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All Smithtowne #1  
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SHERYL L. WHITE, DAVIS CNTY RECORDER  
1999 MAY 14 3:39 PM FEE 24.00 DEP JD  
REC'D FOR BERGHOUT, SARAH

Smithtowne Subdivision No. 1  
Homeowner Association  
Rules and Regulations

Declarant -

This declaration, made on the date hereafter set forth by a 2/3 majority vote by the Smithtowne Homeowners on a certain property in Clearfield, County of Davis, State of Utah, which is more particularly described as follows:

A part of the Northeast Quarter Section 2, Township 4 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey in Clearfield City, Davis County, Utah:

Beginning at a point on the south line of 300 North Street 799.00 feet South 89 55' 46" East along the Section line at 33.00 feet south 0 11' 45" West from the North Quarter Corner of said section 2; and running thence South 0 11' 45" West 426.00 feet along the Easterly line of 360 West Street; thence South 89 55' 46" East 127.57 feet; thence South 0 11' 45" west 438.16 feet to a point on the North Boundary of Pheasant Creek subdivision, Phase 2 as it is staked on the ground; thence North 84 32' 04" West 263.68 feet along said North Boundary Line Subdivision to the East Boundary of Yorkshire Place Subdivision No. 2 in Clearfield City, Davis County, Utah; thence North 0 11' 45" East 567.97 feet along the East Boundary of Yorkshire Place Subdivision No. 2, No. 3, No. 4; thence south 89 55' 46" East 85.00 feet to a point on the Westerly line of the street; thence north 0 11' 45" East 272.00 feet along said westerly line of street to the South line of 300 North Street; thence South 89 55' 56" East 50.00 feet along said line of Street to the point Beginning.

Contains 3.358 Acres.

Now therefore, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which all run with real property and the binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

**Smithtowne  
Home Owner Association**

Amended Rules and Regulations

Effective upon recordation, these rules and regulations are subject to change by a 2/3 majority vote of the homeowners, at special election, or at the annual election.

1. General Rules

A. Smithtowne Subdivision No. 1 is a single family, residential living area. Home occupations and businesses which do not comply with Clearfield City planning and zoning ordinances are strictly prohibited.

B. Complaints regarding the management of Smithtowne Subdivision No. 1; suggestions; needed repairs; or items of concern should be submitted in written form to the board of directors ten days prior to the regular scheduled monthly meetings. This will enable the board of directors to compile a record file of all the actions received and actions taken. Meetings will follow an agenda.

C. When a unit is leased or rented or otherwise made available to another resident, the owner is responsible for rendering payment of the monthly fees and any other assessments.

D. Assessments can only be levied after a 2/3 majority vote at a special election or the regular annual election.

E. The owner shall be responsible for the actions of their children, tenants, or guests. Any damage to common area structures caused by the children, tenants, or guests shall be repaired at the cost of the home owner. In the case of any lease or sublease, the home owner must provide the tenant with a copy of the Bylaws and Rules and Regulations. The home owner will also execute a written agreement by the tenant to perform and comply with all the provisions of the rules and regulations. The home owner will get this form signed and presented to the Smithtowne Subdivision No. 1 board of directors before the tenant moves in.

F. Additional TV antennas, radio aerials, large satellite dishes, solar panels, or similar devices shall not be installed on the outside of the building.

G. Directors are responsible for maintenance of the common areas, to include removal and or replacement of trees and shrubs. Residents may purchase and plant trees only after first obtaining approval from the board of directors. Flowers may be planted by the resident as long as the disturbed area remains free of weeds, and then returned to the original maintenance-free landscaping after gardening is discontinued.

H. It will be the duty of all residents to keep their unit clean and free of insects and mice. Should the board of directors be forced to come in and clean up the unit of insects, mice or their offensive odors, the owner will be held responsible for the cost.

I. All exterior maintenance and repair will be the responsibility of the association.

J. All hoses must be removed from the outside water faucets during freezing weather to avoid damage to plumbing. Damage caused by failure to follow rules will be the responsibility of the individual home owner.

## 2. Architectural Control Committee.

A. There is hereby established an architectural control committee ("ACC") for the Smithtowne Subdivision No. 1. The ACC will be made up of three persons appointed by the Board of Trustees. Members of the ACC shall serve at the pleasure of the Board of Trustees and no person may be appointed to the ACC unless the person is the owner of a lot within Smithtowne Subdivision No. 1.

B. No building, fence, wall or other structure, or landscape painting, shall be commenced, erected or maintained at Smithtowne Subdivision No. 1, nor shall any exterior addition or change including change in colors or alteration on the subdivision property be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the ACC. In the event an architect is not included on the committee, the committee may retain an architect for consultation. In the event the ACC fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, the ACC will be deemed to have approved the plans and specifications and this rule will be deemed to have been fully complied with.

C. The ACC may from time to time publish rules governing the conduct of its own affairs and the filing of plans in order to 1) coordinate plans with governmental agencies, and 2) process plans and specifications with the least inconvenience to the applicant.

D. The ACC may charge the applicant a fee for reviewing the plans and specifications and shall publish its fee schedule to the owners by either 1) publishing the fee schedule in a newsletter, if one is distributed to the owners, or 2) posting the fee schedule in a conspicuous place within the subdivision.

E. The ACC shall:

1. Adopt and publish from time to time restrictions and requirements which must be met prior to issuing any approval to plans submitted.

2. Insure that plans do not violate the terms or requirements of the declaration, the articles of incorporation, the bylaws or these rules and regulations.
3. Insure that any construction or improvements placed on any lot conform to the plans approved by the ACC.
4. Insure that any construction or improvements placed on any lot conforms to municipal ordinances and State of Utah requirements.
5. The ACC in its own name or on behalf of the association may exercise all available legal and equitable remedies to prevent or remove any unauthorized or unapproved construction or improvements on the properties or any portion thereof.

F. The approval by the ACC of any plans, drawings, or specifications for any plans, improvements or construction, or for any matter requiring the committee's approval, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specifications or matter subsequently submitted for approval.

G. Neither the ACC nor any member thereof shall be liable to the association, any owner, or to any other party, for any damage suffered or claimed on account of any act, action or lack thereof, so long as that with respect to the liability of a member of the ACC such member has acted in good faith on the basis of such information as may be possessed by him.

H. The owners at Smithtowne Subdivision No.1 are aware that some owners have made alterations to their lots prior to the passing of this rule. Many of these alterations were made in violation of a former rule which requires all alterations to be approved by the board of directors. It is the express intention of the homeowners that the ACC review all of the alterations and improvements made in violation of the former rule. All owners who have made alterations to their lots shall be required to submit either descriptions of those alterations or a copy of the board's written approval to the ACC within thirty (30) days of the effective date of this rule. Owners who fail to submit their alterations to the ACC within that time will be deemed to have abandoned their alterations and will be required to remove them at the owner's sole cost. The ACC will review all of the submitted alterations pursuant to this rule. Any alterations which are disapproved by the ACC or abandoned by the owner under this subsection shall be removed by the owner at the owner's sole cost within 30 days. If the owner fails to remove the alteration as provided above, the association may remove the alteration and the association's costs of doing so shall constitute a special assessment against the owner of the lot.

### 3. RVs.

A. No owner may keep an RV at Smithtowne Subdivision No. 1 which is longer than twenty-five feet (25'). Such RVs may only be brought to Smithtowne Subdivision No. 1 for brief periods of time for the purpose of loading or unloading the RV. RVs

longer than twenty-five feet may not be washed, cleaned, stored or repaired at Smithtowne Subdivision No. 1.

B. For purposes of this rule, an RV shall be presumed to be stored at Smithtowne Subdivision No. 1 if 1) it is present on the subdivision property for 24 consecutive hours, regardless of whether it is moved from one location to any other location on the subdivision property during that time, or 2) when it has been parked overnight at the subdivision property for three consecutive nights, regardless of whether it is parked in the same location on the property for each of those nights.

C. This rule shall apply to all RVs at Smithtowne Subdivision No. 1, regardless of whether they have previously been washed, cleaned, stored or repaired on the subdivision property. It is the intent of the owners in enacting this rule to eliminate any claims of exemption by "grandfathering," prior nonconforming use or similar means.

#### 4. Pet Rules

A. No pets shall be kept in Smithtowne Subdivision No. 1 except those kept in accordance with the following rules:

1. No homeowner, tenant, or occupant shall bring into Smithtowne Subdivision No. 1 or keep more than two (2) pets at any time.
2. All pets retained in Smithtowne Subdivision No.1 must be licensed and vaccinated as required by Clearfield City, Davis County, or Utah State authorities.

B. Pets will not be allowed to run free under any circumstances. When outside the homeowner's or occupant's unit, the pet owner must accompany the pet and be prepared to pick up and dispose of any pet droppings to make sure odor or unsanitary conditions do not exist to offend their neighbors or other home owners. Pet owners who violate this rule will be assessed a \$75.00 fine for violation. A ticket will be issued and enforced by the directors.

C. Each pet owner will take proper precautions to insure their pet(s) are absolutely under their control and are not permitted to bark or make other noises that will disturb others. Violations of this rule will be referred to the Clearfield City Police and/or Clearfield Animal Control Officers.

#### 5. Lease and Rental Policy

A. A lease for a single family is permitted, subject to approval by the board of directors. The owner is responsible for furnishing tenants with copies of the bylaws and current rules and regulations of Smithtowne Subdivision No. 1 and for assuring that the tenants understand the current rules and regulations and agree to abide by these rules and regulations, as well as the ordinances of the city of Clearfield, and the statutes of the state of Utah. The unit owner is responsible for any damage to the association or private party

caused by the tenant or guest. The board of directors has the power to terminate a lease or rental agreement in the case of flagrant violations of the Covenants, Bylaws, Rules and Regulations, or misconduct or violations of city or state laws.

#### 6. Rule Violation Policy

A. When a violation of these rules occur, the Board of Directors will give written notification of the violation to the home owner or tenant and the home owner or tenant will be given up to ten (10) days to resolve the violation or to give notice to the association to appeal the violation citation. If there is no response, or if the violation(s) continue, the board of directors will assess a \$10 fine per violation against the home owner or resident, and can additionally take action to remedy the violation, with the cost to be paid by the home owner. Imposed fines must be paid to Smithtowne Subdivision No. 1 within 10 days of the assessment of the fine. Fines will go into the general maintenance fund.

B. Any expense incurred with enforcing the rules or assessments made against the homeowners for violations, and or fines shall be eligible to be entered as a lien against the unit. The cost for recording the lien with the county and the cost of releasing the lien when the assessment and interest are paid, will be paid by the homeowner. In the event foreclosure becomes necessary; a \$1,000.00 handling fee plus reasonable attorney fees will be assessed. Proper notice will be given and foreclosure proceedings will begin subject to any underlying mortgage followed by eviction of tenant or homeowner, then final sale of the property.

C. The failure of the board to insist and enforce strict performance of any term, condition, rules, regulations, agreements, or determination shall not constitute nor be construed as a waiver or relinquishment of any other right which the board may have to perform their duties.

I, the undersigned, do hereby certify:

That I am the duly elected and acting President of Smithtowne Subdivision No.1 and that the forgoing constitute the General Rules and Regulations for Smithtowne Subdivision No. 1.

These Rules and Regulations of Smithtowne Subdivision No. 1 amend the Rules and Regulations within the April 3, 1996 recorded Declaration of Covenants, Conditions, and Restrictions of Smithtowne Subdivision No.1, reference number E 1238552 B 1986 P 377-387.

J.C. Berghout  
James C. Berghout  
President, Smithtowne Subdivision No. 1

Sarah S. Berghout  
Sarah S. Berghout  
Secretary/Treasurer, Smithtowne Subdivision No. 1

State of UTAH }

ss.

County of Davis

On this the 12<sup>TH</sup> day of MAY, 1999, A.D., personally appeared before me, JAMES BERGHOUT and SARAH BERGHOUT who being duly sworn, did say, each for himself, that he, the said JAMES BERGHOUT is president, and she, the said SARAH BERGHOUT is the secretary/treasurer of Smithtowne Subdivision No. 1 and that the within and forgoing instrument was signed in behalf of the said corporation by authority of a resolution of its board of directors, and said JAMES BERGHOUT and SARAH BERGHOUT each duly acknowledged to me that the said corporation executed the same.

Wade J. Van Tassel  
Notary Public

My Commission Expires: JUNE 25, 2000

Residing at: 234 N. 360 W.  
CLEARFIELD, UTAH 84015

