

ENT 19468 BK 2524 PG 662
NINA B REID UTAH COUNTY RECORDER DEP AT
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**COVENANTS AND BUILDING RESTRICTIONS OF THE
OLD ORCHARD ESTATES SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS:

That ABP Investments, Curt T. Jones, Rick A. McKell and R. Duff Thompson are the owners of the following described property located in Orem City, County of Utah, State of Utah:

See the attached Exhibit A, which is made a part hereof by this reference.

It is the owner's desire to restrict the use to which the above described real property is put, and for this purpose executes these covenants and building restrictions:

That the real property covered by said covenants has been platted and is designated and known as the Old Orchard Estates Subdivision (the "Subdivision"), that a plat thereof was accepted by Orem City Council and the Mayor of Orem City and has been recorded in the office of the County Recorder of Utah County.

That ABP Investments, Curt T. Jones, Rick A. McKell and R. Duff Thompson are the sole owners of all the land located in said subdivision, except the portion thereof dedicated as public streets.

NOW, THEREFORE, all of the lots shown on the subdivision plat of the Old Orchard Estates Subdivision are held and shall be conveyed subject to the restrictions and covenants hereinafter set forth, and all persons and corporations who hereafter own or have any interest in any lot in said subdivision shall take and hold the same subject to the agreement and covenant with the other owners, their heirs successors and assigns to conform to and observe the same for a period of twenty-five (25) years from the date of recording; provided, however, that said restrictions and covenants shall be

renewed and automatically continue thereafter for successive periods of ten (10) years each, unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part.

1. Dwelling Quality and Size:

A. All of the lots shown on said subdivision plats shall be used only for residential purposes unless otherwise specifically provided. All dwellings shall include a garage for not less than two (2) cars. No dwelling shall be erected, altered, placed or permitted to remain on any lot other than one (1) single-family dwelling, not to exceed three (3) stories in height above grade.

B. For a single story dwelling, the finished area above grade will be not less than twenty-two hundred (2200) square feet and a multiple story dwelling will have a minimum of three thousand (3000) square feet, exclusive of open porches and garages.

C. Any deviation from or modification of this paragraph 1 shall be by way of unanimous consent of the Architectural Control Committee, a body of property owners in the subdivision, duly nominated and elected to serve as further set forth in paragraph 6 (hereafter, the "Committee").

2. Specifications:

To maintain a degree of protection to the investment which homeowners in this area may make, homes of superior design are requisite, and must be approved by the Committee in advance of the commencement of construction. Designs shall be limited to those prepared by architects licensed to practice in any U.S. jurisdiction or by designers of outstanding ability whose previous work may be considered by the

Committee as a part of the approval process.

A. Easements for installation and maintenance of utilities are reserved as noted on the recorded map. Further, an eight (8) foot parkway within the subdivision separating the interior walkways from the street is reserved as noted on the recorded map. Within these easements and the above referenced parkway, 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. 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 if any, for which a public authority or utility company is responsible or for which a subdivision-wide maintenance contract is entered into by the Committee. The maintenance of the parkway and the perimeter hedges and fencing shall be maintained under contract entered into by the Committee on behalf of the property owners in the Subdivision, as modified from time to time at their discretion.

B. All set backs shall conform to Orem City requirements, with the additional requirement that the minimum front yard set back for any dwelling shall be not less than 30 feet from back edge of sidewalk (i.e. at least 42 feet from the back of curb), with any minimum side yard setback for any dwellings not less than 20 feet.

C. All plans and specifications for any structure or improvements whatsoever to be erected on or moved onto any lot, and the proposed location on the lot or lots, the construction material, the roofs and exterior color schemes, any later changes or additions after initial approval has been given thereof and exterior remodeling, reconstruction, alterations, or additions thereto on any lot shall be subject to and shall require the approval of the Committee in writing before any such work is commenced. A complete set of plans and specifications together with proof of approval from governmental agencies involved for any and all proposed improvements, the

creation or alteration of which is desired, and no structures or improvements of any kind shall be erected, altered, placed or maintained upon any lot unless and until the final plan, elevations, and specifications therefore have received such written approval as herein provided. Such plans shall include plot plans showing the location on the lot of the building, wall, fence, or other structure proposed to be constructed, altered, placed or maintained, together with the proposed construction material, color schemes for roofs and exteriors thereof and so much of the proposed landscape planting as is visible from the front sidewalk.

D. The Committee shall approve or disapprove plans, specifications and details within fifteen (15) days from the receipt thereof; the plans and specifications shall be deemed approved should the Committee fail to respond within said fifteen (15) day period. Upon approval, the plans and specifications and details with the approval endorsed thereon, shall be returned to the person submitting them. The Committee shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with all of the provisions of these restrictions. Further, if the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such lot or with the adjacent buildings or structures; if the plans and specifications submitted are incomplete; or in the event the Committee deems the plans, specifications or details, or any part thereof, to be contrary to the interests, welfare or rights of all or any one of the property owners of the Subdivision, then the Committee shall have the right to disapprove said plans, specifications or details. The decisions of the Committee shall be final, subject to veto by a two-thirds (2/3rd's) vote of all the property owners, based on one vote per platted and recorded lot.

E. The Committee shall not be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications, and the property owners, by virtue of their purchase of any lot in the Subdivision, waive any and all claims, present or future, against the Committee members, and any one of them, as such claims relate to the performance of their duties as Committee members.

F. The Committee shall have the authority to set up standards and regulations as to the height, architectural plan and design, for all structures, including fences, walls, copings, etc., and may circulate said standards and regulations to the property owners. To the extent the property owners abide by such standards and regulations in the construction of any structure on their lot(s), they need not seek additional approval from the Committee as to the subject structure. No improvements shall be built unless they conform with all requirements of federal, state and local governing authorities and the minimum building area restrictions as they may exist at the time of approval of the plans by the Committee.

3. Maintenance:

A. No lot shall be used or maintained as a dumping ground for rubbish or debris. Trash, garbage or other waste shall not be kept except in sanitary containers. All containers used for the storage or disposal of such materials shall be kept in a clean and sanitary condition. During construction, excess building material and debris shall not be permitted to accumulate.

B. Unless otherwise approved in writing by the Committee, construction of the primary dwelling must be completed, construction materials and

equipment removed and the ground graded within fifteen (15) months from the time ground is broken for the structure.

C. All lots, whether improved or unimproved, must be kept free of rubbish, weeds, trash and debris of any kind and must be maintained in such manner as to not detract from the Subdivision as a whole. Sidewalk, parkway, curbs and gutters must be kept clean, unobstructed and in good repair.

D. The property maintenance agreement entered into by the Committee on behalf of the property owners from time to time is hereby specifically authorized. Such agreement(s) may provide for the care and maintenance of the parkway, the subdivision perimeter hedges and fences, any and all trees on the parkway fronting the lots, parkway lighting, and such other expenses as may be incurred from time to time for the general maintenance of these areas. The Committee is authorized to enter into this type of agreement(s) on behalf of the property owners, to manage same, and to place a lien on the property of any property owner who fails to pay on demand his/her assessed portion of said costs, with the power to foreclose said lien, and to collect such delinquent maintenance expenses, such foreclosures to be conducted in accordance with Section 57 of the Utah Code Annotated, Chapter 19, et seq. pertaining to Trust Deed Liens and foreclosure of Trust Deed Liens. For the purpose of placing of such liens and foreclosing same, the property owners authorize the Committee to nominate any licensed title/escrow company in the State of Utah or member of the Utah bar to act as trustee relative to such liens.

E. No building material of any kind or character shall be placed or stored upon any lot until the owner thereof is ready to commence improvements and then the material shall be placed within the property lines of the lot upon which the improvements are to be erected, and shall not be placed in the streets or between the

curb and the property lines.


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F. Landscaping, including grass and some shrubs, must be completed within twenty-four (24) months from the time first ground is broken for the structure.

4. Restrictions on Uses:

A. 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 or nuisance to the neighborhood.

B. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any lot at any time as a residence either temporarily or permanently.

C. No animals, livestock or poultry of any kind shall be raised or kept on any lot, except that dogs, cats, and other domesticated household pets may be kept provided that they are not kept or maintained for any commercial purpose, and provided further that all pets kept outside must be restrained in a humane and sanitary manner. Kennels, runs and leash areas must be kept clean and sanitary and may not be located less than forty (40) feet from any neighboring dwelling. No pets may be kept in unreasonable numbers, and the Committee may establish rules and restrictions from time to time concerning specific breeds or types of animals. ~~Notwithstanding the foregoing, and subject to conforming with applicable municipal and court ordinances, Lot #1, Plat D, Old Orchard Estates is specifically excepted from the prohibition against animal and livestock rights set forth above, so long as said lot is owner by Curt T. Jones, or as otherwise may be agreed by a majority of the Committee.~~ 

D. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than ten square feet advertising the property for sale or

rent, or signs used by a builder or realtor to advertise the property during the construction and sales period.

E. No automobiles, trucks, campers, trailers, boats, equipments, recreational vehicles, motor homes, or other similar vehicles, shall be parked or stored on a public street or right-of-way for more than 72 consecutive hours. The intent of this provision is to keep the roadways open for daily traffic, and to avoid the unsafe and unsightly condition of vehicles parked on the street for long periods of time--the Committee may enforce this provision by first giving notice to the owner of the violation (or where the owner is not readily available or ascertainable, by giving notice in the form of a written request placed on the vehicle in question) and subsequently by causing that vehicles or equipment parked on the street in violation of this provision be towed away, at the owners expense. None of the above referenced vehicles or equipment may be kept or stored on any lot unless stored in a garage or parking stall or other facility approved by the Committee. No such parking or storage facilities may be located nearer than thirty (30) feet to the rear of the sidewalk and must conform to all building ordinances and the other provisions of this declaration. No lot line fence over six (6) feet high will be allowed without the specific authorization of the Committee.

F. No commercial activity of a permanent nature may be conducted within the subdivision without the express written consent of the Committee. The standard by which the Committee shall judge in connection with such requests shall be based in part on avoidance of the generation of business traffic into the subdivision, and the unobtrusive nature of the requested activity viz the other property owners.

G. Not more than one (1) family unit will be maintained on each lot within the subdivision; notwithstanding the foregoing, it is contemplated that live-in

help and immediate family members, their spouses and children would be permitted to occupy the premises with the property owner.

H. The minimum lot size in the Subdivision shall be seven tenths (.70) of an acre. With the exception of lot line adjustments and further with the exception of the subdivision of Lot #1, Plat B in the Subdivision (which may be subdivided into as many as four individual lots), no further lot subdividing may occur without the consent of 2/3rds of the property owners in the subdivision (and further subject to any local governmental approvals, as such may be required).

5. Enforcement right:

If the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the Covenants herein, it shall be lawful for any other person or persons owning any real property situated in the Subdivision, to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such Covenants, and either to prevent him or them from so doing or to recover damages, attorney's fees, costs or court or other dues for such violation.

6. Architectural Control Committee:

A. The initial Committee is composed of:

- (1) D. Clive Winn
- (2) Andre H. Peterson
- (3) Kris Johnson
- (4) Lynn Bradford
- (5) R. Duff Thompson

B. The structure of the Committee will include not less than three nor more than seven duly elected property owners.

C. Members of the Committee shall be elected to one year terms at the annual meeting of the property owners, to be held the first Tuesday in May, commencing May, 1989, on a one vote/recorded lot basis. Vacancies on the Committee shall be filled by a majority vote of the remaining Committee members. Any or all members of the Committee may be removed and replaced upon a 2/3rds vote of the property owners.

D. So long as the Committee members carry out their responsibilities hereunder in a reasonable manner, they shall incur no liability, cost or expense arising out of the claims of any property owner.

E. Membership on the Committee shall be limited to property owners only, so long as at least three property owners consent to serve. In the event the property owners cannot fill at least three seats on the Committee, any property owner may nominate a non-property owner in the Subdivision and such individual(s) may be voted upon for membership on the Committee.

6. General Provisions:

A. Except as otherwise provided, this Declaration can be amended at any time by a written instrument executed in recordable form by not less than two-thirds (2/3rds) of the property owners within the Subdivision.

B. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded. (Extension provisions cited in preamble).

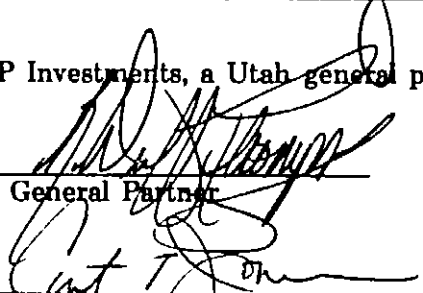
C. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

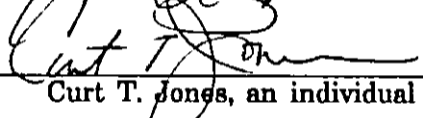
D. Invalidation of any one of these covenants by judgement or court order shall in no wise affect the remaining provisions which shall remain in full force and effect.


IN WITNESS WHEREOF this instrument is signed the day and year set forth below.

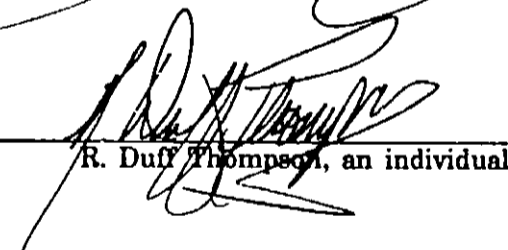
SIGNED this 31st day of May 1988.

ABP Investments, a Utah general partnership

By: 
Its: General Partner


Curt T. Jones, an individual


Rick A. McKell, an individual


R. Duff Thompeon, an individual

ACKNOWLEDGMENTS

Partnership Acknowledgement

On this 31st day of May, 1988, personally appeared before me R. Duff Thompson, who being by me duly sworn, did say that he is the General Partner of ABP Investments, a Utah general partnership, the partnership that executed the above and foregoing instrument, and that said instrument was signed in behalf of said partnership by authority of a Resolution of the Partnership, and said R. Duff Thompson acknowledged to me that said partnership executed same.

Marie Schmitz
Notary Public
My Commission Expires: 10-10-91
Residing in: Utah

Individual Acknowledgement

On this 31st day of May, 1988, personally appeared before me R. Duff Thompson, Rick A. McKell, and Curt Jones, the signers of the within instrument, who duly acknowledged to me that they executed the same.

Marie Schmitz
Notary Public
My Commission Expires: 10-10-91
Residing in: Utah

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EXHIBIT "A"

All of Plats A, B, C and D, OLD ORCHARD ESTATES SUBDIVISION, Orem,
Utah, according to the official plats thereof on file and of record
in the office of the Utah County Recorder.