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NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
MERRILL TITLE
REC BY: B GRAY DEPUTY - WI

WHEN RECORDED RETURN TO:

Judy H. Parmelee
1306 E. Brookshire Drive
Salt Lake City, Utah 84106

PARTY WALL AND RECIPROCAL EASEMENT AGREEMENT

H. PARMELER THIS AGREEMENT is made as of the 9th day of January, 1996 between JUDY PARMALEE ("Parmalee"), and KEITH/BRINGHURST and NANCY/BRINGHURST (collectively referred to herein as "Bringhursts").

WITNESSETH:

JH Parmelee WHEREAS, Parmelee is the owner of that certain parcel of land located in Holladay, Salt Lake County, Utah, known as 1306 East Brookshire Drive, as more particularly described on Exhibit A attached hereto and incorporated herein by reference ("Parcel A"); and

WHEREAS, Bringhursts are the owners of that certain parcel of land in Holladay, Salt Lake County, Utah, known as 1308 East Brookshire Drive, as more particularly described on Exhibit B attached hereto and incorporated herein by reference ("Parcel B"), which Parcel B adjoins the East side of Parcel A; and

WHEREAS, a twin home has been constructed with portions of said twin home being located on both Parcel A and Parcel B; and

WHEREAS, the East wall of that portion of the twin home located on Parcel A is common with the West wall of that portion of the twin home located on Parcel B ("Party Wall"); and

WHEREAS, the parcels will use a common driveway ("Driveway") for purposes of ingress to and egress from the parcels; and

JH Parmelee WHEREAS, Parmelee and Bringhursts are desirous of settling all differences and questions relating to the existence, ownership, maintenance and repair of the Party Wall and the Driveway; and

JH Parmelee WHEREAS, Parmelee and Bringhursts desire to subject their above described real property to the covenants, restrictions, easements, charges and liens hereinafter set forth;

HT 35202 + HT 35645

BK7310PG0874

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree that their above described real property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") set forth in this Agreement.

1. Declaration of Party Wall. It is hereby declared that the Party Wall shall be legally deemed to be a party wall in all respects and shall be subject to the Covenants and Restrictions set forth in this Agreement.

2. Encumbrances and Claims. The parties hereby mutually agree to waive any and all claims, damages, demands, actions, proceedings, rights, or remedies that each may have as against the other arising out of or relating to the Party Wall or any appurtenance thereto, as of the date of this Agreement.

3. Damage and Repairs of Party Wall.

(a) In the event of damage or destruction of the Party Wall from any causes, other than the negligence of either party, the then owners shall, at joint and equal expense, repair or rebuild the Party Wall on the same spot and on the same line, and of the same size, and of the same or similar material and of like quality with the present wall, and each party, his heirs, successors, and assigns shall have the right to the use of the Party Wall so repaired or rebuilt. The parties agree that repairs and reconstruction of the Party Wall shall be undertaken wherever a condition exists which may result in damage or injury to person or property if repair or reconstruction work is not undertaken. Either party, upon discovering the possibility of damage or destruction, shall notify the other in writing of the nature of the damage, the work required to remedy the situation, and the estimated cost of the repair or reconstruction. The other party shall then have twenty (20) days from the receipt of the notice either to object to the repairs or reconstruction or to pay that party's share of the cost of the work. However, in the event of an emergency (i.e., a condition that is immediately threatened to the safety of persons or property) the other party shall then have five (5) days from the receipt of the notice, which notice shall state that an emergency exists, either to object to the repairs or reconstruction or to pay that party's share of the cost of the work.

(b) If either party's negligence shall cause damage to or destruction of the Party Wall, the negligent party shall bear the entire cost of repair or reconstruction.

(c) If either party shall neglect or refuse to pay that party's share, or all of the cost in case of negligence, the other party may have the wall repaired or restored and shall be entitled to have a mechanics' lien and lis pendens on the property of the party failing to pay for the amount of such defaulting party's share of the repair or replacement cost.

(d) Except in cases of negligence as described above, in the event of substantial destruction to the Party Wall (i.e., where eighty percent (80%) or more of the Party Wall is destroyed by fire or otherwise), neither party shall be obligated to repair or restore the Party Wall and this Agreement shall terminate with respect to the Party Wall. Notwithstanding the above, should the parties agree to rebuild the Party Wall, or should any mortgage or other instrument require that the Party Wall be rebuilt, the parties shall jointly and equally share the cost of such reconstruction as provided above.

4. Transfer of Title to a Unit. Upon any transfer of title to either parcel, the party ("Grantor") and the purchaser ("Grantee") of such parcel shall be jointly and severally liable for all unpaid amounts pertaining to the Party Wall accrued up to the date of the conveyance without prejudice to the rights of the Grantee to pursue Grantor for payment, but the Grantee shall be exclusively liable for those accruing after the conveyance. In the event that a party shall place a mortgage on the unit, the lien of the mortgage shall be deemed to attach to the party's rights, privileges, and obligations under this Agreement so that if the party should be in default of any of the terms of the mortgage and the default shall result in foreclosure of the mortgage, all of the rights, privileges, and obligations shall inure to the mortgagee and its assigns. However, notwithstanding anything to the contrary set forth in this Agreement, if the holder of a first mortgage of record or other purchaser of a lot acquires title as a result of a foreclosure of the first mortgage, the purchaser and any successors and assigns shall not be liable for the amounts which became due prior to the acquisition of title in the foreclosure action. Except as provided above, all unpaid amounts shall be collectible from the parties, including such purchaser, and any successors or assigns in accordance with Paragraph 3.

5. Use of Party Wall. Either party shall have the right to use the side of the Party Wall facing the party's lot in any lawful manner, including attaching structural or finishing materials to it; however, a party shall not create windows or doors or place air conditioning equipment in the Party Wall without the consent of the other party. Any consent given to one of the parties to make openings in the Party Wall shall be subject to the right of the other party to close up such openings and/or remove such air conditioning equipment at such time as that party desires to use that part of the Party Wall.

6. Easements with Respect to Party Wall.

(a) Each party to this Agreement and his respective successors, heirs, or assigns shall have any easement in that part of the land of the other on which the Party Wall is located, as may be necessary or desirable to carry out the terms of this Agreement.

(b) Each party to this Agreement and his respective successors, heirs, assigns, contractors, licensees, agents and employees shall have an easement in that part of the land of the other necessary or desirable to repair or restore the Party Wall.

(c) Each party to this Agreement shall permit the other party and said other party's contractors, licensees, agents and employees to enter his property, at reasonable times, for the purpose of repairing and/or restoring the Party Wall and shall secure the permission of the party or the tenants, if any, occupying the property for such entrance.

7. Easements with Respect to Driveway.

(a) *Parcel A.* ~~Parmalee~~ ^{W Parmelee} hereby conveys, assigns, transfers and grants to Bringhursts, their heirs, successors and assigns, a nonexclusive easement and right-of-way on, over, across and through that portion of Parcel A on which the Driveway is constructed, and any modification or extension thereof, for ingress and egress by vehicular and pedestrian traffic at all times, and a nonexclusive easement and right-of-way on, over, across and through the Driveway for the purposes of maintaining, repairing, replacing and improving the Driveway.

(b) *Parcel B.* Bringhursts hereby convey, assign, transfer and grant to Parmalee, her heirs, successors and assigns, a nonexclusive easement and right-of-way on, over, across and through that portion of Parcel B on which the Driveway is constructed, and any modification or extension thereof, for ingress and egress by vehicular and pedestrian traffic at all times, and a nonexclusive easement and right-of-way on, over, across and through the Driveway for the purposes of maintaining, repairing, replacing and improving the Driveway.

8. Maintenance of Driveway. The parties hereby agree that each party hereto shall maintain, repair, replace, improve and keep in good condition and repair that portion of the Driveway located on their respective parcels so as to allow safe passage on, over, across and through the Driveway (including without limitation snow and ice removal) and to do so at their own expense.

9. Obstructions. The parties hereby agree that they shall not construct or erect, or permit others to construct or erect, any fence, wall, barricade or other obstruction on or near the Driveway, whether permanent or temporary in nature, which materially limits or impairs the free and unimpeded access to either parcel.


10. Insurance. Each party shall be required to obtain, and maintain, "All Risks" insurance for their respective portions of the building in an amount equal to eighty percent (80%) of the full replacement value of their portion of the building (exclusive of the cost of excavation and foundations), without deductions for depreciation. The parties shall not do or permit any act or thing to be done in or to the Party Wall or the Driveway which is contrary to law or which invalidates or is in conflict with the party's policy of physical damage insurance. A party who fails to comply with the provisions of this paragraph shall pay all costs, expenses, liens, penalties or damages which may be imposed upon the parties by reason thereof.

11. Duration and Amendment. The Covenants and Restrictions of this Agreement shall run with and bind the land, and shall inure to the benefit of and be enforceable by a party

owning any land subject to this Agreement, his respective heirs, successors and assigns unless an instrument agreeing to change said Covenants and Restrictions in whole or in part is signed by all of the parties and has been recorded. Provided, however, that no such agreement to change shall be effective unless made and recorded in advance of the effective date of any change. Unless the change is specifically prohibited by this Agreement, it may be amended by an instrument signed by the parties which shall be recorded and will supersede any and all other agreements relating to the subject matter hereof.

12. Indemnity. Each of the parties agrees to indemnify the other against the indemnifying party's share of the liability for injury or personal or property damage, when such injury or damage shall result from, arise out of, or be attributable to any maintenance or repair undertaken pursuant to Paragraph 3 or Paragraph 8 of this Agreement.

13. Notices. Any notice or report required under this Agreement shall be sent to the parties at the addresses respectively listed below, unless the address is changed by written notice to the other party, in which event the new address given shall be used for the sending of the notice or report.


Judy Parmalee- Parmelee
1306 East Brookshire Drive
Holladay, Utah 84106

Keith and Nancy Bringhurst
1308 East Brookshire Drive
Holladay, Utah 84106

In addition, any notice or report shall also be sent to the parties at their respective properties described above and all notices shall be sent by certified mail, properly addressed and postage paid.

14. Disputes. The parties understand, agree, and consent that any controversy or difference arising between the parties with respect to any of the provisions of this Agreement shall be submitted to the decision of three (3) arbitrators, one to be chosen by each party and the third to be chosen by the two chosen by the parties. If a party fails to choose an arbitrator within ten (10) days after the first one is chosen, then two other arbitrators shall be chosen by the American Arbitration Association. If the two arbitrators chosen by the parties fail to choose a third arbitrator within ten (10) days after they have been selected, then a third arbitrator shall be chosen by the American Arbitration Association. Each party will pay the cost of its experts, evidence, and legal counsel, but the other expenses of the arbitration will be borne equally by the parties. The arbitration will be governed by the Commercial Rules of the American Arbitration Association then in effect. A decision of a majority of arbitrators shall be final and conclusive on the parties. Judgment upon any award of the arbitrators may be entered in any

court of competent jurisdiction. Any party may institute arbitration under this section upon ten (10) days' notice and in the manner set forth in Paragraph 13.

15. Recording. The parties understand and agree that this Agreement shall be recorded in the County of Salt Lake, State of Utah and that this Agreement is binding on the parties and their heirs, successors and assigns. The cost of recording this Agreement and/or any changes or amendments thereto shall be borne equally by the parties.

16. Termination of Agreement. Except as specifically provided to the contrary herein, with respect to the Party Wall, this Agreement shall continue in full force and effect for so long as the Party Wall or any replacement thereof stands, and no longer, and without prejudice to the title of either party to the land so occupied by the Party Wall. With respect to the Driveway, this Agreement shall continue in full force and effect until the parties hereto, their successors or assigns, shall mutually agree in writing to terminate this Agreement.

17. Severability. Invalidation of any one of these Covenants and Restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

18. Number and Gender. Number and gender as used in this Agreement shall extend to and include both a singular and plural and all genders as the context and construction require.

19. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Utah.

20. Integration. This Agreement contains the entire agreement of the parties hereto, and supersedes any prior written or oral agreements between the parties concerning the subject matter contained herein.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

^{JP}
PARMELEE:

Judy C. Parmelee
Judy Parmelee / H. Parmelee

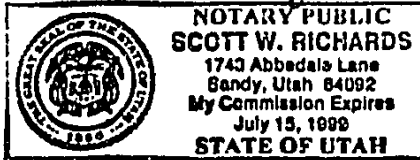
BRINGHURSTS:

Keith Bringham
Keith / Bringham

Nancy Bringham
Nancy / Bringham

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

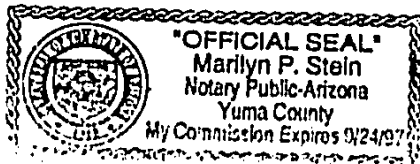
The foregoing instrument was acknowledged before me this 9th day of January, 1996, by Judy Parmelee / H. Parmelee.



Scott Richards
NOTARY PUBLIC

STATE OF ~~UTAH~~ ARIZONA)
) : ss.
COUNTY OF ~~SALT LAKE~~ YUMA)

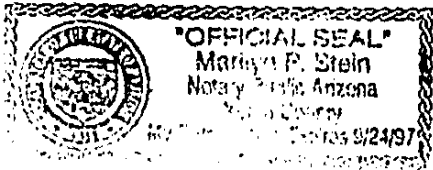
The foregoing instrument was acknowledged before me this 12th day of Jan, 1996, by Keith / Bringham.



Marilyn P. Stein
NOTARY PUBLIC

STATE OF ~~UTAH~~ ARIZONA)
 : ss.
COUNTY OF ~~SALT LAKE~~ / YUMA)

The foregoing instrument was acknowledged before me this 12th day of January,
1996, by Nancy / Bringhurst.
C. PCB



Marilyn P. Stein
NOTARY PUBLIC

EXHIBIT A
[Parcel A Legal Description]

Beginning at the Southwest corner of Lot 3, Ford Subdivision located in Block 23, 10 acre Plat "A" Big Field Survey and running thence North $0^{\circ} 58' 30''$ East along the West line of said Lot 72.91 feet; thence North $2^{\circ} 31' 23''$ West along said West line 75.63 feet to the Northwest corner of said lot and on a curve to the left, the radius point of said curve being North $62^{\circ} 51' 37''$ East 50.00 feet; thence Southeasterly along the arc of said curve and the North line of said lot and through a Delta angle of $56^{\circ} 25' 20''$, 49.24 feet; thence South $2^{\circ} 31' 23''$ East and along the center of a party wall 77.61 feet; thence North $87^{\circ} 28' 37''$ East along a party wall 2.00 feet; thence South $2^{\circ} 31' 23''$ East 7.50 feet; thence South $87^{\circ} 28' 37''$ West 2.00 feet; thence South $2^{\circ} 31' 23''$ East 26.87 feet to the South line of said Lot; thence South $76^{\circ} 53' 29''$ West along said South line, 42.84 feet to the point of beginning. Contains 4,873.0 square feet or 0.112 acres.

Subject to easements for an irrigation pipe and public utilities as shown on the recorded plat of the Ford Subdivision.

EXHIBIT B
[Parcel B Legal Description]

Beginning at a point North 76° 53' 29" East along the South lot line 42.84 feet from the Southwest corner of Lot 3, Ford Subdivision, located in Block 23, 10 acre Plat "A" Big Field Survey and running thence North 76° 53' 29" East along said lot line 19.57 feet to a lot corner; thence North 12° 37' West along a lot line 13.40 feet to a lot corner; thence North 76° 12' 44" East along the South lot line 49.05 feet to the Southeast corner of said Lot 3; thence North 25° 22' 54" West along the East line of said lot 96.615 feet to the Northeast corner of said lot and on a curve to the right, the radius point of said curve being North 25° 41' 54" West 50.00 feet; thence Westerly along the arc of said curve and the North line of said lot end through a Delta angle of 32° 08' 11" 28.04 feet; thence South 2° 31' 23" East and along the center of a party wall 77.51 feet; thence North 87° 28' 37" East along a party wall 2.00 feet; thence south 2° 31' 23" East 7.50 feet; thence South 87° 28' 37" West 2.00 feet; thence South 2° 31' 23" East 26.87 feet to the point of beginning. Contains 4,683.0 square feet or 0.108 acres.

Subject to easements for an irrigation pipe and public utilities as shown on the recorded plat of the Ford Subdivision.