

44
WHEN RECORDED MAIL TO:
SALT LAKE INVESTMENT COMPANY
230 SOUTH 500 EAST, #230
SALT LAKE CITY, UT 84102

E 1069981 B 1677 P 636
CAROL DEAN PAGE, DAVIS CNTY RECORDER
1993 OCT 22 10:05 AM FEE 44.00 DEP REC
REC'D FOR KAYSVILLE CITY CORP

-TO-
WHOM IT MAY CONCERN

**DECLARATION OF PROTECTIVE
COVENANT AGREEMENTS, RESTRICTIONS
AND CONDITIONS AFFECTING THE REAL
PROPERTY KNOWN AS SOUTH BENCH
ESTATES, NO. 5 SUBDIVISION.**

Entry No.
Recorded
Book Page
Dated

WHEREAS the Salt Lake Investment Company, a Utah Corporation, (hereinafter referred to as "Developer") is the owner of the following described real property located in Davis County, Utah;

Lot 119 through 144 inclusive of South Bench Estates No. 5 Subdivision, according to the official plat thereof recorded as Entry No. 1069980 in Book 1677, Page 635 in the Office of the Davis County Recorder.

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.

E 1069981 B 1677 P 637

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 1,300 square feet.

Two Story Dwellings: The combined area of the two stories above curb level shall not be less than 1,700 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 1,500 square feet.

Split Entry Dwellings: The combined area of the two levels shall not be less than 2,000 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 1,400 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 25 feet to the front lot line, or nearer than 20 feet to any side street line.
- (b) No dwelling shall be located nearer than 8 feet to any interior lot line, and the total width of the two (2) side yards shall not be less than 16 feet, except 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 15 feet to the rear lot line. Detached garages or other permitted accessory buildings may be located 7 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 70 feet at the point 25 feet behind the front lot line, nor shall any dwelling be erected or placed on any lot having an area of less than 8,000 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. **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.

E 1069981 B 1677 P 638

8. **PERMANENT CONSERVATION EASEMENT.** This Paragraph number 8 of this Declaration shall pertain to and affect only Lot Numbers 130 and 144 of South Bench Estates No. 5 Subdivision (the "Subdivision"), according to the official plat thereof recorded as Entry No. _____ in Book _____, Page _____, in the Office of the Davis County Recorder, and for purposes of this paragraph number 8, the above-described Lots 130 and 144 shall be referred to as the "Conservation Easement Lots". On the official plat for South Bench Estates No. 5 Subdivision described above, a certain portion of each of the Conservation Easement Lots has been identified as being subject to a conservation easement (the "Conservation Easement"), and the portion of each such Conservation Easement Lot which is subject to the Conservation Easement has been identified on the official plat by crosshatching lines. The portion of each Conservation Easement Lot which is identified on the official plat by crosshatching lines as being subject to the Conservation Easement is referred to herein as the "Conservation Easement Area". All of the terms, conditions and restrictions pertaining to the Conservation Easement are set forth in this paragraph 8, and there shall be no additional implied terms, conditions or restrictions with respect to the Conservation Easement other than those expressly set forth in this paragraph 8. Approval must be obtained from the United States Army Corps of Engineers or the State of Utah, if applicable, by the owner of a Conservation Easement Lot prior to: (i) placing within the Conservation Easement Area of any Conservation Easement Lot any permanent structure, nonindigenous vegetation, fill material, pavement, concrete, or other similar material, or (ii) removing from the Conservation Easement Area of any Conservation Easement Lot any of the indigenous and stable vegetation located thereon, other than as specified herein. Notwithstanding the foregoing restrictions, the owner of a Conservation Easement Lot shall not be required to obtain approval from the United States Army Corps of Engineers or the State of Utah in order to: (i) remove from the Conservation Easement Area any poison ivy or any other noxious or nonindigenous vegetation which poses a threat to human health as a result of possible human contact with any such vegetation or as a result of human consumption of any leaves, berries or other foliage produced by any such vegetation, or (ii) remove or clear a limited portion of the indigenous and stable vegetation growing within the Conservation Easement Area in order to clear an area for a footpath no greater than four feet in width, which footpath passes through the Conservation Easement Area. The Conservation Easement created by this paragraph 8 upon the Conservation Easement Area within each of the Conservation Easement Lots shall be a perpetual easement which runs with the land and which shall be binding on all parties having or acquiring any right, title or interest in or to any portion of any of the Conservation Easement Lots, whether or not such parties have actual notice of the provisions of the Conservation Easement. The Conservation Easement may be enforced by the United States Army Corps of Engineers. Notwithstanding any other provisions contained in this Declaration to the contrary, the provisions of this paragraph 8 may only be amended or canceled by a duly recorded document which is executed by the then owners of record of a majority of the Conservation Easement Lots and which document is approved in writing by the United States Army Corps of Engineers.

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. **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.

11. **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.

12. **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.

E 1069981 B 1677 P 639

13. **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.

14. **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. All containers or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

15. **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.

16. **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.

17. **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 South Bench Estates No. 5 Subdivision, 230 South 500 East, Suite 230, Salt Lake City, UT 84102, 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, Jeff McComas and Margaret Franklin.

18. **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.

19. **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 1 day of Sept, 1993.

THE SALT LAKE INVESTMENT COMPANY

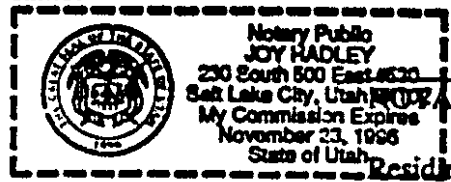
By: Howard Kent
Its: President

E 1069981 B 1677 P 640

STATE OF UTAH)
):§
COUNTY OF SALT LAKE)

On the 1st day of September, 1993, personally appeared before me Howard Kent, who being by me duly sworn did say that he is the President of Salt Lake Investment 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 Howard Kent acknowledged to me that said corporation executed the same.

My commission expires:
11/23/96



Joy Hadley
NOTARY PUBLIC
Residing at: Salt Lake County

MLF:\subfiles\cmch5.aov:jb