

WHEN RECORDED MAIL TO:  
SLI COMMERCIAL REAL ESTATE  
261 EAST 300 SOUTH, #350  
SALT LAKE CITY, UT 84111

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SHERYL L. WHITE, DAVIS CNTY RECORDER  
2001 JUL 11 10:03 AM FEE 46.00 DEP KM  
REC'D FOR BONNEVILLE TITLE COMPANY, INC

-TO-  
WHOM IT MAY CONCERN

DECLARATION OF PROTECTIVE COVENANT AGREEMENTS, RESTRICTIONS AND  
CONDITIONS AFFECTING THE REAL PROPERTY KNOWN AS NEWBERRY PLACE  
SUBDIVISION NO. 2

Entry No.  
Recorded **July 11, 2001**  
Book Page  
Dated **June 29, 2001**

WHEREAS SLI Commercial Real Estate, a Utah Corporation, and Benchmark Real Estate Company, a Utah Corporation, (hereinafter referred to as "Developer") are the owners of the following described real property located in Davis County, Utah:

Lots 31 through 61 inclusive of Newberry Place Subdivision No. 2, according to the official plat thereof recorded as Entry No. **1671003**, in Book **2836**, Page **198**, in the Office of the Davis County Recorder.

**13-227-0031 thru 13-227-0061 inclusive**

WHEREAS, it is the desire and intention of the Developer to sell the lots described above and to subject the lots to mutually beneficial restrictions under a general plan of improvement for the benefit of all the lots in the subdivision and the future owners of these lots;

NOW, THEREFORE, the Developer hereby declares that all of the lots described above are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied and improved subject to the following covenants and conditions, all of which are declared and agreed to be in furtherance of a plan for improvement and sale of the lots described above and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the lots. All of the covenants and conditions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the above described lots or any part hereof.

1. **LAND USE AND BUILDING TYPE.** No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single-family dwelling not to exceed two stories in height and an attached garage for not fewer than two cars or more than three cars; provided however, that the Architectural Control Committee may permit one or more of the lots to be used for school or church purposes or to be used for a swimming pool and other recreational facilities for the benefit of the owners of some of all of the other lots described above.

2. **ARCHITECTURAL CONTROL.** No building shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structure and as to location with respect to topography and finished grade elevation.

Unless approved by the Architectural Control Committee, no hedge more than three feet high and no fence or wall shall be erected, placed, altered or permitted to remain on any lot closer to the front street than the front of the residential structure on said lots, or where said hedge, fence or wall is located along the boundary line between two adjoining lots, it shall not be closer to the front street than the front of whichever residential structure on the two adjoining lots is nearer to the street.

Each lot shall be used for private residence purposes only, except as hereinafter set forth, and no pre-existing structure of any kind shall be moved from any other location and placed upon said lot, nor shall any incomplete building be permitted to remain incomplete for a period in excess of one year from the date the building was started, unless approved by the Architectural Control Committee.

All construction shall be comprised of new materials, except that used brick may be used with prior written approval of the Architectural Control Committee.

The front exterior wall surface of a dwelling shall consist of brick, rock, stucco, or a combination. Manmade stone shall be subject to the Architectural Control Committee approval. All roofs in the subdivision shall be of 20-Year asphalt shingle or better. All roofs shall have a pitch of 5-12 or greater (rise over run shall be 5-12 or greater). All roof vent caps, lowers, plumbing stacks, chimney flashing, down spouts, etc. are to be painted to match the color of the roof or the trim.

3. **DWELLING QUALITY AND SIZE.** The following minimum finished square foot living area requirements shall apply. Living areas shall be calculated exclusive of garages, one story open porches, and basements.

One Story Dwellings (Rambler): The minimum square foot living area shall not be less than 1100 square feet.

Two Story Dwellings: The combined area of the two stories above curb level shall not be less than 1,450 square feet.

Split Level Dwellings: The combined area of the ground level and the adjoining levels, qualifying as stories as herein defined, shall not be less than 1,300 square feet.

Split Entry Dwellings: The combined area of the two levels shall not be less than 1,600 square feet; the lower level must qualify as a story as herein defined, and the minimum area of the upper level shall not be less than 1,100 square feet.

If four feet or more of foundation is above finished grade, then the level qualifies as a story. For the purposes of these covenants, the basement area shall in no event be considered a story. It is the purpose of this covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same as or better than that which can be produced at the date that these covenants are recorded.

4. **SET BACK LINES.** Unless a written exception is granted by the Architectural Control Committee where unusual circumstances exist, the following set back lines shall apply:

- a) No building shall be located on any lot nearer than 30 feet to the front lot line, or nearer than 20 feet to any side street line. Buildings fronting 2300 North street cannot be located nearer than 35 feet to the front lot line.
- b) No dwelling shall be located nearer than 10 feet to any interior lot line. A one-foot minimum side yard shall be permitted for a garage or other permitted accessory building located 60 feet or more from the front building setback line, unless further restricted by a side lot utility/drainage easement as depicted on the recorded plat. No dwelling shall be located on any interior lot nearer than 30 feet to the rear lot line. Detached garages or other permitted accessory buildings may be located 3 feet or more from the rear lot line, so long as such buildings do not encroach upon any easements as revealed by the recorded plat.
- c) For the purposes of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided however that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

5. **LOT AREA AND WIDTH.** No dwelling shall be erected or placed on any lot having a width of less than 75 feet at the point 30 feet behind the front lot line, nor shall any dwelling be erected or placed on any lot having an area of less than 11,000 square feet.

6. **HEIGHT RESTRICTIONS.** No dwelling shall exceed thirty (30) feet in height, nor shall any dwelling be less than twelve (12) feet in height. No accessory building shall exceed fifteen (15) feet in height, nor shall any accessory building be less than six (6) feet in height.

7. **CURB, GUTTER AND SIDEWALKS.** Each lot owner hereby warrants that they have reviewed the curb, gutter and sidewalks that abut to and are part of the lot(s) purchased and accept the curb, gutters and sidewalks in their current condition. Owner(s) also warrant the curb, gutter and sidewalk to be free from defects to Clinton City for a period of two years from the date of closing of the purchase of said lot(s).

8. **EASEMENTS.** Eight and ten foot easements for drainage and/or installation and maintenance of utilities are reserved on front and back lot lines and on some side lot lines 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 or maintenance of utilities. 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.

9. **DRAINAGE.** No lot shall be graded and no structure or other obstacle shall be erected, placed, or permitted to remain thereon in such a way as to interfere with the established drainage pattern over the lot to and from adjoining land, or in the event it becomes necessary to change the established drainage over a lot, adequate provision shall be made for proper drainage. Any fence or wall erected along the side or rear property line of any lot shall contain "weep holes" or shall be otherwise constructed so as not to prevent the flow of surface water from adjoining land where such flow is in accord with the established drainage. 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.

10. **SUB-SURFACE DRAINS.** Where ground conditions allow, sub-surface drain lines have been installed to each lot for the purpose of helping to protect the homeowners against possible ground moisture. All lots, where sub-surface lines are available, homeowners shall install sub-surface drains around the footings of the home and tie said drains into the existing sub-surface drain located in the street adjacent to the lot. Maintenance of the sub-surface drain laterals will be the sole responsibility of the lot owner.

11. **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 to the neighborhood.

12. **USE OF OTHER STRUCTURES AS RESIDENCE.** No trailer, basement, tent, shack, garage, barn or other outbuilding or any structure of a temporary character shall be used on any lot at any time as a residence either temporarily or permanently.

13. **SIGNS.** No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

14. **ANIMALS.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats, or other household pets may be kept provided that (i) they are not kept, bred or maintained for any commercial purpose and (ii) they do not become an annoyance or nuisance to the neighborhood.

15. **GARBAGE AND REFUSE DISPOSAL.** No lot shall be used as or maintained as a dumping ground for rubbish, trash, garbage, or other waste and such materials shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No trash, refuse or construction debris may be burned on any lot at any time, neither in an incinerator nor open fire. Each lot and its abutting street is to be kept free of trash, weeds and other refuse by the lot owner. No unsightly material or objects are to be stored on any lot in view of the general public. No lot owner or homeowner will place grass clippings, yard clippings or other debris on any vacant lots within the project. Construction dumpsters will be used for construction materials only and not for general household waste.

16. **EXCAVATIONS AND COMPLETING IMPROVEMENTS.** No excavation shall be made on any lot except in connection with the erection, alteration, or repair of a dwelling or other improvement thereon. When excavation or the erection, alteration, or repair of a structure or other improvements has once begun, the work must be executed diligently and completed within a reasonable time.

17. **ROOFTOP ANTENNAS.** No television, ham radio, citizen band or radio antenna or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any home or elsewhere if exposed to the view from any other lot, unless approved by the Architectural Control Committee. In no case will any such receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of any neighboring lot owner's premises or home entertainment facilities or equipment.

18. **ARCHITECTURAL CONTROL COMMITTEE.** The Architectural Control Committee (the "Committee") shall consist of three members to be elected by the Developer. Any communication to the Committee shall be addressed to the Architectural Control Committee of Newberry Place Subdivision No. 1, 261 East 300 South, Suite 350, Salt Lake City, UT 84111, unless the address is changed by written notice to the lot owners from the Developer or the Committee. Upon failure of the Developer to fill any vacancies in the Committee the remaining members of the Committee may do so by a majority vote of their number. The Developer may, at its sole discretion, remove members from the Committee and fill vacancies. Said rights of appointment and removal shall, however, be subject to the right of the then record owners of a majority of the lots, through a duly recorded written instrument to change any membership of the Committee or to withdraw from the Committee or restore to its power and duties, except that the Committee shall always have one member selected by the Developer if the Developer desires. A majority of the Committee may designate a representative to act for it. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed under this declaration.

The Committee's approval or disapproval required in this Declaration of Covenants and Conditions shall be in writing. In the event that the Committee, or its designated representative, fails to approve or disapprove plans and specifications within 30 days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced before the completion, approval shall not be required and related covenants shall be deemed to have been fully complied with.

As of the date of this Declaration, the Architectural Control Committee shall be composed of Howard Kent, Brent A. Nelson and Margaret Franklin.

19. **TERM OF RESTRICTIONS.** These restrictions are to run with the land permanently except that they may be changed, canceled or added to in whole or in part by a duly recorded instrument signed by the then owners of record of a majority of the lots.

20. **RELEASE.** Lot owner hereby agrees to accept the lot in its current condition and releases SLI Commercial Real Estate and Benchmark Real Estate Company from any and all claims, actions, demands, rights, damages, losses, costs, expenses, or liabilities, known or unknown, which arise out of or in connections with the environmental conditions of the property. The term "environmental condition" shall mean any condition with respect to the Property which could or does result in any damage, loss, cost, expense, or liability to or against the owner of the Property by any third party (including, without limitation, any governmental entity).

21. SEVERABILITY. Invalidation of any one of these covenants by judgement or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

THIS DECLARATION is made this 29th day of June, 2001.

SLI COMMERCIAL REAL ESTATE

BENCHMARK REAL ESTATE COMPANY

by: Howard Kent  
Its: President

by: Brent A Nelson  
Its: President

STATE OF UTAH )  
 )  
COUNTY OF DAVIS )

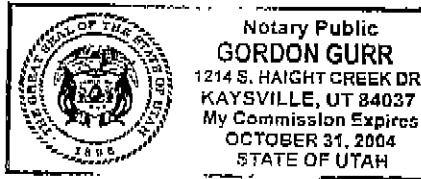
On the 29th day of June, 2001, personally appeared before me Howard Kent, who being by me duly sworn did say that he is the President of SLI Commercial Real Estate Co., a Utah Corporation, and that said instrument was signed in behalf of said corporation by authority of its bylaws (or by a resolution of its Board of Directors) and said Howard Kent acknowledged to me that said corporation executed the same.

My commission expires:

Gordon Gurr  
NOTARY PUBLIC

October 31, 2004

Residing at: Kaysville, Utah



STATE OF UTAH )  
 )  
COUNTY OF DAVIS )

On the 10th day of July, 2001, personally appeared before me Brent A. Nelson, who being by me duly sworn did say that he is the President of Benchmark Real Estate Company, a Utah Corporation, and that said instrument was signed in behalf of said corporation by authority of its bylaws (or by a resolution of its Board of Directors) and said Brent A. Nelson acknowledged to me that said corporation executed the same.

My commission expires:

Gordon Gurr  
NOTARY PUBLIC

October 31, 2004

Residing at: Kaysville, Utah

