior to the approval of any building or structure, appropriate building materials samples must be provided to the Committee in order to determine if said materials comply with the terms of these conditions and restrictions. In addition, samples must be provided accurately reflecting the color scheme to be used on the improvements.

10. Construction plans and drawings: Prior to obtaining approval from the Committee, a set of final "to be constructed" plans and drawings must be submitted to the Committee. The Committee will not permit any redlining or oral modification of said final "to be constructed" plans and drawings, and all plans and drawings so submitted will be evaluated based solely on the submitted "to be constructed" plans. In addition, no plans shall be approved by the Committee until after the footing and foundation plans have been approved in writing by a licensed structural engineer. All such plans and drawings will be deemed to be approved at such time as they have been signed by three members of the Committee or their designated representatives.

11. Prohibition against soil erosion and runoff: It shall be the responsibility of the proeprty owner to direct site work relative to the lot in such manner as to minimize erosion and runoff. Construction shall be conducted in such manner as to prevent the movement of earth materials or construction debris onto neighboring property or into the storm drainage system.

15. ARCHITECTURAL PROCEDURE: The Committee's approval or disapproval shall be in writing. All decisions of the Committee shall be final, and neither the Committee nor its designated representative shall be subject to any liablility therefore. Any errors or omissions in the design of any building or landscaping, and any violations of city ordinances are the sole responsibility of the lot owners and/or their designer or architect. The Committee's review of plans shall in no way be concerned with the structural or mechanical adequacy of the building or with architectural soundness thereof. At such time as the Committee has approved a lot onwer's final plans and drawings, the Committee shall give notice in writing to the Salt Lake City Planning Department of its approval. Said notice of approval shall also contain the Committee's assent to the issuance by the Salt Lake City Planning Department of a building permit with respect to the lot. No such building permit will be issued by the Salt Lake City Planning Department until such a letter of approval has been duly received from the Committee.

16. ADDITIONAL COVENANTS:

A. Trees. At the time 60% of the lots in Benchmark Subdivision are built upon and occupied, all of the lot owners hereby agree to purchase, plant and maintain trees which shall line the roads in said subdivision. The trees to be used for this purpose shall be similar to those used in other subdivisions in Salt Lake City, and shall be a kind and size specified by the Committee. The trees shall be located according to a plan to be prepared by said Committee. All lot owners hereby agree not to plant any other trees or bushes in the publicly owned portion of strip of land in front of their lot, and they further agree to remove any existing trees or bushes in said publicly owned parcel if requested to do so by the Committee. Each lot owner hereby agrees to pay a proportionate share of the total cost of purchasing and planting said trees.

B. Ground Cover. Each lot owner shall plant and maintain suitable ground cover in the public portion of property between the curb and gutter and sidewalk in front to the side of his or her lot.

C. Concrete Maintenance. Each lot owner shall at all times keep the curb and gutter and sidewalk in front of his or her lot or lots in good condition, and shall repair any cracks or breaks in such concrete within a reasonable time after receiving notification to do so from the Committee.

D. Restriction Against Raising or Otherwise Changing the Height of Grade. Neither the lot owner nor any person or persons claiming under him shall or will at any time raise or otherwise change the grade of any lot or lots herein conveyed or otherwise permit said grade to be different from the grade established by the developer. Notwithstanding the foregoing a lot owner shall be entitled to make application to the Salt Lake City Planning Commission for a change in grading. Upon approval of both the Committee and the Salt Lake City Planning Commission in writing, a change in grading will be permitted.

E. Enforcement. The lot owners hereby agree that the Committee may institute in its own name any suit or suits necessary in order to obtain a decree for specific performance of any restraining order necessary under these agreements. Should any suit be instituted, the affected lot owners agree that if the court finds in the Committee's favor such lot owner or owners shall pay reasonable attorney's fees for the plaintiff's attorney as such fees may be fixed by the Court.

17. VIOLATIONS OF RESTRICTIONS, PENALTIES: Violation of any of the restrictions conditions, covenants or agreements, herein contained shall give the Committee, the undersigned, their successors and assigns, the right to enter upon the property upon or as to which said violation or breach exists, and to summarily abate and remove at the expense of the owner, any erection, thing or condition that may be or exist thereon contrary to the provisions hereto without being deemed guilty to trespass. The result of every action or omission whereby any restriction, condition, covenant or agreement is violated, in whole or in part, is hereby declared to be and constitute a nuisance and every remedy allowed by law against a nuisance, either public or private, shall be applicable against such result. Such remedy shall be deemed cumulative and not exclusive.

18. ACCEPTANCE OF RESTRICTIONS: All purchasers of property described above shall by acceptance of contracts of deeds for every lot or lots shown therein, or any portion thereof, thereby be conclusively deemed to have consented and agreed to all restrictions conditions, covenants and agreements, set forth.

19. EFFECT OF WAIVER OR BREACH OR FAILURE TO ENFORCE: Each and all of the covenants, conditions, restrictions and agreements, contained herein shall be deemed and construed to be continuing, and the extinguishment of any right of re-entry or reversion for any breach shall not impair or affect any of the covenants conditions, restrictions or agreements, so far as any future or other breach is concerned. It is understood and agreed by and between the parties hereto that no waiver of a breach of any of the covenants, conditions, restrictions, and agreements herein contained shall be construed to be a waiver of any other breach of the same, or other covenants, conditions, restrictions and agreements herein contained shall be construed to be a waiver of any other breach of the same, or other covenants, conditions, restrictions, and agreements; nor shall failure to enforce any one of such restrictions, either by forfeiture or otherwise, be construed as a waiver of any other restriction or condition.

20. RESERVATION OF EASEMENT: All purchasers of property described above shall by acceptance of contracts or deeds for every lot or lots shown therein, or any portion thereof, thereby be conclusively deemed to have granted an easement to the undersigned so as to permit the Developer to establish and maintain vegetation on the lots in accordance with the plan of re-vegetation submitted to and accepted by the Salt Lake City Planning Commission.

21. ARCHITECT-BUILDER-ENGINEER ACKNOWLEDGMENT: All purchasers of property described above hereby agree to cause any architect, designer, builder or engineer whom purchaser desires to employ or enter into any contract with regarding the design or construction of a residence on the property to execute an Architect-Builder-Engineer Acknowledgment of Receipt of these Restrictive Covenants, prior to commencement of any work on the property on behalf of purchaser. Purchaser further agrees to present a copy of all such fully executed Architect-Builder-Engineer Acknowledgments to the undersigned prior to filing of an application for a building permit.

22. SEVERABILITY: Invalidation of any one or any portion of any one of these covenants and restrictions by judgement or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this document this 6th day of June, 1980.

BENCHMARK, INC., a Utah corporation

BY K.P. Alexander

STATE OF UTAH)
)ss
COUNTY OF SALT LAKE)

On the 6th day of June, personally appeared before me K.P. ALEXANDER who being by me duly sworn did say, for himself, that he, the said K. P. ALEXANDER, is the President of BENCHMARK, INC., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said K.P. ALEXANDER, duly acknowledged to me that said corporation executed the same.

K.P. Alexander
NOTARY PUBLIC

My commission expires: June 8, 1983

Residing in: Salt Lake City, Utah