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DATE 14-APR-1997 11:59AM
FEE: 70.00 CHARGE
DONNA S. MCKENDRICK, RECORDER
FILED BY RGO
FOR B & D TITLE CO OF TOOELE
TOOELE COUNTY CORPORATION

WHEN RECORDED, RETURN TO:
Bob McIntyre
100 Lakeview
Stansbury Park, UT 84074

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF HOME TOWNE COURT, A PLANNED UNIT DEVELOPMENT

1997 THIS DECLARATION is made and executed this 9th day of April, ~~1996~~, by McIntyre Construction Company, a Utah Company (hereinafter referred to as "Declarant").

RECITALS: 11-35-1 to 38

A. Declarant is the record owner of that certain tract of Property more particular described in Article II of this Declaration.

B. Various improvements have been or will be made to the Property described in Article II of this Declaration so as to enable its use as a planned unit development containing certain Lots and Common Areas. Declarant desires to provide for the preservation of the values and amenities in said development and for the maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Article II of this Declaration to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

C. Declarant deems it desirable, for the efficient preservation of the values and amenities in the Project, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purposes, Declarant hereby establishes the Home Towne Court Homeowners Association, a group comprised of the owners of that real property described in Article II herein. The Association will be just as the name implies, an association of homeowners who, by their acting in unity according to their guidelines set forth herein, may direct the affairs of Home Towne Court.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby declares that the property described in Article II of this Declaration is and shall be held, transferred, sold conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals") the following terms shall have the meanings indicated:

1. *Association* shall mean and refer to the HOME TOWNE COURT HOMEOWNERS ASSOCIATION, an association of the real property located in Home Towne Court, Tooele County, State of Utah.

2. *Common Areas* or *Common Areas and Facilities* shall mean and refer to all portions of the Property owned by the Association for the common use and enjoyment of the Owners, and shall include:

(a) All portions of the Property not specifically included with the individual Lots.

(b) All Common Areas and Limited Common Areas designated as such on the Plat.

(c) The Private Street within the Project.

3. *Declarant* shall mean and refer to McIntyre Construction Company, a Utah Company, and/or any successor to said Company which, by operation of law, through a voluntary conveyance, transfer, or assignment, or as a result of the foreclosure of an encumbrance granted by Declarant, comes to stand in the _____ relationship to the Project and/or the Additional Land as did its predecessor.

4. *Declaration* shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions as the same may be modified amended, supplemented, or expanded in accordance with law and the provisions hereof.

5. *Living Unit* shall mean and refer to a home, similar structure or portion of a structure located on a Lot which is designed and intended for human occupancy.

6. *Lot* shall mean and refer to any of the separately numbered and individually described parcels of land shown on the Plat or Plats and intended for private use and ownership. The Plats as initially recorded in conjunction with this Declaration and prior to any amendment or supplement thereto contains thirty-eight (38) such lots.

7. *Member* shall mean and refer to every person who holds membership in the Association.

8. *Mortgage* shall mean and include a first mortgage on any Lot or a first deed of trust on any Lot.

9. *Mortgage* shall mean and include both a mortgage under a first mortgage on any Lot and a beneficiary under a first deed of trust on any Lot.

10. *Open Space Area* shall mean and refer to all portions of the Common Areas, excluding the following: Limited Common Areas; the Project's Private Street and parking areas; the Project's utility and drainage lines and facilities; landscaped or otherwise developed portions of the Common Areas approved by Tooele City, Utah.

11. *Owner* shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Tooele County, Utah) of a fee or an undivided fee interest in any mortgage, deed of trust, or like instrument. The term Owner shall not mean or include a mortgage or a beneficiary or trustee under a deed of trust unless and until each party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

12. *Plat* or *Plats* shall mean and refer to the following duly approved and recorded plats:

The Plat filed herewith, entitled "Home Towne Court, A Planned Unit Development," as executed and acknowledged by Declarant.

13. *Private Street* shall mean and refer to the Project's "private street" identified as such on the Plat; provided, however, that any portions of a "private street" which occupy part of a Lot shall consist only of such perpetual easements and rights of ingress and egress on, over, under, through, and across the part of the Lot so occupied as may be necessary or convenient for the Association (in a manner not inconsistent with this Declaration) to construct, improve, and maintain the Project's "private street," walkways, and sidewalks, all drainage structures and other related facilities, all improvements created or constructed by Declarant, and all other improvements occupying any such part of a Lot when all Project construction has been completed. Such perpetual easements and said

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rights shall benefit the entirety of the Project. (Article II of this Declaration contains additional easements and reservations in favor of the Declarant affecting the area located within the Private Street.)

14. Project shall mean and refer to Home Towne Court, A Planned Unit Development, as shown on the Plat and governed by this Declaration.

15. Property shall mean and refer to the tract of real property described in Article II of this Declaration.

II. PROPERTY DESCRIPTION

The property which is initially to be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following-described real property situated in the City of Tooele, Tooele County, State of Utah:

> Situated in the County of Tooele, State of Utah:
>
> Beginning at a point of the Southwest corner of Parkside Subdivision Phase III, and on the Easterly line of North Lake #1 Subdivision, said point also lies S00.54'36"W, 186.74 feet from the Northwest corner of Lot 4, Block 4, Plat "B", Tooele City survey, said point also lies N89.41;22"E, along the section line (basis of bearings) 258.41 feet and N00.54'36"E, 24.64 feet; from the Northwest corner of Section 28, Township 3 South, Range 4 West, Salt Lake Base and Meridian; and running thence S89.05'24"E, along the Southerly line of said Parkside Subdivision Phase III and along the Southerly right of way line to a point on the Southerly line of aforesaid Block 4; thence N89.05'24"W, along said block line, 241.00 feet; thence N00.54'36"E, 170.46 feet; thence N89.05'24"W, 75.00 feet to a point on the aforesaid Easterly line of North Lake #1 Subdivision; thence N00.54'36"E along said Easterly line of North Lake #1 Subdivision, 590.54 feet to the point of beginning. Contains: 5.23 Acres

TOGETHER WITH all easements, rights-of-way, and other rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

EXCLUDING all presently existing or to-be-constructed or -installed utility lines and related facilities which are now or hereafter owned by any governmental or quasi-governmental authority or by any public or private utility company, including (without limitation) all water pipes, lines, and related facilities now or hereafter located within the Project, and all easements appurtenant thereto.

ALL OF THE FOREGOING IS ALSO SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; and all Patent reservations and exclusions.

RESERVING UNTO DECLARANT such perpetual easements and rights of legress and egress over, across, through, and under all portions of the above-described parcel of and all portions of each Lot located either within ten (10) feet of the front or within ten (10) feet of either side of such Lot as may be necessary or convenient for Declarant (in a reasonable manner not inconsistent with this Declaration) to such roads, structures, facilities, and other improvements (including recreational improvements and utilities) designed for the use and enjoyment of all the Members as Declarant may determine in its sole discretion to be appropriate. The easements and rights set forth in the foregoing shall include (without limitations) the right to hook into and use any utility line, pipe, conduit, water runoff retention areas, structures and the Private Street located in the Project. Declarant shall have the right to assign, convey, and/or transfer all or any portion of the easements and rights herein reserved to the City of Tooele, any other governmental or quasi-governmental body having jurisdiction over the Property, and any private or public utility company providing service to the Project.

III. ASSOCIATION MEMBERS AND VOTING RIGHTS

1. *Membership.* Every Owner shall be a Member of the Association. No evidence of membership in the Association shall be necessary other than evidence of ownership of a Lot. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

2. *Voting Rights.* The Association shall have the following-described two classes of voting membership:

Class A. Class A Members shall be all Owners, except Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held. Although each of the multiple Owners of a single Lot shall be a Class A Member, in no event shall more than one (1) Class A vote exist or be cast on the basis of a single Lot. Which of the multiple Owners of a single Lot shall cast the vote on the basis of the Lot is determined under Section 3 of this Article III.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to five (5) votes for each Lot in which the interest required for membership in the Association is held. The Class B membership shall cease and the Declarant shall become a Class A Member upon the first to occur of the following: (i) after fee titles to the thirty-eight (38) Lots contained in the Project have been conveyed by Declarant to purchasers; or (ii) the expiration of fifteen (15) years after the date on which Declarant first conveys to a purchaser for title to a Lot.

3. *Multiple Ownership Interests.* In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of the such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

4. *Lists of Owners.* The Association shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Lot which is owned by him. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the Association may for all purposes act and rely on the information concerning Owners and Lot ownership which is thus acquired by it, or at its option, the Association may act and rely on current ownership information representing any Lot or Lots which is obtained from the Office of the County Recorder of Tooele County, Utah. The address of an Owner shall be deemed to be the address of the Lot owned by such person unless the Association is otherwise advised.

IV. PROPERTY RIGHTS IN COMMON AREAS

1. *Easement of Enjoyment.* Each Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described in this Section to any family member, household guest, tenant, leasee, contract purchaser, or other person who resides on such Owner's Lot.

2. *Form of Conveyancing.* Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. _____ contained within Home Towne Court, A Planned Unit Development, as said Lot is identified in the Plat recorded in Tooele County, Utah, on _____, 19____, as Entry No. _____ and in the "Declaration of Covenants, Conditions, and Restrictions of Home Towne Court, A Planned Unit Development", recorded in Tooele County, Utah on _____, 19 ____, as Entry No. _____, in Book _____, at Page _____.

TOGETHER WITH a non-exclusive right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Plat and said Declaration of Covenants, Conditions, and Restrictions.

SUBJECT TO such perpetual easements and rights of ingress and egress on, over, under, through, and across the lot which are associated with the utilities and private street in said development.

Whether or not the description employed in such instrument is in the above-specified form, however, this Declaration shall be binding upon and shall incur to the benefit of any party who acquires any interest in a Lot. Neither the right and easement of use and enjoyment to the Common Areas shall be separated from the Lot to which they appertain, and even though not specifically mentioned in the instrument of transfer, such non-exclusive right and easement of use and enjoyment to the Common Areas shall automatically accompany the transfer of the Lot to which they relate. Notwithstanding any interference that can be drawn from this Declaration to the contrary, the owner of each Lot shall be responsible for the payment of any and all charges, assessments and fees (including hookup fees) relating to culinary water of any source, and the Association shall not be liable for any part of such charges, assessments or fees.

3. *Transfer of Title.* Declarant agrees that it shall, at or prior to the time it conveys the first Lot to an Owner, convey by Warranty Deed to the Association good and marketable title to the Common Areas free and clear of all monetary liens and encumbrances (other than the lien of current general taxes and the lien of any current assessments, charges, or taxes imposed by governmental or quasi-governmental authorities).

4. *Limitation on Easement.* A Member's non-exclusive right of use of the Common Areas shall be subject to the following:

(a) The right of the Association to suspend a Member's voting rights and right to the use of the Common Areas (except the Private Street shown on the Plat for access to his Lot) for any period during which an assessment on such Member's Lot remains unpaid.

(b) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas.

(c) The right of the Association (without the consent of Owners, Members, or any other persons or entities) to grant permits, licenses, and easements over, across, through, and under the Common Areas to any governmental or quasi-governmental authority, to any maintaining, or providing utilities and related facilities or roads or for such other purposes reasonably necessary or useful for the proper maintenance or operation of the Project; and

(d) The rights of Tooele City, any other governmental or quasi-governmental body having jurisdiction over the Property, and any private or public utility company serving the Project to access said rights of ingress and egress over, across, through, or under the Common Areas for purposes of providing police and fire protection, transporting school children, and providing any other governmental, municipal, or utility service to the Project.

5. *Charges for Use of Common Areas.* No leases, charges for use, rental agreements, licenses, or similar arrangements shall be employed or entered into with respect to any portion of the Common Areas and Facilities.

6. *Access to Lots.* Each Lot Owner's non-exclusive right and easement of use and enjoyment in and to the Common Areas shall include (without limitation) the right of ingress and egress to such Owner's Lot, which right shall be irrevocable, perpetual, and appurtenant to such Lot.

V. ASSESSMENTS

1. *Person Obligation and Lien for Assessments.* Each Owner (including Declarant) shall, by acquiring or in any way becoming vexed with an interest in a Lot, be deemed to covenant and agree to pay to the Association the regular and the special assessments described in this Article, together with the charges hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain: (a) a charge and lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of each person who is an Owner of the such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot.

2. *Purpose of Regular Assessments.* Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, recreation, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of the following:

(a) Taxes and insurance on the Common Areas.

(b) Maintenance, operation, management, and supervision of the Common Areas.

(c) Lawn care and landscaping on all Lots and on the Common Areas.

(d) Snow removal from the Private Street, driveways and sidewalks within the Project.

(e) Minor repair of exterior portion of Living Units.

(f) Public liability insurance insuring the Association, the Declarant and the individual Owners and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Areas owned by the Association or easement areas under the control of the Association.

(g) Such other insurance, including worker's compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, and other requirements necessary to carry out the Association's functions or to insure the Association against any loss from malfeasance or dishonesty of any person charged with the management or possession of any Association funds or other property.

(h) Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

(i) Any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under its Articles of Incorporation. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of the Common Areas and Facilities.

3. *Special Assessments.* Special assessments may only be levied with the unanimous agreement of all Association voting members and in conformity with their unanimous agreement as to amount, use, or any other function relating thereto. * Board Members

4. *Quorum Requirements.* The quorum required for any action authorized by these declarations shall be as follows: The presence of Members or of proxies entitles to cast sixty-six percent (66%) of all the votes of Members shall constitute a quorum.

5. *Monthly Assessment and Due Dates.* The monthly assessments shall be $_____ and shall commence as to all Lots on the first day of the month following conveyance of the Common Areas to the Association. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in amount of the monthly assessment, the Association shall give each owner written notice of the amount and first due date of the assessment concerned.

6. *Certificate Regarding Payment.* Upon the request of any Owner, prospective purchaser, or encumbrances of a Lot, the Association shall issue a certificate stating whether or not all assessments regarding such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons (other than the Owner of the Lot concerned) who in good faith and value rely thereon.

7. *Effect of Nonpayment --- Remedies.* Regardless of the terms of any agreement to the contrary, the liability of the Owners of a Lot for the payment of any assessment relating to such Lot shall be joint and several, and any remedy for the collections of such assessment may be enforced against any or all Owners of the Lot concerned; provided, however, that the personal obligation of an Owner to pay assessments shall not pass to his successors in title unless authorized by them. If any assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum (or, in the event such rate at any time exceeds the maximum legal limit, interest shall accrue at such maximum legal rate) and the Association may bring an action either against any or all Owners who are personally liable therefor or to foreclose the lien against the Lot; provided, however, that the Association shall give the Owner(s) concerned twenty (20) days advance written notice of its intent to pursue one or more of its remedies thereunder. Any reasonable attorneys' fees, court costs, and each and every other expense incurred by the Association in enforcing its rights. After instigation of a foreclosure action by the Association against any Lot, the Association shall, without regard to the value of such Lot or the Extent of the Owner's equity therein, be entitled to the appointment of a receiver to collect any income or rentals which may be produced by such Lot.

VI. OPERATION AND MAINTENANCE

1. *Maintenance by Owners and Related Costs.* Each Living Unit shall be maintained by the Owner thereof in a clean and orderly condition and in such condition as does not detract from the appearance of the Property and as does not affect adversely the value or use of any other Lot, Living Unit, or the Common Areas. Each Lot Owner, and not the Association, shall be responsible to pay for utility services (including, without limitation, both hookup and installation fees and periodic charges) which are separately charged, billed, and/or metered to his Lot by governmental or quasi-governmental authorities or by public or private utility companies.

**The Association shall have the power to incur expenses for maintenance and repair of the exterior of any Living Unit or any improvements on the exterior of a Living Unit, if such maintenance and repair is necessary, in the opinion of the Association, to protect the Common Area or any other portion of the Property, and if the Owner of said Living Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity thereof has been delivered by the Association to said Owner. The ~~Board~~ Assoc shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and any such cost or expense, including attorneys' fees, arising out of or incident to such maintenance and repair and the Assessment therefor.

2. *Operation and Maintenance by Association.* The Association shall provide for such maintenance and operation of each Lot ~~and exterior Living Unit and the Common~~ and Areas as may be reasonably necessary or desirable to make them appropriately usable and to keep them clean,

functional, attractive, and generally in good condition and repair. The Association shall perform routine lawn care and landscaping duties on Lots with Living Units and the Common Areas. The Association shall remove snow from Private Street and walkways on Lots and Common Areas.

3. *Association Access to Lots.* The Association shall have an irrevocable right of access to each Lot to make emergency repairs and to do other work reasonably necessary or useful for the proper maintenance or operation of the Project.

VII. USE AND BUILDING RESTRICTIONS

1. *Use of Common Areas and Park Common Area.* The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions contained herein. The Park Common Area may be used for picnicking, and other recreational uses consistent with the Park Common Area.

2. *Use of Lots and Living Units.* All Lots and Living Units are restricted to use as residential housing; provided, however, that a portion of a Living Unit can be used to conduct a business or profession of: (a) such use as is approved by all appropriate governmental and quasi-governmental bodies having jurisdiction over such matters; (b) such use as is approved by Declarant; and (c) such use as is of a type traditionally conducted in a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to detract from the appearance or value of any other Lot, Living Unit, or the Common area, so as to create a nuisance or interfere with the rights of any Owner.

3. *Recreational Vehicles.* No boats, trailers, and campers shall be parked within the Lot of the Owner, the Private Street, the Common Areas or any other are on the Project.

4. *Animals.* No animals other than small household pets (dogs and cats), with a maximum of two (2) per Living Unit shall be kept or allowed on any Lot. Animals must be kept inside Living Unit at all times unless it is on a leash or in a cage and is in the presence of said Owner. No animals of any kind shall be raised, bred, or kept for any commercial purpose. The Association may enforce reasonable rules and regulations concerning the use of, or damages to, the Common Areas by animals and the liability of individual Owners for such damage. Notwithstanding the foregoing, the Association shall have the right to prohibit the presence of any animal within any Living Unit of the Project which constitutes a nuisance to any other Lot owner.

5. *Nuisances.* No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render any part of the Property unsanitary or unsightly or which would be offensive or detrimental to any other part of the Property or to the occupants thereof. No noise or other nuisance shall be permitted to exist or operate upon any part of the Property so as to be offensive or detrimental to any other part of the Property or to the occupants thereof. Notwithstanding the foregoing, no provision of this Declaration shall be construed or enforced to prevent or limit the Declarant's right to complete development of the Property in accordance with the plan therefor as the same exists or may be modified from time to time by the Declarant nor prevent normal construction activities during the construction of improvements upon any Lot in the Project. No development or construction activities shall be deemed to constitute a nuisance or violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion.

6. *Unsightly Articles.* No unsightly articles shall be permitted to remain on a Lot so as to be visible from any other Lot or the Common Area. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container, and any such container shall be kept within an enclosed structure or when appropriately screened from view.

7. *Signs.* Signs may be erected by Declarant for permanent identification of the Project or used by Declarant in connection with the development and sale of lots. Signs of customary and reasonable dimensions as may be displayed on a Lot advertising a Lot or Living Unit for sale or

lease. Political yard signs may be maintained only for two (2) months in advance of any election and must conform to the standards set forth by the Association should the same exist.

8. *No Hazardous Activities.* No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

9. *Motorbikes.* All motorcycles, trail bikes, three-wheel powered devices, automobiles, and two-or four-wheel-drive recreational type vehicles are to be operated only on established streets and parking areas and are specifically prohibited from all other portions of the Common Area.

10. *Drainage.* No Owner may interfere with the established drainage pattern over any part of the Project unless adequate provision is made for proper drainage and in approved in advance by the Association. Established drainage shall mean and refer to the drainage which exists at the time the overall grading and development of the Project by Declarant is completed. Each Lot Owner shall maintain the drainage channel immediately inside the road in a manner which keeps it free of debris.

11. *No Further Subdividing.* No Lot or Common Area may be further subdivided.

VIII. ARCHITECTURAL CONTROL

1. *Size of Living Unit.* Each Living Unit shall consist of a minimum of Twelve Hundred (1,200) square feet, not including a basement and two- (2-) car attached garage.

2. Other Structures. No other structures shall be placed by Owners on said Lots or Common Areas such as outside dog houses, storage sheds, carports, decks, fences or any other structure that is attached or detached from the Living Unit.

3. Changes to Lots and Living Units. No architectural changes are to be made by the Owner to the Lot or the exterior portion of the Living Unit without the unanimous approval of the Association. Changes include color, types of material used to build home, structural changes, additions and modifications

4. *Rules and Regulations.* The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to ensure that the Property is maintained and used in a manner consistent with the interests of the Owners.

5. *Unanimous Written Consent In Lieu of Vote.* In any case in which the Declaration requires for authorization or approval of a transaction or the affirmative vote of a stated percentage of the votes of the Association, such requirement may be fully satisfied by obtaining, with or without a meeting, consent in writing to such transaction from every Member entitled to cast a vote.

6. *Amendment.* A unanimous vote of all members entitled to vote shall be required to amend these Declarations. A vote may be deemed approved by written consent as heretofore set forth. Until the Class B membership ceases, no amendment to the Plat or to this Declaration, or to any provision of this Declaration, which has or may have the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant) shall be accomplished or effective unless the instrument through which amendment is purported to be accomplished is consented to in writing by Declarant.

7. *Mortgage Protection.* The lien of claim against a Lot for [illegible] assessments 0454 P 317 charges levied by the Association pursuant to this Declaration shall be subordinate to any Mortgage

recorded on or before the date such assessments or charges become due. In the event that the State of Utah should enact the Uniform Planned Community Act or any other statute applicable to planned unit developments with a provision that would allow such assessments or charges, including special assessments, to have a limited priority over a Mortgage recorded before such assessments or charges became due, or in the event that the State of Utah should enact any law which would allow a lien for unpaid assessments or charges to survive foreclosure or exercise of a power of sale, all such assessments and charges, including those made due and payable to the Association on a monthly basis, and the lien for any fees, late charges, fines, or interest that may be levied by the Association in connection with such unpaid assessments of charges shall be deemed subordinate to the Mortgage on the Lot upon which such assessments or charges are levied.

The lien or claim against a Lot for such unpaid assessments or charges shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such lot, or the exercise of a power of sale available thereunder, shall extinguish a subordinate lien for such assessments or charges which become payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure or power of sale shall not relieve the purchaser or transferor of such Lot from liability for, nor such Lot from the lien of, any assessments or charges becoming due thereafter.

The Association shall make available to Lot Owners, to lenders, and to holders, insurers, or guarantors of any mortgage current copies of this Declaration, the Plat, any rules concerning the Project, and the books, records, and financial statements of the Association. "Available" as used in this Paragraph, shall mean available for inspection upon request during normal business hours or under other reasonable circumstances.

6. *Protective or Storm Water Retention Areas and Structures.* Declarant and Owners shall not have the authority to change, by any vote, or by alienation, transfer, sale, or otherwise, the use of the areas and structures designed to control or retain storm water runoff unless the consent of the Flood Control Division of Tooele County has first been obtained in writing.

7. *Declarant's Rights Assignable.* All of the rights of Declarant under this Declaration may be assigned, transferred, or encumbered either by operation of law or through a voluntary conveyance, transfer, encumbrance, or assignment.

8. *Interpretation.* The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not effect the validity or enforceability of the remainder thereof.

9. *Covenants to Run with Land.* This Declaration and all the provisions thereof shall constitute covenants to run with the land or equitable servitude, as the case may be, and shall be binding upon and shall serve to the benefit of Declarant, all parties who hereafter acquire any interest in a Lot or in the Common Areas, and their respective grantees, transferees, heirs, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Living Unit shall comply with, and all interests in all Lots and in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, amendments, and determinations contemplated by this declaration and the provisions of any rules, regulations, agreements, instruments, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

10. *Effective Date.* This Declaration, any amendment or supplement hereto, and any amendment to the Plat shall take effect upon its being filed for record in the Office of the County Recorder of Tooele County, Utah.

11. *No Liability for Damages.* The Association shall not be liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made

pursuant to these Declarations. All Members waive all courses of action against the Declarant, its employees, professional assistants, preparers of these Declarations, and Association Members for causes arising out of the existence of these Declarations, notwithstanding the enforceability thereof.

EXECUTED by Declarant on this 9 day of April, 1997

"Declarant":

McIntyre Construction Company

By: Robert McIntyre

STATE OF UTAH)
:)
COUNTY OF TOOELE)

PERSONALLY APPEARED before me ROBERT R. MCINTYRE who, being first duly sworn, acknowledged that he is the PRESIDENT of MCINTYRE CONSTRUCTION COMPANY, that the foregoing Declaration of Covenants, Conditions, and Restrictions was signed on behalf of said Company.

SUBSCRIBED AND SWORN TO before me this 9 day of April, 1997

Karen Jensen
NOTARY PUBLIC
Residing in Tooele County, Utah

NOTARY PUBLIC
KAREN JENSEN
50 N. Main St.
Tooele, Utah 84074
My Commission Expires
February 18, 1998
STATE OF UTAH

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ROBERT R. MCINTYRE

JILL K. MCINTYRE

STATE OF UTAH)
) ss.
COUNTY OF TOOELE)

On the 9 day of April, 1997, personally appeared before me ROBERT R. MCINTYRE and JILL K. MCINTYRE the signers of the above instrument, who duly acknowledged to me that they executed the same.

NOTARY PUBLIC
KAREN JENSEN
50 N. Main St.
Tooele, Utah 84074
My Commission Expires
February 16, 1998
STATE OF UTAH

NOTARY PUBLIC

My Commission Expires: February 16, 1998 Residing In: Tooele, Utah

JULIE ANN SYNDERGAARD

STATE OF UTAH)
) ss.
COUNTY OF TOOELE)

On the 10 day of April, 1997, personally appeared before me JULIE ANN SYNDERGAARD the signer of the above instruement, who duly acknowledged to me that she executed the same.

NOTARY PUBLIC

My Commission Expires: February 16, 1998 Rsiding In: Tooele, Utah

NOTARY PUBLIC
KAREN JENSEN
50 N. Main St.
Tooele, Utah 84074
My Commission Expires
February 16, 1998
STATE OF UTAH