

AFTER RECORDING PLEASE RETURN TO:



\*W2058175\*

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Post Office Box 11019  
Salt Lake City, Utah 84147-0019

E# 2058175 PG 1 OF 10  
DOUG CROFTS, WEBER COUNTY RECORDER  
23-SEP 04 1021 AM FEE \$41.00 DES KKA  
REC FOR: PARR.WADDOUPS.BROWN.GEE

EASEMENT AGREEMENT AND DECLARATION OF COVENANTS

This Easement Agreement and Declaration of Covenants is made and entered into between Thomas J. Nass ("Nass") and Green Hill Country Estates Homeowner's Association, a Utah corporation ("Green Hill").

RECITALS:

A. Nass is the record owner of the following-described property located in Weber County, Utah:

Serial # 21-001-0008 *AB*

All of Lots 4 and 5, Section 4, Township 6 North, Range 2 East, Salt Lake Base and Meridian, U.S. Survey. (Being the East half of the Northeast quarter of said Section 4.)

Serial # 21-001-0009 *AB*

The Northwest quarter of Section 3, Township 6 North, Range 2 East, Salt Lake Base and Meridian, U.S. Survey.

Serial # 21-001-0010 *AB*

The North one half of the Southwest quarter of Section 3, Township 6 North, Range 2 East, Salt Lake Meridian. U.S. Survey.

Serial # 21-001-0011 *AB*

The North one half of the South one half of the Southwest quarter of Section 3, Township 6 North, Range 2 East, Salt Lake Meridian. U.S. Survey.

Serial # 21-001-0012 *AB*

The Northeast quarter of Lot 6, Section 4, Township 6 North, Range 2 East, Salt Lake Base and Meridian. U.S. Survey.

EXHIBIT "C"

Serial # 23-012-0022



The Southwest quarter of Section 34, Township 7 North, Range 2 East,  
Salt Lake Meridian. U.S. Survey. Containing 160 acres.  
Serial # 21-001-0008

Said property is hereinafter referred to as the "Nass Property."

B. Green Hill is the record owner of all of the private roads and common areas depicted on the following subdivision plats:

Green Hill Country Estates Phase Nos. 1 through 7, according to the official plats thereof on record at the office of the Weber County, Utah Recorder.

Said property is hereinafter referred to as the "Green Hill Country Estates."

C. The Second Judicial District Court for Weber County, Utah has entered a Declaratory Judgment in the action entitled Don Kelly, et al. v. James Aland, et al., Civil No. 010905924, adjudicating that Nass is the owner and holder of a perpetual, nonexclusive right-of-way and easement on, under and across (1) the private roads and utility easements adjacent thereto as depicted on the official plats of Green Hill Country Estates Phase Nos. 1 through 7, and (2) a 50' wide extension of Maple Drive between Lots 99 and 100-R of Green Hill Country Estates Phase No. 6 and continuing northerly to the southerly boundary of Parcel No. 21-001-0012, which easement and right-of-way benefits the Nass Property (hereinafter collectively referred to as the "Nass Easement"), and that Nass and Green Hill are the owners and holders of a perpetual, nonexclusive right-of-way and easement on, over and across the "Loop Trail," the location, scope and terms of which are specified in this Easement Agreement and Declaration of Covenants, to be recorded at the Weber County Recorder's office concurrently with the Declaratory Judgment. A certified copy of said Declaratory Judgment has been recorded at the Weber County, Utah Recorder's office on September 23, 2004 as Entry No. 2058174.

D. The parties, by this Easement Agreement and Declaration of Covenants, desire to define and limit the Nass Easement, to define and limit the Loop Trail, to grant one another certain rights-of way, and to declare certain covenants with respect to the Nass Property and Green Hill Country Estates.

NOW, THEREFORE, for such purposes and in consideration of the covenants contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Nass Easement. The parties, for themselves, their successors and assigns, hereby recognize, grant, convey and define the Nass Easement as follows: (a) a perpetual, nonexclusive right-of-way and easement for ingress and egress, and (b) a perpetual, nonexclusive right-of-way and easement for the laying, installation, operation, servicing,

maintenance, repair, removal, relocation, and replacement of utility lines, wires, conduits, and related facilities (including, without limitation, lines, wires, conduits, and related facilities for electricity, lighting, natural gas, and other fuels or power sources, telephone, sewage, storm drainage, and all types of water), on, under, and across (1) the private roads and utility easements adjacent thereto as depicted on the official plats of Green Hill Country Estates Phase Nos. 1 through 7, and (2) a 50' wide extension of Maple Drive between Lots 99 and 100-R of Green Hill Country Estates Phase No. 6 and continuing northerly to the southerly boundary of Parcel No. 21-001-0012. The Nass Easement is appurtenant to the Nass Property. No properties past the Nass Property will be allowed by Nass, his heirs, successors, or assigns to use the Nass Easement for access to such properties by virtue of the easement and right-of-way recognized herein.

2. Maintenance of Green Hill Roads. Green Hill shall repair and maintain the Green Hill roads in a good and passable condition, including snow removal. So long as no building permits are issued for a home or permanent structure to be constructed on the Nass Property, neither Nass nor his successors shall have any obligation to pay for the cost of repair and maintenance of the Green Hill roads. Commencing at such time as a building permit is issued for construction of a permanent dwelling on the Nass Property, the then current owner(s) of the Nass Property on lots for which a building permit has been issued for the construction of a permanent dwelling (the "Nass Owners") shall contribute ratably with the lot owners in Green Hill Country Estates subject to assessment under the restrictions and covenants applicable to Green Hills (the "Green Hills Owners") for the cost of repair and maintenance of the Green Hills roads. The amount paid to Green Hill for the repair and maintenance of the Green Hill roads by the Nass Owners, shall be the same as the regular dues paid by the Green Hills Owners, which amount is presently \$49.00 per month subject to periodic adjustment by the Green Hill Country Estates Homeowner's Association; provided, however, that the Nass Owners shall not be required to pay assessments for capital expenses unrelated to road use and maintenance or other costs and expenses unrelated to road use and maintenance if the monthly dues are adjusted to an amount greater than \$49.00. Expenses related to road use and maintenance shall include all amounts paid for the repair, maintenance, and upkeep of the roads as well as the costs for liability insurance. In the event Green Hills adjusts the monthly dues paid by the Green Hills Owners to an amount greater than \$49.00 per month, the amount paid by a Nass Owner shall be calculated by multiplying the total Green Hills road maintenance expense by a fraction, the numerator of which is one and the denominator of which is the total of the Green Hills Owners' and Nass Owners' lots.

3. Use of Green Hill Roads During Construction. Nass and his successors shall be entitled to use the Green Hill roads for ingress and egress to the Nass Property for construction purposes. Thirty (30) days prior to commencing any construction on the Nass Property requiring the issuance of a building permit or county approval, the owner of the Nass Property or portion thereof on which the construction is to occur shall provide written notice to Green Hill reasonably describing the construction and the type of equipment to be used so that the impacts on the roads can be ascertained. The owner of the Nass Property shall make reasonable efforts to minimize impact to the Green Hill roads and adjacent utility easements from heavy equipment and vehicles and shall not off-load or

park equipment on Green Hill roads or common areas without authorization from Green Hills. The owner of the Nass Property and, in the case of construction of a home or structure on a lot within the Nass Property, the owner of such lot, shall promptly repair, or cause to be repaired, any Green Hill road or utility easement that is damaged by construction use and shall indemnify Green Hill against any damage that may be caused to the Green Hill roads or utility easements by the owner or the owner's contractors, subcontractors, or suppliers during such construction. In the event that Weber County approves a subdivision or grants a land use or building permit that will require the construction of roads or other subdivision improvements that will entail the use of heavy equipment, the owner of the Nass Property shall, at least thirty (30) days prior to the commencement of construction of roads and subdivision improvements within the Nass Property, provide notice to Green Hills that construction is to commence and cause its contractor to furnish to Green Hill a surety bond in the amount of \$100,000 (or such lesser amount as may be mutually agreed) to insure the repair of any damage that may be caused to the Green Hill roads or utility easements by the contractor or its subcontractors and suppliers during such construction. Upon commencement of construction of a home or other structure on the Nass Property, the owner of the property on which the construction is to occur shall cause his or her contractor to furnish to Green Hill a surety bond in the amount of \$10,000, or such lesser amount as may be agreed, to secure the repair of any damage that may be caused to the Green Hill roads or utility easements by the contractor or its subcontractors or suppliers during such construction. All bonds (the \$100,000.00, \$10,000.00 or agreed upon lesser amounts) shall be in a form reasonably satisfactory to Green Hill with a surety qualified to transact business in the State of Utah. Any damage caused to Green Hill roads or utility easements by any owner of the Nass Property, or a contractor, subcontractor, or supplier of such owner during construction, shall be timely repaired and the roads or utility easements restored to a condition at least as good as the condition that existed prior to such damage.

4. Grant of Reciprocal Easements for "Loop Trail." Nass and Green Hill hereby recognize, grant and convey to one another, their grantees, transferees, heirs, successors, and assigns, a perpetual, nonexclusive right-of-way and easement fifteen feet in width for pedestrian, equestrian, and nonmotorized vehicle ingress and egress, and for emergency and maintenance vehicular access only, over and across the "Loop Trail" at the location depicted on Exhibit "A" attached hereto and incorporated herein by this reference. The right-of-way and easement for the Loop Trail is subject to the following terms and conditions:

- (a) The Loop Trail shall be used only by owners of the Nass Property and owners of lots in Green Hills Country Estates, their families and invited guests.
- (b) Buildings, fences and structures shall not be constructed within 25 feet of the centerline of the Loop Trail without the consent of both Green Hill and Nass.
- (c) Both Green Hill and Nass reserve the right to use motorized vehicles on the portions of the Loop Trail that cross their own respective properties. Motorized vehicle use of the Loop Trail for maintenance shall be allowed upon advance notice

to and consent by the owner of the affected portion, which consent may not be unreasonably withheld.

(d) Either Nass or Green Hill may relocate the portion of the Loop Trail on their respective properties to accommodate the location of lots, homes, roads, or other uses, with the consent of the other, which consent may not be unreasonably withheld. The party seeking to relocate any portion of the Loop Trail shall provide sixty days (60) written notice of its intent to relocate with a map and specific description of the proposed relocation. The party receiving the notice shall have sixty days after receipt of notice, to consent or object. If the party does not respond, consent shall be deemed given. In the event a portion of the Loop Trail is relocated, the party relocating the trail shall bear all cost of relocation and shall build the new portion to at least the same condition as the portion relocated.

(e) It is the parties' intent and desire that, wherever possible, the loop trail shall be separate from, and shall not overlap, vehicular roadways. However, the parties recognize that from the current end of pavement in Maple Canyon to the intersection of the road to Section 34, a distance of approximately 3,170 feet, the terrain may not allow sufficient width to separate the trail from the road. For this section the trail may be located directly adjacent to the roadway and may only overlap the roadway if the terrain does not allow for the trail to be adjacent.

5. Entrance Gates. Green Hill shall have the right to place a gate and/or gated entrance at the entrance to Green Hill Country Estates as may be permitted by and in compliance with all applicable fire safety and other state, county, and local laws and regulations. In the event that Green Hill places such a gate at the entrance to its property, Green Hill shall furnish to the owners of the Nass Property all cards, combinations, or other means needed to operate the gate as is provided for other Green Hill property owners. If Green Hill installs a gated entry with signage, such signage shall be mutually agreeable to Nass and Green Hill indicating that it is the entrance to both Green Hill and the Nass Property.

6. Development of Nass Property. Development of the Nass Property shall be consistent with the uses and density permitted by Weber County ordinances for the zoning that presently applies to the Nass Property on the date this document is executed, which is FR-40. Nass agrees that no more than 13 single family dwellings shall be built on the Nass Property and agrees not to apply for any zoning change that would allow a higher density than one unit per 40 acres as allowed by the current FR-40 zone. So long as any development proposal for the Nass Property is consistent with the uses and density allowed by the current FR-40 zone, Green Hill agrees not to oppose any development plan for the Nass Property that is consistent with the uses and density for such zone and with the terms of this agreement. Green Hill reserves all rights that it may have, if any, to support or oppose any application that may be made to Weber County for planning and zoning approval of any development that is inconsistent with the uses and density allowed by the FR-40 zone or with the terms of this agreement. Nass may elect, with the consent of Green Hills, which consent may not be unreasonably withheld, to develop the Nass Property as

an additional phase of Green Hills, upon such terms and conditions as may be approved by Weber County and agreed to by Green Hills.

7. Nass Property "Common Open Space." Nass reserves the right to develop the Nass Property in any manner consistent with the uses and density permitted by the current FR-40 zone under Weber County ordinances and has no obligation to develop the property as a cluster subdivision. In the event that Nass or his successors choose to develop the Nass Property as a cluster subdivision as defined by Weber County ordinance, and such cluster subdivision contains common open space for the use and benefit of the lot owners within the cluster subdivision, such common open spaces shall be preserved as natural open spaces without fences or other impediments to the natural migration of wildlife.

8. Building Restrictions. No structure shall be built on the Nass Property in violation of Weber County planning and zoning ordinances or other applicable law. No dwelling shall be constructed on any lot in the Nass Property at a cost less than \$125,000 (based on construction costs prevailing in the area) and the ground floor area of any dwelling, exclusive of porches and garages, shall not be less than 1,200 square feet on the main floor of a one story dwelling and no less than 1,000 square feet on the main floor of a dwelling with more than one story. The owner of the Nass Property reserves the right to impose development standards more stringent than the foregoing.

9. Covenants Run With Land. The covenants contained herein shall constitute covenants running with the land and shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors, and assigns.

10. Integration. This agreement constitutes the entire agreement among the parties relating to the subject matter hereof. No covenant, representation, or condition not expressed in this agreement shall affect or be deemed to interpret, change, or restrict the express provisions hereof.

11. Counterparts. This instrument may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original. The executed pages from each such original may be joined together and attached to one such original and shall thereupon constitute one and the same instrument.

12. Venue. This agreement shall be governed by and construed in accordance with the laws of the State of Utah. The parties agree that the Second Judicial District Court in and for Weber County is and shall be the appropriate venue for resolution of any dispute concerning interpretation, implementation, enforcement, or construction of this agreement.

13. Equitable Remedy and Injunctive Relief. The Parties hereto agree that each one shall have the absolute right to seek and be granted equitable relief, including a temporary restraining order and injunction, from the Second Judicial District Court in and for Weber County, State of Utah, preventing any violation of this agreement, and that should the Second Judicial District Court grant a temporary restraining order and/or injunction, it shall remain in effect until such time as the Court enters an Order finding that

the violation is no longer occurring. Each party agrees that a breach of this Agreement by itself will cause irreparable harm to the other party and it shall not be a defense to a request for injunctive relief that the party seeking such relief has an adequate remedy at law. Nothing herein, however, shall in any way limit the damages that may be recovered by the non-breaching party, or the attorney's fees that may be recovered under this Agreement. Further, the failure of a party to seek a temporary restraining order, an injunction or other equitable relief shall not in any way limit that party to seek such relief under this provision or constitute a waiver of the same, or any other or further violation of this agreement.

14. Notices. All notices under this Agreement shall be in writing and delivered personally or sent by prepaid mail to the addresses indicated below. Until a change of address is so given, notices shall be sent as follows:

If to Nass: Thomas J. Nass  
8992 East 100 South  
Huntsville, Utah 84317

With a copy to: Ronald G. Russell, Esq.  
Parr Waddoups Brown Gee & Loveless  
185 South State Street Suite 1300  
Salt Lake City, Utah 84111-1537

If to Green Hills: Green Hill Country Estate Homeowner's  
Association  
Post Office Box 372  
Huntsville, Utah 84317

With a copy to: James L. Warlaumont, Esq.  
Peterson Reed & Warlaumont  
9 Exchange Place Suite 800  
Salt Lake City, Utah 84111

The date of Notice shall be the date of delivery or the date mailed by prepaid mail.

15. Attorney's Fees. In the event of a breach of this Agreement, the prevailing party in any court action brought to enforce this agreement shall be entitled to recover reasonable attorney's fees and reasonable costs arising from or related to such breach. However, it is agreed that only the signatories hereto shall be liable for their conduct only and that the individuals and homeowners association shall not be subject to an award of attorney's fees arising out of the conduct of a homeowner in the Green Hills subdivision who has not executed this document.

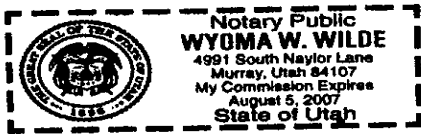
16. Authority to Enter Agreement. The signature of the representatives of the parties hereto shall constitute a warranty that each signatory for the party has the requisite authority to enter into this agreement and to bind that party.

DATED this 31 day of Aug., 2004.

Thomas J. Nass  
Thomas J. Nass

STATE OF UTAH )  
COUNTY OF Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of August, 2004 by Thomas J. Nass.



Wyoma W. Wilde  
NOTARY PUBLIC  
Residing In Murray, Utah

My Commission Expires:

August 5, 2007

DATED this 14<sup>th</sup> day of August, 2004.

GREEN HILL COUNTRY ESTATES  
HOMEOWNER'S ASSOCIATION

By: [Signature]  
Its: President



STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of August, 2004 by Don Kelly, the President of Green Hill Country Estates Homeowner's Association.

Yvonne M. Schenk  
NOTARY PUBLIC  
Residing In Salt Lake County

My Commission Expires:

10-29-06

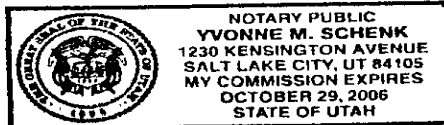


EXHIBIT "A"

