

Mail To:

Perry Homes
17 E. 6400 S.
Murray, Utah 84107

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

SOUTH MOUNTAIN PHASE 9

THIS DECLARATION is made by L.H. PERRY INVESTMENTS, a Utah Limited Partnership, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property (sometimes collectively "Project") in Draper City, Salt Lake County, State of Utah, more particularly described as follows:

All of Lots 1 through 87 ("Lot[s]"), South Mountain Planned Unit Development, Phase 9, according to the official plat thereof filed with the Salt Lake County Recorder in Salt Lake County, Utah, on August 13, 2001, BK 200P, pg. 223, Entry #797293.

WHEREAS, Declarant intends that the Lots, and each of them together with the Common Easements as specified herein, shall hereafter be subject to the covenants, conditions, restrictions, reservations, assessments, charges and liens herein set forth.

NOW, THEREFORE, Declarant hereby declares, for the purpose of protecting the value and desirability of the Lots, that all of the Lots shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the Lots, and be binding on all parties having any right, title or interest in the Lots or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each Owner thereof.

ARTICLE I

HOMEOWNERS' ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Declarant, as an owner of Lots, and every other owner of a Lot shall be a member of the South Mountain Phase 9 Homeowners' Association ("Association"). Membership shall be appurtenant to and may not be separated from ownership of one or more Lots.

SECTION 2. The voting rights of Association members shall be as specified in the Articles of Incorporation and ByLaws of the Association.

ARTICLE II

ASSESSMENTS

SECTION 1. Creation of Lien and Personal Obligation for Assessments. Declarant and each owner of any Lot by accepting a deed to or executing a contract for a Lot (whether or not it

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shall be so expressed in such instrument), shall be deemed to covenant to pay the Association special assessments as hereinafter described. Such assessments, together with interests, costs, and reasonable attorneys' fees, shall be a personal obligation of the owner of each Lot at a time when the assessment is due. Delinquent assessments, together with interests, costs, and reasonable attorneys' fees, shall become a lien upon the Lot if the Association files a Claim of Lien describing the Lot with the Salt Lake County Recorder's Office. The priority of such lien shall be based upon the date the Claim of Lien is filed.

SECTION 2. Purpose of Special Assessments. Any assessments levied by the Association shall be used exclusively to administer and enforce the Residential Area Covenants described in Article IV hereof, to preserve the quality of the Phase 9 development and generally to promote the health, safety, comfort, convenience, and welfare of the owners of Lots in Phase 9. Specifically, without limitation, the assessments may be used to engage legal counsel to file such actions as may be necessary to enforce the Residential Area Covenants.

SECTION 3. Approval of Special Assessments. Any such assessment shall have the consent of sixty percent (60%) of the votes entitled to be cast by Lot Owners or their proxies at a meeting duly called for this purpose. Such assessment shall be separately billed and accounted for by the Association.

SECTION 4. Quorum for Approval of Special Assessment. Written notice of any meeting called for the purpose of levying a special assessment shall be sent to all Owners not less than ten (10) days nor more than fifty (50) days in advance of the meeting. The presence of persons or their proxies entitled to cast forty percent (40%) of all votes entitled to be cast shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at such subsequent meetings shall be one-half of the required quorum at the proceeding meeting.

SECTION 5. Effect of Non-Payment of Assessment: Remedies of the Association. Any assessment not paid by the due date is delinquent and shall bear interest from that date at the rate set forth in the ByLaws. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose any lien against the Lot in the same manner as an action to foreclose a mortgage on real property. No owner subject to assessment may waive or otherwise escape liability for the assessments provided for herein by abandonment of his or her Lot.

ARTICLE III

ARCHITECTURAL CONTROL

SECTION 1. The initial Architectural Control Committee ("Committee") shall be composed of William O. Perry and Ken Dyer. Upon formation of the Association, the Association shall appoint one of its members to act as the third member of the Committee. In the event of death or resignation of any member of the Committee, the remaining members of the Committee shall have full authority to select a successor. Neither members of the Committee,

nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant.

SECTION 2. The Committee's approval or disapproval as required in these covenants shall be in writing on the Owners' plans or in a letter form. The Owner must submit a set of formal plans, specifications, and site plan to the Committee before the review process can commence. In the event the Committee or its designated representative fails to approve or disapprove within 30 days after plans and specifications have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Provided, however, nothing herein shall be deemed to release or discharge the Owners' obligations to comply with the covenants described in Article IV hereof. This section does not apply to homes built by L.H. Perry Investments, a Utah Limited Partnership, so long as it is a member of the Architectural Control Committee and complies with the covenants described in Article V.

SECTION 3. No building or other structure shall be commenced, erected or maintained upon the Project, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, exterior color combinations and location of the same shall have been submitted to and approved in writing as to the harmony of exterior design and location in relations to surrounding structures and topography by the Committee.

SECTION 4. No fence shall be commenced, erected or maintained upon the Project unless the plans meet the local zoning and safety requirements of Draper City and comply with the conditions of approval and development standards of the South Mountain Planned Unit Development.

ARTICLE IV

SPECIAL MAINTENANCE COVENANT (AFFECTING ONLY LOTS 901-911 AND 940-943)

SECTION 1. PARKING STRIP MAINTENANCE ALONG RAMBLING ROAD The owners of Lots 901-911 and 940-943 shall individually maintain and repair that portion of the improved, landscaped parking strip that lies between the back of their Lots and Rambling Road.

SECTION 2. DUTY TO INSTALL LANDSCAPING AND IRRIGATION The Declarant shall landscape the parking strip described in Section 1 and make provision for adequate irrigation.

ARTICLE V

RESIDENTIAL AREA COVENANTS

SECTION 1. QUALITY

1. No Lot shall be used except for residential purposes.
2. Each dwelling shall have an attached garage for a minimum of 2 cars and may have a detached garage with a maximum of 3 vehicles; provided that neither encroach upon any easement.
3. No building shall exceed two stories in height, not including basement.
4. All construction shall be comprised of new materials, except that used brick may be used with the prior written consent of the Committee.
5. The main exterior materials shall be brick, stucco, stone or artificial stone. However, no aluminum, vinyl, or wood siding shall be used as an exterior wall finish. Any other exterior wall finishes shall be first approved by the Committee.
6. All Lots shall comply with the January 4, 2000 Development Standards adopted by the South Mountain Planned Unit Development that has been recorded and are therefore a matter of public record, or as hereafter duly amended and recorded.

SECTION 2. DWELLING SIZE. The requirements below are exclusive of open porches and garages.

- Rambler: 1,500 sq.ft. main level.
Tri-Level: 1,250 sq.ft. minimum finished square feet constituting the combination of the main level and upper level.
Two Story: 1,000 sq.ft. 1st floor, 800 sq.ft. 2nd floor.

SECTION 3. CITY ORDINANCES. All improvements on a Lot shall be made constructed and maintained, and all activities on a Lot shall be undertaken, in conformity with all laws and ordinances of the City of Draper, Salt Lake County, and the State of Utah which may apply, including without limiting the generality of the foregoing, all zoning and land use ordinances.

SECTION 4. EASEMENT. Easements for installations 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 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.

SECTION 5. NUISANCES. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done there on which may be or may become an annoyance or nuisance to the neighborhood.

SECTION 6. TEMPORARY STRUCTURES No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

SECTION 7. GARBAGE AND REFUSE DISPOSAL No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers.

SECTION 8. LANDSCAPING All front and side yards must be landscaped within 1 year after dwelling is occupied.

ARTICLE VI

GENERAL PROVISIONS

SECTION 1. ENFORCEMENT Any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right of the Owner or any other Owner to do so thereafter.

SECTION 2. SEVERABILITY Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provision which shall remain in full force and effect.

SECTION 3. COVENANTS TO RUN WITH THE LAND. The covenants and restrictions of this Declaration are intended to and shall run with land, and shall be binding upon and shall inure to the benefit of the Declarant and all other Lot Owners and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns.

SECTION 4. AMENDMENTS. Any amendment to this declaration shall have the consent of two-thirds (2/3) of all the votes entitled to be cast by Lot Owners or their proxies at a meeting duly called for this purpose. Written notice of such meetings shall be sent to all Owners not less than ten (10) nor more than fifty (50) days in advance of the meeting. The presence of persons or their proxies entitled to cast forty percent (40%) of all votes entitled to be cast shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the proceeding meeting. Any amendment approval shall be reduced to writing, signed, and recorded against the Lots.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 29th day of August, 2001.

DECLARANT:

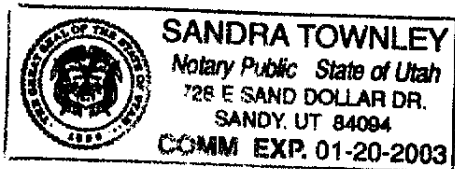
L.H. PERRY INVESTMENTS,
A UTAH LIMITED PARTNERSHIP

BY: *William O. Perry*
William O. Perry
ITS: General Partner

STATE OF UTAH)
)ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me by William O. Perry, the General Partner of LH Perry Investments, a Utah Limited Partnership.

Sandra Townley
NOTARY PUBLIC



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Book - 8494 Pg - 9107-9112
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
MERIDIAN TITLE
BY: KCC, DEPUTY - WI 6 P.

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