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03-207-0001 thru 0016 ✓

075091 Bk 0591 Pg 0908
LuAnn Adams, Box Elder County Recorder
03/15/1995 12:11pm FEE: 39.00 Dep:LA
Rec'd For: HILLAM ABST & INS AGENCY INC

DECLARATION OF PROTECTIVE COVENANTS, AGREEMENTS,
RESTRICTIONS AND CONDITIONS AFFECTING THE REAL PROPERTY
KNOWN AS BRIGHAM WILLOWS SUBDIVISION, PHASE I

TO WHOM IT MAY CONCERN:

PART A
PREAMBLE

078429 Bk 0600 Pg 0815
LuAnn Adams, Box Elder County Recorder
07/14/1995 9:55am FEE: 41.00 Dep:MM
Rec'd For: HILLAM ABST & INS AGENCY INC
RW

WHEREAS, the undersigned is the legal and beneficial Owner of a certain tract of land situated in Brigham City, Box Elder County, State of Utah, described as Brigham Willows Subdivision, Phase I; lots 1 thru 16,

WHEREAS, the undersigned is about to sell the property described heretofore, which it desires to subject, pursuant to a general plan of improvement, to certain restriction, conditions, and agreements between itself and the several purchasers of said property and between the several purchasers of said property themselves as hereinafter set forth,

NOW, THEREFORE, the undersigned declares that the property described heretofore is held and shall be sold, conveyed, leased, occupied, resided upon, hypothecated and held subject to the following restrictions, conditions, covenants and agreements between itself and the several Owners and purchasers of said property as between themselves and their heirs, successors and assigns.

PART B
AREA OF APPLICATION

B-1. DEFINITIONS

When used in this Declaration, the following terms shall have the meaning indicated:

A. "Developer" shall mean BRIGOLF REALTY, L.L.C., a Utah limited liability company, and its successors and assigns.

B. "Owner" shall mean and refer to every person who purchases one of the lots in the subdivision subject to this Declaration.

C. "Undeveloped Land" shall, at any point of time, mean all of the land more particularly described in Exhibit "B" attached hereto and made a part hereof by reference, excluding any portion or portions of such land comprising the Property, and any other portion or portions of such land improved for the completed above-ground residential structures and related on-site and off-site improvements ordinarily in existence when a tract of land is considered to be fully developed. So long as it is not arbitrary, Developer's determination as to when any of the land described in Exhibit "B" ceases to be Undeveloped Land shall be conclusive.

D. "Plat" shall mean and refer to the Plat of BRIGHAM WILLOWS SUBDIVISION, PHASE I, prepared and certified by K. Greg Hansen, a registered land surveyor, executed and acknowledged by Developer on June 9, 1994, which is being recorded in the Official Records of Box Elder County, Utah, concurrently with the recording of this Declaration, as the same may be amended from time to time, and Plats hereafter recorded by expansion of the property.

E. "Architectural Control Committee" shall be comprised of Craig Wood, PMC, Inc. or his designee, until at least eight lots of the subdivision have been sold. At that time, and at any time thereafter, the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to designate membership on the Committee or to withdraw from the Committee any of its powers and duties.

B-2. The residential area covenants in Part C herein, in their entirety shall apply to Lots 1 thru 16, inclusive, BRIGHAM WILLOWS SUBDIVISION.

PART C
RESIDENTIAL AREA COVENANTS

C-1. LAND USE AND BUILDING TYPE

A. No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single family dwelling not to exceed two and one-half stories in height and an attached garage for not less than two cars.

B. All land use and buildings shall be in compliance with all zoning and land use ordinances and regulations of the municipalities and agencies governing subdivision land use and building, including all landscaping, grading and drainage of the land in each Owner's lots. All must be completed so as to comply with flood control requirements of the subdivision and the individual lots therein.

C. All construction is to be of new materials, except that used masonry material may be used with prior written approval of the Architectural Control Committee.

D. The exterior design showing finish materials must be prepared and the renderings and elevations submitted to the Architectural Control Committee for prior approval.

E. Any residence erected on the conveyed premises shall not have less than 75% of the roof surface of gable construction, and all gabled roofs shall be covered with shingles of wood or composition, or with slate or tile. A garage or other outbuilding on the lot shall be of construction and architectural type similar to the residence thereon. All flat portions of any roof must be surrounded by parapets at least two feet above the highest point of such flat roof, and such parapets must be finished, both inside and out, of material to match the general character of the remainder of the building.

F. No excavation for stone, gravel, or earth shall be made except for walls, basements, or cellars of dwellings.

G. The grade of any lot shall not be raised above the grade established by developer and existing at the time said lot was purchased.

H. After construction of a residence or other building the balance of the remainder of the land not covered by such buildings shall be seeded, sodded and suitably planted with grass, decorative shrubs, trees or flowers, excepting, however, such part of the area, not to exceed 15% thereof, as shall be constructed as and used for driveways and parking space.

C-2. ARCHITECTURAL CONTROL

No building shall be erected, placed or altered on any lot until the construction plans and specifications, including a plan showing the location of the structure have been approved by the Architectural Committee as to quality of workmanship and materials, harmony of exterior design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed, or altered on any lot nearer to any street than the minimum building setback line unless similarly approved. Approval shall be as provided in Part D herein.

C-3. MINIMUM DWELLING SIZE

The ground floor area of the main structure, exclusive of one story open porches and garages, shall not be less than 1,500 square feet for a one-story dwelling, nor less than 1,000 square feet for a dwelling of two stories or more, unless waived in

writing, in advance, by the Architectural Control Committee. For the purposes of these Covenants, the basement area shall not be considered as a story.

C-4. BUILDING LOCATION.

A. No building shall be located on any lot nearer than 30 feet to the front lot line, or nearer than 20 feet to any side street line.

B. No building shall be located nearer than six feet to an interior lot line with both side yards totalling not less than 16 feet, except that no side yard shall be required for a permitted accessory building located 50 feet or more from the building setback line. No dwelling shall be located on any interior lot nearer than 30 feet to the rear lot line. No accessory or outbuildings shall be located to encroach upon any easements.

C. For the purpose of this covenant, eaves, steps, and open porches shall not be considered a part of a building, provided, however, that this shall not be construed to permit any portion of a building, on a lot to encroach upon another lot.

C-5. LOT AREA AND WIDTH.

No dwelling shall be erected or placed on a lot having a width of less than 60 feet at the minimum building setback line nor shall any dwelling be erected or placed on any lot having an area of less than 10,000 square feet, except that a dwelling may be erected or placed on all lots as shown on the recorded plat provided that said location complies with all required front, side and rear setbacks.

C-6. NUISANCES.

No noxious or offensive activity shall be carried on upon any Residential Lot, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their Residential Lots and living units. Without limiting the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively to protect the security of the Residential Lot and living unit thereon, shall be placed or used upon any Residential Lot without the prior written approval of the Architectural Control Committee.

No stripped-down, wrecked, junk or inoperable motor vehicles shall be kept, parked, stored or maintained on any Residential Lot or any adjoining public street. No large commercial vehicle shall be parked on any Residential Lot, public street, or the

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common areas, except within an enclosed structure or a screened area which prevents view thereof from adjoining Residential Lots or roads, unless such vehicle is temporarily parked for the purpose of serving such Residential Lot.

C-7. TEMPORARY STRUCTURES.

Except to the extent used by Developer in connection with and during the development and sale of Residential Lots, no mobile home or similar facility shall be placed upon any Residential Lot. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently. All buildings are to be of new construction.

C-8. PRIVATE RESIDENCE.

Said premises shall be used for private residence purposes only.

C-9. MOVING OF STRUCTURE.

Except as hereinafter set forth, no structure of any kind shall be moved from any other location upon said premises, nor shall any incomplete building be permitted to remain incomplete for a period in excess of one year from the date the building was started, unless approved in writing by the Architectural Control Committee and the local building and zoning officer.

C-10. SIGNS.

No sign of any kind shall be displayed to the public view on any lot except as follows: one professional sign of not more than one square foot; one sign of not more than five square feet advertising the property for sale or rent; signs used by the builder to advertise the property during construction and sales period; and one sign at the entrance of the subdivision of not more than 130 square feet advertising the subdivision during the construction and sales period.

C-11. LIVESTOCK AND POULTRY.

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 may be kept provided that they are not kept, bred, or maintained for any commercial purpose and are restricted to Owner's premises or on leash under handler's control. Any animals or household pets must be in compliance with the local ordinances pertaining thereto.

C-12. GARBAGE AND REFUSE DISPOSAL.

No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. In no event shall such containers be maintained so as to be visible from neighboring Residential Lots or roads. The storage, collection, and disposal of garbage, rubbish and trash shall be in strict compliance with applicable laws and regulations. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

C-13. SIGHT DISTANCE AT INTERSECTIONS.

No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sight line limitations shall apply on any lot with 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

C-14. EASEMENTS.

A. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded subdivision plat. Within these easements, no structure or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements. 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 is responsible.

C-15. WETLANDS.

Some of the lots in the subject subdivision may have a wetlands designation to which that lot is subject. Any lot with such designation must obtain design review approval before any excavation or construction can commence in order to assure compliance with the applicable federal, state and local regulations concerning said wetlands.

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C-16. HOME OCCUPATIONS.

No business, profession or trade shall be operated or maintained on any residential lot or in any structure thereon without the prior approval of the Architectural Control Committee, except that this provision shall in no way limit or restrict Develop in its activities prior to the sale of all Residential Lots nor prevent Owners from renting their living units to tenants.

C-17. RECREATIONAL VEHICLES.

All recreational vehicles shall be parked off the street and screened from view from the street at the setback line of the residence. Recreational vehicles shall not be parked overnight on the street nor in the driveways in front of the residence setback line, but shall be allowed to remain overnight on the property only if housed in a garage or screened from the street from behind the setback line of the residence. Failure to comply with the provisions herein shall constitute a nuisance.

C-18. MAINTENANCE.

Each Residential Lot and all improvements located thereon shall be maintained by the Owner thereof in good condition and repair, and in such manner as not to create a fire hazard, all at the Owner's expense. All walls and fences on common boundary lines or corners separating two or more Residential Lots shall be maintained jointly in equal shares by the Owners of the Residential Lots abutting such fence or wall, provided that each Owner shall be responsible for painting the side of any party wall or fence facing his Residential Lot. No fence or wall in the nature of a fence shall be constructed of any material other than wood or chain-link fence with a maximum height of four feet.

C-19. PLANTED AREAS.

Vegetation within any Residential Lot shall be planted and maintained in good condition at the Owner's expense in such a manner as to prevent or retard shifting or erosion.

C-20. NO SUBDIVIDING.

No Residential Lot shall be resubdivided.

C-21. CLOTHESLINES.

Outside clotheslines and other outside clothes drying or airing facilities shall be maintained in such a manner and in such location as not to be visible from neighboring property Owners or streets.

PART D
ARCHITECTURAL CONTROL COMMITTEE

The Committee's approval or disapproval as required in these Covenants shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove within 30 days after plans and specifications have been submitted to it, approval will not be required and the related Covenants shall be deemed to have been fully complied with.

PART E
GENERAL PROVISIONS

E-1. TERM.

These covenants are to run with the land and shall be binding on all parties and all persons claiming ownership under them for a period of 50 years from the date these covenants are recorded, after which time said covenants shall automatically be extended for successive periods of 10 years unless an instrument signed by a majority of the then Owners of the lots have been recorded, agreeing to change said covenants in whole or in part.

E-2. ENFORCEMENT.

A. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

B. If any purchaser or Owner of any lot in the subdivision, or their heirs or assigns shall violate or attempt to violate any of the covenants or restrictions herein, as shall be lawful for any other person or persons owning any other lots in said development or subdivision to prosecute any proceedings of law or in equity against the person or persons violating or attempting to violate any such covenant or restrictions and either to prevent him or them from so doing or to recover damages or other dues for such violation.

C. Each and all of the covenants, conditions, restrictions, and agreements contained herein shall be deemed and construed to be continuing, and the extinguishment of any right of re-entry of reversion for any breach shall not impair or affect any of the covenants, conditions, restrictions, or agreements, so far as any future or other breach is concerned. It is understood and agreed that no waiver of a breach of any of the covenants, conditions, restrictions, and agreements herein contained shall be construed to be a waiver of any other breach of the same, or other covenants, conditions, restrictions, and agreements; nor shall failure to enforce any one of such

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restrictions, either by forfeiture or otherwise, be construed as a waiver of any other restriction or condition.

E-3. SEVERABILITY.

Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

E-4. AMENDMENTS.

A. These covenants may be amended or renewed upon written approval of at least two-thirds of the Owners of lots within the protected area. Each Owner is entitled to one vote for each lot owned in said protected area.

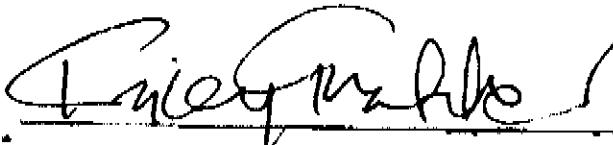
B. The covenants, agreements, conditions, reservations, restrictions, and charges created and established herein for the benefit of BRIGHAM WILLOWS SUBDIVISION, PHASE I, and each lot therein, may be waived, terminated, or modified as to the whole of said subdivision or any portion thereof with the written consent of the Owners of 75% of the lots in said subdivision; and if only a portion of the subdivision is intended to be affected, the written consent of the Owners of 75% of the lots in the portion to be affected shall also be secured. No such waiver, termination or modification shall be effective until the proper instrument in writing shall be executed and recorded in the office of the County Recorder for the County of Box Elder, State of Utah; provided, however, that this provision shall have no application so long as grantor shall be the Owner of 20% of the lots in said subdivision.

DATED this 20 day of June, 1994.


ATTEST:

BRIGOLF REALTY, L.L.C.

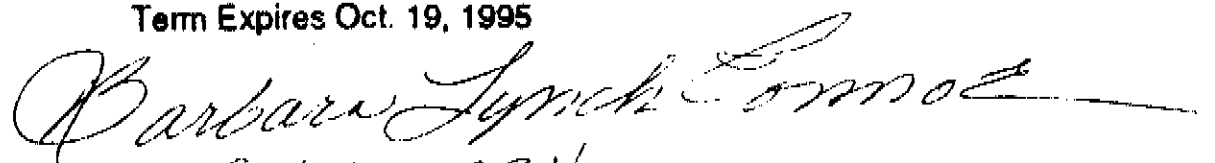
By:
Its:



By:
Its:


_____ Robert Nanger

BARBARA LYNCH CONNOR
Notary Public, State of New York
No. 31-4899488
Qualified in New York County
Term Expires Oct. 19, 1995


Oct 5, 1994