

1989

Hi-Country Estate Homeowner Association v. Steven K. Maxfield : Petition for Rehearing

Utah Court of Appeals

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A. Howard Lundgren; Attorney for Appellee.

Steven K. Maxfield, Pro Se; Appellant.

Recommended Citation

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BRIEF

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IN THE UTAH COURT OF APPEALS

HI-COUNTRY ESTATE HOMEOWNER)	
ASSOCIATION, a Utah corporation,)	
)	PETITION FOR REHEARING
Appellee,)	
)	
vs.)	
)	Case No: 890471-CA
STEVEN K. MAXFIELD,)	
)	
Appellant.)	

PETITION FOR REHEARING FROM A DECISION OF THE COURT OF APPEALS
AFFIRMING AND REMANDING A SUMMARY JUDGMENT GRANTED ON NOVEMBER
3, 1983, BY THE HONORABLE TIMOTHY R. HANSON, DISTRICT COURT JUDGE

STEVEN K. MAXFIELD, PRO SE
Appellant
3329 South 500 West
Salt Lake City, Utah 84105
Telephone: (801) 268-2022

A. HOWARD LUNDGREN
Attorney for Appellee
257 Towers, Suite 340
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AUG 30 1989

Clifford W. Hansen
Clerk of Court
Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

HI-COUNTRY ESTATES HOMEOWNERS)	
ASSOCIATION, a Utah corporation,)	
)	PETITION FOR REHEARING
Appellee,)	
)	
vs.)	
)	Case No: 890471-CA
STEVEN K. MAXFIELD,)	
)	
Appellant.)	

In its August 2, 1990 opinion, this Court based its opinion on information submitted in error by appellant's attorney. The Court based its whole decision on a set of protective covenants which have nothing whatsoever to do with appellant or appellee. Furthermore, we're not even close to one's governing appellant and appellee. The set submitted in appellant's reply brief were for HI-COUNTRY ESTATES, Phase II, (Addendum A). Instead of the set governing Phase I, (Addendum B). In the appellant's brief only the amended portion was submitted. In Appellee's brief nowhere did they submit a copy of the protective covenants.

I. PRELIMINARY STATEMENT

This Court has failed to recognize the protective covenants with the amendment which was filed one (1) time on March 22, 1974. If the Court will review all the documents, protective covenants with amendments, articles of incorporation, and By-laws, the conclusion of findings shows there is no substance of

meaning without the amendment to the protective covenants. The amendment to the protective covenants was the vehicle where the association gained power to do anything.

This is demonstrated by the appellee's Brief on eight (8) separate quotes. They all qualify or refer to the amended portion of the protective covenants. By Judge Daniels striking down the amended portion, James vs Davies, C-81-8560, stated:

..."The plaintiffs, however, are hereby granted judgment against to the extent that the Court hereby declares that the amendment to said protective covenants prepared April 6, 1973 and recorded March 22, 1974, is void and unenforceable."

The Restrictive covenants of Phase I HI-COUNTRY ESTATES are recorded March 22, 1974. The amendment to protective covenants for HI-COUNTRY ESTATES, Phase I - Article III, paragraph I, provides for maintaining and providing for common areas, including roads and streets and for each lot-owner or owners will be members of the association.

Paragraph II provides for assessment for maintenance of road, streets, and other public services. Also specified in Paragraph II, are every detail of assessments and all conditions.

The Restrictive covenants without the amendment provide for no assessments and for no fees to be paid by members or lot owners. The amendment to the covenants were declared void in the James case, *supra*.

II. THE AUTHORITIES AND DUTIES OF THE ASSOCIATION

The certificate of Incorporation of HI-COUNTRY HOMEOWNERS ASSOCIATION, Phase I, dated January 2, 1973, signed by Charles

Lewton Addendum C, (Articles of Incorporation), references on page I, the powers, privileges and duties of the association as set forth in the certain protective covenants for HI-COUNTRY, Phase I (as amended). This gives the authority in third paragraph item (b) to fix levy, collect and enforce payment by any lawful means, all charges or assessment pursuant to the terms of the protective covenants, (as amended) and as provided in the By-laws adopted by the association.

All authority in the certificate of Incorporation to fix, levy, collect and enforce payment of charges or assessments pursuant to the protective covenants come from the amendment to the protective covenant - which was declared void in James case.

The HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION, Phase I, By-laws, dated 1976, article XI, assessments states, ..."as more fully provided in the protective covenants, as amended, each member is obligated to pay".

Since the amendment to the protective covenants were declared void in the James case all other areas in the articles of Incorporation and the By-laws regarding assessments are also void and of no effect since each reference their authority to assess, levy, and collect for services comes from the amendment to the protective covenant.

III. DETAILS OF THE PROTECTIVE COVENANTS

In addition, Article XIII, Section II, of the By-laws, states:

..."in the case of a conflict between the articles of Incorporation and these by laws, the articles shall control;

and in the case of conflict between the protective covenants and these By-laws, the protective covenants shall control."

The protective covenants stated in paragraph eight (8) - In validity - If any part or portion is held invalid or void, it shall in no way effect a valid covenant. This is also the ruling in the James case, supra. The amendment to the protective covenants was declared void, but the other portion of the Restrictive covenants remains valid. Only the amendment which includes the power to assess and collect and made membership mandatory was struck down and rendered void.

Keeping in mind the protective covenant with amendment, were the only documents filed with the County and against said property. To this day, the only documents that will show up on a title search is the protective covenants with amendments. Also the articles of Incorporation and By-laws have never been recorded against said property as were the covenants. Thus no notice was provided to Maxfield concerning the By-laws and Articles of Incorporation.

Further, Maxfield purchased said land without signing any documents in regards to affirming or having any knowledge of protective covenants, articles of Incorporation, or By-laws, Maxfield took the property without notice of By-laws and Articles. It wasn't until after Maxfield began to build his home that Zions Bank issued a deed some sixty (60) days after purchase listing the restrictive covenants and Homeowners Association, which was too late to change the deed but it did render the deed taken without knowledge of the covenants.

IV. FEES FOR ATTORNEY AND CONTRACTS

Under Utah law, attorney's fees cannot be assessed, unless by statute or by contract. Maxfield never signed any contract or document or had notice at the time he purchased the property of any requirements for membership or assessment of fees.

This subdivision does not fall under the Condominiums Ownership Act for the following:

1. This is a residential development with single family dwellings on five (5) acre lots. There are not condominium within the boundaries of this subdivision, and the sub-division lots are no subject to the act.

2. Further, the developer nor any association has ever made a filing under the Condominium Act as required by State law. Further, to assess attorney's fees in this case, would be collateral estopped & Res. Judicata, as in Davies (HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION) vs. James C81-8560, no attorney fees were awarded by Judge Daniels since there was no valid contract or statute that provided for fees to be assessed.

V. REASONS FOR DISMISSAL OF THIS CASE

Further this case should have been dismissed at the trial judge level for the same reason. As Judge Daniels fully litigated this matter (Addendum D & E). Maxfield submitted an affidavit in Addendum D in that case which attached:

1. Protective covenants with amendment.
2. Articles of Incorporation.
3. By-laws.

In Addendum E (attached), is a copy of the Court's record of

the Exhibits accepted at trial. In Exhibit D, 4P, copy of articles of incorporation, 20P - protective covenants, 48D - By-laws submitted by Defendant's HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION.

The most striking information as to what both Judge Daniels and Mr. Kostopulos, the attorney for Defendant, was found in appellant's Brief, (Exhibit M, page 4). This was the conversation between the Judge and Mr. Kostopulos which found in the Court transcript after the judge had ruled:

MR. KOSTOPULOS: No, Your Honor. The only additional question I might ask, the Court may decline to respond, it being no perhaps properly before the Court at the present time is this: In as much as the Court has ruled that the amendment to the covenants is invalid in as far as it being improperly enacted and in as much as the amendment to the covenants is the source of mandatory members in the association itself, and in as much as we are coming up very quickly to the February 28th annual meeting of the association, I wonder if the Court would address the issue of whether or not that meeting should go forth or if there's any point in doing anything with it or whether the association should simply be dissolved at this point?

THE COURT: Well, I'm of the opinion that the amendment improperly enacted which seems to be the source of mandatory participation in the association. I don't see any reason why the association can't continue to hold its meetings do what it wants to do, maybe even tell people if they can't be members, they can't drive on the roads or something. But as I read the documents, I just see no -- I just cannot come to the conclusion that that amendment was validly enacted.

Prior to Judge Daniel's ruling on the amendment, he called both attorneys into his chambers and instructed them to bring both sides together - (that same day), the attorneys were instructed to try to get both sides to negotiate, because if they didn't he was inclined to rule that the amendment was void and in his words, would cause serious consequences if he were forced to

rule that way ("and didn't want to throw the baby out with bath water").

CONCLUSION

There was no compromise reached and the judge in his decision stated that he was compelled to rule that the amendment of the covenants was void and the covenants themselves could not be changed for twenty-five (25) years.

As previously quoted from the transcript of the Court, in the judge's ruling no longer made membership mandatory, which thus invalidated the "contract", whereby previous members were subject to paying assessments and attorney's fees. By the judge striking down this "contract", this enabled others to organize their own associations, to which Maxfield became thus affiliated with; HI-HILLS HOMEOWNERS ASSOCIATION, which has paid taxes on common areas, provided garbage collection, and snow-removal.

There also is a separate water company serving this subdivision, known as Foot Hills Water Company.

In reference to the certificate of incorporation, located in Item (a):

Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the certain Protective Covenants for Hi-Country Estates, located in Salt Lake County, State of Utah, Phase I, as amended, which is applicable to the property, and as the same may be amended from time to time as therein provided;

The judge striking the amendment to the protective covenants, renders this particular document ineffective and without consequence and would require filing the change with the

secretary of State, in accordance to Utah law. This has never been done, and thus is in violation with Utah law, which leaves the By-laws and Articles of incorporation without any authority to charge fees and collect assessments until such time as the required number of lot owners meet and a new set of articles of incorporation and By-laws that provide for assessments and collection of fees are prepared and approved by the proper percentage of said lot owners. These changes have never occurred because the percentage of lot owners required to do this could not be obtained.

DATED this 30th day of August, 1990.

Respectfully submitted,


STEVEN K. MAXFIELD, PRO SE
Appellant

CERTIFICATE OF SERVICE AND GOOD FAITH

On this 30th day of August, 1990, I hereby certify that I caused to be hand-delivered, four (4) true and accurate copies of the foregoing Petition to A. Howard Lundgren, Attorney for Appellee, 257 Towers, Suite 340, 257 East 200 South #10, Salt Lake City, Utah 84111 and eight copies delivered to the Court of Appeals, 230 South 500 East, Suite #400, Salt Lake City, Utah 84102.

MAXFIELD/adf

ADDENDUM -A-

2598154

7573770
FEB 4 1974
Recorded
Request of SECURITY TITLE COMPANY
Fee Paid, JERADIAN MARTIN
Recorder, Salt Lake County
1250 By *PHH*

OCT 10 1973

PROTECTIVE COVENANTS
(Corrected)
For Hi-Country Estates, Phase II, Located

in Salt Lake County, State of Utah

(See Attached Exhibit "A")

KNOW ALL MEN BY THESE PRESENTS:

That the owner of the herein described property, hereby subject said property to the following covenants, restrictions and conditions; and the acceptance of any deed or conveyance thereof by the grantor or grantees therein, and their, and each of their heirs, executors, administrators, successors, and assigns, shall constitute their covenant and agreement with the undersigned, and with each other, to accept and hold the property described or conveyed in or by such deed or conveyance, subject to said covenants, restrictions and conditions, as follows, to-wit:

ARTICLE I

GENERAL RESTRICTIONS

1. Land Use and Building Type: The herein described property shall be designated as a single family residential lot. Such designation shall not be construed as prohibiting the agricultural use of the property.

A single family residence is a dwelling for one family alone, within which no person may be lodged for hire at any time, provided that reasonable quarters may be built and maintained in connection therewith for the use and occupancy of servants or guests of said family and that such quarters may be built and maintained as a part of the detached accessory building or buildings on the same lot. Any lot may be re-subdivided when approved by the Architectural Control Committee and when in conformance with existing County regulations. Responsibility for compliance with any County regulations rests

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...ly with the owner of the lot.

No other buildings shall be erected, altered, placed or permitted to remain on any lot, other than one barn and a private garage for not more than three (3) cars, except that in areas designated for trailer use a small storage building shall be permitted. The design and placement of such a storage facility is subject to approval of the Architectural Control Committee, as is the placement of a trailer itself.

2. Architectural Control: No building or trailer shall be erected, placed or altered on any lot without the approval by the Architectural Control Committee and compliance with the provisions of Article III, Section 6 of these Covenants. No fence, wall, swimming pool or other construction shall be erected, placed or altered on any lot without approval of the Architectural Control Committee.

3. Building Location: Any building location must be approved by the Architectural Control Committee.

4. Easements: Easements for installation and maintenance of utilities and drainage facilities and roads are reserved as shown by the plat. 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.

There is to be reserved easements for electric power, gas, water or for any other utility, public or otherwise, the right to construct, maintain and operate along, upon and across all present or future streets, easements and roadways on said property. Developers may request other easements not heretofore mentioned, and they shall be so granted by any present or future owner of the property, provided that they shall not unduly harm the owner's property.

5. Nuisances: 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 or development.

No trash shall be burned on the premises except in approved incinerators located indoors or within a service yard. No garbage shall be burned. Garbage shall be placed in covered containers, said containers to be concealed from public view by an attractive enclosure.

Control over and the ability to eliminate any nuisance vests with the Homeowner's Association.

6. Temporary and Other Structures: Structures of a temporary or movable nature such as trailers or temporary recreational tents shall be used only in designated areas as outlined in the DESIGNATED USE EXHIBIT which is attached hereto.

No old or second-hand structures shall be moved onto any of said lots.

All buildings, permanent and temporary, shall be of good quality and design, and shall be completed with good workmanship and materials.

7. Signs: No billboard of any character shall be erected, posted, painted or displayed upon or about any of said property. No sign shall be erected or displayed upon or about said property unless and until the form and design of said sign has been submitted to and approved by the Architectural Control Committee.

8. Oil and Mining Operations: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

9. Trade or Commercial Activities: No trade or commercial activity of any kind shall be carried on upon any lot, unless approved by the Architectural Control Committee and unless such activity creates no visual or aesthetic nuisance and does not violate Article I, Section 5 of these Covenants, in the judgment of the Homeowner's Association.

10. Garbage and Refuse Disposal: All garbage and refuse must be disposed of in the designated garbage disposal area. If such garbage disposal

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area is now or ever erected by the Developers, said area shall be maintained by the Homeowner's Association.

11. Livestock-Poultry-Agriculture: No animal may be kept which constitutes an annoyance or nuisance to the area. Any animals to be kept outside shall be housed and managed, based upon a plan for such housing and management which shall have had prior Architectural Control Committee approval.

12. Utilities, Water, Electricity, Gas: The development, implementation, utilization and extension of all utility services rests with the individual property owner, and must conform to all Salt Lake County and Utah State regulations relating to those services.

13. Natural Vegetation and Trees: Natural vegetation is to be left undisturbed as far as is practical on each lot, except for providing access to the property or for making the property available for improvements. The foregoing shall not be construed as prohibiting a property owner from removing any trees or other vegetation which he has himself planted.

14. Water, Butane, Propane or Storage Tanks: All storage tanks must conform to State regulations, and must be located and screened as far as practicable, so as not to detract from the appearance of the lot or neighboring lots. Any plan for a storage facility shall be approved by the Architectural Control Committee prior to the construction or erection of such facility.

15. Fences: All plans for fences must be submitted to the Architectural Control Committee for approval. The use of barbed wire fencing is prohibited on all road frontages.

16. Diligence in Building: When the erection of any residence or other structure is begun, work thereon must be prosecuted diligently and it must be completed within a reasonable length of time.

17. Covenants Binding on Subsequent Owners: All the reservations and restrictions here set forth are made for the benefit of each and every subsequent owner of any portion of the land in said development or interest therein; and shall inure to and bind all subsequent owners thereof.

18. Fire, Casualty or Destruction: In the event that a structure is destroyed, wholly or partially, by fire, or by other casualty, said structure shall within a reasonable time be properly rebuilt or repaired to conform to this declaration, or, upon the election of the owner of the property, all the remaining structures, including the foundations thereof and all debris, shall be removed from the lot as soon as is practicable.

19. Roads: All roads, road maintenance and snow removal shall be under the jurisdiction of the Homeowner's Association.

ARTICLE II

HOMEOWNER'S ASSOCIATION AND MAINTENANCE OF COMMON AREAS

1. Homeowner's Association: Hi-Country Estates, Inc., will form or cause to be formed a non-profit corporation or association for the purpose of maintaining and providing for the common areas, including roads and streets, and each lot owner or owners will be members of such association. Persons or entities purchasing a lot under a contract shall be deemed the owner of such lot for the purpose of membership in the association.

2. Assessment for Maintenance of Road, Street and Other Public Services: Each Grantee and lot owner for himself, his heirs, executors, and assigns, covenants and agrees to pay annually his pro-rata share of the cost to maintain the roads, streets and common areas, including, but not limited to, the common areas set aside for the delivery and pickup of mail, the pickup of children for school by school buses and other vehicles, and an area for garbage collection. Grantee's assessment in this regard shall be paid promptly when the same becomes due as provided in the By-Laws of the Homeowner's Association, and the Grantee's failure to pay same promptly when due shall constitute a lien upon the owner's premises and the same may be enforced in equity or at law as in the case of any lien foreclosure. Such annual assessment shall not commence until the ____ day of _____, 19__, and the first assessment shall be in the amount of \$_____ per lot owned, said amount to be placed

~~the account~~ and to be used exclusively by the Homeowner's Association for the purposes hereinabove mentioned, and for such other services as are deemed important to the development and preservation of an attractive community and to further maintain the privacy and general safety of the residential communities located in Hi-Country Estates. From and after the ____ day of _____, 19____, the annual payment may be increased each year up to five per cent (5%) of the maximum authorized payment for the previous year. The Homeowner's Association is obligated to provide maintenance and all other services stated above only to the extent that such maintenance and services can be provided with the proceeds of such annual payments. The foregoing annual fee may be increased by an amount greater than five per cent (5%) of the maximum authorized payment for the previous year, by the written consent of a majority of the lot owners. At such time as any public body shall undertake to maintain the roads and streets and provide the other services contemplated herein, this covenant shall cease, terminate, and be held for naught.

3. Extensions of Roads and Common Areas: Hi-Country Estates, Inc., reserves the right to extend the road system into property adjoining Hi-Country Estates, and to plat additional subdivision areas which would be an extension of the road system and common areas as contemplated herein. Should such extension take effect, the lot owners within the adjoining subdivisions shall be required to become members of the Homeowner's Association as contemplated herein and to pay their pro-rata share of the cost.

ARTICLE III

DURATION, ENFORCEMENT, AMENDMENT

1. Duration of Restrictions: All of the conditions, covenants and reservations set forth in this declaration of restrictions shall continue and remain in full force and effect at all times against said property in Exhibit "A" and the owners thereof, subject to the right of change or modification provided for below, until twenty-five (25) years, and shall as then in force be continued

~~for a period of twenty (20) years, and thereafter for successive periods of~~
twenty (20) years each without limitation, unless, within the six (6) months
prior to 19__ or within the six (6) months prior to the expiration of any
successive twenty-year period thereafter, a written agreement executed by
the then record owners of more than three-fourths (3/4) in area of said property,
exclusive of streets, parks, and open spaces, be placed on record in the office
of the County Recorder of Salt Lake County, by the terms of which agreement
any of said conditions or covenants are changed, modified or extinguished in
whole or in part as to all or any part of the property originally subject thereto,
in the manner and to the extent therein provided. In the event that any such
written agreement of change or modification be duly executed and recorded, the
original conditions and covenants, as therein modified shall continue in force
for successive periods of twenty (20) years each unless and until further changed,
modified or extinguished in the manner herein provided for, by mutual written
agreement with not less than seventy per cent (70%) of the then owners of record
title of said property (including the mortgagees under record mortgages and
the trustees under recorded deeds of trust), duly executed and placed of record
in the office of the County Recorder of Salt Lake County, Utah, provided,
however, that no change or modification shall be made without the written
consent duly executed and recorded of the owners of record of not less than two-
thirds (2/3) in area of all lands which are a part of said property and which are
held in private ownership within five hundred (500) feet in any direction from any
direction from the exterior boundaries of the property concerning which a change
or modification is sought to be made.

2. Enforcement: Each and all of said conditions, covenants and
reservations is and are for the benefit of each owner of land (or any interest
therein) in said property and they and each thereof shall inure to and pass with
each and every parcel of said property and shall apply to and bind the respective
successors in interest of said Grantor. Each Grantee of the Grantor of any part
or portion of said property by acceptance of a deed incorporating the substance

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of this declaration either by setting it forth or by reference therein, accepts the same subject to all of such restrictions, conditions, covenants and reservations. As to each lot owner the said restrictions, conditions and covenants shall be covenants running with the land and the breach of any thereof, and the continuance of such breach may be enjoined, abated or remedied by appropriate proceedings by any such owner of other lots or parcels in said property, but no such breach shall affect or impair the lien of any bona fide mortgage or deed of trust which shall have been given in good faith, and for value; provided, however, that any subsequent owner of said property shall be bound by the conditions and covenants, whether obtained by foreclosure or at a trustee's sale or otherwise.

3. Violation Constitutes Nuisance: Every act or omission, whereby any restriction, condition or covenant in this declaration set forth, if violated in whole or in part is declared to be and shall constitute a nuisance and may be abated by Grantor or its successors in interest and/or by any lot owner; and such remedy shall be deemed cumulative and not exclusive.

4. Construction and Validity of Restrictions: All of said conditions, covenants and reservations contained in this declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants, or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Grantor and Grantee, their successors, heirs, and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this declaration, irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason becomes unenforceable.

5. Right to Enforce: The provisions contained in this declaration shall bind and inure to the benefits of and be enforceable by Grantor, by the owner, or owners, of any portion of said property, their and each of their legal

held invalid or void, such invalidity or voidness shall in no way affect any
valid covenant, condition or restriction.

IN WITNESS WHEREOF, I have hereunto set my hand and seal

day of July, 1973.



HI-COUNTRY ESTATES

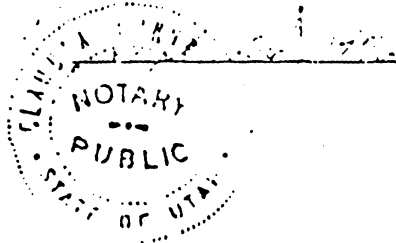
By Charles Lewton
Charles Lewton

STATE OF UTAH)
) ss.
County of Salt Lake)

I hereby certify that on the 11th day of July, 1973.

CHARLES LEWTON, personally appeared before me, who being by
me first duly sworn, declared that he is the person who signed to
going instrument and duly acknowledged to me that he executed the same.

My commission expires:



Charles Lewton
NOTARY PUBLIC

Residing at:

1000 E. 1000 S.

ADDENDUM -B-

2607748

Recorded MAR 22 1974 11 48 11
Request of SECURITY TITLE COMPANY
Fee Paid, JERADAN MARTIN
Recorder, Salt Lake County, Utah
By [Signature] Deputy

PROTECTIVE COVENANTS FOR HI-COUNTRY ESTATES

Located in Salt Lake County, State of Utah,

Phase I, as shown by Plat recorded on the 17th

day of January, 1972, Reference: Book "KK"
of P ats, Pages 56, 57, 58 and 59.

KNOW ALL MEN BY THESE PRESENTS:

That the said owners of the heretofore described property, hereby
subject said property to the following covenants, restrictions and conditions;
and the acceptance of any deed or conveyance thereof by the grantee or
grantees therein, and their, and each of their heirs, executors, administrators,
successors, and assigns, shall constitute their covenant and agreement with
the undersigned, and with each other, to accept and hold the property des-
cribed or conveyed in or by such deed or conveyance, subject to said
covenants, restrictions and conditions, as follows, to-wit:

ARTICLE I

GENERAL RESTRICTIONS

1. Land Use and Building Type: The heretofore described property shall
be designated as a single family residential lot, except that each lot may be
divided one (1) time with the approval of the architectural control committee,
and in accordance with Salt Lake County Zoning Regulations.

A single family residence is a dwelling for one family alone, within
which no person may be lodged for hire at any time, provided that reasonable
quarters may be built and maintained in connection therewith for the use and
occupancy of servants or guests of said family and that such quarters may be
built and maintained as a part of the detached accessory building or buildings
on the same lot, provided said accessory buildings be not at any time rented
or let to persons outside the family and that they may be occupied and used

EVERETT E. DAHL
ATTORNEY AT LAW
760 EAST CENTER STREET
(SUITE 2)
MIDVALE, UTAH 84047

only by persons who are employed by members of or are guests of said family.

No other buildings shall be erected, altered, placed, or permitted to remain on any lot, other than one barn to be used in stabling horses and a private garage for not more than three (3) cars.

2. Architectural Control: No building shall be erected, placed or altered on any lot nor any lot divided without the approval by the architectural control committee and compliance with the provisions of Section 6, Article II, of these covenants. No fence, wall, swimming pool or other construction shall be erected, placed or altered on any lot without approval of the architectural control committee.

3. Building Location: No building shall be located on any lot nearer to the front line than fifty (50) feet therefrom, measured to the foundation of such building; nor nearer than fifty (50) feet to the rear lot line; nor nearer than fifty (50) feet to a side lot line. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of a building for the purposes of determining such distances, provided, however, that this shall not be construed to permit any portion of a building, including such eaves, steps, or open porches, to encroach upon another lot.

4. Easement: Easements for installation and maintenance of utilities and drainage facilities and roads are reserved as shown by the plat, labeled Exhibit "B", and attached to these covenants. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for these improvements for which a public authority or utility company is responsible.

There is reserved to electric power, gas, water and other public utilities the right to construct, maintain and operate along, upon and across

all present street, easements and roadways on said property.

5. Nuisances: 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.

6. Temporary and Other Structures: No structures of a temporary nature, trailer, basement house, tent, shack, garage, barn or other out-building shall be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on said property at any time. No old or second-hand structures shall be moved onto any of said lots, it being the intention hereof that all dwellings and other buildings to be erected on said lots, or within said subdivision, shall be new construction of good quality workmanship and materials.

7. Signs: No billboard of any character shall be erected, posted, painted or displayed upon or about any of said property. No sign shall be erected or displayed upon or about said property unless and until the form and design of said sign has been submitted to and approved by the architectural control committee. No "For Sale" signs shall be displayed upon or about said property without approval of the architectural control committee.

8. Oil and Mining Operations: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

9. Livestock-Poultry Agriculture: No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats, or other household pets and horses may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. No animal may be kept which

constitutes an annoyance or nuisance to the area. All animals shall be restricted to their owner's property.

10. Garbage and Refuse Disposal: No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste. Such trash, rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, and no rubbish, trash, papers, junk or debris shall be burned upon any lot.

11. Water Supply: Whenever a residence is constructed on said property and there is a culinary water line available to serve said residence by being located in an adjoining street or road, the said property owner shall connect to and utilize the water services of said line. No other water supply system shall be used or permitted on any lot or group of lots unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of both the State Health Department and State Water Engineer.

12. Trees: No cutting of trees shall be permitted on the premises at any time, except for the sole purpose of making land available for improvements.

13. Landscaping: No landscaping shall be begun on said property nor planting of trees take place until the plans and specifications therefor have first been approved in writing by the architectural supervising committee.

14. Diligence in Building: When the erection of any residence or other structure is once begun, work thereon must be prosecuted diligently and it must be completed within a reasonable length of time.

ARTICLE II
DURATION, ENFORCEMENT, AMENDMENT

1. Duration of Restrictions: All of the conditions, covenants and reservations set forth in this declaration of restrictions shall continue and remain in full force and effect at all times against said property in Exhibit "B" and the owners thereof, subject to the right of change or modification provided for in Sections 2 and 3 of this Article, until twenty-five (25) years, and shall as then in force be continued for a period of twenty (20) years, and thereafter for successive periods of twenty (20) years each without limitation unless, within six (6) months prior to 1992 or within the six months prior to the expiration of any successive twenty year period thereafter, a written agreement executed by the then record owners of more than three-fourths (3/4) in area of said property, exclusive of streets, parks and open spaces, be placed on record in the office of the County Recorder of Salt Lake County, by the terms of which agreement any of said conditions or covenants are changed, modified or extinguished in whole or in part as to all or any part of the property originally subject thereto, in the manner and to the extent therein provided. In the event that any such written agreement of change or modification be duly executed and recorded, the original conditions and covenants, as therein modified shall continue in force for successive periods of twenty (20) years each unless and until further changed, modified or extinguished in the manner herein provided for, by mutual written agreement with not less than seventy per cent (70%) of the then owners of record title of said property (including the mortgagees under record mortgages and the trustees under recorded deeds of trust), duly executed and placed of record in the office of the County Recorder of Salt Lake County, Utah, provided, however, that no change of modification shall be made without the written consent duly executed and recorded of

the owners of record of not less than two-third (2/3) in area of all lands which are a part of said property and which are held in private ownership within five hundred (500) feet in any direction from any direction from the exterior boundaries of the property concerning which a change of modification is sought to be made.

2. Enforcement: Each and all of said conditions, covenants and reservations is and are for the benefit of each owner of land (or any interest therein) in said property and they and each there of shall inure to and pass with each and every parcel of said property and shall apply to and bind the respective successors in interest of said Grantor. Each Grantee of the Grantor of any part or portion of said property by acceptance of a deed incorporating the substance of this declaration either by setting it forth or by reference therein, accepts the same subject to all of such restrictions, conditions, covenants and reservations. As to each lot owner the said restrictions, conditions and covenants shall be covenants running with the land and the breach of any thereof, and the continuance of such breach may be enjoined, abated or remedied by appropriate proceedings by any such owner of other lots or parcels in said property, but no such breach shall affect or impair the lien of any bona fide mortgage or deed of trust which shall have been given in good faith, and for value; provided, however, that any subsequent owner of said property shall be bound by the conditions and covenants, whether obtained by foreclosure or at a trustee's sale or otherwise.

3. Violation Constitutes Nuisance: Every act or omission, whereby any restriction, condition or covenant in this declaration set forth, if violated in whole or in part is declared to be and shall constitute a nuisance and may be abated by Grantor or its successors in interest and/or by any

lot owner; and such remedy shall be deemed cumulative and not exclusive.

4. Construction and validity of Restrictions: All of said conditions, covenants and reservations contained in this declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants, or reservations, or any part thereof, is invalid, or for any reason, becomes unenforceable no other condition, covenant, or reservation or any part thereof, shall be thereby affected or impaired; and the Grantor and Grantee, their successors, heirs, and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this declaration, irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason becomes unenforceable.

5. Right to Enforce: The provisions contained in this declaration shall bind and inure to the benefits of and be enforceable by Grantor, by the owner or owners of any portion of said property, their and each of their legal representatives, heirs, successors and assigns, and failure by Grantor or any property owner, or their legal representatives, heirs, successors or assigns to enforce any of said restrictions, conditions, covenants, or reservations shall in no event be deemed a waiver of the right to do so thereafter.

6. Architectural Committee: The architectural committee which is vested with the powers described herein shall consist of three (3) persons appointed by the Grantor. Prior to the commencement of any excavations, construction or remodeling or adding to any structure, theretofore completed, there shall first be filed with the architectural committee two complete sets of building plans and specifications therefor, together with a block or plot plan indicating the exact part of the building site the improvements will cover and said work shall not commence unless the architectural committee

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shall endorse said plans as being in compliance with these covenants and are otherwise approved by the committee. The second set of said plans shall be filed as a permanent record with the architectural control committee. In the event said committee fails to approve or disapprove in writing said plans within fifteen (15) days after their submission, then said approval shall not be required. When all lots in said tract have been sold by Grantor, said plans and specifications shall be approved by an architectural committee approved by a majority of owners of lots in the property herein described and only owners of said lots shall be privileged to vote for said architectural committee. The Grantor shall have the right to appoint members of the architectural committee until such time as all lots in the tract have been sold by the Grantor.

7. Assignment of Powers: Any and all rights and powers of the Grantor herein contained may be delegated, transferred or assigned. Wherever the term "Grantor" is used herein, it includes assigns or successor in interest of the Grantor.

8. Invalidity: It is expressly agreed that in the event any covenant or condition or restriction hereinbefore contained, or any portion thereof is held invalid or void, such invalidity or voidness shall in no way affect any valid covenant, condition or restriction.

IN WITNESS WHEREOF, I have hereunto set my hand and seal
this 15 day of June, 1970.

HI-COUNTRY ESTATES

By 

STATE OF UTAH)

:ss.

County of Salt Lake)

I hereby certify that on the 5 day of June, 1970, D. KIETH SPENCER,

personally appeared before me, who being by me first duly sworn, declared that he is the person who signed the foregoing instrument and duly acknowledged to me that he executed the same.



My commission expires:

Sept. 3, 1973

[Signature]
NOTARY PUBLIC

Residing at:

[Signature]

AMENDMENT TO
PROTECTIVE COVENANTS FOR HI-COUNTRY ESTATES,
LOCATED IN SALT LAKE COUNTY, STATE OF UTAH,
PHASE I.

This Amendment of Protective Covenants for Hi-Country Estates, located in Salt Lake County, State of Utah, Phase I, by the undersigned, being record owners of more than three-fourths in area of the property located within Hi-Country Estates, hereinafter called the "Declarants";

WITNESSETH:

WHEREAS, Declarants executing this amendment are the owners of record of more than three-fourths in area of the Lots contained in Hi-Country Estates, located in Salt Lake County, State of Utah, Phase I.; and

WHEREAS, Declarants executing this amendment desire to amend the Protective Covenants by adding thereto the provisions hereinafter contained;

NOW, THEREFORE, Declarants executing this amendment hereby subject said property to the covenants, restrictions and conditions previously in affect, together with this amendment thereto, and the acceptance of any deed or conveyance thereof by the Grantee or Grantees therein and their, and each of their heirs, executors, administrators, successors and assigns, shall constitute their covenant and agreement with the declarants and with each other, to accept and hold the property described or conveyed in or by such deed or conveyance, subject to such covenants, restrictions and conditions, with the following amendment, as follows, to-wit:

ARTICLE III.
HOMEOWNERS ASSOCIATION AND MAINTENANCE OF COMMON AREAS

1. Homeowners Association. Hi-Country Estates, Inc., will form or cause to be formed a non-profit corporation or association for the purpose of maintaining and providing for the common areas, including roads and streets, and each lot owner or owners will be members of such association. Persons or entities purchasing a lot under a contract shall be deemed the owner of such lot for the purpose of membership in the association.

2. Assessment for Maintenance of Road, Street and Other Public Services. Each Grantee and lot owner for himself, his heirs, executors, and assigns, covenants and agrees to pay annually his pro-rata share of the cost to maintain the roads, streets and common areas, including, but not limited to, the common areas set aside for the delivery and pickup of mail, the pickup of children for school by school buses and other vehicles, and an area for garbage collection. Grantee's assessment in this regard shall be paid promptly when the same becomes due as provided in the By-Laws of the Homeowners Association, and of the Grantees failure to pay same promptly when due shall constitute a lien upon the owners'

BOOK 3541 PAGE 1

premises and the same may be enforced in equity or at law as in the case of any lien foreclosure. Such annual assessment shall not commence until January 1, 1973, and the first assessment shall be in the amount of \$85.00 per lot owned, said amount to be placed in an account and to be used exclusively by the Homeowners Association for the purposes hereinabove mentioned, and for such other services as are deemed important to the development and preservation of an attractive community and to further maintain the privacy and general safety of the residential communities located in Hi-Country Estates. From and after January 1, 1974, the annual payment may be increased each year up to five (5) percent of the maximum authorized payment for the previous year. The Homeowners Association is obligated to provide maintenance and all other services stated above only to the extent that such maintenance and services can be provided with the proceeds of such annual payments. The foregoing annual fee may be increased by an amount greater than five (5) percent of the maximum authorized payment for the previous year, by the written consent of a majority of the lot owners. At such time as any public body shall undertake to maintain the roads and streets and provide the other services contemplated herein, this covenant shall cease, terminate, and be held for naught.

3. Extentions of Roads and Common Areas. Hi-Country Estates, Inc., reserves the right to extend the road system into property adjoining Hi-Country Estates, and to plat additional subdivision areas which would be an extension of the road system and common areas as contemplated herein. Should such extension take effect, the lot owners within the adjoining subdivisions shall be required to become members of the Homeowners Association as contemplated herein and to pay their pro-rata share of the cost.

4. Effect of Amendment. Each and every other restriction and covenant contained in the Protective Covenants are hereby reaffirmed as hereinabove modified and amended.

DATED this 6th day of April, 1973.

HI-COUNTRY ESTATES, INC.

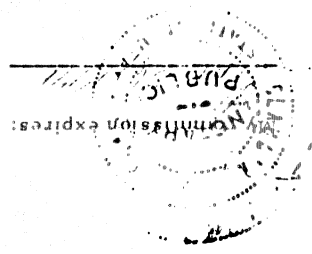
By: _____
President

(Corporate Seal)
ATTEST:

Secretary

RECORDED MAY 10

8053541 PAGE 3



Residing at: _____

NOTARY PUBLIC
J. Keith Spencer

On the 14 day of April, 1973, personally appeared before me
CHARLES E. LEWTON and D. KIEITH SPENCER who being by me duly
sworn did say, each for himself, that he the said Charles E. Lewton
is the president and he, the said D. Kieith Spencer is the secretary of
HI-COUNTRY ESTATES, INC, and that the within and foregoing instru-
ment was signed in behalf of said corporation by authority of a resolution
of its Board of Directors and said Charles E. Lewton and D. Kieith Spencer
each duly acknowledged to me that said corporation executed the same and
that the seal affixed is the seal of said corporation.

STATE OF UTAH)
ss. _____
County of Salt Lake)

CERTIFICATE OF INCORPORATION

OF

HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION

KNOW ALL MEN BY THESE PRESENTS:

I, CHARLES E. LEWTON, acting as the incorporator of a corporation under the Utah act governing the formation of non-profit corporations, do hereby adopt the following Certificate of Incorporation for such corporation;

FIRST: The name of this Corporation is Hi-Country Estates Homeowners Association, hereafter called the "Association,"

SECOND: The term of existence of this Association will be perpetual.

THIRD: This Association is not organized for pecuniary profit or gain to the members thereof, and the specific purposes for which it is formed are to provide for maintenance, upkeep and preservation of the streets, roads and common area within that certain tract of property described as:

Hi-Country Estates, located in Salt Lake County,
State of Utah, Phase I,

and also to include additional phases of Hi-Country Estates and the homeowners located within such additional subdivisions as may be mutually beneficial for the members hereof and the homeowners of the adjoining subdivisions. This Association is also formed to promote the health, safety and welfare of the residents within Hi-Country Estates and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose to:

(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that cer-

EVERETT E. DAHL
ATTORNEY AT LAW
760 EAST CENTER STREET
(SUITE 2)
MIDVALE, UTAH 84041

tain Protective Covenants for Hi-Country Estates, located in Salt Lake County, State of Utah, Phase 1, as amended, which is applicable to the property, and as the same may be amended from time to time as therein provided;

(b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Protective Covenants, as amended, and as provided in the By-Laws adopted by the Association; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) Acquire by gift, purchase or otherwise own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) Borrow money, and with the assent of two-thirds of the members mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) Dedicate, sell or transfer all or any part of the common area or road system to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members;

(f) Participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional residential property, road systems and common area, for any contiguous areas;

(g) Have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of Utah may now or hereafter have or exercise;

(h) *The Association shall have no capital stock and no divi-*

dends or other pecuniary profits shall be declared or paid to any member or director of the Association as such;

(i) The Association has no power to carry on propaganda attempt to influence legislation, or take part in a political campaign.

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants or record to assessment by the Association, including purchasers under contract, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation, such as Mortgagees. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association.

Members shall be entitled to one vote for each Lot owned. A Lot shall mean any Lot as platted and/or divided as provided in the protective covenants. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

The affairs of this Association shall be managed by a Board of three Directors, who need not be members of the Association. The number of Directors may be changed by amendment of the By-Laws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are;

<u>Name</u>	<u>Address</u>
Charles E. Lawton	P. O. Box 1901 Jackson, Wyoming
Keith Spencer	Casper, Wyoming
Tony Mascaro	4505 West 12600 South Riverton, Utah

At the first annual meeting the members shall elect three Directors
for a term of one year, and at each annual meeting thereafter the members
shall elect the number of Directors provided in the By-Laws for a term of
one year.

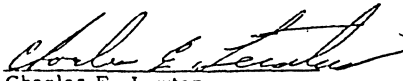
The Association may be dissolved with the assent given in writing and signed by not less than two-thirds of all members, provided, however, that the assets must then be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created, or in the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to a non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

The address of this Association's registered office in the State of Utah is P O Box 11, Riverton, Utah, and the name of its registered agent and his address is, Everett E. Dahl, Attorney at Law, 760 East Center Street, Midvale, Utah 84047.

Amendment of this Certificate shall require the assent of seventy-five percent of the entire membership.

The name and address of the Incorporator is: Charles E. Lewton, P.O. Box 1901, Jackson, Wyoming.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of January, 1972.


Charles E. Lewton

STATE OF UTAH)
ss.
County of Salt Lake)

I hereby certify that on the 30th day of January, 1972, CHARLES E. LEWTON, personally appeared before me, who being by me first duly sworn, declared that he is the person who signed the foregoing document as incorporator, and that the statements therein contained are true.

WITNESS my hand and notarial seal the day and year last above
written

Ernest L. Dahl
NOTARY PUBLIC

My commission expires

Sept 3, 1973

Residing at:

Midvale Utah

#10
a-10

FILMED

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

FEB 10 1982

W. Stanley Evans, Clerk of the District Court
By Grady Deputy Clerk

RAY M. HARRING
HARRING & HARRING
ATTORNEYS AT LAW
308 WEST MAIN STREET
AMERICAN FORK UTAH 84003
TELEPHONE: 756 7658

PLAINTIFFS

Attorneys for

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

RICHARD L. JAMES, et al.

AFFIDAVIT

Plaintiffs,

vs.

JOHN W. DAVIES, et al.

Defendants.

Civil No. C-81-8560

STATE OF UTAH)

ss

COUNTY OF SALT LAKE)

STEVEN K. MAXFIELD, being first duly sworn on his oath,
deposes and says:

1. That the affiant is a Party-Plaintiff in the
above-entitled action.

2. That the affiant is familiar with the Restrictive
Covenants upon the premises and is also familiar with the
Certificate of Incorporation of Hi-Country Estates Homeowners
Association and Hi-Country Homeowners Association By-Laws. Copies
of said Certificate of Incorporation and By-Laws are attached
hereto as Exhibits "A" and "B". A copy of the Restrictive
Covenants and Amendments thereto are attached hereto as Exhibit
"C".

3. That Everett E. Dahl prepared the Certificate of
Incorporation for Hi-Country Estates Homeowners Association and, has
at meetings of the Association informed the Defendants and other
parties present at such meetings that the Association, through its
Articles, have no authority to enforce the Protective Covenants,
but that such Protective Covenants could be enforced by individuals
bringing actions thereon.

ADDENDUM -D-

1
2 4. That it is clear from the documents attached hereto
3 that the Association has no authority to enforce the Covenants.

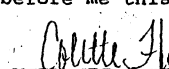
4 FURTHER AFFIANT SAYETH NAUGHT.

5 DATED this 5 day of February, 1982.

6 
7 STEVEN K. MAXFIELD

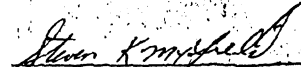
8
9 SUBSCRIBED AND SWORN to before me this 5th day of
10 February, 1982.

11 MY COMMISSION EXPIRES:

11 
12 NOTARY PUBLIC
13 RESIDING AT:

14 CERTIFICATE OF MAILING

15 I hereby certify that a copy of the foregoing AFFIDAVIT,
16 was hand carried on this 5 day of February, 1982, to: CON
17 KOSTOPULOS, Attorney for Defendants, 1095 East 2100 South, Suite
18 235, Salt Lake City, UT 84106.
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CERTIFICATE OF INCORPORATION

OF

HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION

KNOW ALL MEN BY THESE PRESENTS:

I, CHARLES E. LEWIS, acting as the incorporator of a corporation under the Utah act governing the formation of non-profit corporations, do hereby adopt the following Certificate of Incorporation for such corporation:

FIRST: The name of this Corporation is Hi-Country Estates Homeowners Association, hereafter called the "Association,"

SECOND: The term of existence of this Association will be perpetual.

THIRD: This Association is not organized for pecuniary profit or gain to the members thereof, and the specific purposes for which it is formed are to provide for maintenance, upkeep and preservation of the streets, roads and common area within that certain tract of property described as

Hi-Country Estates, located in Salt Lake County,
State of Utah, Phase 1,

and also to include additional phases of Hi-Country Estates and the homeowners located within such additional subdivisions as may be mutually beneficial for the members hereof and the homeowners of the adjoining subdivisions. This Association is also formed to promote the health, safety and welfare of the residents within Hi-Country Estates and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose to:

(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that cer-

EVERETT E. DAHL
ATTORNEY AT LAW
700 EAST CENTER STREET
(SUITE 2)
MIDVALE, UTAH 84047

ADDENDUM -C-

tain Protective Covenants for Hi-Country Estates, located in Salt Lake County, State of Utah, Phase 1, as amended, which is applicable to the property, and as the same may be amended from time to time as therein provided;

(b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Protective Covenants, as amended, and as provided in the By-Laws adopted by the Association; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association,

(c) Acquire by gift, purchase or otherwise own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) Borrow money, and with the assent of two-thirds of the members mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) Dedicate, sell or transfer all or any part of the common area or road system to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members;

(f) Participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional residential property, road systems and common area, for any contiguous areas;

(g) Have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of Utah may now or hereafter have or exercise;

(h) The Association shall have no capital stock and no divi-

dends or other pecuniary profits shall be declared or paid to any member or director of the Association as such;

(1) The Association has no power to carry on propaganda attempt to influence legislation, or take part in a political campaign.

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants or record to assessment by the Association, including purchasers under contract, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation, such as Mortgagees. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association

Members shall be entitled to one vote for each Lot owned. A Lot shall mean any Lot as platted and/or divided as provided in the protective covenants. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

The affairs of this Association shall be managed by a Board of three Directors, who need not be members of the Association. The number of Directors may be changed by amendment of the By-Laws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are;

<u>Name</u>	<u>Address</u>
Charles E. Lawton	P.O. Box 1901 Jackson, Wyoming
Keith Spencer	Casper, Wyoming
Tony Mascaro	4505 West 12600 South Riverton, Utah

At the first annual meeting the members shall elect three Directors for a term of one year, and at each annual meeting thereafter the members shall elect the number of Directors provided in the By-Laws for a term of one year.

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds of all members; provided, however, that the assets must then be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created, or in the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to a non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

The address of this Association's registered office in the State of Utah is P.O. Box 14, Riverton, Utah, and the name of its registered agent and his address is, Everett E. Dahl, Attorney at Law, 760 East Center Street, Midvale, Utah 84047.

Amendment of this Certificate shall require the assent of seventy-five percent of the entire membership.

The name and address of the Incorporator is: Charles E. Lewton, P.O. Box 1901, Jackson, Wyoming.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of January, 1972.


Charles E. Lewton

STATE OF UTAH)
 : ss.
County of Salt Lake)

I hereby certify that on the 30th day of January, 1972, CHARLES E. LEWTON, personally appeared before me, who being by me first duly sworn, declared that he is the person who signed the foregoing document as incorporator, and that the statements therein contained are true.

WITNESS my hand and notarial seal the day and year last above
written.


NOTARY PUBLIC

My commission expires:

Sept 3, 1973

Residing at:

M. Lov. Utah

OF
HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION

ARTICLE I
Name and Location

The name of the Association is Hi-Country Estates Homeowners Association, hereinafter referred to as the "Association." The principal office of the Association shall be located at 13300 South 7370 West, Salt Lake City, Utah, but meetings of members and directors may be held at such places within or without the State of Utah, as may be designated by the Board of Directors.

ARTICLE II
Definitions

Section 1. "Association" shall mean and refer to Hi-Country Estates Homeowners Association, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property known as Hi-Country Estates, located in Salt Lake County, State of Utah, Phase 1, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and the enjoyment of the Owners, to include the road and street system, and the common areas used for mail delivery, garbage collection and school bus pickup.

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the property, including persons or entities purchasing a lot under contract, but excluding those having such interest merely as security for the performance of an obligation.

Section 5. "Protective Covenants" shall mean and refer to the Declaration of Protective Covenants applicable to the property, as the same may be amended from time to time.

Section 6. "Member" shall mean and refer to those persons entitled to membership as provided in the Protective Covenants, Certificate of Incorporation, and these By-Laws.

ARTICLE III
MEETING OF MEMBERS

Section 1. ANNUAL MEETINGS. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 8:00 o'clock P.M. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. SPECIAL MEETINGS. Special meetings of the members may be called at any time by the President or by the Board of Directors, or upon written request by not less than one-fourth of the members.

Section 3. NOTICE OF MEETINGS. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting the purpose of the meeting.

Section 4. QUORUM. The presence at the meeting of members entitled to cast, in person or by proxy, one-tenth of the votes shall constitute a quorum for any action except as otherwise provided in the Certificate of Incorporation or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. PROXIES. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his lot.

ARTICLE IV
Board of Directors; Selection; Term of Office

Section 1. NUMBER. The affairs of this Association shall be managed by a Board Three Directors, who need not be members of the Association.

Section 2. TERM OF OFFICE. Each Director shall serve a three-year term, none of which shall be concurrent. This was enacted so that one Director would be elected each year at the Annual Meeting, replacing the outgoing Director whose term has expired, as was established by amendment as voted on by the members in the Annual Meeting held October 23, 1975.

Section 3. REMOVAL. Any Director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a Director, his successor shall be elected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. COMPENSATION. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. ACTION TAKEN WITHOUT A MEETING. The Directors shall have the right to take any action in the absence of a meeting which they could take at any meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

ARTICLE V
Nomination and Election of Directors

Section 1. NOMINATION Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for the Board of Directors as it shall, in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. ELECTION Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI
Meetings of Directors

Section 1. REGULAR MEETINGS Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. SPECIAL MEETINGS. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two Directors, after not less than three days notice to each Director.

Section 3. QUORUM A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII
Powers and Duties of the Board of Directors

Section 1. POWERS. The Board of Directors shall have power to:

(a) Adopt and publish rules and regulations governing the use of roads, streets, common area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof,

(b) Suspend the voting rights and right to use of the recreational facilities of a member during any period in which such members shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty days for infraction of published rules and regulations,

(c) Exercise for the Association all powers, duties and responsibilities reserved to this Association and not reserved to the membership by other provisions of these By-Laws, the Certificate of Incorporation, or the Protective Covenants.

(d) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three consecutive regular meetings of the Board of Directors;

(e) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. DUTIES. It shall be the duty of the Board of Directors to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by not less than one-fourth of members who are entitled to vote.

(b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed,

(c) As more fully provided in the Protective Covenants, as amended, to:

(1) Fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period,

(2) Send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period,

(3) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) Procure and maintain adequate liability and hazard insurance on property owned by the Association,

(f) Cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate,

(g) Cause the common area and road system to be maintained.

ARTICLE VIII Officers and Their Duties

Section 1. ENUMERATION OF OFFICERS. The officers of this Association shall be a President and Vice-President, who at all times will be members of the Board of Directors, a Secretary, a Treasurer, and such other officers as the Board may from time to time by resolution create. The Secretary and Treasurer may be the same person.

Section 2. ELECTION OF OFFICERS. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. TERM. The officers of this Association shall be elected annually by the Board and each shall hold office for one year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. SPECIAL APPOINTMENTS. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. RESIGNATION AND REMOVAL. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

the Board. The officer appointed to such vacancy, shall serve the term of the officer he replaces.

Section 7. MULTIPLE OFFICES. The office of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. DUTIES. The duties of the officers are as follows:

(a) PRESIDENT. The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board are carried out, shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) VICE-PRESIDENT. The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) SECRETARY. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members, keep appropriate current records showing members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) TREASURER. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a Public Accountant at the completion of each fiscal year, and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE IX Committees

The Association shall have the right to appoint members of the Architectural Control Committee, as provided in the Protective Covenants, at such time as all Lots in the Tract have been sold by the Grantor, as stated in Protective Covenants. The Board shall also have the right to appoint a Nominating Committee, as provided in these By-Laws, and in addition thereto shall appoint other committees as deemed appropriate in carrying out its purposes.

ARTICLE X Books and Records

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Protective Covenants, Certificate of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI Assessments

As more fully provided in the Protective Covenants, as amended, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of seven (7) percent per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common area, roads or abandonment of his Lot.

ARTICLE XII Corporate Seal

The Association shall have a seal in circular form having within its circumference the words "Hi-Country Estates Homeowners Association."

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote or a majority of a quorum of members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Protective Covenants and these By-Laws, the Protective Covenants shall control.

ARTICLE XIV
Fiscal Year

The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, We, being all of the Directors of Hi-Country Estates Homeowners Association, have hereunto set our hands this _____ day of _____, 1976.

AMENDMENT TO BY-LAWS
OF
HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION

Each Grantee and lot owner for himself, his heirs, executors, and assigns, covenants and agrees to pay annually his pro-rata share of the costs to maintain the roads, streets and common areas, including but not limited to, the common areas set aside for the delivery and pickup of mail, the pickup of children for school by school buses and other vehicles, and an area for garbage collection. Grantee's assessment in this regard shall be paid promptly when the same becomes due as provided in the By-Laws of the Homeowners Association, and the Grantee's failure to pay same promptly when due shall constitute a lien upon the owner's premises and the same may be enforced in equity or at law as in the case of any lien foreclosure. Such annual assessment shall not commence until adoption, and the first assessment shall be in the amount of \$(to be determined) per lot owned, said amount to be placed in an account and to be used exclusively by the Homeowner's Association for the purpose hereinabove mentioned, and for such other services as are deemed important to the development and preservation of an attractive community and to further maintain the privacy and general safety of the residential communities located in HI-Country Estates. From and after adoption, the annual payment may be increased each year up to five (5%) percent of the maximum authorized payment for the previous year. The Homeowners Association is obligated to provide maintenance and all other services stated above only to the extent that such maintenance and services can be provided with the proceeds of such annual payments. The foregoing annual fee may be increased by an amount greater than five percent (5%) of the maximum authorized payment for the previous year, by the written consent of a majority of the lot owners. At such time as any public body shall undertake to maintain the roads and streets and provide the other services contemplated herein, this covenant shall cease, terminate, and be held for naught.

EXHIBIT "A"

Protective Covenants for Hi-Country Estates,
Located in Salt Lake County, State of Utah
Phase I

KNOW ALL MEN BY THESE PRESENTS:

That the said owners of the heretofore described property, hereby
subject said property to the following covenants, restrictions and conditions;
and the acceptance of any deed or conveyance thereof by the grantee or grantees
therein, and their, and each of their heirs, executors, administrators, success-
ors, and assigns, shall constitute their covenant and agreement with the under-
signed, and with each other, to accept and hold the property described or con-
veyed in or by such deed or conveyance, subject to said covenants, restrictions
and conditions, as follows, to-wit:

ARTICLE I

GENERAL RESTRICTIONS

1. Land Used and Building Type: The heretofore described property
shall be designated as a single family residential lot, except that each lot may
be divided one (1) time with the approval of the architectural control committee,
and in accordance with Salt Lake County Zoning Regulations.

A single family residence is a dwelling for one family alone, within
which no person may be lodged for hire at any time, provided that reasonable
quarters may be built and maintained in connection therewith for the use and
occupancy of servants or guests of said family and that such quarters may be
built and maintained as a part of the detached accessory building or buildings
on the same lot, provided said accessory buildings be not at any time rented or
let to persons outside the said family and that they may be occupied and used
only by persons who are employed by members of or are guests of said family.

No other buildings shall be erected, altered, placed, or permitted to
remain on any lot, other than one barn to be used in stabling horses and a pri-
vate garage for not more than three cars.

2. Architectural Control: No building shall be erected, placed, or altered
on any lot nor any lot divided without the approval by the architectural control com-
mittee and compliance with the provisions of Section 6, Article II, of these covenants.

No fence, wall, swimming pool or other construction shall be erected, placed or altered on any lot without approval of the architectural control committee.

3. Building Location: No building shall be located on any lot nearer to the front line than fifty (50) feet therefrom, measured to the foundation of such building; nor nearer than fifty (50) feet to the rear lot line; nor nearer than fifty (50) feet to a side lot line. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of a building for the purpose of determining such distances, provided, however, that this shall not be construed to permit any portion of a building, including such eaves, steps, or open porches, to encroach upon another lot.

4. Easement: Easements for installation and maintenance of utilities and drainage facilities and roads are reserved as shown by the plat, labeled Exhibit "B", and attached to these covenants. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for these improvements for which a public authority or utility company is responsible.

There is reserved to electric power, gas, water and other public utilities the right to construct, maintain and operate long, upon and across all present streets, easements and roadways on said property.

5. Nuisances: 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.

6. Temporary and Other Structures: No structures of a temporary nature, trailer, basement house, tent, shack, garage, barn or other outbuilding shall be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on said property at any time. No old or second-hand structures shall be moved onto any of said lots, it being the intention hereof that all dwellings and other buildings to be erected on said lots, or within said subdivision, shall be new construction of good quality

workmanship and materials.

7. Signs: No billboard of any character shall be erected, posted, painted or displayed upon or about any of said property. No sign shall be erected or displayed upon or about said property unless and until the form and design of said sign has been submitted to and approved by the architectural control committee. No "For Sale" signs shall be displayed upon or about said property without approval of the architectural control committee.

8. Oil and Mining Operations: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

9. Livestock-Poultry Agriculture: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats, or other household pets and horses may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. No animal may be kept which constitutes an annoyance or nuisance to the area. All animals shall be restricted to their owner's property.

10. Garbage and Refuse Disposal: No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Such trash, rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, and no rubbish, trash, papers, junk or debris shall be burned upon any lot.

11. Water Supply: Whenever a residence is constructed on said property and there is a culinary water line available to serve said residence by being located in an adjoining street or road, the said property owner shall connect to and utilize the water services of said line. No other water supply system shall be used or permitted on any lot or group of lots unless such

system is located, constructed and equipped in accordance with the requirements, standards and recommendations of both the State Health Department and the State Water Engineer.

12. Trees: No cutting of trees shall be permitted on the premises at any time, except for the sole purpose of making land available for improvements.

13. Landscaping: No landscaping shall be begun on said property nor planting of trees take place until the plans and specifications therefor have been first approved in writing by the architectural supervising committee.

14. Diligence in Building: When the erection of any residence or other structure is once begun, work thereon must be prosecuted diligently and it must be completed within a reasonable length of time.

ARTICLE II

DURATION, ENFORCEMENT, AMENDMENT

1. Duration of Restrictions: All of the conditions, covenants and reservations set forth in this declaration of restrictions shall continue and remain in full force and effect at all times against said property in Exhibit "B" and the owners thereof, subject to the right of change or modification provided for in Sections 2 and 3 of this Article, until twenty-five (25) years, and shall as then in force be continued for a period of twenty (20) years, and thereafter for successive periods of twenty (20) years each without limitation, unless, within the six months prior to 1992 or within the six months prior to the expiration of any successive twenty-year period thereafter, a written agreement executed by the then record owners of more than three-fourths in area of said property, exclusive of streets, parks, and open spaces, be placed on record in the office of the County Recorder of Salt Lake County, by the terms of which agreement any of said conditions or covenants are changed, modified or extinguished in whole or in part as to all or any part of the property originally subject thereto, in the manner and to the extent therein provided. In the event

that any such written agreement of change or modification be duly executed and recorded, the original conditions and covenants, as therein modified shall continue in force for successive periods of twenty (20) years each unless and until further changed, modified or extinguished in the manner herein provided for, by mutual written agreement with not less than seventy per cent (70%) of the then owners of record title of said property (including the mortgagees under record mortgages and the trustees under recorded deeds of trust), duly executed and placed of record in the office of the County Recorder of Salt Lake County, Utah, provided, however, that no change or modification shall be made without the written consent duly executed and recorded of the owners of record of not less than two-third ($\frac{2}{3}$'s) in area of all lands which are a part of said property and which are held in private ownership within five hundred (500) feet in any direction from any direction from the exterior boundaries of the property concerning which a change or modification is sought to be made.

2. Enforcement: Each and all of said conditions, covenants and reservations is and are for the benefit of each owner of land (or any interest therein) in said property and they and each thereof shall inure to and pass with each and every parcel of said property and shall apply to and bind the respective successors in interest of said Grantor. Each Grantee of the Grantor of any part or portion of said property by acceptance of a deed incorporating the substance of this declaration either by setting it forth or by reference therein, accepts the same subject to all of such restrictions, conditions, covenants and reservations. As to each lot owner the said restrictions, conditions and covenants shall be covenants running with the land and the breach of any thereof, and the continuance of such breach may be enjoined, abated or remedied by appropriate proceedings by any such owner of other lots or parcels in said property, but no such breach shall affect or impair the lien of any bona fide mortgage or deed of trust which shall have been given in good faith, and for value; provided, however, that any subsequent owner of said property shall be bound by the

conditions and covenants, whether obtained by foreclosure or at a trustee's sale or otherwise.

3. Violation Constitutes Nuisance: Every act or omission, whereby any restriction, condition or covenant in this declaration set forth, if violated in whole or in part is declared to be and shall constitute a nuisance and may be abated by Grantor or its successors in interest and/or by any lot owner; and such remedy shall be deemed cumulative and not exclusive.

4. Construction and Validity of Restrictions: All of said conditions, covenants and reservations contained in this declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants, or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Grantor and Grantee, their successors, heirs, and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this declaration, irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason becomes unenforceable.

5. Right to Enforce: The provisions contained in this declaration shall bind and inure to the benefits of and be enforceable by Grantor, by the owner, or owners of any portion of said property, their and each of their legal representatives, heirs, successors and assigns, and failure by Grantor, or any property owner, or their legal representative, heirs, successors, or assigns to enforce any of said restrictions, conditions, covenants, or reservations shall in no event be deemed a waiver of the right to do so thereafter.

6. Architectural Committee: The architectural committee which is vested with the powers described herein shall consist of three persons appointed by the Grantor. Prior to the commencement of any excavations, construction or remodeling or adding to any structure, theretofore completed, there shall first

be filed with the architectural committee two complete sets of building plans and specifications therefor, together with a block or plot plan indicating the exact part of the building site the improvements will cover and said work shall not commence unless the architectural committee shall endorse said plans as being in compliance with these covenants and are otherwise approved by the committee. The second set of said plans shall be filed as a permanent record with the architectural control committee. In the event said committee fails to approve or disapprove in writing said plans within fifteen (15) days after their submission, then said approval shall not be required. When all lots in said tract have been sold by Grantor, said plans and specifications shall be approved by an architectural committee approved by a majority of owners of lots in the property herein described and only owners of said lots shall be privileged to vote for said architectural committee. The Grantor shall have the right to appoint members of the architectural committee until such time as all lots in the tract have been sold by the Grantor.

7. Assignment of Powers: Any and all rights and powers of the Grantor herein contained may be delegated, transferred or assigned. Wherever the term "Grantor" is used herein, it includes assigns or successor in interest of the Grantor.

8. Invalidity: It is expressly agreed that in the event any covenant or condition or restriction hereinbefore contained, or any portion thereof is held invalid or void, such invalidity or voidness shall in no way affect any valid covenant, condition or restriction.

IN WITNESS WHEREOF, we have hereunto set our hands and seals
the _____ day of June, 1970.

HI-COUNTRY ESTATES

By Charles Lewton
Charles Lewton, Manager
Seller

Buyer

Buyer

AMENDMENT TO
PROTECTIVE COVENANTS FOR HI-COUNTRY ESTATES,
LOCATED IN SALT LAKE COUNTY, STATE OF UTAH,
PHASE I.

This Amendment of Protective Covenants for Hi-Country Estates, located in Salt Lake County, State of Utah, Phase I, by the undersigned, being record owners of more than three-fourths in area of the property located within Hi-Country Estates, hereinafter called the "Declarants";

WITNESSETH:

WHEREAS, Declarants executing this amendment are the owners of record of more than three-fourths in area of the Lots contained in Hi-Country Estates, located in Salt Lake County, State of Utah, Phase I; and

WHEREAS, Declarants executing this amendment desire to amend the Protective Covenants by adding thereto the provisions hereinafter contained;

NOW, THEREFORE, Declarants executing this amendment hereby subject said property to the covenants, restrictions and conditions previously in effect, together with this amendment thereto, and the acceptance of any deed or conveyance thereof by the Grantee or Grantees therein and their, and each of their heirs, executors, administrators, successors and assigns, shall constitute their consent and agreement with the declarants and with each other, to accept and hold the property described or conveyed in or by such deed or conveyance, subject to such covenants, restrictions and conditions, with the following amendment, as follows, to-wit:

ARTICLE III.

HOUSING ASSOCIATION AND MAINTENANCE OF COMMON AREAS

1. **Housing Association.** Hi-Country Estates, Inc., will form or cause to be formed a non-profit corporation or association for the purpose of maintaining and providing for the common areas, including roads and streets, and each lot owner or owners will be members of such association. Persons or entities purchasing a lot under a contract shall be deemed the owner of such lot for the purpose of membership in the association.

2. **Assessment for Maintenance of Road, Street and Other Public Facilities.** Each Grantee and lot owner for himself, his heirs, successors, and assigns, covenants and agrees to pay annually his proportionate share of the cost to maintain the roads, streets and common areas, including, but not limited to, the common areas set aside for the delivery and pickup of mail, the pickup of children for school by school buses and other vehicles, and an area for trash collection. Grantee's assessment in this regard shall be paid promptly when the same becomes due as provided in the By-Laws of the Housing Association, and if the Grantee fails to pay same promptly when due shall constitute a lien upon the estate.

premises and the same may be enforced in equity or at law as in the case of any lien foreclosure. Such annual assessment shall not commence until January 1, 1973, and the first assessment shall be in the amount of \$95.00 per lot owned, said amount to be placed in an account and to be used exclusively by the Homeowners Association for the purposes hereinabove mentioned, and for such other services as are deemed important to the development and preservation of an attractive community and to further maintain the privacy and general safety of the residential communities located in Hi-Country Estates. From and after January 1, 1974, the annual payment may be increased each year up to five (5) percent of the maximum authorized payment for the previous year. The Homeowners Association is obligated to provide maintenance and all other services stated above only to the extent that such maintenance and services can be provided with the proceeds of such annual payments. The foregoing annual fee may be increased by an amount greater than five (5) percent of the maximum authorized payment for the previous year, by the written consent of a majority of the lot owners. At such time as any public body shall undertake to maintain the roads and streets and provide the other services contemplated herein, this covenant shall cease, terminate, and be held for naught.

3. Extensions of Roads and Common Areas. Hi-Country Estates, Inc., reserves the right to extend the road system into property adjoining Hi-Country Estates, and to plat additional subdivision areas which would be an extension of the road system and common areas as contemplated herein. Should such extension be effected, the lot owners within the adjoining subdivisions shall be required to become members of the Homeowners Association as contemplated herein and to pay their pro-rata share of the cost.

4. Effect of Amendment. Each and every other restriction and covenant contained in this Protective Covenants are hereby reaffirmed as hereinabove modified and amended.

DATED this 6th day of April, 1973.

HI-COUNTRY ESTATES, INC.

By: _____
President

Secretary

-3-

STATE
CERTIFIED TRUE COPY

JEFFREY S. JOHNSON
State Archivist

Date 1-9-84Richard L. James

vs.

John W. DavisNo. Q-81-8560C. Arnold

Attorneys for Plaintiff

C. Kostopoulos

Attorneys for Defendant

 H. Dixon, Clerk
 By Deputy Clerk
 Clerk 3rd Dist. Court

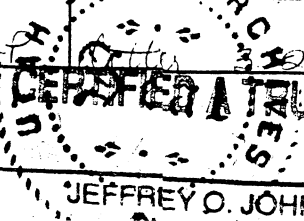
JAN 10 1984

 CLERK'S OFFICE
 Salt Lake County Utah

DESCRIPTION OF EXHIBITS		REMARKS	DESCRIPTION OF EXHIBITS		REMARKS
-P	letter & copy of report	rec'd	18-P	letter 6-9-78	rec'd
-P	litigation report	rec'd	19-P	" 6-9-78	rec'd
-P	cont. of litigation report	rec'd	20-P	protonic contract	rec'd
-P	cont. of unconformity	rec'd	21-P	letter 2-6-81	rec'd
-P	" " "	rec'd	22-P	" 7-22-81	rec'd
-P	letter 9-2-80	rec'd	23-P	" 8-12-81	rec'd
-P	" 10-9-80	rec'd	24-P	" 3-7-80	rec'd
-P	" 10-10-80	rec'd	25-P	" 6-18-80	rec'd
-P	letter 10-26-80	rec'd	26-P	" 6-24-80	rec'd
-P	minutes 9-3-80	rec'd	27-P	Quit-claim deed	rec'd
-P	" 10-15-80	rec'd	28-P	folder - plan	rec'd
-P	letter 2-22-79	rec'd	29-P	Quit-claim Contract	rec'd
-P	minutes 10-17-74	rec'd	30-P	Hi-Country Homeowners Assoc.	rec'd
-P	4-2-75 doc. architectural committee	rec'd	31-P	Brochure	rec'd
-P	letter 4-25-81	rec'd	32-P	Fact sheet	rec'd
-P	letter 5-22-78	rec'd	33-P	contract	rec'd
-P	" 6-9-78	rec'd	34-P	copy of letter 12-8-70	rec'd

CONTINUED

DESCRIPTION OF EXHIBITS		REMARKS	DESCRIPTION OF EXHIBITS		REMARKS
35-P	Brochure	rec'd.	55-P	minutes	rec'd.
36-P	12-7-77. Progress copy of letter & report	rec'd.	56-P	letter & lawsuit	rec'd.
37-P	records-	rec'd.	57-P	summary of meeting	rec'd.
38-P	records-	rec'd.	58-P	minutes	rec'd.
39-P	Aerial survey map	rec'd.	59-D	letter	rec'd.
40-P	Aerial map	rec'd.	60-P	letter 2-23-81	rec'd.
41-P	Diagram of Plot	rec'd.	61-P	minutes	rec'd.
42-P	map	rec'd.	62-P	letter	rec'd.
43-P	preliminary plot	rec'd.	63-P	minutes	stricken rec'd.
44-P	minutes	rec'd.	64-P	meeting notes 11-22-81	stricken rec'd.
45-P	map	rec'd.	65-P	letter 9-3-81	rec'd.
46-D	warranty deed	rec'd.	66-P	Agenda	rec'd.
47-D	" "	rec'd.	67-P	minutes ('74 meeting)	rec'd.
48-D	By-Laws (in file)	rec'd.	68-D	minutes	rec'd.
49-P	photo	rec'd.	69-D	Disclosure	rec'd.
50-P	agreement	rec'd.	70-P	minutes	withdrawn
51-P	meeting documents	rec'd.	71-P	copy of check	rec'd.
52-P	1977-1978 notes router	rec'd.	72		
53-P	1978-1979 notes router	rec'd.	73		
54-P	1979-1980 notes router	rec'd.	74		



 DEPOSED A TRUE COPY

 JEFFREY O. JOHNSON