

E 137203 B 0588 P 0024
Date 13-SEP-1999 13:23pm
Fee: 63.00 Check
CALLEN B. PESHELL, Recorder
Filed By JPT
For JEFF MCNEILL
TOOELE COUNTY CORPORATION

**HECKERT COTTAGES PUD
AMENDED
TOOELE COUNTY, UTAH**

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS**

E 137203 B 0588 P 0024

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
HECKERT COTTAGES PUD AMENDED

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made and executed this 10 day of September, 1999, in the County of Tooele, State of Utah, by Grant T. McNeill Company, . Inc., a Utah corporation, hereinafter referred to as 'Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Tooele, State of Utah, which is described as:

The HECKERT COTTAGES PUD AMENDED, A Planned Unit Development, Tooele City, according to the official subdivision plat map thereof on file in the office of the County Recorder, Tooele County, State of Utah;

And which is more particularly described as:

Beginning at a point which is South 87°38'18" East along the Section line 2090.22 feet and South 752.17 feet from the Northwest corner of Section 1, Township 3 South, Range 6 West, Salt Lake Base and Meridian, Tooele County; thence East 143.04 feet to the West line of Durrant Street; thence North 01°01'39" East 3.43 feet; thence East 203.48 feet to a point on the West boundary line of Bell Estates Subdivision; thence Southerly along said boundary line South 00°55'52" West 450.25feet to a point on the North side right of way of Pear Street; thence Westerly along said right of way North 89°43'58" West 350.83 feet to a point on the East side of right of way of West street; thence Northerly along said right of way North 01°29'15" East 445.28 feet to the point of beginning.

Historical Legal

Parcel 1

Commencing 599 feet south of the Northeast corner of Lot 3, Block 68, Grantsville City Survey, Grantsville City; and running thence South 230.785 feet; thence West 171.60 feet, more or less, to the center of Durrant Street; thence North along the center of Durrant Street 230.785 feet; thence East 171.60 feet, more or less to the East line of said Lot 3 and the point of beginning.

Subject to and Together with a right of way over the following described property:

Beginning at a point on the South line of Durfee Street, on the center line of Durrant Street, said point of beginning being West 17 feet from the Northeast corner of Lot 3, Block 68, Grantsville City Survey, and running thence East 25 feet along said South line of Durfee Street; thence South 1,049.50 feet, more or less, to the North line of South Willow Road (now known as Pear Street); thence running Westerly along the North line of said South Willow Road (now know as Pear Street) 50 feet, more or less, to a point which is 146.6 feet more or less, East of the East line of Cemetery Street (now known as West Street); thence North 762.03 feet, more or less to a point which is 287.47 feet South of South line of Durfee Street and 146.6 feet, more or less, East of the East line of Cemetery Street (now know as West Street); thence East 5 feet; thence North 287.47 feet; thence East 20 feet to the point of beginning.

Parcel 2

Beginning at a point on the south line of Durfee Street and the centerline of Durrant Street, said point being West 171.60 feet from the Northeast corner of Lot 3, Block 68,

Grantsville City Survey, said point lies West 3000.81 feet and South 47.80 feet from a Tooele County Dependent Resurvey monument, witness corner of the Northeast corner of Section 1, Township 3 South, Range 6 West, Salt Lake Base and Meridian (basis of bearing South 05'38" East along the East line of the Northeast Quarter of said Section 1, as defined by Tooele County Dependent Resurvey monuments) thence South 829.785 feet along the centerline of Durrant Street; thence East 171.60 feet to the East line of said Lot 3; thence along said East line, South 212.215 feet to the North line of South Willow Road (now know as Pear Street); thence along said North line, South 87°29'50.7" West 343.528 feet to the West line of said Lot 3 and the East line of West Street (formerly Cemetery Street); thence along said line, North 445.28 feet; thence East 146.60 feet to the West line of Durrant Street; thence along said West line, North 324.25 feet; thence East 5.00 feet; thence North 287.47 feet to the South line of Durfee street; thence along said South line, East 20.00 feet to the point of beginning.

Beginning at a point on the South line of Durfee Street, on the center line of Durrant Street, said point of beginning being West 17 feet from the Northeast corner of Lot 3, Block 68, Grantsville City Survey, and running thence East 25 feet along said South line of Durfee Street; thence South 1,049.50 feet, more or less, to the North line of South Willow Road (now known as Pear Street); thence running Westerly along the North line of said South Willow Road (now know as Pear Street) 50 feet, more or less, to a point which is 146.6 feet more or less, East of the East line of Cemetery Street (now known as West Street); thence North 762.03 feet, more or less to a point which is 287.47 feet South of South line of Durfee Street and 146.6 feet, more or less, East of the East line of Cemetery Street (now know as West Street); thence East 5 feet; thence North 287.47 feet; thence East 20 feet to the point of beginning.

WHEREAS, Declarant will convey the properties subject to certain protective covenants, conditions, restrictions, reservations, assessments, charges and liens as hereinafter set forth.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed and occupied subject to the following easements, restrictions, covenants, conditions, assessments, charges and liens, which are for the purpose of protecting the value and desirability of, and which shall be construed as covenants of equitable servitude and shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof, in this phase and future phases to be constructed by the Declarant.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to HECKERT COTTAGES PUD AMENDED HOMEOWNER'S ASSOCIATION, Inc., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereinafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean and refer to all areas of real property shown on the recorded plat map of the Properties and intended for and dedicated to the common use and enjoyment of the homeowners therein, which Common Area is more particularly described as:

the HECKERT COTTAGES PUD AMENDED, Planned Unit Development, According to the official subdivision plat map thereof on file in the office of the County Recorder, Tooele County, State of Utah. But excepting therefrom those lots identified as Numbers S1 to S22 inclusive to the official plat map.

Section 4. "Limited Common Area" shall mean and refer to all areas of real property identified on the recorded plat map of the Properties as areas of limited common ownership. Limited Common Area shall include all patios, driveways, and walkways adjacent to any lots,

Section 5. "Lot" shall mean and refer to any plot of land designated for separate ownership and the construction of residential improvements as shown upon any recorded subdivision plat map of the Properties with the exception of the Common Area.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding mortgagees or others having such interest merely as security for the performance of an obligation unless and until the mortgagee or other holder of a security interest has acquired title to any Lot which is a part of the Properties pursuant to a foreclosure or any proceeding in lieu of foreclosure.

Section 7. "Member" shall mean and refer to every owner of a fee or undivided fee interest in any Lot which is, by covenants of record, subject to assessment by the Association.

Section 8. "Declarant" shall mean and refer to Grant T. McNeill Company Inc., a Utah Corporation, its successors and assignees if such successors an assignees acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 9. Lots shall mean and refer to any Lot upon which a Residential home dwelling unit has been constructed and completed, as evidenced by a Notice of Final Inspection.

Section 10. Lot shall mean and refer to a single family dwelling unit with or without walls or roofs in common with another single family dwelling unit and which shall include the following:

(a) Fee Title to the land constituting a Lot;

(b) Fee Title to the real property improvements located on the Lot, subject to and together with the obligation of the Association to insure, maintain, repair and replace the structural and exterior elements of those improvements as provided elsewhere in this Declaration; and

(c) An equal and undivided interest in the use of the Common Area, as defined and described above, subject to the rights of the Association as set forth in Article III below.

ARTICLE II

MEMBERSHIP AND VOTING RIGHT

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member unless and until the holder of a security interest has acquired title to any Lot which is a part of the Properties pursuant to a foreclosure or any proceeding in lieu of foreclosure, Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the

Association, and ownership of a Lot subject to such assessment shall be the sole qualification for Membership.

Section 2. Members shall be all those Owners with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Section 3. Bylaws. The Association shall be governed by by-laws which shall control such matters as the election of the Board of Trustees of the Association, the establishment of committees, the appointment of officers and such other matters as are customarily provided in By-laws.

ARTICLE III

PROPERTY RIGHTS

Section 1. Members Easements of Enjoyment. Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Area. The Declarant may retain the legal title to the Common Area until such time as it has completed improvements thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same, but notwithstanding any provision herein, the Declarant hereby covenants, for itself, its heirs and assigns that it shall convey the Common Area to the Association, free and clear of all liens and encumbrances, not later than September 30, 1999.

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

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to be the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken;

(d) The right of the Association to reasonably limit the number of guests of a Member using recreational facilities;

(e) The right of individual Members to the exclusive use of patio spaces as provided in Section 4 hereof.

Section 4. Rights to Limited Common Area. The Association shall provide Limited Common Area for each Lot. Subject to reasonable rules and conditions, the Association

shall designate at least one patio space, one driveway and one walkway conveniently located with reaped to each Lot and each for the exclusive use of the Members residing therein, their families and guests. The use of such Limited Common Area by any other Member or person may be enjoined by the Association or the Members entitled thereto. The right to the exclusive use of such Limited Common Area and to its maintenance and designation by the Association shall be appurtenant to and shall pass with the title to each Lot.

Section 5. Delegation of Use Privileges. Any Member may delegate, in accordance with the Articles and Bylaws of the Association, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

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

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and of the homes situated upon the Properties, including, but not limited to, the payment of taxes and insurance on the Common Area, the payment of the costs of repairing, replacing, maintaining and constructing or acquiring additions to the Common Area, the payment of the cost of insuring, repairing, replacing and maintaining the structures and exteriors of each residential dwelling as provided in Article VII, the payment of utilities billed to Owners separately and the establishment of a reserve account for repair, maintenance, replacement, taxes, insurance and other charges as herein specified.

Section 3. Basis and Maximum of Annual Assessments. For the initial fiscal year of the Association, the maximum annual assessment shall be determined by Declarant or the Board of Trustees, as the case may be.

(a) For each fiscal year after the initial fiscal year, the maximum annual assessment may be increased each year by not more than five percent per annum above the maximum assessment for the previous year, without a vote of the membership.

(b) For each fiscal year after the initial fiscal year, the maximum annual assessment may be increased above five percent by a vote of two-thirds of each class of members voting, in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Trustees may, after consideration of current and future needs of the Association, fix the annual assessment at an amount not in excess of the maximum,

Section 4. Special Assessments for Capital Improvements or Replacements. In Addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Area, the cost of reconstruction or replacement of any capital improvement consisting of a portion of the structure or exterior of any residential dwelling or the uninsured portion of any insurable loss occurring to any residential dwelling, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of Members voting, in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty days in advance of the meeting and shall set forth the purpose of the meeting.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all Members at least thirty days and not more than sixty days in advance of the meeting. At the First Meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate on all lots. Both annual and special assessments may be collected on a monthly basis.

Section, 7. Date of Commencement of Annual Assessments: Duties of Board of Trustees: Due Dates: Adjustments of Assessments in Certain Cases. The annual assessment provided for herein shall commence on the date fixed by the Board of Trustees of the Association to be the date of commencement, provided that the commencement date shall be the first day of a calendar month.

The first annual assessments shall be adjusted according to the number of months remaining in the calendar year. The Board of Trustees shall fix the amount of the annual assessment against each Lot at least thirty days in advance of each annual assessment period, and shall send written notice of the annual assessment to every Owner subject thereto. The due dates shall be established by the Board of Trustees, upon which dates the assessments for any year shall become due and payable; provided, that the Board of Trustees may provide for the payment of annual assessment in twelve equal monthly installments. The due date of any special assessments authorized herein shall be fixed by the Board of Trustees, subject to the same notice and payment requirements pertaining to annual assessments.

The Board of Trustees shall prepare a roster of the Properties and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, shall record payments of assessment, and shall be open to inspection by any Member of the Association at reasonable time.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of

the payment of any assessment or fractional part thereof which is therein shown to have been paid.

Section 8. Effect of Non-Payment of Assessment: Remedies of the Association, Any assessment not paid within thirty days after the due date therefore shall be delinquent and shall bear interest from the due date at the rate of six percent (6%) per annum until paid. The Association may bring an action at law against the Owner personally obligated to pay any such delinquent assessment without foreclosing on the lien, or may foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale or foreclosure in deeds of trusts or mortgages, or in any manner permitted by law, and there shall be added to the amount of such delinquent assessments the costs and expenses of the action, sale or foreclosure, and a reasonable attorneys fee. The personal obligation of an Owner to pay any assessments shall remain his personal obligation for the statutory period and shall not pass to his successor in title unless expressly assumed by them. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such a sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Properties. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein;

- (a) Any properties dedicated and accepted by the local public authority and devoted to public use;
- (b) All Common Areas;
- (c) All properties exempted from taxation by the laws of the State of Utah, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein contained, no land or improvements devoted to dwelling use shall be exempt from the assessments,

Section 11. Insurance and Insurance Assessments. The Board of Trustees of the Association, or its duly authorized agent, shall have the authority to, and shall obtain and continue in effect all types of insurance necessary to protect the Association, its Members, and mortgagees holding mortgages covering residential dwellings as their respective interests may appear, including but not limited to fire and extended casualty insurance coverage on all residential dwellings and other buildings on the Properties, including the structural, exterior and interior components of such residential dwellings and buildings, and broad form public liability insurance on the Association covering all damage or injury caused by the negligence of the Association, or its agents, in caring for the Common Areas or otherwise performing any of its authorized functions. The insurance coverage shall be written in the name of and the proceeds thereof shall be payable to the Association as trustee for each of the Owners of the Properties and of the buildings situated thereon, and the coverage shall be in an amount equal to the full insurable value or replacement cost of all property covered thereby and, in the case of public liability coverage, in an amount deemed adequate by the Board of Trustees.

Premiums for insurance obtained by the Board of Trustees pursuant to this Section shall be a common expense of the Association and shall be collectible from Members of the Association as part of the annual assessments in the manner specified in this Article IV.

In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Association, the Board of Trustees shall, upon

receipt of the insurance proceeds, contract to rebuild or repair the damaged or destroyed portions of the property, as rapidly as possible, in conformity with the plans and specifications by which the properties were erected; provided, that in the event that the cost of the repair or rebuilding shall exceed the insurance proceeds received therefore, the Board of Trustees shall levy a special assessment as provided in Article IV, Section 7, above, to make up any deficiency necessary to repair or rebuild the property.

Provision for the acquisition of insurance coverage written in the name of the Association shall be without prejudice to the right of each Owner to also insure his personal and real property for his own benefit.

Section 12. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Trustees to determine whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

ARTICLE V

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original configuration of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto,

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

Section 3. Destruction by Fire or Other Casually. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent the destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that the protection is not covered by insurance and paid for out of the proceeds of the same.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Board of Trustees of the Association shall select an arbitrator for the refusing party.

ARTICLE VI

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior modification, addition to, change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Board of Trustees of the Association. The Board shall use its best efforts to approve or disapprove such design and location within thirty (30) days after the plans and specifications have been submitted to it. The Board of Trustees shall have the sole and absolute discretion to withhold approval of any plans and specifications and shall have the right to cause an Owner to construct only the same model home and features as previously existed on a Lot and to disapprove changes that would materially change the exterior appearance of a residential dwelling.

ARTICLE VII

MAINTENANCE

Section 1. Exterior and Structural Maintenance and Repair. In addition to maintenance upon the Common Area, the Association shall provide exterior and structural maintenance and repair upon each Lot and residential dwelling that is subject to assessment under Article IV hereof, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements and maintenance, repair and replacement of footings, foundations and walls.

Section 2. Maintenance of Limited Common Areas. The Owner of each Lot shall provide exterior maintenance upon the Limited Common Area located upon the Properties and designated for its exclusive use, and shall repair, replace and care for the Limited Common Area and shall not permit any rubbish, trash, garbage or other nuisance to accumulate thereon; provided that in the event an Owner of such Lot shall fail to maintain the Limited Common Area in accordance with the requirements of this Section, the Board of Trustees of the Association shall have the right, through its agents and employees, to enter upon the Limited Common Area and to repair, replace, maintain and restore the Limited Common Area in accordance herewith, and the cost of such repair, replacement and maintenance shall be assessed against such Lot and shall be added to and become part of the annual maintenance assessment or charge to which the Lot is subject under Article IV hereof.

Section 3. Other Owner Maintenance. Each Owner shall have the exclusive responsibility to maintain, repair and replace the interiors of a Residential Dwelling at the sole expense of the Owner, except in case insurance proceeds are available to cover such work after an event of damage to or destruction of a Residential Dwelling.

Section 4. Access at Reasonable Hour. For the purpose solely of performing the exterior maintenance required by this Article, the Association, through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any lot or exterior or any residential dwelling at reasonable hours on any day except Sunday.

ARTICLE VIII

USE Restrictions

Section 1. General Use Restrictions. All of the Properties which are subject to this Declaration of Covenants, Conditions and Restrictions are hereby restricted to residential dwellings, including Lots, and ancillary and accessory uses and buildings in connection

therewith, including but not limited to community buildings. All buildings or structures erected in the Properties shall be of new construction and no buildings or structures shall be removed from other locations to the Properties and no subsequent buildings or structures other than Single Family Residential Dwellings shall be built on any unit where the Declarant has thereto constructed a residential dwelling. No building or structure of a temporary character, trailer basement, tent, shack, garage, barn, or other outbuilding shall be used on any unit at any time as a residence either temporarily or permanently.

Section 2. Construction. Business and Sales. Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Residential Dwelling during the period of construction and sale of the Residential Dwelling and upon such portion of the premises as Declarant deems necessary, including but not limited to a business office, storage areas, construction yards, signs, model units and sales offices.

Section 3. Livestock. No animals, livestock or poultry of any kind shall be raised, bred or kept on the Properties, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

Section 4. Signs: commercial Activity, No advertising signs, billboards. objects of unsightly appearance or nuisance shall be erected, placed, or permitted to remain on any Lot, except one "For Rent" or "For Sale" sign of not more than five square foot, nor shall any Lot be used in any way or for any purpose which may endanger the health or unreasonably disturb the residents of the Properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the Properties except activities intended primarily to serve residents in the Properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

Section 5. Planting and Gardening. Except in the individual patio areas designated for the exclusive use of Lot Owners, no planting or gardening shall be done upon the Properties and no fences, hedges or walls shall be erected or maintain upon the Properties except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Trustees or their designated representative.

Section 6. Use of Common Area. Except for right of ingress and egress, the Owners of Lots are hereby prohibited and restricted from using any of the Common Area outside the exterior building lines, and the Limited Common Area, other than as permitted in this Declaration of Covenants or as may be allowed by the Board of Trustees of the Association. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all Owners of Lots in the Properties, and is necessary for the protection of the interests of all the Owners in and to the Common Area.

As part of the overall program of development of the Properties into a residential community, and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 7. 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 the Properties or any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Properties or any Lot.

Section 8. Exterior Television or Other Antennas. No exterior television, radio or other antennas shall be placed, allowed or maintained upon any Lot or upon any structure or portion of the improvements situated and located upon the Properties without the prior written approval of the Board of Trustees or their designated representative.

Section 9. Interior Utilities All utilities, fixtures and equipment installed within a Residential Dwelling commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a Residential Dwelling, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair any easement or hereditament, nor do any act or allow any condition to exist which will adversely affect the other lots or their Owners.

ARTICLE IX

EASEMENTS

Section 1. Encroachments. Each Lot and the property included in the Common Area shall be subject to an easement or encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for the encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the multi-family structure containing two or more Residential Dwelling is partially or totally destroyed, and then rebuilt, the Owners of the Lot so affected agree that minor encroachments of parts of the adjacent Lot or Common Area due to construction shall be permitted and that a valid easement for the encroachment and the maintenance thereof shall exist.

Section 2. Utilities. There is hereby created a blanket easement upon, across, over and under all of the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas, telephone and electricity. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, guys, wires and other necessary equipment on the Properties, provided that all such services shall be placed underground, except that the public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs And exterior walls of the Residential Dwellings Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property except as initially programmed and approved by the Declarant or the Association's Board of Trustees. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on the property without conflicting with the terms hereof.

Section 3. Police, Fire and Ambulance Services. An easement is hereby granted to all police, fireman, ambulance attendants and all similar persons to enter upon the streets and Common Area in the performance of their duties.

Section 4. Maintenance by Association, An easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or to cross over the Common Area and any Lot to perform the maintenance and repair of the Residential Dwellings, or Common Area provided for herein.

Section 5, Other Easements. The easements provided for in this Article IX shall in no way affect any other recorded easement on the Premises.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this

Declaration, including but not limited to any proceeding at law or in equity against the person or persons violating or attempting to violate any covenants or restrictions, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right do so thereafter.

Section 2. Severability. All of the conditions, covenants and reservations contained in this Declaration shall be construed together, but it shall at any time be held that any one of the 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 Declarant and Lot owners, 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 other article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason becomes unenforceable.

Section 3. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time the covenants shall be automatically extended for successive periods of ten years. The covenants, conditions and restrictions of this Declaration may be amended during the first twenty year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by no less than seventy-five (75%) of the Lot Owners. Any amendment must be properly recorded in the Tooele County Recorders Office.

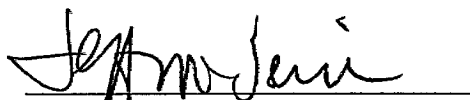
Section 4. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 5. Gender or Grammar. The singular where ever used herein shall be construed to mean the plural when applicable and the necessary grammatical changes required to male the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 6. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds of each class of members.

DECLARANT:

Grant T. McNeill Company, Inc.



By: Jeff McNeill

Its: Secretary and Treasurer

STATE OF UTAH)

) ss.

COUNTY OF TOOELE)

On the 10 day of September, 1999, personally appeared before

me Jeff McNeill the Secretary and Treasure of Grant T. McNeill Company, Inc., who signed the foregoing instrument on behalf of Grant T. McNeill Company, Inc. and acknowledged to me that he executed the same.

Tammy L. Griffith
Notary Public

My commission expires:

