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STATE OF UTAH } SS
COUNTY OF CACHE }
FILED AND RECORDED FOR
BECKMAN LAND TITLE CO.
NOV 8 2 41 PM '78

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

BROOKSIDE HOMEOWNER'S ASSOCIATION

MICHAEL L. GLEED
COUNTY RECORDER
DEPUTY

THIS DECLARATION, made this 21st day of July, 1978, by Ralph Eugene Johnson and Hoyt F. Kelley, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Exhibit "A" of this declaration and desires to create thereon a residential community with open spaces and other common facilities for the benefit of the said community; and,

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities; and, to this end, desires to subject the real property described in Exhibit "A" together with such additions as may hereafter be made thereto to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and,

WHEREAS, Developer has deemed it desirable, for the efficient preservations of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

NOW THEREFORE, the Developer declares that the real property described in Exhibit "A", and such additions thereto as may hereafter be made pursuant to Exhibit "A" hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE 1

DEFINITIONS

SECTION 1. The following words when used in this document shall have the following meanings:

(a) "Association" shall mean the Brookside Homeowner's Association.

(b) "The Properties" refers to the property described in Exhibit "A" and any additions that may be added thereto by a subsequent declaration.

(c) "Common Properties" shall refer to that area of land or areas of land intended for the common use of the owners of the Properties, as indicated on any recorded subdivision plat thereof.

(2)

(d) "Lot" shall mean any parcel of land as recorded on the official plat thereof.

(e) "Living Unit" shall mean and refer to any portion of a building situated on the Properties designed and intended for use and occupancy as a residence by a single family.

(f) "Family" shall mean one of more persons related by blood, marriage, adoption, or any person dependent upon a unit owner, occupying a living unit and living as a single housekeeping unit.

(g) "Owner" shall mean and refer to the record owner or owners.

(h) "Member" shall refer to all those owners who are member of the Association as provided for in Articles III, Section 1, hereof.

(i) "Mortgage" shall mean not only a mortgage, but also a Trust Deed and purchase contract.

(j) "Mortgagee" shall mean a holder of an interest as defined in (i) above.

(k) "First Mortgage" shall mean a recorded mortgage with priority over any other mortgage.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

The Real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this declaration as it is defined in Exhibit "A" all of which real property shall hereinafter be referred to as "Existing Property."

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership: Every person or entity who is a record owner of a fee or undivided fee, interest in any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights: The Association shall have but one class of voting membership.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Member's Easements of Enjoyment: Every member shall have a right and easement of enjoyment in and to the Common Properties, said right of enjoyment being appurtenant to the title in the land.

Section 2. Title to Common Properties: The Developer is to retain title to the Common Properties until such time as the improvements are completed on the Common Properties and, in the Developers sole determination, the Association is prepared to assume the maintenance of the Common Properties.

(3)

Section 3. Extent of Members' Easements: The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to assess a fee to be charged against the members of the Association to maintain the Common Properties and to provide for any subsequent improvements.

(b) The right of the Association to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

(c) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments: The Developer for each Lot owned by him within the Properties hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon The Properties, including but not limited to the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

Section 3. Basis and Maximum of Annual Assessments: Until the year beginning January 1, 1980, the annual assessment shall be \$ 40.00 per lot. From and after January 1, 1980, the annual assessment may be increased by vote of the Members, as hereinafter provided, for the next succeeding three years and at the end of each such period of three years for each succeeding period of three years. The Board of Trustees of the Association may, after consideration of current maintenance costs and further needs of the Association, fix the actual assessment for any year at a lesser amount.

(4)

Section 4. Special Assessments for Capital Improvements:

The Association may charge any special assessments during a given year for certain expenses that result from any kind of emergency or unforeseeable expenses and any such assessment must have the approval of two-thirds of the Members.

Section 5. Change in Basis and Maximum of Annual Assessment:

Subject to Section 3, the Association may modify the basis and maximum of the annual assessment by a vote of two-thirds of the Members of the Association.

Section 7. Date of Commencement of Annual Assessments:

The Board of Trustees of the Association shall set the date of the annual assessments provided for herein. The first annual assessment shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, shall become due and payable on the first day of March of said year. The amount of assessment that shall be levied during the balance of the first year that remains shall bear a reasonable relationship to the fraction of the year remaining.

Section 8. Duties of the Board of Trustees. The Board of Trustees of the Association shall have the following duties:

1. Fix the date of commencement and the amount of assessment at least thirty days in advance.
2. Prepare a roster of the properties and the applicable assessments, such being open to the inspection of the Owners.
3. Send written notification of the amount of assessment to each owner.
4. Issue receipt upon payment of the assessments to each individual owner.

Section 9. Effect of Non-Payment of Assessment: If

the assessments provided for herein are not paid on the date when due, the amount of the assessment, plus accrued interest (which shall accrue at the rate of 18% per annum), collection fees, and attorney fees and any other fees or costs reasonably related with collection shall become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. Interest shall not accrue until thirty days after the delinquency.

Section 10. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any recorded first mortgage (meaning a mortgage with first priority over the other mortgages) placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessment which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

(5)

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply: Each wall which is built as part of the original improvements and is erected upon the dividing line between the lots shall constitute a party wall and shall be subject to the general rules of law as they apply party walls.

Section 2. Sharing of Repair and Maintenance: The cost of reasonable repair and maintenance of a part wall shall be shared by the Owners who made use of the wall in proportion to such use.

Section 3. Negligent or willful Act. Notwithstanding any other provision in this Article, any owner who causes harm or damage to the party wall through his negligent or willful act shall bear the full cost of restoration.

ARTICLE VII

BUILDING CONFORMITY

There shall be no building, fence, wall or other structure commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the consent of two-thirds of the Owners has been obtained. This article is intended to prevent any addition or modification which might not be in keeping with the general architectural unity or integrity of the Properties.

ARTICLE VIII

EXTERIOR MAINTENANCE

In addition to the maintenance of the Common Properties, the Association shall bear the cost of the maintenance of the exterior of each lot and living unit. The cost of such maintenance is to be added to and become a part of the annual assessment. An Owner is liable for any improper use of his lot or unit which might cause undue damage or wear to the exterior of his unit or that of another. The Association shall have the right of reasonable access to each and every unit to facilitate the exterior repair of said units.

ARTICLE IX

OWNER'S OBLIGATIONS AND LIMITATIONS

Section 1. Owner's obligation to Repair. The Owner is responsible for the maintenance and repair of the following:

1. Interior of his individual unit.
2. Interior of his garage.
3. The individual patio area.

(6)

Section 2. Prohibition against structural changes by Owner: The Owner shall in no way add or modify to or change in any way the exterior of his individual unit. Nor shall he paint or decorate any portion thereof without first obtaining the written consent of the Association.

Section 3. Limitation of use: The units and common properties shall be occupied and used as follows:

A. There shall be no obstruction of the Common Properties without having first obtained the written consent of the Association.

B. Nothing shall be done or kept in any unit or the Common Properties which might cancel or increase the rate of insurance thereon. No waste shall be committed in the Common Properties.

C. No sign shall be maintained in view of the public without first obtaining the written consent of the Association.

D. No animals, livestock or poultry of any kind shall be raised, bred, or kept in any unit or in the common properties except that dogs, cats or other household pets may be kept at units subject to the rules and regulations adopted by the Association.

E. No offensive activity may be carried on in any unit or on the common properties, nor shall anything be done therein which may be or becomes an annoyance or nuisance to the other owners.

F. Nothing may be removed or altered on the Common Properties without first obtaining the consent of the Association.

ARTICLE X

Section 1. Notwithstanding any other provisions of this Declaration, unless at least seventy-five (75) per cent of the first mortgagees or owners of the units have given their prior written approval, the Association shall not be entitled to:

1. by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Properties, except the granting of public easements consistent with the intended use of such common properties;

2. Change the method of determining the obligations, assessments, dues or other charges which may be levied against an owner;

3. by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of the common property party walks or common fences and driveways or the up-keep of lawns and plantings in the properties;

4. fail to maintain fire and extended coverage on insurable Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon current replacement cost);

5. use hazard insurance proceeds for losses to any Common Properties for other than the repair, replacement or reconstruction of such common property.

(7)

Section 2. First mortgagees shall have the right to examine the books and records of the Association.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of the land subject to this Declaration, their respective legal representatives, heirs, successors, assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then-owners of two-thirds of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise effect any other provision which shall remain in full force and effect.

DATED THIS THE 28th DAY OF July 1978.

Ralph Eugene Johnson
Ralph Eugene Johnson

Hoyt F. Kelley
Hoyt F. Kelley

STATE OF UTAH }
COUNTY OF CACHE } ss.

On this 28th day of July, 1978, personally appeared before me, a notary public, Hoyt F. Kelley and Ralph Eugene Johnson who did acknowledge to me that they signed the same.

Residing at: Logan, Utah
My Commission expires: 18 March 1982

Notary Public
NOTARY PUBLIC



**Notary's acknowledgment continued after Exhibit "A"

EXHIBIT "A"

Real Property being located in Cache County, Utah and described as follows:

All of Lots 8, 9, 4 and 5 of Ten-O-Two Subdivision as shown by the official plat of said subdivision filed May 11, 1973 as filing No. 372828 in the Office of the Recorder for Cache County, Utah.

INDIVIDUAL ACKNOWLEDGMENT

STATE OF UTAH)
)ss.
County of Cache)

On this 28th day of July 1978 A.D., personally appeared before me, Lois J. Kelley, wife of Hoyt F. Kelley, and Dolores E. Johnson, wife of Ralph Eugene Johnson, two of the signers of the within documents who did acknowledge to me they executed the same.



Expires: 18 March 1982
Logan, Utah

Lois J. Kelley

Notary Public