

A Declaration of Restrictions, Covenants and Conditions

3340797

This Declaration is made this 20th day of SEPT. 1979 by Kesler Co., Inc., a Utah corporation, as owner and developer of a unique parcel of property on Salt Lake County's east bench, which is described in the Deed referred to in Section 2.01, and which has been beautifully preserved in its natural and unspoiled state. The purpose of this declaration is to perpetuate, with respect to such developed portions the rich variety of topography, scrub oak and vegetated environment for the benefit of all who acquire property within Heughs Canyon Subdivision (as hereinafter defined).

Through the Heughs Canyon Subdivision, Kesler Co., Inc. seeks to meet the increasing and highly sophisticated housing demands of a portion of the burgeoning population of the Salt Lake Valley in a manner which insures the full enjoyment of the historical traditions and natural advantages of the area for all who acquire property therein and yet which encourages controlled diverse individual expression within the environment. Kesler Co., Inc. believes that this fundamental concept which underlies the development and use of the Heughs Canyon Subdivision serves both public and private interests by fostering a beneficial land use which retains the unique beauty of the land and creates an atmosphere enriching the spirit of its participants.

It must be assumed that all owners of property within Heughs Canyon, by virtue of their purchase of such property, are motivated by the character of the natural environment in which their property is located, and accept, for and among themselves, the principle that the development and use of Heughs Canyon shall preserve that character for its present and future enjoyment by other owners. It is also assumed that those who are entrusted with the administration of Heughs Canyon will discharge their trust in full recognition of that principle, and to the extent consistent therewith, will foster maximum individual flexibility and freedom of individual expression.

In order to promote the foregoing this declaration is made and it is the intention of Heughs Canyon that it will be in recognition of the foregoing that the limitations, restrictions, covenants, and conditions of this declaration and of all other declarations supplemental hereto shall be understood and construed.

Article I Definitions

Unless the context otherwise specifies or requires, the terms defined in this Article I shall, for all purposes of Heughs Canyon Restrictions, have the meanings herein specified.

Architect. The term "architect" shall mean a person holding a certificate to practice architecture in the State of Utah.

Design Committee. The term "Design Committee" shall mean the committee created pursuant to Article IV.

Design Committee Rules. The term "Design Committee Rules" shall mean rules adopted by the Design Committee pursuant to Section 4.04.

Excavation. The term "excavation" shall mean any disturbance of the surface of the land (except to the extent reasonably necessary for planting) which results in the removal of earth, rock or other substance from a depth of more than eighteen (18) inches below the natural surface of such land.

File; Filed. The term "file" and "filed" shall mean, with respect to the subdivision map, that said subdivision map shall have been filed in the office of the Recorder of the County of Salt Lake, State of Utah.

Fill. The term "fill" shall mean any addition of rock or earth materials to the surface of the land which increases the natural elevation of such surface by more than eighteen (18) inches.

Grantor. The term "grantor" shall mean Heughs Canyon, its successors and assigns.

Improvements. The term "improvements" shall include buildings, outbuildings, roads, driveways, parking areas, fences, retaining walls, stairs, decks, hedges, windbreaks, poles, signs and any structures of any type or kind.

Indigenous Specie. The term "indigenous specie" shall mean a specie of ground cover, shrub or tree listed in Exhibit A, which is attached hereto and made a part hereof, or from time to time listed in the Design Committee Rules.

Lot. The term "lot" shall mean any lot designated on a subdivision map for residential use.

Mortgage; Mortgagee. The term "mortgage" shall mean a deed of trust as well as a mortgage, and the term "mortgagee" shall mean a beneficiary under or a holder of a deed of trust as well as a mortgagee.

Notice. The term "notice" shall mean a written notice, signed, dated and delivered to owner at his last known address or to Grantor through its registered agent.

Owner. The term "Owner" shall mean, unless specified otherwise, the original owner, his family, assigns, lessees, invitees, or any other person claiming an interest through any original owners.

Private Area. The term "private area" shall mean any real property designated as a residential lot on a subdivision map, which is conveyed to an Owner by means of a deed, together with all improvements from time to time constructed thereon.

Project Area. The term "project area" shall mean all of the real property within Heughs Canyon Subdivision lying within the boundaries of any project and designated "Project Area" on a subdivision map.

Record; Recorded. The term "record" or "recorded" shall mean, with respect to any document, that said document, shall have been recorded in the office of the Recorder of the County of Salt Lake, State of Utah.

Refinish. The term "to refinish" shall include to paint and to resurface.

Residence. The term "residence" shall mean anything constructed or erected the use of which requires location on the ground or attachment to something having location on the ground.

Subdivision Map. The term "subdivision map" shall mean any final map within the meaning of Utah Code, Chapter 5, Plats and Subdivisions, Sections 57-5-1 to 57-5-8 together with any supplements, additions or amendments thereto.

Heughs Canyon. The term "Heughs Canyon" shall mean all of the real property within Heughs Canyon Subdivision.

Heughs Canyon Restrictions. The term "The Heughs Canyon Restrictions" shall mean, with respect to all property within Heughs Canyon, the limitations, restrictions, covenants, and conditions set forth in this declaration, as such declaration may from time to time be amended pursuant to Section 6.01 and, with respect to any property within Heughs Canyon.

Visible from Neighboring Property. The term "visible from neighboring property" shall mean with respect to any given object or activity, that such object or activity is or would be in any line of sight originating from any point six feet above any other property, excluding contiguous property owned by the Owner of the property involved, assuming that such other property has an elevation equal to the highest elevation of the ground surface of that portion of the property upon which such object or activity is located.

Article II Property Subject to the Heughs Canyon Restrictions

Section 2.01 The Heughs Canyon Development

Grantor hereby declares that all of the real property located in the County of Salt Lake, State of Utah, described as follows:

Heughs Canyon Plat "A" all as shown on that certain subdivision map entitles "Heughs Canyon Plat A" filed in the office of the Recorder of the County of Salt Lake, State of Utah, on the 20th day of September 1979, in Book 794-S-2

is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to Heughs Canyon Restrictions meaning the limitations, restrictions, covenants, and conditions set forth in this declaration, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said real property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability, and attractiveness of said real property and every part thereof. All of the Heughs Canyon Restrictions shall run with said real property and shall be binding upon and inure to the benefit of the Grantor, each Owner of said real property, or any part thereof, and each successor in interest of such Owner.

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Article III
Land Classifications,
Use and Restrictive Covenants

Section 3.01
Land Classifications

All land within Heughs Canyon Subdivision has been classified as a private area.

Section 3.02
Private Area:
Uses, Restrictions

The private area of each lot shall be for the exclusive use and benefit of the Owner thereof, subject, however, to all of the following limitations and restrictions:

a) The Design Committee or its duly authorized agents, shall have the right, at any time, and from time to time, without any liability to the Owner for trespass or otherwise, to enter upon any private area for the purpose (1) of removing any improvement constructed, reconstructed, refinished, altered, or maintained upon such private area in violation of these covenants, (2) of restoring or otherwise reinstating such private areas as authorized by paragraph (b) of Section 3.03, and (3) of otherwise enforcing without any limitation, all of the restrictions set forth in this section and in Section 3.03.

b) No improvement, excavation or other work which in any way alters any private area from its natural or improved state existing on the date such private area was first conveyed in fee by Grantor to an Owner shall be made or done except upon strict compliance with, and within the restrictions of, the provisions of Section 3.03.

c) The private area of each lot shall be used exclusively for residential purposes, and no more than one family (including its servants and transient guests) shall occupy such private area: provided, however, that nothing in this paragraph (c) shall be deemed to prevent:

(1) any artist, artisan or craftsman from pursuing his artistic calling upon private area if such artist, artisan or craftsman (aa) also uses such private area for residential purposes (bb) is self employed and has no employees working in such private area, and (cc) does not advertise or offer any product or work of art for sale to the public upon or from such private area;

(2) The leasing of any lot from time to time by the Owner thereof, subject, however, to all of the restrictions of Heughs Canyon Restrictions; or

(3) any use consistent with the provisions of all Salt Lake County zoning ordinances in effect at the time these covenants are recorded.

d) Each private area, and any and all improvements from time to time located thereon shall be maintained by the Owner thereof in good condition, and repair, and in such manner as not to create a safety or health hazard to Heughs Canyon or any part thereof, all at such Owner's sole cost and expense.

e) No noxious or offensive activity shall be carried on upon any private area, nor shall anything be done or placed thereon which may be or may become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their private areas. In determining whether there has been a violation of this paragraph recognition must be given to the premise the Owners, by virtue of their interest and participation in Heughs Canyon are entitled to the reasonable enjoyment of the natural benefits and surrounding of Heughs Canyon. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the private area and improvements located thereon, shall be placed or used upon any private area.

f) No domestic animals or fowl other than a reasonable number of generally recognized house or yard pets shall be maintained on any private area.

g) No tree or shrub shall be planted within any private area and be permitted to grow to a height in excess of eight (8) feet unless such tree or shrub was at the time of its planting an indigenous specie as defined herein.

h) No signs whatsoever, including but without limitation, commercial, political and similar signs, visible from neighboring property, shall be erected or maintained upon any private area, except

- 1) such signs as may be required by legal proceedings.
- 2) residential identification signs of a combined total face area of three (3) square feet or less for each residence.
- 3) during the time of construction of any residence or other improvement, job identification

4) not more than one "for sale" or "for rent" sign having a maximum face area of three (3) square feet, provided that if at the time of any such desired use the grantor is providing "for sale" or "for rent" signs for the use of Owners, the sign provided by the grantor and no other shall be used.

i) No house trailer, mobile home, permanent tent, or similar facility or structure shall be kept, placed or maintained upon any private area at any time; provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any work or improvement permitted by Section 3.03.

j) No trailer of any kind, truck camper, or boat shall be kept, placed or maintained upon any private area in such a manner that such trailer, truck camper or boat is visible from neighboring property; provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained during and used exclusively in connection with, the construction of any work or improvement permitted by Section 3.03.

k) No accessory structures or buildings shall be constructed, placed or maintained upon any private area prior to the construction of the main structure of the residence; provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of the main structure of the residence.

l) No trailer, vehicle or boat shall be constructed, reconstructed, or repaired upon any private area in such manner that such construction, reconstruction or repair is visible from neighboring property.

m) All garbage and trash shall be placed and kept in covered containers. In no event shall such containers be maintained so as to be visible from neighboring property.

n) Outside clotheslines or other outside clothes drying or airing facilities shall be maintained exclusively within a fenced service yard and shall not be visible from neighboring property.

o) There shall be no exterior fires whatsoever except barbecue fires contained within receptacles provided therefore.

p) Each lot owner shall be responsible for restoration of cut or fill slopes between the back of curb and their respective property. All cut or fill slopes shall be restored as per Grantor's landscaping plan for such areas, at the sole expense of said lot owner. All plant materials shall conform to Exhibit "C" of these covenants. All restoration work shall be approved in writing by the Design Committee and shall be completed within one (1) year of purchase of the lot.

Section 3.03
Private Area:
Construction and Alteration
of Improvements; Excavations, etc.

The right of an owner to construct, reconstruct, refinish, alter or maintain any improvement upon, under or above any private area, or to make or create any excavation or fill thereon, or to make any change in the natural or existing surface drainage thereof or to install any utility line (wire or conduit) thereon or thereover, or to destroy or remove any tree therefrom, shall be subject to all of the following limitations and conditions of this section:

a) Except to the extent permitted by paragraph (g) below, any construction or reconstruction of, or the refinishing or alteration of any part of the exterior of, any improvement upon any private area is absolutely prohibited until and unless the owner of such private area first obtains the approval therefor from the Design Committee as herein provided and otherwise complies with all of the provisions of this section. The design committee shall remove any improvement constructed, reconstructed, refinished, altered or maintained in violation of this paragraph and the owner thereof shall reimburse the design committee for all expenses incurred in connection therewith.

b) Except to the extent reasonably necessary for the construction, reconstruction or alteration of any improvement for which the owner has obtained approved plans pursuant to this Section:

- (1) Any excavation or fill which would be visible from neighboring property shall be created or installed upon, each and any lot shall conform to chapter 70 of the Uniform Building Code.
- (2) No change in the natural or existing drainage for surface waters upon, and
- (3) No power, telephone or other utility line (wire or conduit) which would be visible from neighboring property shall be installed upon; and

(4) No living tree or scrub oak shall be destroyed or removed from any private area until and unless the owner of such private area first obtains the approval therefor from the Design Committee as herein provided and such owner otherwise complies with all of the provisions in this section. The Design Committee shall, in the event of any violation of clause (1) or clause (2) above, restore such private area to its state existing immediately prior to such violation in the event of any violation of clause (3) above, remove all unauthorized power, telephone or other utility lines (wires or conduits) and, in the event of any violation of clause (4) above, replace any tree which has been improperly removed or destroyed with a tree similar in type and size to any such tree so removed or with such other tree as the Design Committee may deem appropriate. The owner of such private area shall reimburse the Design Committee for all expenses incurred by it in performing its obligations under this paragraph; provided, however, that with respect to the replacement of any tree the Owner shall not be obligated to pay an amount in excess of the expenses which would have been incurred by the Design Committee had it elected to replace the destroyed or removed tree with a tree similar in type and size.

c) Any Owner proposing to construct or reconstruct, or to refinish or alter any part of the exterior of, any improvement on or within his private area, or to perform any work which under paragraph (b) above requires the prior approval of the Design Committee, shall apply to the Design Committee for approval as follows.

The Design Committee may require that this submission of plans and specifications be accompanied by a reasonable plans inspection fee in an amount of One Hundred Dollars (\$100.00).

(1) The owner shall notify the Design Committee of the nature of the proposed work and the Design Committee shall at that time schedule a preliminary meeting in which the ecological a permanent record of all improvements constructed or improvements of Heughs Canyon and the various design controls and restrictions applicable to the owner's private area can be summarized. The Owner and any architect employed by the Owner shall be present at said first meeting. Such meeting shall be at a mutually convenient time not to exceed fifteen (15) days following the initial request.

(2) Following the initial meeting, the Owner shall submit to the Design Committee for approval such plans and specifications for the proposed work as the Design Committee may from time to time request, including when deemed appropriate by the Design Committee, but without limitation the following:

(aa) a plot plan of the lot showing (i) contour lines, (ii) the location of all existing and/or proposed improvements, (iii) the proposed drainage plan, (iv) the proposed sanitary disposal facilities, (v) the location of all existing trees having a height in excess of four (4) feet and the location of all scrub oak existing on said lot, (vi) such trees which the Owner proposed to remove, and (vii) the location of all proposed utility installation;

(bb) floor plans;

(cc) drawings, showing all elevations;

(dd) description of exterior materials and color, with samples;

(ee) working drawings and construction specifications; and

(ff) the Owner's proposed construction schedule.

(3) If at any time following an Owner's notification of the Design Committee pursuant to clause (1) above of his proposed work, the Design Committee shall determine that it would be in the best interests of Heughs Canyon for such owner to employ professional assistance to design any improvement involved in the proposed work, the Design Committee shall inform such owner in writing of its determination, whereupon all plans and specifications submitted pursuant to clause (2) above shall be prepared by such qualified professional as the Design Committee shall determine.

d) Subject to the provisions of paragraph (e) below, the Design Committee shall approve the plans, drawings and specifications submitted to it pursuant to paragraph (c) only if the following conditions shall have been satisfied:

(1) The owner and the owner's architect, if any, shall have strictly complied with the provisions of paragraph (c) above; and

(2) The Design Committee finds that the plans and specifications to the Heughs Canyon Restrictions, particularly to the requirements and restrictions of this section and to the Design Committee Rules in effect at the time such plans were submitted to the Design Committee.

All such approval shall be in writing and may be conditioned upon the submission by the Owner or the Owner's architect, if any, of such additional plans and specifications as the Design Committee shall deem appropriate for the purpose of insuring that the construction of the proposed improvement shall be in

accordance with the approved plans; provided, however, that plans, drawings and specifications which have been neither approved nor rejected within (15) days from the date of submission thereof to the Design Committee shall be deemed approved. One set of plans as finally approved shall be retained and maintained by the Design Committee as a permanent record.

e) Notwithstanding the provisions of paragraph (d) above, if within the fifteen (15) day period referred to in said paragraph (d), the members of the Design Committee, in their sole discretion, unanimously find that the proposed work would, for any reason whatsoever (including the design, height, color, or location of any proposed improvement and the probable effect thereof on other Owners in the use and enjoyment of their private area be incompatible with Heughs Canyon, then the Design Committee shall not approve the plans, drawings and specifications submitted to it pursuant to paragraph (c) above and shall so notify the Owner concerned in writing setting forth the reasons for such disapproval.

f) Grantor shall, upon the timely request of the Design Committee, file with the Design Committee copies of such of the plans and specifications described in paragraph (c) above, which have been prepared by Grantor and which are deemed by the Design Committee to be necessary for the purpose of maintaining a permanent record of all improvements constructed or being constructed by Grantor upon any private area at the time such private area became a part of Heughs Canyon.

g) Any provision herein to the contrary notwithstanding any Owner may at any time, and from time to time, without first obtaining the approval of the Design Committee and without otherwise comply with paragraph (c) above, reconstruct or refinish any improvement or any portion thereof, excavating or make any other installation, in such manner as may be set forth in the last plans thereof approved by the Design Committee and not revoked pursuant to paragraph (i) below or in the plans and specifications filed pursuant to paragraph (f) above.

h) Upon receipt of the approval from the Design Committee pursuant to paragraph (d) above, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations pursuant to the approved plans.

i) With references to paragraph (h) above, Owner shall satisfy all conditions and commence the construction, reconstruction, refinishing, alterations or other work pursuant to the approved plans within one (1) year from the date of such approval. If the Owner shall fail to comply with this paragraph any approval given pursuant to paragraph (d) above shall be deemed revoked unless upon the written request of the Owner made to the Design Committee prior to the expiration of said one (1) year period and upon a finding by the Design Committee that there has been no change in circumstances, the time for such commencement is extended in writing by the Design Committee.

j) With further reference to paragraph (h) above, the Owner shall in any event complete the construction, reconstruction, refinishing or alteration of the foundation and all exterior surfaces (including the roof, exterior walls, windows and doors) of any improvement of his private area within one (1) year after commencing construction thereof, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies or natural calamities. If owner fails to comply with this paragraph, the Design Committee shall notify the corporation of such failure, corporation, at its option, shall either complete the exterior in accordance with the approved plans or remove the improvement, and the owner shall reimburse the corporation for all expenses incurred in connection therewith.

k) Upon the completion of any construction or reconstruction of, or the alteration or refinishing of the exterior of, any improvement, or upon the completion of any other work for which approved plans are required under this section, the Owner shall give notice thereof to the Design Committee and within sixty (60) days thereafter, the Design Committee or its duly authorized representative may inspect such improvement to determine whether it was constructed, reconstruction, altered or refinished in substantial compliance with approved plans. If the Design Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with approved plans, it shall notify the owner of such non-compliance within sixty (60) days and shall require the owner to remedy such non-compliance. If upon the expiration of sixty (60) days from the date of such notification the Owner shall have failed to remedy such non-compliance, the Design Committee shall notify the corporation of such failure, and the corporation, at its option shall either remove the improvement or remedy the non-compliance, and the Owner shall reimburse the corporation for all expenses incurred in connection therewith. If for any reason the Design Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of said notice of completion thereof from the owner, the improvement shall be deemed to be in accordance with said approved plans.

l) The following standards and restrictions are applicable to the construction, reconstruction, alteration and refinishing of any and all improvements from time to time existing upon private areas:

(1) No more than one residence shall be constructed on any lot. A guest suite or like facility, without a kitchen, visually attached to the main residence structure with a minimum connecting structure of a wall or fence not less than six (6) feet high or a covered walk, shall be deemed to be included as part of the single residence.

(2) No recreational facilities shall be constructed or maintained on any lot without prior written consent of the Design Committee.

(3) All improvements shall be constructed in accordance with applicable building line, setback, and height provisions set forth on the subdivision map and the Salt Lake County Zoning guide as may be amended from time to time, provided, however, that with the consent of the Design Committee and if permissible by law, a carport or garage may be constructed on a property line if such carport or garage (aa) is designed together with, and as an integral part of, the carport or garage of an adjacent property owner, and (bb) is detached from any part of the main residence structure by a minimum distance of twenty (20) feet.

(4) No reflective finish (other than glass) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including but without limitation, the exterior surfaces of any of the following: roofs, all projections above roofs, retaining walls, doors, trim, fences, pipes, equipment, mailboxes and newspaper tubes.

(5) The colors of all exterior surfaces shall be only those which are commonly referred to as earth tone colors.

(6) No roof shall be finished with built up tar and gravel; unless the gravel used is colored in earth tone colors and no reflective surfaces are visible by other property owners.

(7) Except for nails, bolts, other approved connecting devices and hardware fixtures used in connection therewith, all fences, screens and similar exterior structures shall be constructed solely of wood or brick, provided, however, that recreational facilities may be constructed of other materials to which the Design Committee has given prior written approval.

(8) Each residence shall contain parking space within the private area for at least two automobiles by one of the following means:

(aa) A garage either attached to or detached from the main structure of the residence.

(bb) A carport enclosed on not less than two sides attached directly to the main structure of the residence or connected by a roof or major fence.

(cc) An exterior parking area enclosed on not less than two sides by a five (5) foot fence or planted berm; or

(dd) An exterior parking area not visible from neighboring property.

(9) All maintenance and service facilities including clotheslines and garbage receptacles shall be kept and maintained only in enclosed service yards.

(10) There shall not be installed or maintained any unreasonably bright or glaring lights, nor other unusual lighting system which may or is likely to cause annoyance or be a nuisance to neighboring property.

(11) There shall be no antenna or equipment placed upon any structure or lot, of any sort either installed or maintained, which is visible from neighboring property; no swamp coolers will be permitted. Air conditioning shall be provided only by a central air conditioning system.

(12) The minimum side yard for any main building shall be thirty-five (35) percent of the building height, but in no case less than eight (8) feet, and the total width of the two side yards for any one lot shall be seventy (70) percent of the building height, but in no case less than eighteen (18) feet.

(13) The minimum depth of the front yard for all main building be the average of the existing buildings within the same block frontage except that a front yard need not be more than thirty (30) feet in depth.

(14) The minimum depth of the rear yard for any main building be fifteen (15) feet.

(15) No building shall be erected to a height in excess of twenty-five (25) feet except that at the sole discretion of the Design Committee a height of thirty-five (35) feet may be allowed. No dwelling shall be erected to a height less than one (1) full story above grade. Height shall be measured at the average natural grade at the building wall as per attached Exhibit "B".

Section 3.04 Presumption of Compliance

All of the following improvements, excavations, fills, and other work shall, for all purposes of Heughs Canyon Restrictions, be

conclusively presumed to be in compliance with, and within the restrictions of, the provisions of this Article III.

a) Those existing or maintained within or upon any property within Heughs Canyon at the time such property became a part of Heughs Canyon.

b) Those existing or maintained within or upon any private area at the time such private area was first conveyed to an Owner by Grantor.

c) Those from time to time constructed, reconstructed, refinished, installed or maintained within or upon any property within Heughs Canyon by Grantor or pursuant to plans and specifications which have been approved by the Design Committee and which approval has not thereafter been revoked; and

d) Those specified as complying with the Heughs Canyon Restrictions in the estoppel certificate recorded by the Design Committee pursuant to Section 4.06.

Article IV Design Committee

Section 4.01

Design Committee:

Organization;

Power of Appointment and Removal of Members

There shall be a Design Committee organized as follows:

a) The Design Committee shall consist of three (3) members. No member shall be required to meet any qualification for a membership on the Design Committee.

Each of the said persons shall hold his office until such time as he has resigned or he has been removed or his successor has been appointed, as set forth herein.

b) Except as provided in paragraph (c) below, the right from time to time to appoint and remove all members of the Design Committee shall be and is hereby reserved to and vested solely in Grantor.

c) The right to appoint members to the Design Committee shall vest in the homeowners of Heughs Canyon Subdivision at such time as the last lot within Heughs Canyon Subdivision shall be sold by the Grantor.

1) Such right shall be exercised by majority vote of the homeowners present at any such meeting.

2) Such meeting shall be called by request of 10% of the homeowners or the Design Committee by giving five (5) days written notice to each homeowner of Heughs Canyon subdivision.

d) Any member of the Design Committee may, at any time resign from the Design Committee upon written notice delivered to Grantor.

Section 4.02

Design Committee Duties.

It shall be the duty of the Design Committee to correct; provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith. Without in any way limiting the generality of the foregoing, the Design Committee or any member thereof, may, but is not required to, consult with or hear any owner with respect to any plans, drawings or specifications, or any other proposal submitted to the Design Committee.

Article V Miscellaneous Provisions

Section 5.01

Amendment of Repeal;

Duration.

a) The Heughs Canyon Restrictions, or any part thereof, as from time to time in effect with respect to all or any part of Heughs Canyon, and any limitation, restriction, covenant or condition thereof, may, at any time be amended or repealed upon the happening of the following events:

(1) The vote or written consent of Owners owning not less than three-fourths (3/4) of the lots within Heughs Canyon, approving the proposed amendment or amendments to the Heughs Canyon Restrictions; and

(2) The recordation of a certificate setting forth in full the amendment or amendments to the Heughs Canyon Restrictions so approved, including any portion or portions thereof repealed, and certifying that said amendment or amendments have been approved by Owners owning not less than three-fourths (3/4) of the lots within Heughs Canyon.

b) All of the limitations, restrictions, covenants and conditions of the Heughs Canyon Restrictions shall continue and remain in full force and effect at all times with respect to all property and each part thereof, included within Heughs Canyon to the Owners

subject, however, to the right to amend and terminate as provided for in paragraph (a) above, for a period of twenty-one (21) years following the death of the survivor of all the living descendants of Jimmy Carter, President of the United States, but not beyond the year 2000 A.D.; provided, however, that unless within one (1) year prior to the expiration of said twenty-one (21) year period or prior to December 31, 1999, whichever occurs first, there shall be recorded an instrument directing the termination of the Heughs Canyon Restrictions signed by Owners of not less than two-thirds (2/3) of the lots within Heughs Canyon, the Heughs Canyon Restrictions in effect immediately prior to the expiration date shall, subject to the provisions of paragraph (a) above, be continued automatically without any further notice, for an additional period of ten (10) years and thereafter for successive periods of ten (10) years unless within one (1) year prior to the expiration of any such period the Heughs Canyon Restrictions are terminated as set forth above in this paragraph (b).

Section 5.02
Enforcement;
Non-Waiver.

- a) Except to the extent otherwise expressly provided herein, the Design Committee or any Owner or Owners shall have the right to all of the limitations, restrictions, covenants, conditions, obligations now or hereafter imposed by the Heughs Canyon Restrictions upon other Owners or upon any property within Heughs Canyon.
- b) Every act or omission whereby any restriction, condition or covenant of the Heughs Canyon Restrictions is violated in whole or in part is hereby declared to be and to constitute a nuisance and may be enjoined or abated, or whether or not the relief sought is for negative or affirmative action, by the Design Committee or by an Owner or Owners, as provided for in paragraph (a) above; provided, however, that any provision to the contrary notwithstanding, only the Design Committee or its duly authorized agents may enforce by self-help any limitation, restriction, covenant, condition or obligation herein set forth.
- c) Each remedy provided for in the Heughs Canyon Restrictions is cumulative and not exclusive.
- d) The failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien or charge of the Heughs Canyon Restrictions shall not constitute a waiver of any right to enforce any such provisions or any other provisions of the Heughs Canyon Restrictions.

Section 5.03
Construction;
Compliance with Laws;
Severability;
Singular and Plural Titles.

- a) All of the limitations, restrictions, covenants and conditions of the Heughs Canyon Restrictions shall be liberally construed, together, to promote and effectuate the fundamental concepts of Heughs Canyon, as set forth in the introductory paragraphs of this declaration.
- b) No provision of the Heughs Canyon Restrictions shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person of Heughs Canyon or any part thereof.
- c) Notwithstanding the provisions of paragraph (a) above, the limitations, restrictions, covenants and conditions of the Heughs Canyon Restrictions shall be deemed independent and severable and the invalidity or partial invalidity of any provision thereof, of any of such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision.
- d) The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context so requires.
- e) All titles used in the Heughs Canyon Restrictions including those of articles and sections, are intended solely for convenience of reference and the same shall not nor shall any of them affect that which is set forth in such Articles, sections nor any of the terms or provisions of the Heughs Canyon Restrictions.

Section 5.04
Obligations of Owners;
Avoidance; Termination.

Upon the conveyance sale, assignment or other transfer of a lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such lot after the date of such transfer, and no person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under the Heughs Canyon Restrictions following the date of such termination.

Section 5.05
Notices; Documents; Delivery.

Any notice or other document permitted or required by the Heughs Canyon Restrictions to be delivered may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Design Committee, at Kesler Co., Inc., Sandy, Utah. If to an Owner, then any lot within Heughs Canyon owned by the Owner; if to Grantor at the registered office provided, however, that any such address may be changed from time to time by any Owner, by the Design Committee, by notice in writing delivered to all Owners.

Section 5.06
Special Lot Provisions

a) The following additional special provisions shall apply to Plat "A" notwithstanding the prior paragraphs.

(1) **Easements.** Such easements and right-of-ways shall be reserved to the Developer, its successors and assigns, in and over said real property for the erection, construction and maintenance and operation thereon of drainage pipes, conduits, poles, wires and other means of conveying to and from lots in said subdivision, gas, electricity, power, water, telephone, sewer and any other thing for convenience to the owners of the lots in said subdivision as may be shown on the recorded Plat.

It is understood that lots number 13, 14, 15, 16, 17, 18, 21 and 22 are encumbered by a Salt Lake Aqueduct Easement. Owners are not permitted to construct permanent structures or plant trees over said easements (i.e. but not limited to tennis courts, landscaping, gardens, fences, etc.) are done at Owner's risk, and plans for same shall require review and approval by the U.S. Department of Interior, Bureau of Reclamation, hereinafter referred to as "U.S.", and the Metropolitan Water District of Salt Lake City, hereinafter referred to as "District". Any and all fences constructed over said easements must have metal gates installed being ten (10) feet wide and five (5) feet on each side of the centerline to permit ingress and egress along said easements. All gates shall be locked and the U.S. and the District shall be provided a common master key for all such locks. Owners of lots encumbered by the Salt Lake Aqueduct Easement as set forth above must, 48 hours prior to beginning construction of any homes or appurtenant improvements thereon, stake the location of same in the field and notify the U.S. and the District so as to permit inspection and approval to avoid any encroachment of the subject easements.

Pipeline or conduits shall not be constructed within 25 feet from the centerline of the subject Salt Lake Aqueduct except where necessary to cross the Aqueduct, and in such event all crossings must provide a minimum of one (1) foot clearance between such pipeline or conduit and the Aqueduct. All sewer pipeline crossings must cross under the Aqueduct unless otherwise approved in writing by the U.S. and the District, and all such sewer line crossings shall be constructed of cast iron with tight sealed joints for a minimum of twenty (20) feet on each side of the centerline of the Aqueduct.

Any increase in the cost to reconstruct, operate, maintain and repair the Salt Lake Aqueduct and appurtenant structures which result from the construction of the subdivision, homes and other physical structures and utility improvements in the subdivision shall be borne by subdivider or its successor in interest in the land. Any cost to the District or the U.S. which result from the construction of the subdivision or utility improvement shall be borne by the subdivider or its successor in interest in the land, and such costs shall constitute a lien on said land until paid.

2) **Notice of Seismic Conditions.** The Developer and Salt Lake County, hereby give notice that the subdivision is in Zone 3 of the U.S.G.S. Seismic Risk Map. Various faults exist in and near the subdivision. Lot owners may construct a building up to the edge of any known fault line, but may not construct any building directly over a fault line. The lot owner shall comply with all rules and regulations adopted by Salt Lake County regarding the construction of buildings in the subdivision.

3) **Exterior Lighting.** 1 post light and 2 front lights or garage lights will be required for each lot in order to provide neighborhood lighting on the whole. Lighting of residential house numbers shall be encouraged to insure night time visibility. Lot owners and their successor agree to pay for electric lights at the entrance of Heughs Canyon and above Wasatch Blvd. The cost will be prorated by the 23 lots in the subdivision into the power costs. This fee will be estimated for the year and to be paid every six months in advance to the Design Committee.

4) All property owners must landscape all water run off areas of lots and fills so as to contain the run off water from creating damage. Revegetation must be completed as soon as possible considering the season but no later than 1 year from date of excavation. Property owner will be responsible for run off water and revegetation.

EXHIBIT "A"

In any planting plan at least 70 percent by quantity of all new plantings shall be selected from the following:

List "A"

Trees

Acer glabrum	Rocky Mountain Maple
Amelanchier alnifolia	Sservice berry
Quercus gambellii	Gambel Oaks

Shrubs

Artemisia filifolia	Threadleaf Sage
Artemisia fridgida	Fringed sage
Aerocarpus monfamus	Birchleaf Mt. Mahogany
Cowania mexicana	Cliff rose
Mohonia aquifolium	Oregon grape
Rhus trilobata	Squawbush
Sheperdia argentia	Silver buffaloberry

Ground Covers and Vines

Arctostaphylos Uva-ursi	Red Bearberry
Clematis liquisticifolia	Western Virginsbower
Mahonia repens	Creeping Mahonia
Parthenocissus tricuspidata	Virginia Creeper
Potentilla verna	Spring Cinquefoil
Hardy Ferns	Hardy Ferns

Grass

For lawns use: Porter-Walton's "Magic Carpet" mix

For erosion control on all disturbed soils not otherwise planted, use:

Sodar wheat grass at 70 lbs. per acre or

Erosion control flower seed mix at 80 lbs. per acre
48 lbs. Escholzia California (California poppy)
16 lbs. Linum lewisti (Blue Flox)
16 lbs. Lupinus micranthus (Baby Blue Lupine)

In any planting plan, no more than 5 percent by quantity of all new plantings shall be selected from the following:

List "B"

Trees

Acer grandidentatum	Bib Tooth Maple
Gledisia triacanthos imermis	Thornless Honeylocust
Malus sp.	Flowering crab
Pinus nigra	Austrian Pine
Populus tremulcides	Quaking aspen
Sorbus aucuparia	European Mt. Ash

Shrubs

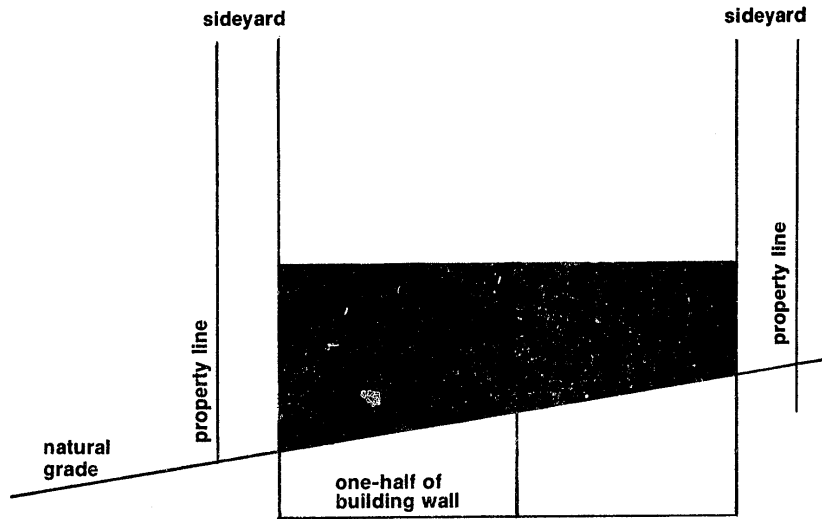
Berberis thimbergi atropurpurea	Real leaf Barberry
Ceanothus prostratus	Squaw Carpet
Cornus stolonifera	Red Osler Dogwood
Cotoneaster horizontalis	Rock Cotoneaster
Pinus mugo mughus	Mugo Pine
Rhus glabra	Smooth Sumac
Sambucus cerulea	Blue Elderberry
Sorbus scopuffina	Mt. Ash

Ground Covers and Vines

Ajunga reptans	Carpet Bringie
Cerastium tomentosum	Snow-in-Summer
Frageria chiloensis	Strawberry
Hedera helix	English Ivy
Pachysandra terminallis	Japanese Spruge
Vinca Mimor	Vinca

Notes: All annual and perennial herbaceous plants and bulbs known as "natives" shall be encouraged to be included in planting plans.

EXHIBIT "B"



**allowable building cubbage
Heughs Canyon**

IN WITNESS WHEREOF, the undersigned owner has executed
this document this 20th day of September, 1979.

KESLER CO., INC., a Utah Corporation

BY: *Dene J. Kesler*
DENE J. KESLER

ITS: President

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

On the 20th day of September, 1979, personally appeared before me DENE J. KESLER who being by me duly sworn did say, for himself, that he is the president of KESLER CO., INC., a Utah Corporation, and that the within foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said DENE J. KESLER duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Robert M. Tucker
Notary Public

My Commission Expires: 1-18-81

My residence is Salt Lake City, Utah

2200
\$
REF
PARACOUNT TITLE CO.
SEP 24 9 36 AM '79
KATIE L. DIXON
RECORDER
SALT LAKE COUNTY,
UTAH
Dene J. Kesler