

3900

WHEN RECORDED MAIL TO:
THE BOYER COMPANY
ATTENTION: DICK MOFFAT
127 SOUTH 500 EAST, SUITE 310
SALT LAKE CITY, UTAH 84102
17 NOVEMBER 93 11:19 AM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
THE BOYER COMPANY 127 S
950 E SUITE 310 SLC 84102
REC BY: DELORES NIERA, DEPUTY

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SCENIC CIRCLE SUBDIVISION

Entry No. 5659177

5659177

THIS DECLARATION is made and executed effective the 16 day of November, 1993, by THE BOYER COMPANY, L.C., a Utah Limited Liability Company, with its principal place of business located in Salt Lake City, State of Utah, (hereinafter referred to as "Declarant").

RECITALS:

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

B. Declarant desires to provide for preservation of the values and amenities of the Property. 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 and the various Lots now or hereafter contained within the entire tract hereinafter described to the covenants, restrictions, easements, charges, liens hereinafter set forth.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property described in Article II hereof shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations, and lien hereinafter set forth.

I. DEFINITIONS

1.1 Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, including any subsequent amendments hereto.

1.2 Development shall at any point in time mean, refer to, and consist of the Subdivision then in existence.

1.3 Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence.

1.4 Lot shall mean and refer to any one of the separately numbered and individually described plots of land described on a Plat: (a) which is intended to be owned individually, rather than in common by Owners of different lots; and (b) which is intended to be used as the site of a single Living Unit.

1.5 Owner shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

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1.6 Parcel shall mean and refer to the Property which is subject to the terms of this Declaration, which is filed for record in the office of the County Recorder of Salt Lake County, Utah, is separately subjected to the terms of this Declaration with the intention that it shall thereby comprise the Development. The real Property described in Article II of this Declaration constitutes a Parcel.

1.7 Plat shall mean and refer to any subdivision plat, any plat of a planned unit development, or any plat or map similar to any of the foregoing: (a) which covers all or a portion of the Property; (b) which describes or creates one or more Lots; (c) on which or in an instrument recorded in conjunction therewith there is expressed the intent that the Subdivision created by the Plat shall comprise the Development; and (d) which is filed for record in the office of the County Recorder of Salt Lake County, Utah. Recorded prior to this Declaration is a Subdivision Plat of the Scenic Circle Subdivision, and executed and acknowledged by Declarant on September 17, 1993, and creating separately numbered Lots. Said plat constitutes a Plat.

1.8 Property shall mean and refer to the entire residential development which is covered by a Plat.

1.9 Subdivision shall mean and refer to the entire residential development which is created and covered by a Plat.

II. PROPERTY DESCRIPTION

2.1 Submission. The Property which, as of the date hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of the following-described real property situated in Salt Lake County, State of Utah, to wit:

Beginning at a point on the West line of Lot 1 of Arcadia Heights Plat "A" Amended, said point being North $89^{\circ}41'10''$ West 1516.52 feet and North $18^{\circ}24'07''$ West 147.454 feet from the South Quarter corner of Section 14, Township 1 South, Range 1 East, Salt Lake Base and Meridian, and running thence North $40^{\circ}11'45''$ West 373.990 feet; thence South $89^{\circ}41'10''$ East 879.382 feet; thence South $00^{\circ}18'50''$ West 265.000 feet; thence North $89^{\circ}41'10''$ West 409.153 feet; thence South $00^{\circ}18'50''$ West 126.000 feet to the North line of 2100 South Street; thence along the North line of 2100 South Street North $89^{\circ}41'10''$ West 50.000 feet; thence North $00^{\circ}18'50''$ East 126.000 feet; thence North $89^{\circ}41'10''$ West 183.847 feet; thence South $18^{\circ}24'07''$ East 20.423 feet to the point of beginning.

The following description is the mathematical equivalent to the preceding description with all bearings correctly converted to the description terms of the Utah State - Rectangular Coordinate System.

Commencing at a point with state plane rectangular coordinates of X = 1,913,975.021 and Y = 871,752.154 based on the Lambert Conformal Projection Utah Central Zone; thence North $39^{\circ}57'27''$ West 373.990 feet; thence South $89^{\circ}26'52''$ East 879.382 feet; thence South $00^{\circ}33'08''$ West 265.000 feet; thence North $89^{\circ}26'52''$ West 409.153 feet; thence South $00^{\circ}33'08''$ West 126.000 feet; thence North $89^{\circ}26'52''$ West 50.000 feet; thence North $00^{\circ}33'08''$ East 126.000 feet; thence North $89^{\circ}26'52''$ West 183.847 feet; thence South $18^{\circ}09'49''$ East 20.423 feet to the point of beginning.

Contains 4.8079 acres; 4 buildable lots; 2 non-buildable lots.

III. VOTING RIGHTS

3.1 Membership. Every Owner of Lots 1,2,3, and 4 shall have the right to vote on subdivision issues as provided in this Declaration. Owner(s) of non-buildable lots "A" and "B" shall not be entitled to vote on subdivision issues as provided in this Declaration.

3.2 Voting Rights. There shall be two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant until the Class B membership ceases, at which time the Declarant shall become a Class A Member and with the exception of Owners of non-buildable Lots "A" and "B" who are not members. Class A Members shall be entitled to one vote for each Lot in which the ownership interest required is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the ownership interest required. The Class B Membership shall automatically cease and be converted to a Class A membership on the first to occur of the following events:

- (a) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member; or
- (b) The expiration of seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

3.3 Multiple Ownership Interest. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owner may determine among themselves. A vote cast by any of 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.

IV. USE RESTRICTIONS

4.1 Use of Lots and Living Units. All Lots (except non-buildable Lot "A" and Lot "B") are intended to be improved with Living Units and are restricted to such use. Each Living Unit shall be used only as a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

4.2 Non-Buildable Lots. Notwithstanding anything to the contrary contained in this Declaration, no building of any kind shall be allowed on Lot "A" or Lot "B" of the Plat.

4.3 Dwelling Cost, Quality and Size. No dwelling shall be permitted on a Lot having a fair market value of less than \$175,000.00, not including the Lot, based upon costs and value levels prevailing on the date these covenants are recorded. The Committee shall have the authority to require an appraisal from a registered appraiser acceptable to committee under questionable valuation conditions. It shall be the intention and purpose of these covenants to assure that all dwellings shall be of fine quality of workmanship, materials and appearance. Aluminum or plastic siding, or cinderblock buildings or walls shall not be permitted. The ground floor area of the house shall not be less than 2,000 square feet for a one-story house, and not less than 1,500 square feet for a house of more than one floor. A two-story structure shall be construed as a ground floor and one additional floor above exclusive of a basement. In so-called split-entry or bi-level houses, the ground floor shall be defined as only two levels and not all multiple levels combined. Exceptions to the above requirements must be approved in writing by the Committee. Measurements of ground floor area shall be exclusive of open porches, garages and breezeways.

4.4 Building Height. No Lot in the subdivision shall have a building or structure which exceeds a height of two stories (not counting the basement) or thirty-five (35) feet, whichever is lesser, above the final grade of such Lot at any cross section of the building or structure concerned. Height shall be measured from finished grade to top of roof. If Salt Lake City Ordinances are more restrictive, then they shall govern.

4.5 Building Features and Materials.

(a) Building location. Each building shall be located such that:

(i) No building shall be located on any Lot nearer than 20 feet to the front Lot line nor nearer than 40 feet from the rear Lot line, except that a gamecourt, swimming pool and spa may be located in the rear of Lot so long as they are not located in an undevelopable area as shown on the Plat.

(ii) No dwelling shall be located nearer than 20 feet to any interior Lot line, except that the combined side yard distances to any interior Lot line shall be not less than 40 feet. Each dwelling and other building shall be located solely within the area ("Building Area") described for such lot, with dimensions, on the Plat.

(iii) For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of a building.

(iv) The location and height of any and all dwellings and other buildings to be constructed upon a Lot shall be subject to the approval of the Architectural Control Committee. Vegetation removal, excavations or construction of any kind shall not be permitted upon any Lot in this subdivision until a building permit authorizing said activity or construction shall have been first obtained from Salt Lake City Corporation and formal approval granted by the Architectural Control Committee and conforms to requirements on the Plat.

(b) Garages. Garages must be fully enclosed, accommodate a minimum of two (2) vehicles and not more than three (3) vehicles, and be equipped with an automatic garage door opener. Carports may not be built. No more than three (3) car garages may be built without prior approval of the Architectural Control Committee.

(c) Exterior Building Wall Materials. Brick, stone and stucco are permitted for use in the exterior walls of Living Units and accessory buildings. The use of any other materials for such buildings shall require the prior approval of the Architectural Control Committee. Reflective materials other than glass are prohibited. Aluminum, wood siding or plastic siding or cinderblock buildings or walls shall not be permitted.

(d) Roof, Soffit, and Facia. Roof, soffit and facia material shall be restricted to wood shingles or shakes, asphalt, fiberglass, slate, rolled seam metal, tile, aluminum soffit and facia or other materials approved by the Architectural Control Committee. Tar and gravel roofs are prohibited. The use and design of roof, soffit and facia materials is subject to the approval of the Architectural Control Committee.

(e) Accessory Structures. Patio structures, trellises, sunshades, gazebos and any other appurtenant buildings shall be constructed of materials consistent with the colors, textures and materials approved for the dwelling and shall be integral to the architecture of the house and subject to the approval of the Architectural Control Committee.

(f) Chimneys. Chimneys of approved exterior materials may not exceed the height required by appropriate governmental agencies. Exposed metal flues are not permitted, with the exception of copper.

(g) Fences and Walls. Fencing and walls shall be stucco, wood, brick, masonry, stone, chain link or wrought iron. Fences and walls are to be color coordinated with the approved dwelling colors. Use of landscape materials for hedges and fencing is encouraged. No structures or fences shall be permitted or cantilevered over any area designated by Salt Lake City or the Plat as undevelopable. Fences, walls or hedges shall not exceed six (6) feet in height, provided, however, that no wall, fence or opaque hedge or screening materials (other than pre-construction natural vegetation) shall be maintained within: (1) a required front yard; (2) in any portion of a rear or side yard which is highly visible from Scenic Circle Street or other nonadjoining Lot because of the elevation or slope of the portion of the rear or side yard concerned unless specifically permitted by the Architectural Control Committee.

(h) Paving. Driveway and other flat paved areas may be concrete, exposed aggregate concrete, stamped concrete, asphalt, quarry tile, brick or paving blocks. Gravel areas are not permitted.

(i) Solar Equipment. Solar panels are to be integrated into roof design. Panels and frames must be compatible with roof colors and all equipment must be screened from view.

(j) Antennas. All antennas are restricted to the attic or interior of the Living Unit. It is mandatory that all homes be pre-wired for cable reception. Satellite dish antennas shall be allowed provided they are screened from view and their location is approved by the Architectural Control Committee. Satellite dish antennas shall not be permitted on roofs. No short-wave radio antennas may be constructed or attached.

- (k) Skylights. Skylights are to be designed as an integral part of the roof. Skylight glazing may not be reflective. Skylight framing shall be colored to match adjacent roofing materials.
- (l) Pools, Spas, Fountains, Gamecourts. Pools, spas, fountains and gamecourts shall be approved by the Architectural Control Committee and shall be located to avoid impacting adjacent properties with light or sound. No gamecourt shall be located in front yards. Pool heaters and pumps must be screened from view and sound insulated from neighboring houses. Nothing herein shall be construed as permitting the construction of skateboard areas and/or ramps, which structures shall be prohibited.
- (m) Sheet Metal, Flashing and Vents. All sheet metal, flashing, vents and pipes must be colored to match the material to which they are attached or from which they project, with the exception of copper.
- (n) Mechanical Equipment. All air conditioning, heating equipment, swamp coolers and soft water tanks must be screened from view. Air conditioning units and swamp coolers are not permitted on roofs or through windows unless screened from view and approved by the Architectural Control Committee.
- (o) Gas and Electric Meters. Meter locations are to be designed into the architecture of the dwelling and screened from view.
- (p) Exterior Lighting. Each Lot Owner may use fluorescent ground lights to provide site lighting. All exterior site lighting is to be indirect. In addition to the foregoing, Owners shall be permitted to utilize accent and spot lights on their Living Units. All exterior lighting shall be directed away from neighbors Lots.
- (q) Landscape Site Preparation Guidelines and Restrictions. All demolition, clearing, grubbing, stripping of soil, excavation, compaction and grading must be performed within the confines of a Lot. No scrub oak located upon a Lot shall be removed without the prior approval of the Architectural Control Committee. All fill elevations which can be viewed from any other Lot must be approved by the Architectural Control Committee prior to construction.
- (r) Site Grading and Drainage. Special notice is made with regard to or otherwise changing the height of grade on all Lots. Neither the Lot Owner nor any person or persons claiming under an Owner shall or will at any time raise or otherwise change the grade of any Lot or Lots or otherwise permit said grade to be different from the grade established by Declarant. Notwithstanding the foregoing, an Owner shall be entitled to make application to the Salt Lake City Board of Adjustment for a change in grading. Upon approval of both the Architectural Control Committee and the Salt Lake City Board of Adjustment, a change in grading will be permitted. Each Lot Owner will also comply with drainage provisions as described on the Plat.

(s) City and Other Approval. Approval of any improvements by the Architectural Control Committee does not waive the requirements for any other required public agency review or permit approval process. By approving plans, the Architectural Control Committee takes no responsibility for plan conformity to any other criteria other than the requirements of this Declaration and any Architectural Guidelines. Each Lot Owner shall comply with all applicable City and County ordinances, rules, regulations and conditions on recorded Subdivision Plat.

All buildings in said subdivision shall be placed and used upon said Lots in accordance with all the Planning, Zoning and Siting Ordinances and Codes of Salt Lake City and conditions on recorded subdivision plat. This includes, but is not limited to, a No Parking at any time ordinance on Scenic Circle that is a part of this subdivision. Each Lot in the subdivision is included in the Foothill Development "F-1" Overlay Zone and shall be developed subject to the regulations and applicable provisions of those zones and ordinances as they may be from time to time amended. The granting of a permit or approval by the City with respect to any matter shall not bind or otherwise effect the power of the Committee to require to approve any such matter.

4.6 Landscaping. Each Owner shall be responsible at his own cost and expense to maintain and water all trees and other landscaping which naturally grow upon the Lot of any Living Unit, which Declarant may have installed upon such Lot during development of the Subdivision or which is installed by Owner (or predecessor) after approval by the Architectural Control Committee in accordance with the requirements of Article V. All trees, shrubs and other vegetation to be installed upon such Lot shall be approved by the Architectural Control Committee prior to installation. The addition to, modification of, or removal of trees and other vegetation, shall be deemed a violation of the requirements of Owner to maintain such areas and the Architectural Control Committee shall have the right to require Owner to restore such area to its prior approved condition at the sole cost of Owner. In the event Owner fails to restore such area as required herein, the Declarant shall have the right to restore the same and the cost of such restoration, together with administrative expenses equal to ten percent (10%) of such costs, shall become the responsibility of the Owner. The provisions of this Section relating to the removal of trees and shrubs shall not be applicable or binding upon Declarant with respect to the initial clearing, grading and landscaping of the Property, including the development and the installations of utilities serving the Subdivision.

4.7 Planting and Landscaping. Inasmuch as the Lots within the Subdivision are primarily "view lots", Owners within the Subdivision (including Lot "A" and Lot "B") shall not plant nor cause to be planted, trees or shrubbery which block the view of another owner without written consent of the Committee. In these instances, the Committee will obtain written permission of the other Lot Owners involved, if possible. In no instance shall trees or shrubbery be planted which will readily reseed or come up into the neighboring lots. Existing or planted trees or foliage shall not be allowed to block a neighbor's view without written permission of that neighbor with a copy lodged with Committee. Committee has authority to arbitrate disputes between neighbors and require trimming or removal of foliage.

4.8 Recreational Vehicles. No large trucks or commercial vehicles belonging to Owners or other residents of the Property shall be parked within the Development, except temporary parking not to exceed seventy-two (72) hours. No motor vehicle of any kind shall be repaired, constructed upon any Lot or street, except that these restrictions

shall not apply to emergency repairs to vehicles. Any boat, trailers, motor or recreational vehicle and all types of accessory equipment must be kept in an enclosed garage or screened from view.

4.9 Pets. No animals other than small household pets shall be kept or allowed on any Lot or in any Living Unit. Whenever a permitted pet is allowed to leave a Lot, it shall be kept on a leash or in a cage. No animals may be bred for commercial purposes. No pets shall be allowed to make an unreasonable amount of noise or otherwise become a nuisance. The exterior structure for the care, housing or confinement of any such pets shall be maintained by Owner. Any Owner or other resident within the Development who violates this Section shall be subject to such penalties or fines as regulation may provide.

4.10 Insurance. No use shall be made of any Living Unit which shall cause the improvements within the Development or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspended, or cause any company issuing such insurance to refuse renewal thereof. Each Owner shall be responsible for securing his own insurance.

4.11 Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated or maintained in or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Living Unit or appurtenant structures.

4.12 Maintenance and Repair. No Living Unit, building, structure, or landscaping upon any Lot shall be permitted to fall into disrepair and, subject to the requirements herein as to approval by the Architectural Control Committee, each such building, structure, or landscaping at all times shall be kept in good condition and as appropriate, adequately painted or otherwise finished by its Owner. Such obligation shall extend, but shall not be limited to, the painting, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces.

4.13 Nuisances. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No exterior clothes lines and clothes drying will be permitted and no storage of any of any articles which are unsightly will be permitted upon a Lot. No Living Unit or Lot shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other Living Units or Lots. No Owner shall permit an exterior open fire of any kind upon a Lot for any reason. 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. No oil drilling, mining or quarry operations of any kind shall be permitted upon any Lots.

4.14 Right of Entry. During construction at reasonable hours, any member of the Architectural Control Committee or any officer or authorized representative of any of them, shall have the right to enter upon and inspect any building site or Lot to ascertain whether or not the provisions of this Declaration and the rules and regulations of the Committee have been or are being complied with.

4.15 Signs. Except for signs displayed by Declarant during the development and sale of lots and the construction of homes thereon, no signs whatsoever shall be erected or maintained on any Lot, except:

(a) Such signs as may be required by legal proceedings.

(b) Construction identification signs of a combined total face area of two thousand three hundred four (2,304) square inches or less for each Living Unit.

(c) One "For Sale" or "For Rent" sign, not to exceed four (4) square feet.

4.16 Trash Containers and Collection. All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Architectural Control Committee. Insofar as possible, such containers shall be maintained so as not to be visible from neighboring Lots except to make them available for collection and then only for the shortest time necessary to effect such collection. Each Owner must at all times and at his expense provide garbage cans and plastic liners therefore, except as otherwise provided by the City Sanitation Department.

4.17 Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:

(a) Declarant, so long as it has any interest in any of the Property;

(b) The Architectural Control Committee; or

(c) Any Owner.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

4.18 Easements. Easements are reserved as shown on the recorded Subdivision Plat or in the public record.

4.19 Temporary Structures. No trailer, basement, tent, shack, or other out building shall be used at any time within said Subdivision as a temporary or permanent residence. No structure shall be moved on to any of said residential Lots unless it meets with the approval of the Architectural Control Committee hereinafter referred to.

4.20 Further Subdividing. No Lot (including non-buildable Lots "A" and "B") may be further subdivided.

4.21 Notice to Purchasers. Owners of Lots shall be subject to the conditions shown on the recorded Plat, including, but not limited to, "Notice to Purchasers" and "General Notes" and requirements for Lot 4 driveway and storm drain facilities.

V. ARCHITECTURAL CONTROL

5.1 Architectural Control Committee. The Declarant shall initially appoint a three-member Committee (sometimes referred to as the "Architectural Control Committee" or the "Committee"), the function of which shall be to insure that all proposed and/or current improvements and landscaping within the property harmonize with existing surroundings and structures and that the requirements of this Declaration are complied with. The Committee need not be composed of Owners. The initial Committee shall serve for a period of five (5) years at which time their successors shall be appointed by a vote

of the majority of Owners. The initial Architectural Control Committee shall consist of H. Roger Boyer, Ken C. Gardner and Richard W. Moffat. The Committee may designate a representative to act for it. In the event of death or resignation of any member, the remaining members shall have full authority to select a successor. In the event of the inability of all of the members so to act, successors may be appointed by the vote of a majority of 3/4 of the Lot Owners in said Subdivision (one vote per Lots 1 - 4).

5.2 Submission to Committee. No Living Unit, accessory building or structure or addition to a Living Unit and no landscape additions and changes shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Living Unit, nor of any court enclosure, except as herein otherwise mentioned, shall be performed, unless complete plans and specifications therefore have first been submitted to and approved by the Committee. All such plans and specifications shall be consistent with Architectural Guidelines which shall be from time to time adopted by the Committee, and shall include, among other matters, (i) a plot plan showing contour lines, drainage and grading plan, the location of existing scrub oak, the scrub oak proposed to be removed; (ii) drawings and specifications showing floor plans, elevations, exterior materials and colors; (iii) working drawings; and (iv) construction specifications.

5.3 Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping and alterations on Lots within the Property are in compliance with the requirements of this Declaration and conform to and harmonize with existing surroundings and structures and that such proposed improvements enhance the value and aesthetics of the Project.

5.4 Approval Procedure. All plans and specifications and other materials shall be submitted to the Committee in duplicate. A preliminary review of design drawings is recommended with a final review to be made of working drawings. Upon completion of each review, one set of plans will be retained by the Committee and the remaining set of plans will be returned to the property Owner.

All plans and specifications shall be approved or disapproved by the Committee in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

5.5 Commencement of Construction. No person shall commence any work or improvement until any and all approvals have been granted by the Architectural Control Committee, and Salt Lake City.

5.6 Address for Submittal. Plans and specifications for the construction and installation of any and all improvements within Scenic Circle Subdivision shall be submitted and approved by the Architectural Control Committee (prior to submittal to any required governmental agency) at the following address:

The Boyer Company
Attention: Dick Moffat
127 South 500 East, Suite 310
Salt Lake City, Utah 84102

The Committee has the authority to change the address for the submittal of plans and specifications by recording an amendment to this Declaration.

5.7 Construction.

(a) There is no time limit for beginning construction; however, once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion:

(i) The exterior construction of all structures on any Lot shall be completed within a period of one (1) year following commencement of construction.

(ii) Each Lot shall be landscaped within a period of one (1) year following completion or occupancy of the Living Unit.

Declarant and the Committee (by their authorized agents) reserve the right to inspect construction, as it occurs, to insure compliance with the terms of this Declaration.

(b) Owners and builders shall clean up all trash and debris on the construction site at the end of each week. Trash and debris shall be removed from each construction site at least once a week to a dumping location off-site of the development. Light-weight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials off the construction site. Owners and builders are prohibited from dumping, burying or burning trash anywhere on any Lot. During the construction period, each construction site shall be kept neat and shall be promptly removed from public or private roads, open spaces and driveways.

Each property owner and builder shall be responsible for providing adequate sanitary facilities for his construction personnel. Portable toilets or similar temporary toilet facilities shall be located only on the site itself or in areas approved by the Architectural Control Committee.

(c) Owners shall be responsible to repair any broken sidewalk or curb and gutter or other damaged improvements in front of their Lot prior to taking occupancy.

5.8 Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article V.

5.9 Exception for Declarant. The foregoing provisions of this Article V shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot and which occurs at any time during the seven (7) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

VI. MISCELLANEOUS

6.1 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if mailed, postage prepaid, to the person who appears as an Owner, at the latest address for such person appearing in the records of the Declarant or Committee at the time of mailing.

6.2 Amendment. Any amendment hereto shall require (i) the affirmative vote of at least three-fourths (3/4) of all Class A Members, which Owners present in person or prepresented by Proxy are entitled to cast at a meeting duly called for such purpose; and (ii) so long as the Class B membership exists, the written consent of the Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Owners or of proxies entitled to cast sixty percent (60%) of all votes of the Class A Membership shall constitute a quorum. If the quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 6.2), at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by not less than two members of the Committee, and by the Declarant if the Class B Membership then exists, and shall also be approved by the Salt Lake City Attorney. In such instrument not less than two members of the Committee shall certify that the vote required by this Section for amendment has occurred. Owners of non-buildable Lots "A" and "B" are not voting members.

6.3 Consent in Lieu of Voting. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with Class of membership considered. The following additional provisions shall govern any application of this Section 6.3:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 6.3 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Owners whose ownerships are appurtenant to the same Lot are secured, the consent of none of such Owners shall be effective.

6.4 Lease Provision. Any Owner may lease his Lot and such buildings as are situated thereon; provided, however, that any lease agreement between a Lot Owner and a Lessee must be in writing, and must provide, inter alia, that:

(a) The terms of the Lease shall in all respects be subject to the provisions of the Declaration; and

(b) Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.

6.5 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the property may be assigned.

6.6 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 the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity of unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

6.7 Property Part of Development. The Property shall comprise Scenic Circle Subdivision.

6.8 Covenants to Run With Land. This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Declarant, and all parties who hereafter acquire any interest in a Lot shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Declarant or the Committee or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

6.9 Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

6.10 Severability. Invalidation of any one of these covenants by judgment or court shall in nowise affect any of the other provisions which shall remain in full force and effect.

EXECUTED the day and year first above written.

THE DOYER COMPANY, L.C., A UTAH LIMITED
LIABILITY COMPANY

By *Kem C. Gardner*
Kem C. Gardner
President and Manager

