

**PROTECTIVE COVENANTS AND DECLARATION OF
BUILDING AND USE RESTRICTIONS FOR
WINCHESTER HILLS SUBDIVISION NO. III**

KNOWN ALL MEN BY THESE PRESENTS: that Russel J. Walter and Patricia G. Walter, is the owner of the following described real property located in Washington County, State of Utah, and more particularly described as follows, to wit:

A subdivision located in Sections 22 & 23, Township 41 South, Range 16 West, Winchester Hills Subdivision #3 according to the Official Records of the Washington County Recorder, State of Utah.

WHEREAS, certain covenants and building and use restrictions must be established and observed to insure harmonious relationships, protect property values, eliminate hazardous conditions, and preserve the natural beauty of the area, wherever the persons reside in close proximity to one another.

NOW, THEREFORE, said owner hereby declares that all of the property described above is held and 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 a plan for the subdivision, improvement and sale of the enhancing and protecting the value, desirability and attractiveness of the lands and every part thereof. The acceptance of any deed or conveyance thereof by the Grantee or Grantees therein, and their heirs, executors, administrators, successors and assigns shall constitute their covenant and agreement with the undersigned and with each other, to accept and hold the property described or conveyed in or by such deed or conveyance, subject to said covenants and restrictions, as follows, to wit:

ARTICLE I - GENERAL RESTRICTIONS

1. **ARCHITECTURAL CONTROL:** No building shall be erected, altered, placed or permitted to remain on any lot without prior approval of plans and specifications therefor by the Architectural Control Committee. Said plans and specifications shall show location of structure on the lot, materials to be used, external design and location with respect to topography and finish grade elevation. No fence, wall, swimming pool or other construction shall be erected, placed or altered on any lot without approval of the Architectural Control Committee.

2. **DWELLING SIZE:** No single-family unit shall be less than one thousand three hundred fifty (1,350) square feet in size on the main level, exclusive of garages. No more than one detached single-family dwelling, not to exceed two and one half stories in height shall be permitted on any lot, unless an exception thereto

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is specifically approved in writing by the Architectural Control Committee. All dwellings shall have a private garage sufficient to park at least two cars.

a. SPECIAL EXCEPTION: MULTI-LEVEL HOMES: An exception to this requirement shall be made in the case of multi-level homes (basements not included) in which the second level is equal to or exceeds the minimum allowable square footage of the main level which in such situation shall not be less than one thousand three hundred fifty (1,350) square feet, unless otherwise approved by the Architectural Control Committee.

3. OUTBUILDINGS AND BARNES: No more than one barn shall be permitted on any lot. Barns and/or outbuildings shall be constructed out of similar materials and conform to the same general color scheme and design of the exterior features of the dwelling on the same lot. Barns and/or outbuildings shall not exceed fifteen hundred (1,500) square feet on one level unless approved by Architectural Control Committee. Barns and/or outbuildings shall be restricted to the same height limitations as dwellings in Section 2 Article 1 above. In the event a barn or outbuilding exceeding nine hundred (900) square feet shall be constructed or put on a lot, then other outbuildings and storage sheds shall be permitted (however, none shall exceed two hundred fifty (250) square feet in size, shall be restricted to one level, and all such structures combined shall not exceed three hundred (300) square feet in size).

4. BUILDING LOCATION: No building shall be located on any lot nearer to the front line than thirty (30) feet therefrom, measured to the foundation of such building; nor nearer than thirty (30) feet to the rear lot line; nor nearer than fifteen (15) feet to a side lot line. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of a building for the purpose of determining such distances. The preceding rear lot line restriction shall not apply to barns and other outbuildings.

5. EASEMENTS: Easements for installation and maintenance of utilities, drainage facilities and ingress and egress are reserved as shown upon 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 utilities, or which may change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements or which may impede ingress and egress. The easement are of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

6. TRANSMISSION LINES: No above ground transmission lines of any kind shall be allowed on any lot or at any location on the public way or upon any private lot easement or right of way within the subdivision.

7. NUISANCES: No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No clothes drying or storage of any articles which are unsightly in the opinion of the Architectural Control Committee will be permitted unless in enclosed areas built and designed for such purpose. No automobiles, trailers, boats, or other vehicles are to be stored on streets on front or side lots unless they are in running condition, properly licensed and are being regularly used.

8. TEMPORARY AND OTHER STRUCTURES: No structures of a temporary nature, trailer, bus, basement house, tent, shack, garage, barn or other outbuilding shall be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on said property at any time. No old or second-hand structures shall be moved onto any of said lots, it being the intention hereof that all dwellings and other buildings to be erected on said lots, or within said subdivision, shall be new construction of good quality, workmanship and materials. However, in the event an owner desires to reside in a mobile home on his lot during the course of construction of the primary residence, the same may be authorized by the Architectural Control Committee. The Committee shall have sole discretion in granting such right and size; however, subject to the restriction that such trailer or mobile home shall not exceed thirty-five (35) feet in length unless approved by Architectural Control Committee and that it shall remain on wheels and fully mobile in every respect. No mobile home used for such purpose shall be allowed to remain on the lot where the residence is under construction or upon any adjacent lot for a period in excess of six (6) months. No such mobile home shall be moved onto any lot until express written permission has been obtained from the Architectural Control Committee.

9. HOME COMPLETION: All buildings and structures approved for construction by the Architectural Control Committee shall be completed no later than one year subsequent to the commencement of said construction. In the event a building or structure fails to be completed consistent with this section, the Winchester Hills Property Owners Association may, at the recommendation of the Architectural Control Committee, after sixty (60) days written notice to the owners, enter onto the property where buildings and structures are in violation, and proceed to complete all reasonable and necessary improvements, the cost of which shall attach as a valid lien against said property in favor of the Association.

10. WALLS, FENCES AND HEDGES: All walls and fences shall be kept in good repair and no fence, wall or hedge shall exceed an overall height as measured from the top of the footing to the top of the fence, wall or hedge in excess of six (6) feet. No walls, fences or hedges may exceed an overall height of four (4) feet in front yard set back areas.

11. CONSTRUCTION OF WALLS AND FENCES: All fences and walls shall be constructed of new material which enhances the appearance of the landscape. Rail and split rail type fencing normally associated with ranch settings are hereby approved for decorative fencing only and shall be subject to Architectural Control Committee approval if used for corral fencing. The use of other types of fencing and walls such as pipe, cement or cinderblock used for decorative fencing, backyards or corrals is subject to final approval by the Architectural Control Committee prior to installation. The use of electric fencing devices and barbed wire is hereby expressly prohibited, except development perimeter barbed wire fencing is permitted when installed by the developer or Association.

12. SLOPE AND DRAINAGE CONTROL: No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems or which may change the direction of flow of drainage channels. The slope control areas of each lot and all improvements in them shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

13. GARBAGE AND REFUSE DISPOSAL: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, rubbish or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each lot and its abutting street are to be kept free of trash, weeds and other refuse by the lot owner. No unsightly material or other objects are to be stored on any lot in view of the general public.

14. WATER SUPPLY: No individual water supply system shall be used or permitted on any lot or group of lots unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the State Health Department, Engineer and/or County officials. Approval of such system as installed shall be obtained from such authority.

15. SIGNS: No sign of any kind shall be displayed to the public view on any lot except (a) one professional sign not more than one (1) square foot in size, (b) one professional sign not more than five (5) square feet in size advertising the property

for sale or rent, or (c) signs used by the builder or developer to advertise the property during the construction and sales period of not more than five (5) square feet in size. Any other sign for any other purpose must be approved by the Architectural Control Committee prior to its erection.

16. DIVISION OF LOTS: No lot in this subdivision shall be divided, subdivided, partitioned, parceled or broken up into smaller lots or units.

17. SIGHT DISTANCE AT INTERSECTIONS AND CORNERS: No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any lot at street corners or curves within the triangular area formed by the front and side lines of such lot. Sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections or obstructions of such sight lines.

18. FIRE HAZARDS: No open fires shall be allowed without a fire permit. Spark arresters shall be installed on all chimneys or fireplaces or any other device designated to contain a fire. Accumulations of dry underbrush or any other combustible materials will not be allowed.

19. INOPERABLE MOTOR VEHICLES: Motor vehicles that are inoperable shall not be permitted to accumulate upon any lot or on road areas adjacent thereto. In the event an inoperable motor vehicle remains upon any lot or road area for a period exceeding thirty (30) days, the Home Owners Association may, pursuant to the recommendation of the Architectural Control Committee, remove inoperable motor vehicles after ten (10) days written notice. The cost of such removal shall, upon the recording of proper notice, attach as a valid lien in favor of the Association.

For purposes of this section, inoperable motor vehicles shall mean any motor vehicle that is unable to be operated in a normal manner upon the streets under its own power, or is unlicensed and unregistered.

ARTICLE II - LAND USE

1. OIL AND MINING OPERATIONS: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

2. COMMERCIAL ENTERPRISE: No commercial enterprise of

any description including timeshare ownership, shall be conducted on any lot. This shall be construed to mean the selling of equipment, storage of inventory, or any other venture conducted in support of or in association with a venture conducted either for profit or charity. However, the developer or his assigns shall be permitted to maintain sales offices in the subdivision until such time as all lots are sold.

3. **LIVESTOCK, GARDENING AND AGRICULTURAL USE:** The land in the subdivision is intended primarily for residential use. The Washington County Commission has zoned the area R-A1 to provide areas for small farms, hobby farms and agricultural development. For this reason, and to make portions of the subdivision available for such uses, the subdivision has been divided as follows:

a. **LIVESTOCK-AGRICULTURE:** Lots are designated as properties upon which household pets, raising of crops, gardening, horticulture, stabling of livestock along with its accessory building subject to Section 3 Article 1 herein and similar uses are permitted. No more than five (5) livestock animals shall be permitted per acre and of that number a maximum of three (3) may be horses unless otherwise approved by Architectural Control Committee.

b. **CORRAL AREAS:** All livestock, when unattended, shall be kept within the confines of corrals, barns or similar structures. All corrals and barns must be maintained in sanitary condition. Excessive accumulations of manure shall be removed from the subdivision so as to avoid potential odor, fly and health problems. Corral fences shall be set back from the lot frontage a distance equal to the rear main wall of the dwelling built on the lot.

ARTICLE III - DURATION, ENFORCEMENT, AMENDMENT

1. **DURATION OF RESTRICTIONS:** All of the conditions, covenants and reservations set forth in this declaration of restrictions shall continue and remain in full force and effect at all times against said property and the owners thereof, subject to the right of change or modification provided for in this Article, until twenty-five (25) years, and shall as then in force be continued for a period of twenty (20) years and thereafter for successive periods of twenty (20) years each without limitations, unless a written agreement is executed by the then record owners of more than three-fourths ($\frac{3}{4}$) in area of said property with one vote per lot and not owner, exclusive of streets, parks, and open spaces, be placed on record in the Office of the Recorder of Washington County, by the terms of which agreement any of said conditions or covenants are changed, modified or extinguished in whole or in part as to all or any part of the property originally

subject thereto, in the manner and to the extent therein provided. In the event that any such written agreement of change or modification be duly executed and recorded, the original conditions and covenants, as therein modified shall continue in force for successive periods of twenty (20) years each unless and until further changed, modified or extinguished in the manner herein provided for, by mutual written agreement with not less than seventy percent (70%) of the then owners of record title of said property (including the mortgages under record mortgages and the trustees under recorded deeds of trust) with one vote per lot and not owner, duly executed and placed on record in the Office of the County Recorder of Washington County, Utah; provided however, that no change or modification shall be made without the written consent duly executed and recorded of the owners of record of not less than two-thirds ($\frac{2}{3}$) in area of all lands which are a part of said property and which are held in private ownership within five hundred (500) feet in any direction from any direction from the exterior boundaries of the property concerning which a change or modification is sought to be made.

2. **ENFORCEMENT:** Each and all of said conditions, covenants and reservations is and are for the benefit of each owner of land (or any interest therein), in said property and they and each thereof shall inure to and pass with each and every parcel of said property and shall apply to and bind the respective successors in interest of said Grantor. Each Grantee of the Grantor of any part or portion of said property by acceptance of deed incorporating the substance of this declaration either by setting it forth or by reference therein, accepts the same, subject to all of such restrictions, conditions, covenants and reservations. As to each lot owner, the said restrictions, conditions and covenants shall be covenants of equitable servitude and the breach of any thereof, and the continuance of such breach may be enjoined, abated or remedied by appropriate proceedings at law or in equity by any such owner of other lots or parcels in said property or the Winchester Hills Property Owners Association, but no such breach shall affect or impair the lien of any bona fide mortgage or deed of trust which shall have been given in good faith, and of value; provided, however, with any subsequent owner of said property shall be bound by said conditions and covenants, whether obtained by foreclosure or at a trustee's sale or otherwise.

3. **DAMAGE:** Any damage inflicted on existing improvements such as curb, gutters, streets, concrete sidewalks, etc., by the purchaser or owner, and/or their agents, of any particular lot, must be repaired or the expense of such repair must be borne by the purchaser or owner at this own expense. This also includes any damage to existing landscape.

4. **VIOLATION CONSTITUTES NUISANCE:** Every act or omission, whereby any restriction, condition or covenant in this

declaration set forth, if violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by Grantor or its successors in interest and/or by any lot owner or the Winchester Hills Property Owners Association; and such remedy shall be deemed cumulative and not exclusive.

5. CONSTRUCTION AND VALIDITY OF RESTRICTIONS: All of said conditions, covenants and reservations contained in this declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant or reservation, or any part thereof, shall be thereby affected or impaired; and the Grantor and Grantee, their successors, heirs, and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this declaration, irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason becomes unenforceable.

6. RIGHT TO ENFORCE: The provisions contained in this declaration shall bind and inure to the benefit of and be enforceable by Grantor, by the owner or owners of any portion of said property, their and each of their legal representatives, heirs, successors and assigns and the Winchester Hills Property Owners Association, and failure by Grantor, or any property, or their legal representatives, heirs, successors or assigns, or the Association, to enforce any of said restrictions, conditions, covenants or reservations shall in no event be deemed a waiver of the right to do so thereafter.

7. ARCHITECTURAL CONTROL COMMITTEE: The Architectural Control Committee which is vested with the powers described herein shall consist of three (3) persons appointed by the Grantor. No property owner shall apply for a building permit from Washington County until having first obtained written approval from the Architectural Control Committee. Prior to the commencement of any excavations, construction or remodeling or adding to any structure, theretofore completed, there shall first be filed with the Architectural Control Committee two (2) complete sets of building plans and specifications therefor, together with a block or plot plan indicating the exact part of the building site the improvements will cover and said work shall not commence unless the Architectural Control Committee shall endorse said plans as being in compliance with these covenants and are otherwise approved by the committee. The committee shall have the right to refuse to approve any such plans and specifications which are not desirable in their opinion or other reasons, and in so passing upon them they shall have the right to take into consideration the suitability of the proposed building and of the materials of which it is to be built to the site upon which it is proposed to erect the same, the harmony thereof with the surrounds and the effect of the building

or other structure so planned on the outlook from the adjacent or neighboring property. The committee shall promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications pursuant to this section. The second set of said plans shall be file as a permanent record with the Architectural Control Committee. In the event said committee fails to approve or disapprove in writing said plans within thirty (30) days after their submission, then said approval shall not be required. When ninety percent (90%) of the lots in the Grantor's development have been sold by Grantor, said plans and specifications shall be approved by an Architectural Control Committee approved by a majority of owners of lots in the subdivision herein described and only owners of said lots shall be privileged to vote for said Architectural Control Committee. The Grantor shall have the right to appoint members of the Architectural Control Committee until such time as ninety percent (90%) of the lots in the Grantor's development have been sold by the Grantor.

8. ASSIGNMENT OF POWERS: Any and all rights and powers of the Grantor herein contained may be delegated, transferred or assigned. Wherever the term "Grantor" is used herein, it includes assigns or successors in interest of the Grantor.

DATE ADOPTED:

FEB. 24, 1993

RUSSEL J. AND PATRICIA G. WALTER

By

Russel J. Walter
Russel J. Walter

Patricia G. Walter
Patricia G. Walter

Attest:

Secretary Treasurer

STATE OF UTAH)

: ss:

COUNTY OF WASHINGTON)

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On this 24th day of Feb., 1993, personally appeared before me Russel J. Walter and Patricia G. Walter, being the owners of Winchester Hill Phase III, who duly acknowledge to me that they executed the above and foregoing instrument for and in behalf of themselves.

[Signature]
Notary Public
Residing in St. George, UT.

84770

My commission expires:

2-22-1996

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