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ENT 82434 BK 3555 PG 744
NINA B REID UTAH CO RECORDER BY BT
1994 OCT 25 3:55 PM FEE 22.00
RECORDED FOR AFFILIATED TITLE COMPANY IN

DECLARATION
OF
EASEMENTS, COVENANTS AND RESTRICTIONS
[Lake Pointe Associates, Ltd./Eagle Hardware & Garden, Inc.]

THIS DECLARATION (this "Declaration") is entered into as of the 29 day of September, 1994, by LAKE POINTE ASSOCIATES, LTD., a Utah limited partnership ("Lake Pointe"), whose address is 127 South 500 East, Suite 310, Salt Lake City, Utah 84102, and EAGLE HARDWARE & GARDEN, INC., a Washington corporation ("Eagle Hardware"), whose address is 101 Andover Park East, Suite 200, Tukwila, Washington 98188.

FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Lake Pointe and Eagle Hardware agree as follows:

1. Definitions. As used in this Declaration, each of the following terms shall have the indicated meaning:

"Eagle Hardware Parcel" means the real property owned by Eagle Hardware and located in Utah County, Utah, described as follows:

All of Lot 1, Plat "A", Eagle Garden & Hardware Subdivision, according to the official plat thereof on file and of record in the office of the Utah County Recorder.

"Easement Area" means the real property located in Utah County, Utah, described as follows (a portion of which is located on the Eagle Hardware Parcel and a portion of which is located on the Lake Pointe Parcel):

Beginning at a point 1342.44 feet North 89°08'17" West along the North section line from the Northeast corner of Section 27, Township 6 South, Range 2 East, Salt Lake Base & Meridian, said point being the Northwest corner of Eagle Garden & Hardware Subdivision Plat "A", and running thence South 89°08'17" East 24.98 feet; thence South 01°05'00" West 553.94 feet to the North right-of-way line of 1300 South Street; thence along said right-of-way line North 89°13'00" West 50.00 feet; thence leaving said right-of-way line North 01°05'00" East 529.70 feet; thence South 89°08'17" East 24.96 feet; thence North 01°13'54" East 24.30 feet to the North boundary line of said subdivision and point of beginning.

"Lake Pointe Parcel" means the real property owned by Lake Pointe and located in Utah County, Utah, described as follows:

Commencing at a point which is South 246 feet and East 76.00 feet from the North quarter corner of Section 27, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North, a distance of 16.13 feet to a point on the beginning of a curve to the left, the radius point of which bears South 83°07'20" West 300 feet; thence along said curve in a northwesterly direction for 71.86 feet, having a Delta angle of 13°43'24" and a chord of North 13°44'30" West 71.68 feet, to a point on the beginning of a curve to the right, the radius point of which bears North 69°23'58" East 240 feet; thence along said curve in a northeasterly direction for a distance of 84.33 feet, having a Delta angle of 20°07'59" and a chord of North 10°32'03" West 83.90 feet; thence North 00°28'01" West, a distance of 27.21 feet to a point on a curve to the right, the radius point of which bears North 89°32'00" East 25 feet; thence along said curve in a northeasterly direction for a distance of 39.87 feet, having a Delta angle of 91°23'05" and a chord of North 45°13'33" East 35.78 feet; thence South 89°04'53" East, a distance of 7.19 feet; thence South 89°08'17" East, a distance of 780.74 feet; thence South 89°08'17" East, a distance of 482.19 feet to the westerly property line of Plat "A" of Eagle Garden & Hardware Sub'd as recorded in Entry No. 58029 Map 5620 in the Utah County Recorder's Office; thence along said line South 01°13'54" West, a distance of 370.68 feet; thence South 89°03'19" East 1.59 feet; thence South 01°17'43" West 159.00 feet to the northerly right-of-way line of 1300 South Street; thence along said right-of-way North 89°13'00" West 1261.11 feet to the East right-of-way line of 400 West; thence North along said right-of-way line, a distance of 45.51 feet; thence North 05°39'37" East, a distance of 88.09 feet to a point on the beginning of a curve to the left, the radius of which bears North 86°20'25" West 518.31 feet; thence along said curve in a northwesterly direction for a distance of 55.43 feet, having a Delta angle of 06°07'37" and a chord of North 00°35'47" East 55.40 feet; thence North 00°28'01" West, a distance of 104.92 feet; thence North 00°43'38" West, a distance of 17.31 feet to the point of beginning.

"Mortgage" means a mortgage or a deed of trust recorded in the official records.

"Mortgagee" means the mortgagee under a mortgage, or the beneficiary under a deed of trust, recorded in the official records.

"Official records" means the official records of the Utah County Recorder, State of Utah.

"Owner" means the person that at the time concerned is the legal owner of record (in the official records) of a whole or undivided fee interest in any portion of any Parcel. If there is more than one Owner of a Parcel at the time concerned, the obligations and liabilities of each such Owner for performance under, and compliance with, the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the term "Owner" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the Parcel concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

"Parcels" means the Lake Pointe Parcel and the Eagle Hardware Parcel, collectively, and "Parcel" means either the Lake Pointe Parcel or the Eagle Hardware Parcel, individually, where no distinction is required by the context in which such term is used.

2. Grant of Rights-of-Way and Easements.

2.1 Access Right-of-Way and Easement. The Parcels (but no other real property) shall have appurtenant thereto and shall be benefitted by, and the Easement Area shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for pedestrian and vehicular ingress and egress on, over and across the Easement Area. Such right-of-way and easement shall be limited to use for such purposes and to such extent as may be customary to the use of the Parcels for general commercial purposes, which shall include reasonable and customary deliveries.

2.2 Utilities Right-of-Way and Easement.

2.2.1 Grant of Right-of-Way and Easement. The Parcels (but no other real property) shall have appurtenant thereto and shall be benefitted by, and the Easement Area shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related facilities (including, without limitation, pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, sewage, storm drainage and all types of water) under, through and across the Easement Area.

2.2.2 Exercise of Right-of-Way and Easement. The Owners may (a) enter on any portion of the Easement Area as may be necessary or appropriate in order to accomplish the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of the utilities and facilities referred to in Paragraph 2.2.1, and (b) in connection with such utilities and facilities, excavate or conduct construction activities on the Easement Area, so long as such excavation or construction activities are performed in a good and workmanlike manner, do not disrupt, interfere with or damage any then existing utilities or related facilities and are prosecuted diligently to completion. On completion of such excavation or construction activities, the Owner concerned shall immediately restore any portion of the Easement Area affected to the same condition as existed prior to the commencement of such excavation or construction activities, using the same type and quality of materials previously used, and such Owner shall also be financially responsible for any disruption, interference with or damage to any then existing utilities or related facilities.

3. No Interference. Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the rights-of-way and easements granted in Paragraph 2 shall be constructed or erected, nor shall any Owner in any other manner obstruct or interfere with the use of such rights-of-way and easements.

4. Maintenance. The Easement Area shall at all times be properly surfaced with asphalt, concrete or other similar material, and each Owner shall at all times maintain or cause to be maintained that portion of the Easement Area located on such Owner's Parcel in a reasonably good, clean and safe condition and repair, reasonably free from debris, rubbish, snow, ice and other materials. If any Owner fails to comply with the provisions of the preceding sentence, any other Owner may (but is not obligated to), after giving twenty (20) days' written notice to the noncomplying Owner, perform or cause to be performed such work as is necessary to cause the Easement Area to so comply. In such event, all sums reasonably expended and all costs and expenses reasonably incurred by such other Owner in connection with such work shall bear interest from the date expended or incurred (as the case may be) at the rate of fifteen percent (15%) per annum until paid or otherwise satisfied in full, and shall be paid promptly to such other Owner by the noncomplying Owner on written demand.

5. Insurance. Each Owner shall at all times maintain commercial general liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 per occurrence. Each Owner's policy shall name each other Owner as an additional insured under such policy. Such insurance shall be with reputable companies qualified to do business in Utah. Concurrently with the execution of this Declaration, and thereafter not less than ten (10) days prior to the expiration date of the policy concerned, each Owner shall deliver to each other Owner a legible photocopy of a certificate evidencing such insurance. If any Owner fails to obtain such insurance within thirty (30) days after written notice of such failure from another Owner, any other Owner may purchase such insurance on behalf of the defaulting Owner. The defaulting Owner shall reimburse such other Owner for the cost of such insurance within ten (10) days after written demand.

6. Duration. This Declaration and each right-of-way, easement, covenant and restriction set forth in this Declaration shall be perpetual.

7. Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Parcels for the general public or for any public purpose whatsoever, it being the intention of Lake Pointe and Eagle Hardware that this Declaration be strictly limited to the purposes expressed in this Declaration.

8. Appurtenances to Parcels; Covenants Run with Land; Various Events.

8.1 Appurtenances to Parcels. Each right-of-way, easement, covenant and restriction created by this Declaration is an appurtenance to the Parcel benefited by such right-of-way, easement, covenant and restriction (but no other real property) and may not be transferred, assigned or encumbered except as an appurtenance to the benefitted Parcel. For the purposes of each such right-of-way, easement, covenant and restriction, the benefitted Parcel shall constitute the dominant estate and the burdened Parcel shall constitute the subservient estate.

8.2 Covenants Run with Land; Various Events.

8.2.1 Covenants Run with Land. Each right-of-way, easement, covenant and restriction contained in this Declaration (whether affirmative or negative in nature) shall (a) create an equitable servitude on the burdened Parcel in favor of the benefitted Parcel (but no other real

property), (b) constitute a covenant running with the land, (c) benefit and bind every person having any fee, leasehold, Mortgage lien or other interest in any portion of the Parcel concerned to the extent that such portion is affected or bound by the right-of-way, easement, covenant or restriction in question, or to the extent that such right-of-way, easement, covenant or restriction is to be performed on such portion, and (d) benefit and bind any Owner whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or other means.

8.2.2 Transfer of Parcel. If any Owner transfers all or any portion of the Parcel owned by such Owner, the transferee shall automatically be deemed to have assumed and agreed to be personally bound by the covenants of such Owner contained in this Declaration, and if the transferring Owner has by such transfer transferred all of such Owner's ownership interest in such Parcel, such transferring Owner shall be released and discharged from all obligations under this Declaration that accrue after the date of recordation in the official records of the instrument effecting such transfer.

8.2.3 Effect of Breach. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration (but such limitation shall not affect any other right or remedy or limit any obligation that any Owner may have under this Declaration by reason of any such breach), or defeat or render invalid the lien of any Mortgage made in good faith and for value as to any Parcel.

8.2.4 Identical Ownership. The ownership of both Parcels by the same person shall not result in the termination of this Declaration.

8.2.5 Priority of Declaration. The interests in and rights concerning any portion of the Parcels held by or vested in Lake Pointe, Eagle Hardware, any other signatory to this Declaration or any other person on or after the date of this Declaration shall be subject and subordinate to the arrangement provided for in this Declaration, and the arrangement provided for in this Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the terms and provisions set forth in this Declaration.

9. Modification. This Declaration and any right-of-way, easement, covenant or restriction contained in this Declaration may not be terminated, extended, modified or amended without the consent of each Owner, and any such termination, extension, modification or amendment shall be effective on recordation in the official records of a written document effecting the same, executed and acknowledged by each Owner; provided, however, that no such termination, extension, modification or amendment shall affect the rights of any Mortgagee holding a Mortgage constituting a lien on any Parcel unless such Mortgagee consents to the same in writing.

10. Attorneys' Fees. If any Owner brings suit to enforce or interpret this Declaration or for damages on account of the breach of any provision of this Declaration, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing party is entitled.

11. General Provisions. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah.

This Declaration shall inure to the benefit of, and be binding on, each Owner and the successors and assigns of each Owner. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Declaration.

LAKE POINTE AND EAGLE HARDWARE have executed this Declaration on the respective dates set forth below, to be effective as of the date first set forth above.

LAKE POINTE:

LAKE POINTE ASSOCIATES, LTD.,
by its general partner:

THE BOYER COMPANY, L.C.,
a Utah limited liability company

By *Kem C. Gardner*
Kem C. Gardner
President and Manager

Date 10-17-94

EAGLE HARDWARE:

EAGLE HARDWARE & GARDEN, INC.

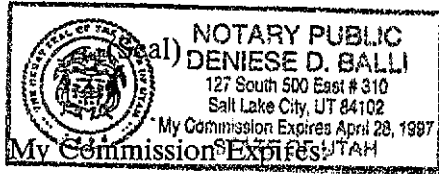
By *David J. Heerensperger*
David J. Heerensperger
Its Chairman of the Board & CEO

Date October 10, 1994

State of Utah)
County of Salt Lake) ss.

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The foregoing instrument was acknowledged before me this 17 day of ^{October} September, 1994, by Kem C. Gardner, President and Manager of The Boyer Company, L.C., the general partner of Lake Pointe Associates, Ltd.



Deniese D. Balli
Notary Public

Residing at:

Salt Lake County

4-28-97

State of WASHINGTON)
County of KING) ss.

The foregoing instrument was acknowledged before me this 10 day of October, 1994, by David J. Heerensperger, the Chairman of the Board & CEO of Eagle Hardware & Garden, Inc.

(Seal)

Nancy Smith
Notary Public

My Commission Expires:

April 15, 1998

Residing at:

Graham

