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STATE OF UTAH) SS
COUNTY OF CACHE)
FILED & C RECORDED FOR
BICKMAN LAND TITLE CO.
JUL 5 1 25 PM '78

Enabling Declaration of
S. Eugene Needham
Condominium

MICHAEL L GLEED
COUNTY RECORDER
DEPUTY *D. Best*

S. EUGENE NEEDHAM

Dated
Filed
Filing No.
Book Page

Declarant

to

Acknowledged

Whom It May Concern

THIS DECLARATION is made and executed this *5th* day of June, 1978, by S. Eugene Needham, (hereinafter referred to as "Declarant"), pursuant to the provisions of the Utah Condominium Ownership Act (Sections 57-8-1 through 57-8-35, Utah Code Annotated (1953)).

RECITALS:

- A. Declarant is the owner of that certain Parcel of real property more particularly described in Article II hereof.
- B. Declarant has constructed, or is in the process of constructing, upon said Parcel a Condominium Project, including certain Units and other improvements. All of such construction has been, or is to be, performed in accordance with the plans and specifications contained in the Record of Survey Map.
- C. Declarant desires, by filing this Declaration and the Survey Map to submit said Parcel and all improvements now or hereafter constructed thereon to the provisions of the Act as a Condominium Project to be known as the Heritage West Condominium.
- D. Declarant intends to sell to various purchasers the fee title to the individual Units contained in the Project, together with the undivided ownership interests in the Common Areas and Facilities appurtenant to such Units, subject to the covenants, restrictions, and limitations herein set forth.

NOW THEREFORE, for the foregoing purposes, Declarant hereby makes the following Declaration:

I. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the

meaning indicated. Any term herein which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act.

1. Act shall mean and refer to the Utah Condominium Ownership Act (Section 57-8-1 through 57-8-35 Utah Code Annotated (1953)).
2. Declaration shall mean and refer to this Enabling Declaration.
3. Record of Survey Map and Survey Map shall mean and refer to the Record of Survey Map filed herewith, executed the 30th day of June, 1978, consisting of 2 sheets, and prepared and certified to by Erwin N. Moser, a duly registered Utah Land Surveyor holding Certificate No. 46.
4. Management Committee and Committee shall mean and refer to the Management Committee of S. Eugene Needham Condominium.
5. Common Areas and Facilities shall mean and refer to, and include:
 - (a) The real property and interests in real property which this Declaration submits to the terms of the act.
 - (b) All Common Areas and Facilities designated as such in the Survey Map.
 - (c) All Limited Common Areas and Facilities.
 - (d) All roofs, halls, corridors, stairs, stairways, entrances, and exits which are designed for the use of more than one Unit.
 - (e) All installations for and all equipment connected with the furnishing of Project central services such as electricity, gas, water, and heat, but only to the extent such facilities are located within the buildings contained within the Project.
 - (f) All tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus, installations, and facilities included within the Project and existing for common use.
 - (g) All portions of the Project not specifically included within the individual Units.
 - (h) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety, or management.
6. Limited Common Areas and Facilities shall mean and refer to those Common Areas and Facilities designated herein or in the Survey Map as reserved for the use of a certain Unit or Units to the exclusion of the other Units, including: (1) some of the parking stalls which are included within the project (one per each home Unit); (2) each area labeled "patio" on the Survey Map; (3) each area labeled "Balcony" (4) that portion of Building consisting of the two entrance and exit halls.
7. Unit shall mean and refer to one of the home Units (nos.

1-3), one of the attic Units, or one of the storage Units which is designated as a Unit on the Record of Survey Map. Unless a wall on the perimeter wall shall constitute a part of the Unit to which it relates. A wall on the perimeter of a Unit which separates such Unit from, and is common to, another Unit shall, from and including the surface of such wall to its center, constitute a part of the Unit to which it relates. A Unit shall include any walls, partitions, and floors which are wholly contained within its vertical and horizontal perimeters and the surfaces of any floors, ceilings or coverings which bound it. A Unit shall not include pipes, wires, conduits, or other utility lines running through it which are utilized for or which serve more than one Unit.

8. Unit Number shall mean and refer to the number, letter, or combination thereof which designates a Unit in the attached Exhibit A and on the Record of the Survey Map.

9. Unit Owner or Owner shall mean and refer to the owner of the fee in a Unit and the percentage of undivided interest in the Common Areas and Facilities which is appurtenant thereof. The Declarant shall be deemed the owner of all unconstructed or unsold Units. In the event a Unit is the subject of an executory contract of sale, the contract purchaser shall, unless the seller and the purchaser have otherwise agreed and have informed the Committee in writing of such agreement, be considered the Unit Owner for purposes of voting and Committee membership.

10. Common Expenses shall mean and refer to all sums which are expended on behalf of all the Unit Owners and all sums which are required by the Management Committee to perform or exercise its functions, duties, or rights under the Act, this Declaration, the Management Agreement for operation of the Project, and such rules and regulations as the Management Committee may from time to time make and adopt.

11. Parcel shall mean and refer to the real property which Article II of this Declaration submits to the terms of the Act.

II. SUBMISSION

Declarant hereby submits to the provisions of the Act, as the Parcel associated with S. Eugene Needham Condominium, the following described real property in Cache County, State of Utah:

A parcel of land situated in Lots 2 and 3 of Block 12, Plat "A" of the Logan City Survey in the NE 1/4 section 33, Township 12 North, Range 1 East, Salt Lake Base and Meridian being further described as follows: Beginning 15 rods and 1 foot west of the SE corner of Lot 2

-3A-

Block 12 Plat "A" of the Logan City Survey, North 10 rods 13 feet (record) 178.00 feet (mea.) to an existing right-of-way thence west along said south line 3 rods (record) 53.20 feet (By Mea.) to the East right-of-way line of Third West Street. Thence along said East right-of-way line South 10 rods 13 feet (Record) 178.00 feet (Mea.) to the North right-of-way line of center street; thence east along said north right-of-way line 3 rods (record) 53.20 feet (mea.) to the point of beginning together with an undivided 1/8 interest in a right-of-way bordering the north line of the above described property. Containing in all 0.217 acres + subject to all existing easements and rights-of-way.

THE ABOVE DESCRIBED TRACTS, EASEMENTS, AND INTERESTS ARE SUBJECT TO all Patent reservations and exclusions; all visible easements and right-of-way; all easements and

rights-of-way of record; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which presently does or in the future may traverse or partially occupy the above-described Parcel; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon and under the following covenants, conditions, and restrictions:

1. Description of Improvements. The improvements included in the Project are now or will be located upon the Parcel described above, and all of such improvements are described in the Survey Map. The Survey Map shows the basements (if any), the number of stories, and the number of Units which are to be contained in the buildings which comprise a part of such improvements. The buildings shall be principally constructed of the following materials, to-wit:

The foundation is concrete, exterior walls are brick and mortar, the floor is composed of wooden beams, covered with plank or plywood, wood beam roofs covered with plank or plywood, roof is composed of asphalt.

2. Description and Legal Status of Units. The Record of Survey Map shows the Unit Number of each Unit, its location, dimensions from which those Limited Common Areas and Facilities (if any) which are reserved for its use, and the Common Areas and Facilities to which it has immediate access. All Units shall be capable of being independently owned, encumbered, and conveyed.

3. Contents of Exhibit A. Exhibit A to this Declaration furnishes the following information with respect to each Unit in the Project: (a) The Unit number; (b) the number of rooms (for home Units); (c) Those Limited Common Areas and Facilities having a numerical or letter designation which are reserved for use by the Unit (for home Units); and (d) The Unit's appurtenant percentage of undivided ownership interest in the Common Areas and Facilities.

4. Common Areas and Facilities. The Common Areas and Facilities contained in the Project are described and identified in Article I of this Declaration. The exclusive use of the parking stall designated with a P followed by

the number of the unit _____ to the stall and facilities to be used in common are reserved to the Unit or Units to which they are designated.

Neither the percentage of undivided interest in the Common Areas and Facilities nor the right of exclusive use of a Limited Common Area and Facility shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such percentage of undivided interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

5. Computation of Undivided Interest. The percentage of undivided interest in the Common Areas and Facilities which is appurtenant to each Unit has been computed by taking as a basis the value of such Unit in relation to the value of the Project as a whole. Thus, the percentage of undivided ownership interest appurtenant to each Unit is the ratio between the value of such Unit and the total value of all Units included within the Project.

6. Permissible Use of Units and Common Areas. Home Units are intended to be used for residential housing and are restricted to such use. Storage Units may be used for the storage of material, equipment, or supplies or for any purpose not incompatible with their location and the interests of the Project as a whole. No Unit shall be used, occupied, or altered in violation of law, so as to detract from the appearance or value of any other Unit, so as to jeopardize the support of any other Unit, so as to create a nuisance or interfere with the rights of any Unit Owner, or in a way which would result in an increase in the cost of any insurance covering the Project as a whole. The Common areas and Facilities shall be used in a manner consistent with their community nature. No animals other than small household pets shall be kept or allowed in any Unit or in any part of the Common Areas and Facilities.

7. Condition and Maintenance of Units. Each Unit shall be maintained so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Unit.

8. Status and General Authority of Committee. The Condominium Project shall be managed, operated, and maintained by the Management Committee consisting of all Unit Owners. The Committee shall, in connection with its exercise of any of the powers delineated in subparagraphs (a) through (i) below, constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted, the

following authority and powers:

(a) The authority, to grant or create, on such terms as it deems advisable, utility and similar easements, over, under across, and through the Common Areas and Facilities.

(b) The authority to execute and record, on behalf of all the Unit Owners, any amendment to the Declaration or Record of Survey Map which has been approved by the vote or consent necessary to authorize such amendment.

(c) The power to sue and be sued.

(d) The authority to enter into contracts which in any way concern the Project.

(e) The power and authority to convey or transfer any interest in real property.

(f) The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property.

(g) The power and authority to add any interest in real property obtained pursuant to subparagraph (f) above to the Condominium Project.

(h) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners.

9. Composition of Management Committee. The Committee shall be composed of three members. Each unit owner may then vote his percentage of undivided ownership interest in favor of the propositions of the management committee. The majority in interest of the committee shall be required to pass any proposition.

10. Committee Officers and Agents. The Committee shall perform its functions through those members who are elected as officers by the Committee and through such agents or employees as the Committee may appoint. The officers of the Committee, and their respective powers and functions, shall be as follows:

(a) President. The President shall be the chief executive of the Committee and shall exercise general supervision over the property and affairs of the Project. He shall preside over all meetings of the Committee and of the Unit Owners. He shall execute all instruments on behalf of the Committee.

(b) Secretary. The Secretary shall keep minutes of meetings of the Committee and of the Unit Owners and shall keep all records which are required or made necessary by the Act, this Declaration, or the Committee.

(c) Treasurer. The Treasurer shall have custody and control of the funds available to the Committee. He shall furnish

the Committee with a bond, in the amount specified by the Committee, conditioned upon the faithful performance of his duties. The offices of Secretary and Treasurer or of Vice President and Treasurer may be held by the same Committee member.

11. Meetings. A regular meeting of the unit owners shall be held at 7:30 p.m. on the first Wednesday in July, 1979, and on the first Wednesday of July, of each succeeding year. Whenever such a day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of the meeting shall be in Logan, Utah, specified in the notice of the meeting at least 10 days before the date of the regular meeting, a written notice thereof shall be personally delivered or mailed postage prepaid to each owner at his last known address. Such notice shall state the time, place, and general purpose of the meeting. A quorum for the transaction of business at any meeting shall consist of a majority of all the members then in office. Special meetings of the owners may be called by the president and a majority of the Committee members, at least 7 days prior to the date set for the special meeting, a written notice such as that described in the immediately preceding paragraph shall be personally delivered or mailed postage prepaid to each unit owner at his last known address. No notice of any owners meetings shall be required, if the owner is present at the meeting.

12. Capital Improvements. Additions or capital improvements to the Project shall be approved by the management of the committee.

13. Operation and Maintenance. The management Committee shall provide for the maintenance for the operation of the common and the limited common areas and facilities as may be reasonable necessary to keep them clean, functional, attractive and generally in good condition and repair. The Committee shall have no obligation regarding the maintenance or care of the units.

14. Payment of Expenses. Before November 1st of each year the Committee shall prepare a budget which sets forth an itemization of the Common Expenses which are anticipated for 12-month period commencing with the following January 1. Such budget shall take into account any deficit or surplus realized during the current fiscal year. The total of such expenses shall be apportioned among all the Units on the basis of their percentages of undivided ownership interest. Prior to the first day of each month during the fiscal year

covered by the budget each Unit Owner shall pay to the Committee as his share of the Common Expenses one-twelfth of the amount so apportioned to his Unit. If such monthly payments are too large or too small as a result of unanticipated income or expenses, the Committee may effect an equitable change in the amount of said payments. The dates and manner of payment shall be determined by the Committee. The foregoing method of assessing the Common Expenses to the Unit Owners may be altered by the Committee so long as the method it adopts is consistent with good accounting practice and requires that the portion of Common Expenses borne by each Owner during a 12-month period be determined on the basis of his undivided ownership interest.

15. Remedies for Nonpayment. Should any Unit Owner fail to pay when due his share of the Common Expenses, the Committee may enforce any remedy provided in the Act or otherwise available for collection of delinquent Common Expense assessments. Regardless of the terms of any agreement to which the Committee is not a party, liability for the payment of Common Expense assessments shall be joint and several, and any remedy for the collection of such assessments may be enforced against any person holding an ownership interest in the Unit concerned, against the interest which is held by him, against either or both the seller or purchaser under an executory contract of sale covering the Unit concerned, against the interests in the Unit which are held by any such seller or purchaser, and against any combination or all of such persons and interests. Any relief obtained, whether or not through foreclosure proceedings, shall include the Committee's costs and expenses and a reasonable attorney's fee. In the event of foreclosure, after institution of the action the Committee shall, without regard to the value of the Unit or the extent of the Owner's equity therein, be entitled to the appointment of a receiver to collect any income or rentals which may be produced by the Unit concerned.

16. Insurance. The Management Committee shall secure and at all times maintain the following insurance coverage:

(1) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of the entire Project. Such policy or policies shall be made payable to the Committee and all persons holding an interest in the Project or any of the Units, as their interests may appear.

(2) A policy or policies insuring the Committee, the

Manager, and the Unit Owners against any liability incident to the ownership, use, or operation of the Project or of any Unit which may arise among themselves, to the public, and to any invitees or tenants of the Project or of the Unit Owners. Limits of liability under such insurance shall be not less than \$300,000.00 for any one person injured, \$1,000,000.00 for all persons injured in any one accident, and \$100,000.00 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

The following additional provisions shall apply with respect to insurance:

- (a) In addition to the insurance described above, the Committee shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with condominium projects similar to the Project in construction, nature, and use.
- (b) All policies shall be written by a company holding a rating of "AA" or better from Best's Insurance Reports.
- (c) The Committee shall have the authority to adjust losses.
- (d) Insurance secured and maintained by the Committee shall not be brought into contribution with insurance held by the individual Unit Owners or their mortgages.
- (e) Each policy of insurance obtained by the Committee shall, if possible, provide: A waiver of the insurer's subrogation rights with respect to the Committee, the Manager, the Unit Owners, and their respective servants, agents, and guests; That it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Unit Owner or Owners; That it cannot be cancelled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Committee or of the Manager without a prior written demand that the defect be cured; That any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners.
- (f) Any Unit Owner may obtain additional insurance at his own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Committee. Any Unit Owner who individually obtains insurance covering any portion of the Project shall supply the Committee with a copy of his policy within 30 days after he acquires such insurance.

17. Damage to Project. In the event of damage to or destruction of part of all of the improvements in the Condominium

Project, the following procedures shall apply:

(a) If proceeds of the insurance maintained by the Management Committee are along sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

(b) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all the Unit Owners shall be assessed for any deficiency on the basis of their respective percentages of undivided interest in the Common Areas and Facilities.

(c) If 75% or more the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Management Committee are not along sufficient to accomplish restoration, and if the Unit Owners within 100 days after the destruction or damage by a vote of at least 66 2/3% elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subparagraph (b) above.

(d) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage and by a vote of at least 66 2/3%, elect to repair or reconstruct the affected improvements, the Management Committee shall promptly record with the Cache County Recorder a notice setting forth such facts. Upon the recording of such notice the provisions of subsections (1) through (4) of Section 57-8-31, Utah Code Annotated (1953), shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

Any reconstruction or repair which is required to be carried out by this Paragraph 17 shall be accomplished at the instance and direction of the Management Committee. Any determination which is required to be made by this Paragraph 17 regarding the extent of damage to or destruction of Project improvements shall be made as follows: The Management Committee shall select three MAI appraisers; each appraiser shall independently arrive at a figure representing the percentage of Project improvements which have been destroyed or substantially damaged; the percentage which governs the application of the provisions of this Paragraph 17 shall be the average of the two closest appraisal figures.

18. Consent Equivalent to Vote. In those cases in which the Act or this declaration requires the vote of a stated percentage of the Project's undivided ownership interest for the

authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the necessary percentage of undivided ownership interest.

19. Effect of Invalidity. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

20. Interpretation. To the extent the provisions of the Act are consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. This Declaration shall be liberally construed to effect its purpose. The captions which precede the Paragraphs of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed.

21. Covenants to Run with Land Compliance. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of the Act, the terms of this Declaration, and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

22. Agent for Service of Process. S. Eugene Needham, whose address is 250 W. Center, County of Cache, State of Utah, is the person to receive service of process in the cases authorized by the Act. The Management Committee shall, however, have the right to appoint a successor or substitute process agent. Such successor or substitute agent and his address shall be specified by an appropriate instrument filed in the Office of the County Recorder of Cache County, State of Utah.


Declarant

STATE OF UTAH)
(ss.
County of Cache)

On the 3rd day of July, 1978, personally appeared before me S. Eugene Needham, the signer of the within instrument, who duly acknowledged to me that he executed the same.

George W. Needham
Notary Public



Commission expires: 6-6-80
Residing at Logan, Utah

EXHIBIT "A"
TO
S. EUGENE NEEDHAM CONDOMINIUM

Unit #	Parking Area	Square feet of Unit	Ownership
1	p-1	2300	33 1/3%
2	p-2	1985	33 1/3%
3	p-3	2250	33 1/3%