

7522375

When Recorded Return To:
Scott O. Mercer
KESLER & RUST, P.C.
36 South State Street, Suite 2000
Beneficial Life Tower
Salt Lake City, Utah 84111

7522375
11/29/1999 04:09 PM 18.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
KESLER & RUST
36 S STATE ST
STE 2000
SLC UT 84111-1401
BY: SBN, DEPUTY - WI 5 P.

DECLARATION OF COMMON WALL COVENANTS AND EASEMENTS

This Declaration is entered into this 17th OF NOVEMBER RFA day of October 1999 by New Song-Salt Lake, Inc., a Utah non-profit corporation (hereinafter "New Song"), and Leo B. and Maxine Dykes, as husband and wife, and as individuals (hereinafter collectively "the Dykes").

WHEREAS, New Song is the owner of certain real property located in Salt Lake County, State of Utah, with the street address of 57 East 700 South, Salt Lake City, Utah, and more specifically described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as "Parcel A"); and

WHEREAS, the Dykes are the owners of certain real property located in Salt Lake County, State of Utah, with a street address of 47 East 700 South, Salt Lake City, Utah, and more specifically described in Exhibit "B" attached hereto and incorporated herein by this reference (hereinafter referred to as "Parcel B"); and

WHEREAS, Parcel A and Parcel B are adjacent parcels; and

WHEREAS, the roof of Parcel B rests upon and a mezzanine floor of Parcel B is bolted to and laterally supported by the west wall of Parcel A; and

WHEREAS, the parties hereto wish to provide for the joint maintenance of the west wall of Parcel A and to make it a common wall for the benefit of both parcels;

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

**ARTICLE I
DEFINITIONS**

For the purpose of this Declaration, the following terms shall have the meanings here ascribed to them:

1. "Parcel" shall mean and refer to said Parcel A or said Parcel B, respectively.

NO ATTACHMENT RECORDED
CO. RECORDER

BK8326PG0275

2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to either of the Parcels, including contract sellers and vendees, but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon the property by provision or operation of law.

3. "Parcels" shall mean and refer collectively to Parcel A and Parcel B.

ARTICLE II NO HAZARDOUS ACTIVITIES

No Owner shall engage in or permit any activities in his Parcel, or maintain or permit any conditions in his Parcel, which would be considered extra-hazardous by fire insurance companies or would adversely affect the insurability of improvements on the other Parcel.

ARTICLE III COMMON WALL

1. General Rules of Law to Apply. The west wall of Parcel A, including any existing utility lines running along said wall, shall constitute and is hereby declared to be a common wall (the "Common Wall") and each Parcel shall be subject to and together with an easement in said Common Wall, and on either side thereof, said easement to be appurtenant to each Parcel. To the extent not inconsistent with the provisions of this Article, the general rules of law in the State of Utah regarding common walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

2. Sharing of Repair and Maintenance Costs. The cost of reasonable repair and maintenance of the Common Wall shall be shared equally by the Owners of said Parcels A and B. However, in the event Salt Lake County or any other governmental entity requires the Common Wall to be upgraded due to a change in use or occupancy by only one of the Owners, or in the event only one of the Owners desires to modify the Common Wall, then that Owner alone shall be fully responsible for the cost of the upgrade.

3. Restoration of Damage to the Common Wall. If the Common Wall is damaged by fire or other casualty or by physical deterioration, either Owner may restore it, and shall have an easement over the adjoining Parcel for purposes of making such restoration. The Owner of the other Parcel shall contribute equally to the cost of restoration thereof, without prejudice, however, to the right of either Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions. If a fire or other casualty originating on the property of only one of the parties causes damage to the Common Wall, or if the negligent or intentional act of one of the parties causes damage to the Common Wall, that party (as between the parties) shall be solely responsible for the repair of the resulting damage.

4. Destruction by Fire or Other Casualty. If the Common Wall is destroyed by fire or other casualty, this Agreement and the rights granted herein shall terminate and neither of the Owners shall have any further right or interest in and to any portion of the Parcel of the other Owner or any part of the improvements thereon. In such event, if either Owner desires to rebuild such building or wall, he shall do so wholly on his own Parcel.

5. Removal of Buildings. If either Owner shall desire to remove a building located upon his Parcel, he may do so provided (a) he does not remove or weaken the Common Wall, and (b) at his own expense he repairs any damage caused to the Common Wall by such removal.

6. Right to Contribution Runs with Land. The right of either Owner to contribution from the other Owner under this Article shall be appurtenant to the Parcel and shall pass to such Owner's successors in title, shall constitute a lien upon the land until paid, and shall run with the land and bind the parties and their heirs and successors in title.

7. Disputes. In the event of any dispute arising concerning Common Wall, or the cost of maintenance or repair thereof, or otherwise under this Article III, and legal action is instituted by either party, the prevailing party to such action will be entitled to its attorney fees and costs.

8. Mechanic's Liens. Each Owner of a Parcel agrees to indemnify and hold harmless the Owner of the adjoining Parcel for any mechanic's liens arising from work done or material supplied to make repairs or replacements for which the first-mentioned Owner is responsible.

ARTICLE IV GENERAL PROVISIONS

1. Enforcement. Except as otherwise expressly provided herein, either Owner shall have the right to enforce, by any proceeding at law or in equity, or both, all of the terms and provisions of this Declaration. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

2. Severability. Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

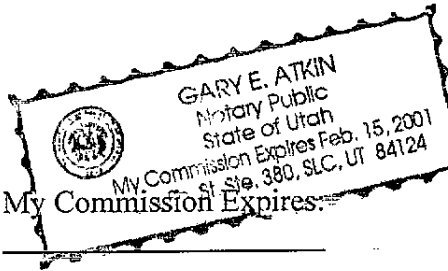
3. Amendments. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by all of the then Owners of the Parcels has been recorded, agreeing to change said covenants in whole or in part.

IN WITNESS WHEREOF, the undersigned, being the parties hereto, have executed this Declaration as of the day and year first above set forth.

STATE OF UTAH)
)s RFA
COUNTY OF SALT LAKE)

On the 2nd day of November, 1999, personally appeared before me Maxine Dykes who duly acknowledged to me that she is the signer of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



[Handwritten Signature]

NOTARY PUBLIC
Residing at _____