

164293

BEAR LAKE COUNTY RECORDER
JOAN F. ENORH

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
BEAR LAKE EXECUTIVE ACRES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R) (the "Declaration"), is made as of the 17 day of June, 1996, by Gary C. and Amber L. McKee ("Declarant"), with reference to the following facts:

A. Declarant is the owner of real property known as Bear Lake Executive Acres, whose CC&R's were recorded on the 17 day of June, 1996 as entry no. 164293 in book _____, page _____ of official records in the office of the County Recorder.

B. All acreage in Bear Lake Executive Acres Phases, a part of Section 16 South, Range 43, East of the Boise Meridian in Idaho, according to the plat thereof, recorded in the office of the county Recorder of Bear Lake County, State of Idaho, are a part of these CC&R.

NOW THEREFORE, in consideration of the promises and as part of the general plan for improvement of said property, the undersigned hereby declares the property herein above described subject to the restrictions and covenants herein recited.

ARTICLE I
DEFINITIONS

Section 1.01: "Property" or "Project" shall mean all the real property described above, consisting of all acreage and shall include any and all annexations to The Bear Lake Executive Acres.

Section 1.02: "Lot" shall mean any plot of land or parcel shown upon any recorded subdivision map of the property.

Section 1.03: "Owner" shall mean the record owner of a fee simple title to any lot which is a part of the Property.

Section 1.04: "Mortgage - Mortgages - Mortgagor". Reference in this Declaration to a mortgage shall be deemed to include a deed of trust; reference to a mortgages shall be deemed to include the beneficiary of a deed of trust; reference to a mortgagor shall be deemed to include the trustor of the deed of trust.

Section 1.05: "Family" shall mean a group of natural persons related to each other by blood or legally related to each other by marriage or adoption.

Section 1.06: "Committee" shall mean Declarant.

GENERAL RESTRICTIONS AND REQUIREMENTS

Section 2.01: Land Use and Building Type. All lots shall be used exclusively for single family residential purposes. Except as may be specifically provided in Article III hereof, no building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling, one building for a garage, and one barn, unless approved by committee, and no parcel may be divided, subdivided or separated into smaller parcels.

Section 2.02: Dwelling Size and Materials. No single story dwelling shall be constructed, altered, placed or permitted to remain on any lot unless the main floor area, exclusive of basement, open porches and garages, is 1,500 square feet or greater. No multi-story dwelling shall be constructed, altered, placed or permitted to remain on any lot unless the main floor and other floors exclusive open porches and garages is a total of 1,800 square feet or greater. Unless prior written approval is first given by the Architectural Control Committee, all exterior construction shall be log, log siding, cedar, redwood or comparable and all dwellings must have at least 10% of the front elevation facing Mountain Way in rock. The Architectural Control Committee may approve a home of a size smaller than as provided in this paragraph only where after considering all relevant factors it is determined to be clearly unreasonable, under the given circumstances, to require the larger size home. But in any event the square footage shall not be less than 1,000 square feet for the first floor.

Section 2.03: Building Location. No building walls or foundation shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building set-back described under prevailing zoning. Notwithstanding any zoning requirements to the contrary, except where special, written approval is first given, no building shall be located on any lot nearer than 20 feet to the front line, or nearer than 20 feet to any side lot line, or nearer than 20 feet to the rear lot line.

Section 2.04: Building and Landscaping Time Restrictions. The exterior constructions of all structures shall be completed within a period of one and one-half (1 1/2) years following commencement of construction.

Section 2.05: Nuisances, Unreasonable Annoyance and Noxious Activities. 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 unreasonable annoyance, nuisance or danger to the neighborhood. Except for legitimate construction and maintenance purposes, no excessively loud noises shall be permitted in the project.

Section 2.06: Signs. No signs, posters, displays or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any lot without written approval having been first obtained from the Architectural Control Committee; provided, however, that the restrictions of this paragraph shall not apply to any sign or notice seven square feet or smaller in size which states

that the premises are for rent or sale. The Association may cause all unauthorized signs to be removed. This section shall not apply to any signs used by Declarant or his agents in connection with the original construction and sale of the residence.

Section 2.07: Antennas. All television and radio antennas or other electronic reception devices shall be completely erected, constructed and placed within the enclosed area of the dwelling or garage on the lot. Exceptions must first be approved in writing by the Architectural Control Committee.

Section 2.08: Animals. Animals kept on property shall be recreational use only. Absolutely no commercial raising animals.

Section 2.09: Rubbish and Unsightly Debris, Etc. Notwithstanding any other provision in the Declaration, no owner shall allow his lot to become physically encumbered with rubbish, unsightly debris, equipment, or other things or materials so as to constitute an eyesore as reasonably determined by the Association. Within 20 days of receipt of written notification by the Association of such failure, the owner shall be responsible to make appropriate corrections.

Section 2.10: Temporary Structures, Etc. No structure of a temporary character, or trailer, camper, tent, shack, garage or other outbuilding shall be used on any lot at any time as a permanent residence, unless first approved in writing by the Architectural Control Committee and Declarant or in the process of constructing the home.

Section 2.11: Non-Residential Uses. No part of the property shall be used for any commercial, manufacturing, mercantile, vending, or other such non-residential purposes. Provided however, that professional and administrative occupations may be carried on within the residence so long as there exists no meaningful external evidence thereof. The Declarant, its successors or assigns may use the property for a model home-site, display, and sales office during the construction and sales period.

Section 2.12: Drilling Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any lot nor shall oil wells, tunnels, mineral excavations or shafts be permitted. No derrick or other structure designed for use in boring for oil or natural gas or water shall erected, maintained or permitted upon any lot.

Section 2.13: Fences and Walls, Hedges and Screens. No fences, walls, or non-living screens shall be constructed on any lot without written approval first having been obtained from the Architectural Control Committee, and in no event shall approval be given to any fence that is not wood (preferably log). Excepting the existing fence on the East border of the property.

Front yard fences, walls and non-living screens are discouraged and require prior approval before construction. Such fences, walls and screens may be approved only following careful scrutiny by the Architectural Control Committee.

Section 2.14: Environmental Concerns. Lots, where possible, shall provide a means for wildlife to traverse from the mountains to areas to the east. The land shall be left in its natural state with exception to reasonable yards, trees, shrubs, etc. for aesthetic purposes. Gardens may be planted for that single family dwelling only. Absolutely no land will be used for commercial purposes.

Improvements: All improvement construction including water installation, sewer, power, phones, or any other roads shall not be the responsibility of the Declarant, the Bear Lake West Property Owners Association, or the County. One water hookup to each lot is available at the price of \$1,000.00 a hookup. Again, the Bear Lake Property Owners Association is providing the right to hook on to their water system only, not the construction of taking the water from their system to the residence. The water will be metered by the Bear Lake Property Owners Association and the party asking for the hookup will be responsible for paying the water rates that are set up by the Bear Lake West Property Owners Association. The water obtained from the Bear Lake West Property Owners Association is not to be used for agricultural commercial use. Limiting water use and water rates are set by the Bear Lake West Property Owners Association.

(Explanation of water fees: BLW POA members have paid for the development of the water system including drilling of well. In order to share in the cost of developing and maintaining the system the initial fees are established as follows: \$1,000.00 hookup fee (includes meter and installation); POA fee as set in the yearly annual meeting of the BLW POA (1994/1995 fee \$80.00); water usage fee of \$50 for the first 30,000 gallons, \$4.00 per 1,000 gallons for the next 70,000 gallons, \$10.00 per 1,000 gallons for the next 50,000 gallons. There is a cap of 150,000 gallons of water per lot per year. Fees and cap are subject to review and revision as needed to maintain the system.

ARTICLE III

ARCHITECTURAL CONTROL COMMITTEE

Section 3.01: Committee Appointment and Composition. The Architectural Control Committee shall consist of three members, who may or may not be lot owners within the Project. The Committee shall act by a majority vote of those present in any meeting duly called for conducting the official business of the Committee members. Notwithstanding anything to the contrary which may appear elsewhere herein, the committee members shall be appointed only by the Declarant or its successor, which, at its option, may temporarily delegate or forever assign such powers and responsibilities, or other powers and responsibilities given to it by this Declaration, to the assignee. Such assignment shall be express and in writing and until such assignment, the assignee shall not possess any powers or responsibilities with respect to such Committee. No Committee member shall be entitled to any compensation for services performed pursuant to this Declaration. However, the Architectural Control Committee may, at its discretion, employ an outside professional architect or engineer or other consultant or professional to assist it in its functions and a reasonable fee (to be established by the Architectural Control Committee) may be charged to the lot owner for such services, in which event the

164293
provisions of Article VII shall be applicable. No member of the Committee shall be liable to any person for his decisions or failure to act in making decisions as a member of said Committee.

Section 3.02: Scope. No building, residence, dwelling, garage, carport, wind generation device, accessory building, or fence, wall, non-living screen or other structure or landscaping shall be commenced, erected, placed or meaningfully altered on any lot until the plans, specifications and plot plans showing the location and nature of such structure, building, landscaping or other improvement or meaningful alteration have been submitted to and approved in writing by the Architectural Control Committee, which may consider such factors as (but not limited to) the quality of workmanship and materials, design, harmony of external design with existing project structures, location with respect to topography and finish grade elevation, preservation and enhancement of the natural beauty of the area and safety.

The Committee may condition such approval on the lot owner depositing cash in the sum of One Hundred Dollars (\$100.00) with the Architectural Control Committee, the purpose of which shall be to further ensure that the lot owner (1) fulfills his responsibility to keep his lot in a condition so as to prevent the rubbish and debris which accumulates during the construction process from blowing or collecting on neighboring lots, and (2) reasonably cleans up his lot at or near the completion of the construction process. If deposit may be kept by the Architectural Control Committee as a fine upon such lot owner or as liquidated damages. If any such failure is not remedied within 14 days after written notice thereof, the Architectural Control Committee may remedy such condition itself and in connection therewith, it may have reasonable access to the lot and shall charge the lot owner for the cost of the remedy in which event the provision of Article VII shall be applicable.

Section 3.03: Process of Approval. Plans and re-submittals thereof shall be approved, disapproved or otherwise acted upon in writing within forty-five (45) days. All plans and specifications and other materials shall be submitted in duplicate. One (1) set shall be returned to the lot owner. Failure of the Committee to respond to a submittal or re-submittal of plans or materials within forty-five (45) days shall be deemed to be an approval of plans as submitted or re-submitted.

If, after such plans and specifications have been approved, the improvements are altered, erected, or maintained upon the lot otherwise than as approved by the Committee, such alteration, erection and maintenance shall be deemed to have been undertaken without the approval of the Committee having been obtained as required by this Declaration. After the expiration of one (1) year from the date of completion of any improvement, said improvement shall, in favor of purchasers and encumbrances, in good faith and for value, be deemed to comply with all of the provisions hereof unless a notice of such non-compliance or non-completion, executed by one member or more of the Committee shall appear of record in the office of the County Recorder, or legal proceeding shall have been instituted to enforce compliance with these legal proceeding shall have been instituted to enforce compliance with these provisions. The approval of the Committee of any plans or specifications submitted for

approval as herein specified for use on any residence shall not be deemed to be a waiver by the Committee of its right object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are embodied in any subsequent plans or specifications submitted for approval as herein provided for use on other residences. Upon approval of the Committee acting in accordance with the provision of this declaration, it shall be conclusively presumed that the location and height of any improvement do not violate the provisions of this declaration. Until later published, the address of the Committee may be obtained by contacting: Gary and Amber McKee, P.O. Box 44, Garden City, Utah 84038 (801)946-3619

ARTICLE IV

EASEMENTS, HILLSIDE DISTURBANCE AND FLOOD CONTROL

Section 4.01: Utility Easements. Easements for installations and maintenance of drainage facilities and public utilities are generally reserved over the front, rear, and side twenty feet of each lot. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. However, the Committee may approve a structure such as a fence or wall or landscaping where constructed at the lot owners risk of having it dismantled, taken out, or destroyed where necessary because of drainage or public utility servicing, installation, alteration or maintenance. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible to maintain.

Section 4.02: Flood Control Responsibility. Construction of berms, channels or other flood control facilities is the sole responsibility of the lot owner and shall be done in accordance with flood control district plans approved by Bear Lake County. Such construction shall commence at the time the lot is graded or otherwise altered from its natural state.

ARTICLE V VIOLATIONS

Section 5.01: Committee's Power of Enforcement. Enforcement shall be accomplished by any lawful way, including proceeding at law or in equity against any person or persons violating or attempting to violate any provision herein, either to restrain violation or recover damages. To the extent reasonably possible, the violator shall be required to pay the expenses incurred therein. No liability shall attach the Committee in acting pursuant to the provisions of this Declaration.

If after due notice, a lot owner fails to remedy a violation, an owner may (in addition to other lawful remedies available to it) cause such violation or condition to be remedied and the cost thereof shall be charged to the owner of the lot in which event such costs shall be deemed a special assessment to such owner and shall attach to his lot, and shall be subject to levy, enforcement and collection by the OWNER in accordance with the assessment lien procedure provided for in this Declaration at Article VII.

Failure to comply with any of the provisions in this Declaration or regulations adopted pursuant thereto shall be grounds for relief which may include, without limiting same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof, which relief may be sought liberally construed to effectuate its purpose and any violation of this Declaration shall be deemed to be a nuisance or unreasonable annoyance. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provisions hereof.

Section 5.02: Enforcement by Others. Additionally and after reasonable notice in writing, an owner not at the time in default hereunder, or Declarant, shall have the option of bringing an action for damages, specific performance, or injunctive relief against any defaulting owner, and in addition may sue to have enjoined any violation of the Declaration. Any judgment shall include a reasonable sum for attorney's fees in favor of the prevailing party. Each remedy provided in this Declaration shall be cumulative and not exclusive or exhaustive.

Section 5.03: Rights of Entry. The committee shall have a limited right of entry in and upon all lots and the exterior of all residences for the purpose of taking whatever corrective action which it deems necessary or proper. Nothing in this Article shall in any manner limit the right of the owner to exclusive control over the interior of his residence.

ARTICLE VI DURATION AND AMENDMENT

Section 6.01: Duration. This Declaration shall continue in full force for a term of fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive period of ten (10) years, unless a declaration of termination is recorded with the County Recorder meeting the requirements of an amendment to this Declaration as set forth in Section 2 of this Article. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any lot from membership in the Association as long as this Declaration shall continue in full force and effect.

Section 6.02: Amendment. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Owners at which meeting such amendment is to be discussed.

No amendment to Article VI shall be effective unless approved in writing by all of the record holders of all encumbrances on all lots in the Project at the time of such amendment and by not less than seventy-five percent (75%) of the record owners of all lots at the time of such amendment, excluding lots owned by Declarant. All other amendments shall be effective only upon written approval by not less than seventy-five percent (75%) of record owners of all lots in the Project at the time of such amendments.

164293

Nevertheless, Declarant may at any time amend the Declaration to qualify the Project with lending institutions and until the close of the escrow established for the sale by Declarant of its last lot in the Project, (including lots in any annexations thereto), Declarant shall have the sole right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification. "The close of escrow" shall be deemed to be the date upon which a deed conveying the lot is recorded.

**ARTICLE VII
MISCELLANEOUS**

Section 7.01: Severability. Invalidation of any one of these covenants, or any portion thereof by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.

Section 7.02: Singular Includes Plural. Whenever the context of the Declaration requires same, the singular shall include the plural, and the masculine shall include feminine.

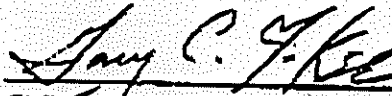
Section 7.03: Covenants Etc. Shall Run with the Land. All of the limitations, restrictions, easements, conditions and covenants herein shall run with the land and shall be binding on and for the benefit of all the Property and all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner and are imposed upon said real property as a servitude in favor of each parcel thereof as the dominant tenement or tenements.

Section 7.04: Liability. Neither the Declarant, its assignee, delegatee or the Architectural Control Committee shall be liable to any other person for any action or failure to act hereunder where such action or failure was in good faith.

Section 7.05: Annexation of Additional Property. Any real property may be annexed to the Project in the discretion of the Declarant, without the approval, assent or vote of the Association or its members. Such real property shall be made subject to this Declaration at the time it is annexed.

Section 7.06: This is a wildlife area. Lot owners should expect that wildlife will be in the area and possibly on their ground.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first hereinabove written.



GARY C. MCKEE, DECLARANT

STATE OF IDAHO)
) SS.
COUNTY OF BEAR LAKE)


164293

On this 17th day of June, 1996, before me, the undersigned,
a notary public in and for said state, personally appeared

GARY C. MCKEE

known to me to be the person whose name is subscribed to the
within instrument, and acknowledged to me that they executed the
same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
my official seal, the day and year in this certificate
above written.


Notary Public
Residing at: Paris
Comission Expires: 