

6742300  
09/18/97 09:37 AM 24.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
JAMES R BLAKESLEY  
2102 E 3300 S  
SLC, UT 84109  
REC BY:R JORDAN ,DEPUTY - WI

Mail recorded documents to:  
Mark B. Gray  
CAPRI PARK HOMEOWNERS ASSOCIATION  
3584 South 860 East, #88  
Salt Lake City, Utah 84106

MAINTENANCE AGREEMENT, WAIVER & GRANT OF EASEMENT

THIS AGREEMENT is made by and between the CAPRI PARK HOMEOWNERS ASSOCIATION of 3584 South 860 East, Salt Lake City, Utah 84106, referred to herein as "CAPRI", and DIMITRIOS TSAGARIS of 3652 South 900 East, Salt Lake City, Utah 84109, referred to herein as "TSAGARIS."

RECITALS:

A. CAPRI is the agent of the owners of the land located in Salt Lake County described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter called "Property A" or the "Benefitted Property") which is contiguous with and west of Property B.

B. TSAGARIS is the owner of the land located in Salt Lake County described with particularity on Exhibit "B" attached hereto and incorporated herein by this reference (hereinafter called "Property B" or the "Burdened Property") which is contiguous with and east of Property A.

C. The carports constructed on the eastern end of Property A and the parking lot constructed on the western end of Property B abut.

D. SALT LAKE COUNTY has asked TSAGARIS to construct a retaining wall approximately 18" east of the boundary line separating Property A and Property B.

E. CAPRI and TSAGARIS do not want the retaining wall because it will create an 18" gap between the carports and the wall which will be difficult to maintain and may fill with water, garbage, trash, refuse and debris.

F. The improvements to Property B may affect the drainage patterns of surface waters on Parcel A.

G. The parties desire to eliminate the need for a retaining wall and establish an acceptable drainage system for the surface waters.

BK 7760 PG 2498

6742300

AGREEMENT:

For the reasons recited above, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the undersigned agree as follows:

1. Grant of Surface Water Easement. TSAGARIS hereby grants to CAPRI a perpetual easement to drain the surface waters by or from the carports on Property A on to, across, through, over or under Property B, without any liability for trespass or other damages which may result therefrom or be caused thereby.
2. Waiver. TSAGARIS waives any and all rights of action, claims, demands, costs, expenses, awards, or judgments it may have against CAPRI, now or in the future, known or unknown, arising out of or caused by the discharge of surface waters from or by the carports on Property A on to, across, through, over or under Property B.
3. Release. TSAGARIS releases and forever discharges CAPRI from any and all losses, liabilities, damages, claims, demands, costs, expenses, awards, or judgments arising out of or caused by the discharge of surface waters from or by the carports on Property A on to, across, through, over or under Property B.
4. Indemnity. TSAGARIS agrees to and shall indemnify, save and hold CAPRI harmless from any and all liability, loss or damage CAPRI may suffer as a result of claims, demands, costs, expenses, awards, or judgments, including attorney's fees, arising out of or caused by the discharge of surface waters from or by the carports on Property A on to, across, through, over or under Property B.
5. Encroachment Easement and Waiver. CAPRI waives its right to require that TSAGARIS construct a retaining wall separating by 18" the carports on Property A from the parking lot on Property B. To the extent that an encroachment may be created by the construction of the improvements by TSAGARIS of Property B along its east/west boundary with Property A (i.e., where the carports on Property A meet the parking lot on Property B), CAPRI and TSAGARIS do hereby convey, grant and warrant against any person claiming by, through or under them, to each other and their successors and assigns as the owners from time to time of all or any part of the Property A and Property B, a perpetual non-exclusive easement and right of way over, across, under and through the encroached area as presently constituted for purposes of allowing the carports and the parking lot to remain and be constructed without the necessity of building the retaining wall or creating the 18" gap requested by SALT LAKE COUNTY.
3. Benefitted Property. The aforesaid surface water drainage easement and right of way shall be appurtenant to and constitute a portion of Property A, and shall benefit and run with said Property, and shall inure to the benefit of all successors and assigns thereof.
4. Burdened Property. The aforesaid surface water drainage easement and right of way shall run with, be binding upon and burden Property B.

BK7760PG2499

5. Construction Costs. TSAGARIS agrees to and shall, at its sole cost and expense, seal the carport walls on Property A, deposit sufficient soil against the carport wall, and install sufficient drains and sump pumps as may be necessary to create and maintain an adequate storm drainage system between Property A and Property B.

6. Maintenance. TSAGARIS shall be solely responsible, and its sole cost and expense, to maintain, repair and replace (as need be) the surface water drainage system between Property A and Property B, the drains and sump pumps.

6.1 Clean & Attractive Condition. The surface water drainage system shall be maintained by TSAGARIS in a usable, clean, functional, attractive and good condition.

6.2 Neglect. If the CAPRI determines that TSAGARIS has failed or refused to discharge properly its obligation with regard to the maintenance, repair, or replacement of items for which it is responsible hereunder; or that the need for maintenance, repair, or replacement of the area is caused through the willful or negligent act of TSAGARIS and it is not covered or paid by insurance, in whole or in part, then CAPRI may, but is not obligated to, provide such maintenance as is reasonably necessary and at TSAGARIS' sole expense. TSAGARIS shall pay CAPRI for such costs and expenses within thirty (30) days after CAPRI'S delivery of a written statement. If TSAGARIS fails or refuses to pay said costs and expenses when due, that amount constitutes a lien in favor of CAPRI on the interest of TSAGARIS, or his successors in interest, in Property B. Provided, however, except in an emergency situation, CAPRI shall give TSAGARIS written notice of CAPRI'S intent to provide maintenance or to repair or replace the surface water drainage system. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by CAPRI. TSAGARIS shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If CAPRI determines that an emergency exists, then notice and the opportunity to cure the default is not necessary.

7. Default & Remedies. In the event of a breach in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney's fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided by the laws of the State of Utah whether such remedy is pursued by filing suit or otherwise. All remedies herein specifically set forth are cumulative and shall be deemed to be in addition to any remedies otherwise available at law or in equity, which shall include the right to restrain by injunction any violation or threatened violation of any of the terms, covenants or conditions of this Agreement and by decree to compel specific performance of any of such terms, covenants or conditions, it being agreed that the remedy at law for any breach of such term, covenant or condition may not be adequate.

8. Duration. the easements, covenants, restrictions and other provisions of this Agreement shall be of perpetual duration.

OK 7760 Pg 2500

9. Amendment. This Agreement, or any easement, covenant, restriction or undertaking contained herein, may be terminated or amended only by the recording of the appropriate document in the TSAGARIS of the County Recorder of Salt Lake County, Utah, which document must be executed by CAPRI and all of the Owners as of the date of such document.

10. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties and any and all prior agreements or understandings with regard to the subject matter hereof are canceled in their entirety and are of no force and effect.

11. Captions. The captions appearing in this Agreements are for convenience in reference only. Should there be any conflict between any caption and the section with which it appears, the section and not the caption shall control.

12. Waiver. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or waiver of any subsequent breach.

13. No Partnership. Nothing in this Agreement shall be deemed or construed to create the relationship of principal and agent or partnership or joint venture or of any other similar association between the parties hereto.

14. Governing Law. This Agreement shall be governed by the laws of the State of Utah.

15. Binding Nature of Agreement. This Agreement shall inure to the benefit of and be binding upon the undersigned, their heirs, successors and assigns.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of this 14<sup>th</sup> day of August, 1997.

CAPRI PARK HOMEOWNERS ASSOCIATION

By: Mark B. Gray  
Title: Mark B. Gray, President

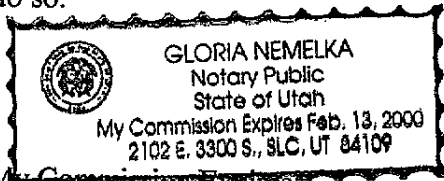
By: Dimitrios Tsagaris  
Title: Dimitrios Tsagaris

BK7760PG2501

ACKNOWLEDGMENTS

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

On this 11<sup>th</sup> day of August, 1997, personally appeared before me Mark B. Gray, the signer of the foregoing instrument who duly acknowledged to me that he is the President of the CAPRI PARK HOMEOWNERS ASSOCIATION, and that he executed the same on behalf of said ASSOCIATION, and that he had authority from the Association or its Board of Directors to do so.



My Commission Expires:  
2-13-2000

Gloria Nemelka  
NOTARY PUBLIC

Residing at: Salt Lake City, UT

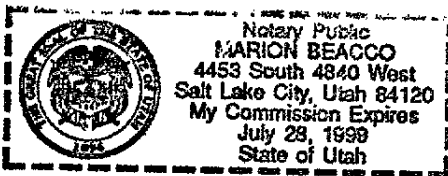
STATE OF UTAH )  
 )ss:  
COUNTY OF SALT LAKE )

On this 11<sup>th</sup> day of August, 1997, personally appeared before me, Dimitrios Tsagaris, the signer of the foregoing instrument who duly acknowledged to me that he executed the same.

Marion Beacco  
NOTARY PUBLIC

Residing at:

My Commission Expires:



BK7760PG2502

EXHIBIT "A"

The Land referred to in the foregoing document as Property A is located in Salt Lake County, Utah and is described more particularly as follows:

Beginning at the Northeast Corner of Lot 14, Block 20, Ten Acre, Plat A, Big Field Survey and running thence S 0°11'03" W 57.57 feet; thence S 89°58'47" W 300.00 feet; thence S 0°11'03" W 805.86 feet; thence N 89°59'45" W 464.90 feet; thence N 0°11'21" E 575.48 feet; thence S 89°59'13" W 305.94 feet; thence N 0°11'29" E 287.69 feet; thence N 89°58'42" E 305.93 feet; thence N 0°11'21" E 282.75 feet; thence N 89°58'10" E 562.92 feet; thence S 0°11'12" W 167.79 feet; thence N 89°58'30" E 19.52 feet; thence S 0°11'07" 47.11 feet; thence N 89°58'36" E 5.31 feet; thence S 0°11'12" W 65.53 feet; thence N 89°58'50" E 177.00 feet; thence S 0°11'03" W 2.43 feet to the point of beginning.

LIGHT TYPE  
CO. RECORDER

BK 7760 PG 2503

**EXHIBIT "B"**

The Land referred to in the foregoing document as Property B is located in Salt Lake County, Utah and is described more particularly as follows:

Parcel No. 1

BEG W 300 FT & N 143.35 FT FR SE COR LOT 14, BLK 20, 10 AC PLAT A, BIG FIELD SUR; E 102 FT; S 70 FT; W 102 FT; N 70 FT TO BEG. 0.16 AC M OR L.

LIGHT TYPE  
CO. RECORDER

Parcel No. 2

BEG 73.33 FT N FR SE COR OF LOT 14, BLK 20, TEN ACRE PLAT A, BIG FIELD SUR; N 70 FT; W 198 FT; S 70 FT; E 198 FT TO BEG. 0.32 AC 4522-7, 5523-2442, 5524-637, 5526-1738, 5537-22 7 5724-0002

BK 7760 PG 2504