

40563

PROPECTIVE COVENANTS OF MOUNTAIN OAKS SUBDIVISION

THIS DECLARATION is made on the date hereinafter set forth by Mountain Oaks Estates Subdivision, Inc., a Utah corporation, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is now the owner of certain real property in Utah County, Utah described hereinafter; and

WHEREAS, Declarant intends to acquire ownership of additional real property in Utah County, Utah adjacent and contiguous to the land described herein to be developed, all of which shall be known as "Mountain Oaks"; and

WHEREAS, the land which is the second phase of "Mountain Oaks" and the subject of this Declaration is more particularly described as follows, to wit:

All of lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, Mountain Oaks Subdivision, Plat "B" according to the official plat thereof, on file in the County Recorder of Utah County, Utah.

WHEREAS, it is the intent of the Declarant to develop the said described land, together with additional adjacent and contiguous land-owned or to be acquired and developed at later dates in an orderly program of phases or stages of development by which periodically parcels of land may be added or annexed to the second phase of "Mountain Oaks"; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and to this end, desires to subject the real property described herein to the covenants, restrictions, servitudes, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and the subsequent owners thereof.

NOW THEREFORE, the Declarant hereby declares that the real property described herein is and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, accupied and proved subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens (hereinafter sometimes referred to as "covenants and restrictions") hereinafter set forth, all of which are declared and agreed to be in aid of a plan for improvement of said property, and shall be deemed to run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, its successors and assigns, and any person acquiring or owning an interest in said property and improvements, including, without limitation, any person, group of persons, corporations, turst or other legal entity, or any combination thereof, who holds such interest solely as security for the performance of an obligation:

ARTICLE I

Definitions. A) "The Property" shall mean and refer to all real property described herein.

B) "Lot" shall mean and refer to all subdivided parcels or property which are part of the Property, and shall include each of the building sites.

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C) "Dwelling" shall mean and refer to any building or portion of a building situated upon the Property and designed or intended for use and occupancy as a residence by a single family.

D) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated on the Property, including contract sellers, but excluding those having such interest solely as security for the performance of an obligation.

E) "Capital Improvement" shall include, but not necessarily be limited to, streets, water systems, sewer systems, water meters and structures and appurtenant facilities installed and intended for use in common by the owners.

F) "Declarant" or "Developer" shall mean and refer to Mountain Oaks Estates Subdivision, Inc.

ARTICLE II

Property Subject to Declaration. The real property which is, and shall be, held, conveyed hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration is located in Utah County, State of Utah, and is more particularly described in the Recitals to this Declaration, each of which are by this reference made a part hereof.

ARTICLE III

Prohibited Uses and Nuisances. Except for the activities of the Declarant during original construction and/or development, or except as may be necessary in connection with reasonable and necessary repairs or maintenance to any dwelling:

A) No noxious or offensive trade or activity shall be carried on upon any lot or within any dwelling, nor shall anything be done therein or thereon, which may be or become an annoyance or nuisance to the neighborhood or other members. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any dwelling or upon the exterior of any other improvements.

B) The maintenance, keeping, boarding and/or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any lot or within any dwelling, except that this shall not prohibit the keeping of dogs, cats, and/or caged birds as domestic pets provided they are not kept, bred or maintained for commercial purposes and provided, further, that such domestic pets are not a source of annoyance or nuisance to the neighborhood. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by law.

C) No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash of any other kind shall be permitted on any lot.

D) Except as hereinelsewhere provided, no junk vehicle, commercial vehicle, trailer, truck, camper, camp truck, house trailer, boat, snow mobile, motorcycle, or other machinery or equipment of any kind or character (except for such equipment and/or machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling or other improvements, unless they are kept in such a place as not to be visible from the street or streets which adjoin the front and sides of any lot. Except for bona fide emergencies, no repair or extraordinary maintenance of automobiles or other vehicles shall be carried out on any lot.

E) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept or maintained upon any lot.

F) Only one single dwelling unit will be built upon each lot. No lot shall be divided or subdivided, and no portion of any lot (other than the entire lot) shall be transferred or conveyed for any purpose. No portion of any dwelling (other than the entire dwelling) shall be leased. The Provisions of this subsection shall not apply to the Declarant, and further, the provisions hereof shall not be construed to prohibit the granting of any easement and/or right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Declarant, nor to prevent the Declarant from conveying to the owner of a lot a right-of-way or easement for access and egress immediately adjacent to such lot.

G) Except for hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, telephone line, electrical line or cable, television cable or similar transmission line, or the like shall be installed or maintained on any lot above the surface of the ground.

H) No lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

I) No structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, stable, outdoor clothes dryer, shed or other buildings shall be erected, used or maintained on any lot at any time.

J) Except for entrance signs, directional signs, signs for traffic control or safety, and such promotional sign or signs as may be maintained by the Declarant, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any lot or dwelling.

K) No structure, planting or other material other than driveways or sidewalks shall be placed or permitted to remain upon any lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels.

L) No outside television or radio aerial or antenna, or other aerial or antenna or similar device for reception or transmission, shall be maintained upon any lot or dwelling.

M) No building or structure shall be moved onto any lot except during the original construction phases of the project.

N) The drying of clothes shall be confined to individual patios and shall be kept screened by adequate fencing so as not to be seen from neighboring lots and streets.

O) No vehicle shall be parked on streets or driveways so as to obstruct ingress or egress by owners of lots, their families, guests or invitees, except for the reasonable needs of emergency, construction or service vehicles for a time limited to as briefly as possible.

P) No spiritous, vinous or malt liquors or medicated bitters capable of producing intoxication shall be sold or offered for sale on any lot within the subdivision. Further, no lot or any part thereof, shall be used for vicious, illegal, or immoral purposes, nor for any purpose in violation of the laws of the State of Utah, the United States of America, or of police, health, sanitary, building or fire code regulations relating to or affecting the use or occupancy or possession of any of said lots.

Q) No freezer, refrigerator, washer, dryer or other household appliance shall be permitted on patios, carports or any portion of the lot in such a position as to be visible from the street.

R) No window or door of any dwelling shall be covered with metal foil or similar material.

S) The use of window air-conditioning units is specifically prohibited.

T) The digging of dirt or sand and/or its removal from any lot is prohibited, except when necessary in connection with the landscaping of a lot and during the original construction phases of the project. No water drilling, refining or quarrying of any kind is permitted upon the Property.

U) The use of firearms, including air rifles, bows and arrows, or other dangerous devices is specifically prohibited upon the Property.

V) The premises of all lots shall be maintained in a clean, orderly and slightly condition at all times.

ARTICLE IV

Dwellings. No dwelling shall be permitted on any lot covered by these covenants, the habitable enclosed main floor area of which is less than 1,600 square feet, or 1,400 square feet if a second story above the ground is constructed, and with the approximate value of not less than \$75,000 on the basis of building costs during the year 1977. No structure shall be built upon any lot with a height exceeding two stories above the existing ground elevations. If a garage is built underneath the house and is exposed this shall be constructed as one story. Each lot must have installed in the front yard of the lot a gas or electric lamp or lantern. Building upon each lot must begin within two years from the date the Declarant sells the lot to the first owner of that lot.

Setbacks. No building shall be located on any building site less than 30 feet from the front lot line for all sites covered by these Covenants, nor less than 10 feet from any side lot line. No residence shall be so located as to reduce the rear yard of the plot on which it is located to less than 30 feet. All construction and setbacks must meet the Orem City Zoning and Building Code in force at the time of construction or installation. The provisions in this Article may be changed by unanimous vote of the Architectural Control Committee.

ARTICLE V

Residential Use. All dwellings shall be used for private residential purposes exclusively and the owner's use of each such lot shall not endanger the health or disturb the reasonable enjoyment of any other owner or resident. The term "Residential" as used herein, shall be held and construed to exclude hospitals, clinics, mobile homes, hotels, motels, boarding houses, commercial and professional uses, including personal service shops, and all such uses are expressly prohibited. Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit the Declarant from the use of any lot or dwelling for promotional or display purposes or as "model homes" or the like.

ARTICLE VI

Party Walls. Each wall which is built as part of the original construction of the dwellings upon the Property and placed on the dividing line between lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and of liability for property damage due to negligent or wilful acts or omissions shall apply thereto.

A) Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

B) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or wilful acts or omissions.

C) Weatherproofing. Notwithstanding any other provisions of this Section, any owner who by his negligent or wilful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

D) Right to Contribution Runs with Land. The right of any owner to contribution from any other owner under this Section shall be appurtenant to the land and shall pass to such owner's successors in title.

E) Arbitration. In the event of any dispute concerning a party wall, or under the provisions of this Section, each party to the dispute shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision made by a majority of all arbitrators shall be binding upon all of the parties to the dispute.

ARTICLE VII

Reconstruction Following Fire or Other Casualty. In the event any dwelling is partially or totally destroyed by fire or other casualty, then the owner of the same shall promptly reconstruct such dwelling at his own expense, or from insurance proceeds

to which he may have access, in accordance with the original plans and specifications for the same, and any failure promptly so to do shall be considered a violation of the provisions of this Article.

ARTICLE VIII

Enforcement-Right to Remove or Correct Violations. If the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the Covenants herein, it shall be lawful for any other person or persons owning any real property situated in said dwelling group, or the Mountain Oaks Estates Subdivision, Inc., to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such Covenant, and either to prevent him or them from so doing or to recover damages, attorney's fees, costs of court or other dues for such violation.

ARTICLE IX

Easements for Utilities and Related Purposes. There is hereby created a non-exclusive easement upon, across, over and under all of the Property for ingress and egress, installation, replacing, repairing and maintaining utilities, including, but not limited to, water, sewer, telephone, electricity, gas and television cables. In the event that any utility company furnishing a service covered by the general easement hereinabove provided requests a specific easement by separate recordable instrument, the Declarant shall have the right to grant such easement upon said property without conflicting with the terms hereof.

The owners of the respective lots shall not be deemed to separately own pipes, wires, conduits or other service lines running through their property which are utilized for or serve other lots, but each owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his lot.

Easements and alleys for the installation and maintenance of utilities and drainage facilities are reserved as shown by the Plat, and instruments recorded in the Office of the County Recorder of Utah County, Utah, and by instruments that may hereafter be recorded in said office, or by instruments approved by the Orem City Engineer. Right of use for ingress and egress shall be had at all times over any dedicated easement, and for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easements, that would constitute interference with the use, maintenance, operation or installation of such utility.

ARTICLE X

Duration. Except where permanent easements or other permanent rights or interests are herin created, the covenants and restrictions of this Declaration shall run with the bind and the land, and shall inure to the benefit of and be enforceable by the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of recordation of this Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then owners of a majority of the lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. No such agreement to change shall be effective unless made and recorded sixty (60) days in

advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every member at least thirty (30) days in advance of any action taken.

ARTICLE XI

Architectural Control Committee. Except for original construction and/or development by the Declarant, and except for any improvements to any lot accomplished by the Declarant concurrently with said construction and/or development, and except for purposes of proper maintenance and repair, no building, fence, wall or other improvements or structures shall be commenced, directed, placed, moved, altered or maintained upon The Property, nor shall any exterior addition to or change (including any change of color) or other alteration thereupon be made until the complete plans and specifications showing compliance with applicable local ordinances and codes and the location, nature, shape, height, material, color, type of construction and/or any other proposed form of change (including, without limitation, any other information specified by the Architectural Control Committee) shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by the Architectural Control Committee designated by the Declarant.

Subject to the same limitations as hereinabove provided for, it shall be prohibited to install, erect, attach, apply, paste, hinge, screw, nail, build, alter, plant, remove or construct any lighting, shades, screens, awnings, patio covers, decorations, fences, hedges, landscaping features, wall, aeriels, antennas, radio or television broadcasting or receiving devices, slabs, sidewalks, curbs, gutters, patios, balconies, porches, driveways, walls or to make any change or otherwise alter (including any alteration in color) in any nature whatsoever the exterior of any improvements constructed upon any lot or to combine or otherwise join two or more dwellings, or to partition the same after combination, or to remove or alter any windows or exterior doors of any dwelling, or to make any change or alteration within any dwelling which will alter the structural integrity of the building or otherwise affect the property, interest or welfare of any other lot owner, materially increase the cost of operating or insuring any common areas or impair any easement, until the complete plans and specifications showing the location, nature, height, material color, type of construction and/or any other proposed form of change (including, without limitation, any other information specified by the Architectural Control Committee) shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography by the Architectural Control Committee.

Architectural Control Committee Operation. The Declarant shall appoint an Architectural Control Committee. The Architectural Control Committee shall be composed of three or more natural persons designated from time to time by the Declarant. The affirmative vote of a majority of the members of the Architectural Control Committee shall be required in order to adopt or promulgate any rule or regulation, or to make any finding, determination, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Article. In the event that the Declarant shall fail to appoint the Architectural Control Committee or until such time as it does so, the Declarant shall act as the Architectural Control Committee.

Approvals, etc. Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to the provisions of this Article, a copy of such plans and specifications, as approved, shall be deposited among the permanent records of such Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. In the event the Architectural Control Committee fails to approve or disapprove any plans and specifications which may be submitted to it pursuant to the provisions of this Article within sixty (60) days after such plans and specifications (and all other materials and information required by the Architectural Control Committee) have been submitted to it in writing, then approval will not be required and this Article will be deemed to have been fully complied with.

Limitations. Construction or alterations in accordance with plans and specifications approved by the Architectural Control Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date upon which the same are approved by the Architectural Control Committee (whether by affirmative action or by forbearance from action, as in Section 3 of this Article provided), and shall be substantially completed within twelve (12) months following the date of commencement, or within such other period as the Architectural Control Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Architectural Control Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no deviations from plans and specifications approved by the Architectural Control Committee without the prior consent in writing of the Architectural Control Committee. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Architectural Control Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

Certificate of Compliance. Upon the completion of any construction or alterations or other improvements or structure in accordance with plans and specifications approved by the Architectural Control Committee in accordance with the provisions of this Article, the Architectural Control Committee shall, at the request of the owner thereof, issue a Certificate of Compliance which shall be PRIMA FACIE evidence that such construction, alteration or other improvements referenced in such certificate have been approved by the Architectural Control Committee and constructed or installed in full compliance with the provisions of this Article and with such other provisions and requirements of the Declaration as may be applicable.

Rules and Regulations, etc. The Architectural Control Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval and may publish and/or record such statements of policy, standards, guidelines and/or establish such criteria relative to architectural styles or details, lot coverage, colors, set-backs, materials or other matters, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of the Declaration. If they incur expenses in connection with review of plans, the Architectural Control Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article.

The decisions of the Architectural Control Committee shall be final except that any member who is aggrieved by any action or forbearance from action by the Architectural Control Committee (or by any policy, standards or guidelines established by the Architectural Control Committee) may appeal the decision of the Architectural Control Committee to the Declarant, and upon the request of such party, shall be entitled to a hearing before the Declarant.

Enforcement. In the event any violation or attempted violation of any of the covenants or restrictions contained in this Article shall occur or be maintained upon any lot, or in the event of any other conduct in violation of any of the provisions and requirements of this Article, then the same shall be construed to have been undertaken in violation of this Article, and without the approval of the Architectural Control Committee required herein, and, upon written notice from the Architectural Control Committee, such violation shall be promptly removed or abated. In the event the same is not removed, or the violation is not otherwise terminated or abated, within fifteen (15) days (or such shorter period as may be required in any such notice) after notice of such violation is delivered to the owner of the lot upon which such violation exists, or to an owner responsible for such violation if the same shall be committed or attempted on premises other than the lot owned by such owner, then the Architectural Control Committee shall have the right through its agents and employees, if any, to enter upon such lot and to take such steps as may be necessary to remove or otherwise terminate or abate such violation and the cost thereof may be assessed against the lot upon which such violation occurred, and when so assessed, a statement of the amount thereof shall be rendered to the owner of said lot at which time the assessment shall become due and payable and a continuing lien upon such lot, and a binding personal obligation of the owner of such lot. The Architectural Control Committee shall have the further right to enter upon and inspect any lot at any reasonable time for the purpose of ascertaining whether any violation of the provisions of this Article or any of the other provisions or requirements in this Declaration exists on such lot, and neither the Architectural Control Committee or its agents shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

ARTICLE XII

Miscellaneous Provisions.

A) Incorporation by Reference on Resale. In the event any owner sells or otherwise transfers any lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration.

B) Notices. Any notice required to be sent to any owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by ordinary mail, postage prepaid, to the last known address of the person who appears as owner on the records of the Utah County Recorder's Office.

C) No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use.

D) Severability. In validation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

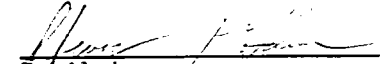
E) Captions. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration.

F) Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

G) Amendments. These protective Covenants may be amended at any time by a vote of fifty-one (51) percent of the number of votes permissible which will be calculated on the basis of one vote per lot covered by the Protective Covenants.

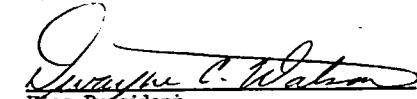
IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 28th day of November, 1977.

MOUNTAIN OAKS ESTATES SUBDIVISION, INC.



President

ATTEST:



Vice-President

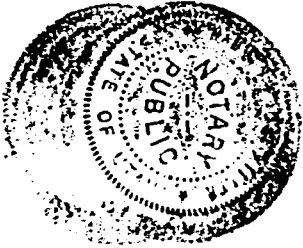
STATE OF UTAH }
COUNTY OF UTAH } SS

On the 28th day of November, 1977, personally appeared before me, Steven L. Godwin and Dwayne C. Watson, who being by me duly sworn did say, each for himself, that he, the said Steven L. Godwin, is the President, and he, the said Dwayne C. Watson, is the Vice President of Mountain Oaks Estates Subdivision, 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 Steven L. Godwin and Dwayne C. Watson each duly acknowledged to me that said corporation executed the same and that said corporation in executing said instrument as Declarant is the owner of all the land which is subject to this instrument and of each individual lot contained therein.

My Commission Expires:
5-22-79

Steven L. Godwin
Notary Public

Residing at: Utah County



(4)

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