

54/7

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SHADY GROVE P.R.U.D. SUBDIVISION, PHASE 1**

13-207-0001 thru 0031

1-14-99

THIS DECLARATION, made on the date hereinafter set forth by CASTLEWOOD INVESTMENTS L.C., a Utah Limited Liability Company, hereinafter referred to as "Declarant."

E 1494483 B 2462 P 422
SHERYL L. WHITE, DAVIS CITY RECORDER
1999 MAR 10 9:47 AM FEE 54.00 DEP D.M.
REC'D FOR BONNEVILLE TITLE COMPANY, INC

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property in Clinton City, County of Davis, State of Utah, which is more particularly described as:

PART OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT SOUTH 89°56'08" EAST ALONG THE SECTION LINE AND CENTER LINE OF 1800 NORTH STREET 825.83 FEET AND SOUTH 00°04'39" WEST 253.00 FEET FROM THE WEST QUARTER CORNER OF SAID SECTION 26; THENCE SOUTH 00°04'39" WEST 416.50 FEET; THENCE NORTH 89°56'08" WEST 150.68 FEET; THENCE NORTH 00°03'52" EAST 11.50 FEET TO A POINT ON A 15-FOOT RADIUS CURVE, THE CENTER OF WHICH BEARS NORTH 89°56'08" WEST; THENCE ALONG SAID CURVE TO THE LEFT 23.56 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00"; THENCE NORTH 89°56'08" WEST 143.36 FEET TO A POINT ON A 15-FOOT RADIUS CURVE, THE CENTER OF WHICH BEARS SOUTH 00°03'52" WEST; THENCE ALONG SAID CURVE TO THE LEFT 23.95 FEET, THROUGH A CENTRAL ANGLE OF 91°28'09"; THENCE NORTH 89°12'06" WEST 60.04 FEET TO A POINT ON A 15-FOOT RADIUS CURVE, THE CENTER OF WHICH BEARS SOUTH 88°35'43" WEST; THENCE ALONG SAID CURVE TO THE LEFT 23.18 FEET, THROUGH A CENTRAL ANGLE OF 88°31'51"; THENCE NORTH 89°56'08" WEST 143.40 FEET TO A POINT ON A 15-FOOT RADIUS CURVE, THE CENTER OF WHICH BEARS SOUTH 00°03'52" WEST; THENCE ALONG SAID CURVE TO THE LEFT 24.30 FEET, THROUGH A CENTRAL ANGLE OF 92°48'34"; THENCE SOUTH 02°44'42" EAST 9.70 FEET; THENCE SOUTH 87°15'18" WEST 150.41 FEET TO THE EAST RIGHT OF WAY LINE OF THE D&RGW RAILROAD; THENCE NORTH 02°41'46" WEST ALONG SAID LINE 634.53 FEET TO THE SOUTH RIGHT OF WAY LINE OF 1800 NORTH STREET; THENCE SOUTH 89°56'08" EAST ALONG SAID LINE 356.59 FEET TO A POINT ON A 25.5 FOOT RADIUS CURVE, THE CENTER OF WHICH BEARS SOUTH 00°03'52" WEST; THENCE ALONG SAID CURVE TO THE LEFT 40.06 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00"; THENCE SOUTH 00°03'52" WEST 100.00 FEET; THENCE SOUTH 01°34'30" WEST 75.87 FEET; SOUTH 00°03'52" WEST 9.66 FEET; THENCE SOUTH 89°56'08" EAST 408.77 FEET TO THE POINT OF BEGINNING.

CONTAINS 8.23 ACRES

NOW THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described Project or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE 1
DEFINITIONS**

Section 1. "Association" shall mean and refer to SHADY GROVE HOMEOWNER ASSOCIATION, its successors and assigns.

Cont. Article I,

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Section 2. "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 a part of the Project, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Project" shall mean and refer to that certain real property heretofore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owner. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

- (a) All areas designated as Common Area on the map attached hereto Exhibit "A" (The "Map").
- (b) All drainage easements, ditches, flood easements and rights of way or easements as may be necessary for water, sewage or other utility from time to time, including those areas shown on the Map.
- (c) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management except public roadways and easements in effect from time to time.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Project with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to CASTLEWOOD INVESTMENTS L.C., a Utah Limited Liability Company, its successors and assigns if such successors or assigns should acquire all of declarant's remaining interest in the Project.

ARTICLE II PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment (including late fees and interest, if any) against his Lot remains unpaid.
- (b) 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 by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenant, or contract purchasers who reside on his Lot; provided, however, that such right to delegate shall not allow an Owner to separate the right to use the Common Areas from his Lot, it being understood that such right is appurtenant to each Lot.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot who is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot, which is subject to assessment.

Cont. Article III

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Section 2. The Association shall have two classes of voting membership.

Class A. Class A member(s) shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for each Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier.

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on 31 December 2000.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Project, hereby covenants, and each Owner of such Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot 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 Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Project and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Twenty Dollars (\$120.00).

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 10% by a vote of two-thirds (2/3) of each class of members who have voting rights in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not to exceed the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, 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, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who have voting rights in person or by proxy at a meeting duly called for this purpose.

Cont. Article IV

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Section 5. Notice and Quorum for any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4, shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis, provided however, that the monthly assessment applicable to any Lot shall be fifty percent (50%) of the monthly assessments fixed for other Lots until the earlier to occur of the following: (a) such Lot has been both fully improved with all utilities installed and occupied for the first time on a residence; or (b) December 31, 2000.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly assessed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from such date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien of 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 lien thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V ARCHITECTURAL CONTROL

Section 1. No building, fence, wall, dog run, or other structure shall be commenced, erected or maintained upon any Lot or the project, nor shall any exterior addition to, or 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 as to harmony of external design and location in relation to surrounding structures and topography by Declarant, or the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board of Directors (the "Architectural Committee"). Failure of the Board or Architectural Committee to act within 30 days after submission shall be deemed to constitute approval by the Association.

Section 2. According to the landscape plans each Lot will have at least 1 (one) shade tree of at least 1 1/2 inch diameter in the park strip. The Association will maintain these trees and will replace if needed at the Association expense.

Section 3. The Association will maintain all fencing around the perimeter of said Project. The Homeowner will maintain each interior fencing them selves.

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Cont. Article V

Section 4. Any perimeter Lot will have a landscaped buffer area maintained by the Owner of such Lot.

ARTICLE VI USE RESTRICTIONS

Section 1. All Lots in the Project shall be known and described as single-family residential units and shall be used for no purpose other than single family residential purposes.

Section 2. There shall be no obstructions of the Common Areas by the Owner, their tenants, guests or invitees without the prior written consent of the Board of Directors. The Board of Directors may by rules and regulations, prohibit or limit the use of the Common Areas as may be reasonable, necessary for protecting the interest of all the Owners, or protecting the units or the Common Areas. Nothing shall be placed on, constructed in, or removed from the Common Areas except upon the prior written consent of the Board of Directors.

Section 3. Nothing shall be done or kept in any unit or in the Common Areas, or any part thereof, which would result in the cancellation of the insurance on the project or any part thereof or increase the rate of the insurance on the Project or any part hereof over what the Board of Directors would pay for such activity without the prior written consent of the Board of Directors. Nothing shall be done or kept in any unit or in the Common Areas or in any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validity imposed requirement of any government body. No damage to, or waste of, the Common Areas or any part thereof, shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Board of Directors and the other Owner harmless against all loss resulting from any such damage or waste caused by him or his invitees; provided, however, that any invitee of the Declarant shall not under any circumstances, be deemed to be an invitee of any other Owner. No noxious, destructive or offensive activity shall be carried on in any unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

Section 4. No sign or billboard of any kind shall be displayed to the public view on any portion of the Project or any Lot, except one sign for each building site, or not more than eighteen (18) inches by twenty four (24) inches, advertising any portion of the Project for sale or rent except signs used by Declarant, its successors or assigns, to advertise the Project during the construction and sales period.

Section 5. No noxious or offensive trade or activity shall be carried on in any Lot or any part of the Project, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owner of his respective Lot or which shall in any way increase the rate of insurance.

Section 6. No structure of a temporary character, trailer, basement, tent shack, garage, barn, or other out building shall be used in connection with any Lot at any time as a residence, either temporarily or permanently. No trailer, camper, boat, truck larger 3/4 ton, or similar equipment shall be permitted to remain upon any property within the Project, unless placed on a designated hard surfaced, off-street parking area which cannot be in front of house.

Section 7. No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept in or around any Lot or the Common Area, except usual and ordinary dogs, cats, birds and other household pets may be kept in or around any Lots subject to the rules and regulations adopted by the Association, provided, that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pet per household, provided however, that the Association (or the architectural committee or such other person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association shall have the right to prohibit maintenance of any animal, which constitutes, in the opinion of the Board of Directors, a nuisance to any other Owner. Animals belonging to Owner, occupants or their licensees, tenants or invitees within the Project must be either kept within an enclosure, an

Cont. Article VI, Section 7

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enclosed pens or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Architectural Committee. Should any animal belonging to an Owner be found unattended out of the enclosure and not being held on a leash by a person capable of controlling the animal such animal may be removed by Deedman (for as long as it owns any interest in the Project) or person designated by Deedman to do so, or the Board of Directors, to a pound under the jurisdiction of the local municipality in which the Project is situated and subject to the laws and rules governing said pound, or to a comparable animal shelter. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by animals brought or kept upon such Lot by an Owner or by members of his family, his tenants, or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Common Area.

Section 8. No rubbish, trash or garbage or other waste material shall be kept or permitted upon or around any Lot or Common Areas unless screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Project or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles designed and fire pits in the patios designed in such a manner that they do not create a fire hazard. No clothing or household fabrics shall be hung, dried, or aired in such a way on any Lot as to be visible to other Lots or the Common Area, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of any Lot except within an enclosed structure or appropriately screened from view.

Section 9. No fence, hedge, wall or other dividing instrumentality shall be constructed, planned or maintained except those that are approved by the Architectural control committee. The Committee may allow such as are compatible with its architectural plans, and total development of the Project.

Section 10. No television, radio, or other electronic antenna or device of any type shall be erected, constructed, placed or permitted to remain on any of the Lots or structures in said Lot unless and until the same have been approved in writing by the Architectural Committee of the Association.

Section 11. All exterior colors of the Project shall be earth tone in nature. Future maintenance, upkeep, etc. shall be of the same type, quality and color.

Section 12. Residents shall be restricted from erecting any buildings, structures or landscaping which shall interfere in such a manner with a contiguous Lot Owner within that 8 foot easement as shown on any plat or any recorded instrument.

ARTICLE VII GENERAL PROVISIONS

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

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90) percent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75) percent of the Lot Owners. Any amendments must be recorded.

Cont. Article VI

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Section 4. Assurances. Additional residential property and common area may be annexed to the Project with the consent of two-thirds (2/3) of each class of members of SHADY GROVE P.R.U.D. SUBDIVISION or may be annexed by the Declarant without the consent of members within 5 years of the date of this instrument.

*PHASE 1

Section 5. Maintenance. Each Owner of a Lot under lease shall be charged with the responsibility of maintenance and upkeep of same. Each house under Lot will be maintained in a manner acceptable to the Architectural Committee and the Association at all times.

Section 6. Creation of Maintenance Lien. In the event that a house under Lot is not maintained in an acceptable manner, as determined by the Architectural Committee under Association, the Architectural Committee or Association shall contact the Owner (by certified mail) stating the nature(s) of the maintenance in question and allowing a reasonable time for correction. In the event that maintenance corrections are not satisfactorily completed within the reasonable time period allowed, the Architectural Committee or the Association may contract for the work to be completed and pay for such work. The Architectural Committee or Association shall file a lien on said Lot and provisions of Article IV, Section 8 and Section 9 of this Declaration shall apply.

Section 7. Easements for City and County Use. In addition to the foregoing covenants over the Common Area, there shall be, and Declarant hereby reserves the covenants for itself and all future Owners, within SHADY GROVE, P.R.U.D. SUBDIVISION, easements for city, county and federal public services, including but not limited to, the right of police to enter upon any part of the Common Area for the purpose of enforcing the laws. Cities shall also have the easement and right-of-way on the Common Area and facilities for the purpose of repairing and replacing facilities therein and thereon at its option in the event the Association fails and neglects to do so and to have a lien thereon to guarantee improvement of the costs thereof against all Lots in the Project.

*PHASE 1

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 14th day of November 1998. January 1999.

CASTLEWOOD INVESTMENTS L.C.,
A Utah Limited Liability Company

John Lemley
JOHN LEMLEY, Manager

State of Utah)
)SS
County of Weber)
 Salt Lake

On the 14th day of October, 1998, personally appeared before me JOHN LEMLEY, who being duly sworn did say that he said JOHN LEMLEY, is the Manager of CASTLEWOOD INVESTMENTS L.C., a Utah Limited Liability Company, and that he, being duly authorized, did execute the foregoing instrument on behalf of said company.

Sheryl H. Robbins
Notary Public
Residing at: *Salt Lake City*
My Commission Expires: *March 20, 1999*

