

**PROTECTIVE COVENANTS**

**for**

**SOUTHGATE HILLS PHASE II SUBDIVISION**

**Washington County, Utah**

**00471129 Bk0830 Pg0258**

**RUSSELL SHIRTS \* WASHINGTON CO RECORDER  
1994 JUN 22 08:44 AM FEE \$30.00 BY CB  
FOR: SOUTHERN UTAH TITLE CO**

**PROTECTIVE COVENANTS FOR  
SOUTHGATE HILLS PHASE II SUBDIVISION  
WASHINGTON COUNTY, UTAH**

KNOW ALL MEN BY THESE PRESENTS: That TONAQUINT INC. hereinafter referred to as the "Developer," is the owner of the following described property platted as "Southgate Hills," hereinafter referred to as the "Property," located in Washington County, State of Utah, to wit:

Southgate Hills Phase II Subdivision, a part of Section 1, Township 43 South, Range 16 West, SLB&M, Washington County, Utah, according to the Official Plat thereof on file with the Washington County Recorder;

and it is the intention of the Developer to include all of the Property in said Plat, to divide the Property into lots as shown on said Plat (such lots being shown on said plat as lots numbered 15 through 34, inclusive), and to dedicate the street shown on said plat to the public. The easements indicated on said plat are hereby perpetually reserved for public utilities and for any other ones as designated thereon or set forth therein, and no structures other than for such utility or other indicated purposes are to be erected within the lines of said easements.

NOW, THEREFORE, said Developer 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, covenants and conditions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement, and sale of the Property, and are established and agreed upon for the purposes of enhancing and protecting the value, desirability, and attractiveness of the Property and every lot, part, or portion thereof. The acceptance of any deed or conveyance of any lot, part, or portion of the Property by the grantees therein named or by their legal representatives, heirs, executors, administrators, successors, or assigns shall constitute their covenant and agreement with the Developer and its successors and assigns, and with each other to accept, hold, improve, use, and convey the Property described and conveyed in or by such deed or conveyance subject to said restrictions, covenants, and conditions as follows, to wit:

**ARTICLE I - GENERAL RESTRICTIONS**

1. Land Use and Building Type. All lots shall be used only for single-family residential purposes and no professional, business, or commercial use shall be made of the same, or any portion thereof, nor shall any resident's use of a lot endanger the health or disturb the reasonable enjoyment of any other owner or resident; provided, however, that the lot restrictions contained in this section shall not be construed in such a manner as to prohibit an owner or resident from (a) maintaining his personal professional library therein; (b) keeping his personal business or professional records or accounts therein; or (c) handling his personal, business, or professional telephone calls or correspondence therefrom. The only building or structure permitted to be erected, placed, or permitted to be located on any lot within the subdivision shall be a detached single-family dwelling not to exceed two stories in height, with an enclosed private garage for not less than two (2) nor more than five (5) automobiles. The height of the garage door header shall be limited to the height of the roof line of the house and shall not in any event exceed ten (10) feet. No carport or other outdoor or partially enclosed parking facility shall be permitted. All construction shall be of new materials, except that used brick may be used so long as it conforms with building and subdivision ordinances of the City of St. George, Utah. All structure shall be constructed in accordance with the zoning and building ordinances of the City of St. George, Utah, in effect from time to time. "Family" is defined to mean persons related by blood or marriage, by legal adoption, or by operation of law. The construction of any building on any portion of the Property shall be continuously and diligently pursued from and after the commencement of such construction, and in any event shall be substantially completed within nine (9) months after such commencement.

2. Lot Size. Lot sizes as described on the recorded plat of subdivision are considered minimum lots sized and no person shall further subdivide any lot other than as shown on the recorded plat of said subdivision.

3. Minimum Area. The minimum total square footage of living area on the first level above ground and located within the area of a foundation for any residential dwelling constructed on any lot within the subdivision, exclusive of porches, balconies, patios, and garages, shall be no less than sixteen hundred (1,600) square feet.

4. Architectural Control. No building, wall, pool, or improvement shall be commenced, erected, or maintained upon any lot, nor shall any exterior addition, change, or alteration -- or in the event of a casualty loss, any restoration -- be made to the

exterior portion of any residence until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same, and the grading plan and landscape plan therefor, shall have been submitted to and approved in writing (as provided in Article II below) as to the harmony of exterior design and location in relation to surrounding structures and topography and finish grade elevations by the Architectural Control Committee. Further, no wall shall be erected, placed, or altered upon any lot nearer to any street than the minimum building setback line unless similarly approved.

5. Building Location. No building shall be located on any lot nearer to the front lot line than twenty-five (25) feet therefrom; nor nearer than ten (10) feet to the rear lot line, nor nearer than ten (10) feet to a side lot line. All of the foregoing measurements shall be made from the applicable lot line to the foundation, porch, or other extension of such building, whichever is nearer to such lot line. For the purpose of this covenant, eaves and steps shall not be considered as part of a building for the purpose of determining such distance; provided, however, that this shall not be construed to permit any portion of a building, including eaves or steps, to encroach upon another lot.

6. Driveways. Each driveway on a lot shall be constructed out of cement, or brick. Any driveways consisting of cinders, sand, gravel, or dirt shall not be permitted on any lot. Driveways of any other materials must be approved by the Architectural Control Committee. The driveway on each lot shall be in a color which blends with the exterior of the structure located on such lot.

7. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown 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, maintenance, or replacement 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. The easement area 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. The title holder of each lot shall, from time to time, grant rights over, across, on, under, and upon these easements for such additional uses and services as may be provided from time to time by a public authority or private utility company.

8. Temporary or Other Structures. No structure of a temporary nature and no trailer, bus, outhouse, tent, shack, garage, or other outbuilding shall be used at any time as a residence either temporarily or permanently, nor shall any such

structures be erected or placed on said property at any time, except a temporary sales office used by the Developer for the purpose of sales during a development, construction, or sales period. 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.

9. Nuisances. No noxious or offensive activity shall be carried on upon any lot, part, or portion of the Property nor shall anything be done thereon which may be or may become an annoyance to the neighborhood.

10. Signs. No billboard of any character shall be erected, posted, painted, or displayed upon any of the Property, except billboard used by the Developer during the development phase. No sign of any kind, except signs used by the Developer or by a builder to advertise the Property during a development, construction, or sales period, shall be displayed to the public view on any lot, part, or portion of the Property without the prior written approval of the Architectural Control Committee, and said Committee shall have the right to remove or cause the removal of any such billboard or any such sign erected and displayed without said prior approval. Such signs shall not exceed a size of two feet by two feet (2' x 2') in size. Flags, pennants, streamers and other special displays are not considered in keeping with the profile or dignity of Southgate Hills and are, likewise, prohibited.

11. 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, part, or portion of the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation, or shaft be permitted upon or in any such lot, part, or portion of the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any such lot or portion of the Property.

12. Livestock, Poultry, Agriculture. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, part, or portion of the Property, except that dogs, cats, and other domesticated household pets may be kept in a residence constructed on a lot provided that they are not kept, bred, or maintained for any commercial purpose. Such animals as are permitted shall be strictly controlled and kept pursuant to all applicable laws and ordinances.

13. Garbage and Refuse Disposal. No lot, part, or portion of the Property shall be used or maintained as dumping ground for rubbish, rubble, trash, garbage, or other waste. Such

trash, rubbish, rubble, garbage, or other waste shall not be kept except in sanitary containers. No rubbish, trash, papers, junk, or debris shall be burned upon the Property, except that trash may be burned in accordance with applicable laws and ordinances inside homes that are properly equipped with inside incinerator units.

14. Building Materials. No lot, part, or portion of the Property shall be used or maintained as a storage for building materials, except during a construction phase. Once a dwelling is occupied or made available for sale, all building materials shall be removed or stored inside such dwelling.

15. Water Supply. No individual water supply system shall be used or permitted to be used on any lot, part, or portion of the Property.

16. Sewage Disposal. No individual sewage disposal system shall be permitted on any lot, part, or portion of the Property.

17. Boats and Motor Vehicles. No boats, trailers, buses, motor homes, campers, or other vehicles shall be parked or stored upon any lot except within an enclosed garage or behind an approved wall of satisfactory height to screen said vehicle from any other lot or from any street. No such vehicles shall be parked overnight on any street located within the subdivision.

18. Antenna. No external radio, television, dish, or other antenna of any kind or nature, or device for the reception or transmission of radio, microwaves, or other similar signals, shall be permitted on any lot without the prior written approval of the Architectural Control Committee.

19. Safe Condition. Without limiting any other provision of this declaration, each owner shall maintain and keep such owner's lot at all times in a safe, sound, and sanitary condition and repair, and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other owners of their respective lots.

20. Sight Distance at Intersections. No structure, wall, hedge, or shrub planting which obstructs sight lines at elevations no higher than three (3) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property lines extended. The same 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 pavement. No tree shall be permitted to remain within such distances of such intersections

unless the foliage line is maintained at such height to prevent obstruction of such sight lines.

21. Landscaping. Within four (4) months after the completion of construction of any home upon a lot, the owner of such lot must have substantially completed the landscaping of such lot, in accordance with a detailed landscaping plan previously approved by the Architectural Control Committee as provided in Section 8 of Article II below. Such landscaping shall include but shall not be limited to the preparation for and planting of lawn, grass, or other appropriate ground cover, appropriate shrubbery, and planting of at least one (1) tree in the front yard. All trees planted by a lot owner as required shall be a minimum size of two and one-half (2-1/2) inches caliper measured at a point one (1) foot above ground level. No more than twenty-five percent (25%) of the landscaping shall be in the desert motif. The planting of trees and shrubs and grass are encouraged and recommended. Should any lot owner fail to comply with the provisions of this section, the Architectural Control Committee shall have the right to seek an order from a court of proper jurisdiction requiring specific performance to comply with the provisions hereof, and shall also have the authority to complete the landscaping and require the lot owner to pay a reasonable amount for such completion. All attorneys' fees and costs incurred in any such action, and all expenses incurred in connection with such completion, shall constitute a lien on such lot owner's lot, and shall also be a personal obligation of said lot owner, enforceable at law, until such payment therefor is made.

22. Excavations. Except for excavations for an approved foundation including basement, no excavations or removal of dirt are permitted on any lot below the present grade of such lot.

#### ARTICLE II - DURATION, ENFORCEMENT, AMENDMENT

1. Duration of Restrictions. The Covenants and Restrictions and Architectural Control Guidelines contained herein shall run with and bind the land for a period of fifty (50) years from the date of recordation of these Protective Covenants, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth. During the Development Phase (defined below), the covenants and restrictions contained herein may be modified, amended, or repealed in whole or in part at any time and from time to time by the Developer or his successor or assigns by recorded instrument. The "Development Phase" shall be the time from the date of the recording of this Plat of Subdivision until such time as Developer transfers legal title to more than ninety-five percent (95%) of the number of lots to bona fide purchasers.

Upon completion of the Development Phase, the covenants and restrictions contained herein may be amended by a recorded instrument signed by no less than the owners of seventy-five percent (75%) of the number of lots. Any amendment after the completion of the Development Phase shall require that a thirty (30) day written notice of any such proposed amendment be sent to every owner of any lot, part, or portion of the Property.

2. Perpetuities. If and to the extent that any of the covenants would otherwise be lawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the applicable provision shall continue and endure only until the expiration of twenty-one (21) years after the death of the last <sup>13</sup> to survive the class of persons consisting on all of the lawful descendants of ~~the~~ Governor of the State of Utah, or ~~the~~ President of the United States, living on the date of recordation of these Protective Covenants.

3. Notices. Any notice required under the provisions of this document to be sent to any lot owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such owner.

4. Construction and Severability. All of the restrictions, covenants, and conditions contained in this document shall be construed together. Invalidation of any one of said restrictions, covenants, or conditions, or any part thereof, shall in no wise affect the enforceability or applicability of any of the remaining restrictions, covenants, or conditions, or parts thereof.

5. Violation Constitutes Nuisance. Every act or omission whereby any restriction, covenant, or condition in this document set forth is violated in whole or in part is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Developer or any owner or owners from time to time of any lot or portion of the Property. Remedies hereunder shall be deemed cumulative and not exclusive.

6. Enforcement. Each and all of the restrictions, covenants, and conditions contained in this document, including the Architectural Control Guidelines which are incorporated herein, is and are for the benefit of the Developer and of the owner or owners from time to time of any lot, part, or portion of the Property. Each such restrictive covenant and condition shall inure to the benefit of the Developer and of the owner or owners from time to time of any lot, part, or portion of the Property. Each such restrictive covenant and condition shall inure to the benefit of and pass with each and every lot, part, or portion of



the Property and shall apply to and be binding upon each and every successor in interest. Said restrictions, covenants, and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any such breach, may be enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Developer or the owner or owners from time to time of any lot, part, or portion of the Property; provided, however, that no such breach shall affect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent owner of said lot, part, or portion of the Property shall be bound and obligated by the said restrictions, covenants, and conditions, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise. No legal or equitable right presently exists or shall exist with respect to the use of or access to any golf course or other property adjacent to the subdivision or any amenity now or hereafter thereon.

7. Right to Enforce. The provisions in this Declaration shall bind and inure to the benefit of and be enforceable by the Developer and by the owner or owners from time to time of any lot, part, or portion of said Property, their and each of their legal representatives, heirs, successors, and assigns, and failure by the Developer or any such owner, or their respective legal representatives, heirs, successors, or assigns to enforce any of said restrictions, covenants, or conditions shall in no event be deemed a waiver of the right to do so thereafter.

8. Architectural Control Committee. The Architectural Control Committee which is vested with the powers described herein shall consist initially of at least one (1) person appointed by the Developer. Prior to the commencement of any excavation, construction, or remodeling of any structure or of any addition to any structure, the requirements for submittal to the Architectural Control Committee as set forth in the Southgate Hills Architectural Control Guidelines must be met. The Architectural Control Guidelines are incorporated in these Protective Covenants by this reference. In the event of any conflict between the Protective Covenants and the Architectural Control Guidelines, the Protective Covenants shall govern. Said Committee shall have the right to refuse to approve any such plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed building, materials of which it is to be built, the site upon which it is proposed to be erected, the landscaping plan, the harmony thereof with the surroundings, and the effect of said building or other structure so planned on the outlook from 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 such plans shall be filed as a permanent record with the Architectural Control Committee. In the event said

Committee fails to approve or disapprove in writing any such plans within sixty (60) days after the submission thereof to the Committee, then such approval shall be deemed to have been given. The Developer shall have the right to appoint all members of the Architectural Control Committee until such time as title to more than ninety-five percent (95%) of the number of lots in the Property has been transferred to bona fide purchasers. When title to more than ninety-five percent (95%) of all of the lots in said development has been transferred by the Developer, or at such earlier date in the discretion of Developer, a majority of the owners of lots, parts, or portions of the Property subject to these covenants shall elect and appoint three (3) persons to serve as members of the Architectural Control Committee, which Committee shall thereafter be vested with the powers described herein and shall have jurisdiction over all of the property subject to these restrictions, covenants and conditions.

9. Assignment of Powers. Any and all rights and powers of the Developer herein contained may be delegated, transferred, or assigned. Wherever the term "Developer" is used herein, it includes Developer and its successors and assigns.

10. Based upon the proximity of the described property to a golf course, homes constructed within the boundaries of the described property may be subject to damage from errant or misdirected golf balls. By purchasing property within this plat, the purchaser assumes any and all risk of damage and personal injury as a result of its proximity to the golf course and does hold the City of St. George harmless from any and all claims for injury, damage, expense or loss of whatever nature which may arise as a direct or indirect result of hazards referred to herein.

IN WITNESS WHEREOF, the undersigned has hereunto executed this document this 14 day of 1994.

TONAQUINT INC.

BY: Gerry T. Brown


GERRY T. BROWN  
PRESIDENT

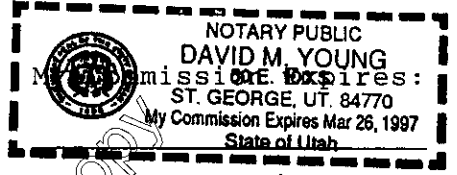
ATTEST:  
  
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STATE OF UTAH )  
 ) :SS.  
COUNTY OF WASHINGTON )

On the 15 day of June 1994, personally appeared before me GERRY T. BROWN, President, and \_\_\_\_\_, Secretary, of said Tonaquint, Inc., who, being duly sworn, did say, each for himself, that they executed the foregoing instrument for and on behalf of said Tonaquint, Inc. by authority of a resolution of its Board of Directors for the uses and purposes set forth therein.

  
\_\_\_\_\_  
Notary Public



Residing at: St. George Utah

