

3420517

ENABLING DECLARATIONS  
OF  
BRIARCREEK CONDOMINIUMS II

THIS DECLARATION is made and executed this 31st day of March, 1980 by GRANITE SCHOOL DISTRICT (herein referred to as "Declarant"), pursuant to the provisions of the Utah Condominium Ownership Act (Sections 57-8-1 through 57-8-35, as amended, Utah Code Annotated, 1953, herein referred to as the "Act").

RECITALS

A. Declarant is the owner and in possession of that certain parcel of real property in Salt Lake County, Utah hereinafter described.

B. Declarant has constructed upon said parcel four duplex-type residential structures, including certain other improvements. Such construction has been performed in accordance with the plans and outlines contained in the Record of Survey Map being filed herewith.

C. Declarant desires, by filing this Declaration and its Record of Survey Map with the Salt Lake County Recorder, 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 BRIARCREEK CONDOMINIUMS II (sometimes herein referred to as "Briarcreek II").

D. Declarant intends to sell to various purchasers the title to the eight individual Units contained in Briarcreek II, together with the undivided ownership interests in the Common Areas and Facilities appurtenant to such Units, subject to the covenants and restrictions set forth herein.

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

I. D E F I N I T I O N S

When used in this Declaration, the following terms shall have the meanings indicated and those ascribed by the Act:

1. Declaration: shall mean and refer to this Enabling Declaration.

2. Record of Survey Map: shall mean and refer to the Record of Survey Map filed herewith, dated the 19<sup>th</sup> day of March, 1980 consisting of 2 sheets as prepared and certified by Aposhian Consulting Engineers, Inc., a duly registered Utah Land Surveyor.

3. Common areas and facilities: shall mean and refer to:

a. The real property and the interests in real property which by this Declaration have been submitted to the terms of the Act.

b. All Common Areas and Facilities designated by the said Record of Survey Map as such.

c. All open areas, retaining and/or perimeter walls and not constituting a portion of or included in the four structural improvements which comprise a part of the project.

d. All installations for and all equipment connected with the furnishing of central services to the project such as water, gas and electricity.

e. All roadways necessary for ingress and egress to deeded units as shown on the Survey Map.

f. All portions of the project not specifically included within the individual Units.

BOOK 5083 PAGE 306

g. All other parts of the project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management.

4. Management Committee and Committee: shall mean and refer to the Management Committee of Briarcreek II.

5. Unit: shall mean and refer to one of the dwelling units and its adjacent garage, which is designated as a Unit by a number on the Record of Survey Map. Unless a wall on the perimeter of a Unit separates and is common to two units, such perimeter wall shall, except for the finished surface thereof which is on the interior of a Unit, constitute a part of the Common Areas and Facilities. Such interior finished surfaces shall be parts of the Unit to which they relate. A wall on the perimeter of a Unit that is common to another Unit shall, from and to the surface of such wall to its center, constitute a part of the Unit to which it relates. A Unit shall include any walls and partitions which are wholly contained within its perimeter and the surfaces of any floors and ceilings which bound it. A Unit shall not include pipes, wires, conduits and other utility lines running through it which are utilized for or which serve more than one Unit.

6. Unit Number: shall mean and refer to the number, letter or combination thereof which designates a Unit in the Record of Survey Map.

7. 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 thereto. The Declarant is the owner of all of the completed and unsold units at this time. In the event a Unit becomes the subject of an executory contract of sale, the contract purchaser shall be considered the Unit owner for purposes of voting and Committee membership.

BOOK 5083 PAGE 307

8. 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, any Management Agreement for operation of the Project, and such rules and regulations as the Management Committee may from time to time make and adopt.

## II. SUBMISSION

Declarant hereby submits to the provisions of the Act and to these Declarations as the area and property constituting BRIARCREEK CONDOMINIUMS II, the following described real property situated in Salt Lake County, State of Utah:

Beginning at a point which is N 89°56' 59" W along the quarter section line 1336.73 feet and North 35.80 feet from the East quarter corner of Section 3, Township 2 South, Range 1 East, Salt Lake Base and Meridian, said point also being on the south right-of-way line of 4500 South Street; thence S 39° 27' 45" E 161.05 feet; thence S 80° 09' 30" W 424.71 feet; thence N 12° 20' W 139.91 feet to a point on an 1106.30 foot radius curve to the right, the radius point of which bears S 10° 59' 34" E; thence along the arc of said curve 22.23 feet through a central angle of 1° 09' 04"; thence N 80° 09' 30" E 328.97 feet to the point of beginning. (containing 1.247 acres.)

## III. COVENANTS, CONDITIONS AND RESTRICTIONS

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

1. The improvements included in the Project as development of Declarant's land are now located on the said parcel described above and identified in the Record of

Survey Map. The buildings are constructed principally of masonry brick exterior walls with wooden shingles and the interior walls surfaced with gypsum sheets.

2. The Record of Survey Map shows the Unit number for each Unit, its location and dimensions and also the Common Areas and Facilities which are reserved for use and for immediate access. Each Unit has an adjacent garage and each Unit is capable of being independently owned, encumbered and conveyed.

3. The Common Areas and Facilities are described above and identified on the Record of Survey Map and such percentages of undivided interests shall not be separated from the Unit to which such appertain and shall automatically accompany the transfer of the Unit to which such relates.

4. For purposes of determining the percentages of undivided interests in the Common Areas and Facilities which are appurtenant to the various Units, such have been fixed upon the basis that the floor space of each Unit is identical and there are eight such units hence the percentages are 12.5% for each Unit.

5. The Units are residential housing and each is restricted to such use. No Unit shall be used or occupied in violation of law, so as to create a nuisance or interfere with the rights of any other Unit owner or in such manner as to cause an increase in the costs of the insurance coverage.

6. Any owner who plans to sell his or her Unit or to enter into any agreement for another's occupancy thereof, shall at least ten days before the transaction is to be consummated, give the Committee written notice of such intentions. The notice shall furnish the name and address of the proposed purchaser or occupant and the terms of the transaction. At any time within seven days after

BOOK 5083 PAGE 309

its receipt of the notice, the Committee shall have the right to enter into the transaction upon the same terms as those offered. Thereafter, if the Committee exercises such right, it may then lease or sell the Unit to any party reasonably acceptable to it.

7. Briarcreek II shall be managed, operated and maintained by the Management Committee as agent for all Unit owners. That Committee shall in the exercise of its powers include those stated below, constitute a legal entity capable of dealing in its Committee name and have the following authority and powers:

a. The power to sue and be sued.

b. The power and authority to convey or to transfer any interest in real property and to record any necessary amendment to this Declaration so long as the vote or consent of the Unit owners necessitated by the agreement has been obtained.

c. The power to promulgate such reasonable rules and 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 several Unit owners.

d. The power and authority to perform any other acts and to enter into any other transactions which may be reasonable necessary for the said Management Committee to perform its functions as agent for the owners of the Units.

8. At all times the Committee shall carry out all of its functions through a Project Manager who shall be employed for that purpose. Such Manager so engaged by the Committee shall act for the benefit of the Unit owners and shall, to the extent permitted by law, be authorized to perform the functions and acts required of the Committee.

9. The initial Project Manager and the one upon whom legal process may be served shall be:

P. David Jensen - 4225 South 2300 East  
Holladay, Utah 84117

10. The Committee shall be composed of three members. At the first regular meeting of the Owners of Units, two members shall be elected for two-year terms and one member shall be elected for a one-year term. At each annual Owners' meeting thereafter any vacant seat on the Committee shall be filled with a member elected for a two-year term. Only Unit owners or officers of corporate Unit owners shall be eligible for Committee membership. At the annual meeting each Unit owner may vote his or her percentage of undivided ownership in favor of as many candidates for Committee membership as there are seats to be filled. In case of an interim vacancy, the remaining Committee members shall elect a replacement until the term of the one being replaced has expired. Committee members shall be reimbursed for all expenses reasonably incurred in connection with Committee business.

11. The Committee will perform its functions through officers elected from its membership and by agents duly appointed by it. Committee officers, agents and employees may be removed at any time by a majority vote of the members of the Committee. The designated officers are:

President: He shall be the chief executive of the Committee and shall preside over all meetings and exercise general supervision over the property of the Project.

Vice-President: He shall have and exercise all of the powers of the President in the event of his absence or inability to act.

Secretary: He shall keep minutes of all meetings of the Committee and record all items and maintain records essential under the Act and these Declarations.

Treasurer: The Treasurer shall have custody and control of the funds available to the Committee. The offices of Secretary and Treasurer may be held by the same Committee member.

12. A regular meeting of the Committee shall be held immediately after the adjournment of each annual Owners' meeting and at such time and place as the Committee shall provide. No notice need be given of the regular meeting. Special Committee meetings shall be held whenever called by the President or by a majority of the Committee after 24 hours notice or waiver of notice or by attendance by all Committee members. A majority of the Committee shall constitute a quorum for doing business.

13. Regular meetings of the Unit Owners shall be held on the first Tuesday in April of each year. The place of meeting shall be in Salt Lake County, Utah as is designated by the Committee. At least ten days before such meeting, written notice of the time and place shall be personally delivered or mailed, postage prepaid, to each Unit owner at his last known address. Special meetings of the Owners may be called by the President or a majority of the Unit Owners by giving notice of the time, place and purpose of such meeting in the manner set forth above but only four days notice shall be required. A majority of the Unit Owners shall constitute a quorum for the conduct of the business.

14. Additions or capital improvements to the Project which cost no more than \$5,000.00 may be authorized by the Management Committee alone. Those which will exceed such amount must, prior to being constructed, be authorized by at least a majority of the Owners.

15. The Committee shall provide for such maintenance of the Common Areas and Facilities as may be reasonably necessary to keep them clean, functional, attractive and generally in good condition and repair. The Committee may permit installation of individual air conditioning units which may intrude partially into portions of



the Common Areas. The Committee shall have no obligation regarding maintenance or care of home Units or garages.

16. Before the end of each year (calendar) the Committee shall prepare a budget which sets forth an itemization of the anticipated Common Expenses for the coming year. The total of such expenses shall be apportioned among all of the Units on the basis of their appurtenant percentages of undivided ownership interest. Prior to the first day of each month during the 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. The Committee may effect an equitable extra charge to meet unanticipated changes in the expenses. The date of payment and methods of assessment may be altered by the Committee in conformance with good accounting practices.

17. 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. The liability shall be joint and several and may be enforced against any party holding such an interest in a Unit, including both a seller and purchaser under an executory contract of sale of a Unit. The delinquent Unit Owner shall pay all costs of enforcement or collection, including reasonable attorneys fees, and if necessary, all costs of foreclosure.

18. The Management Committee shall secure and at all times maintain insurance coverage by a policy or by policies of fire and casualty insurance, with extended coverage, for the full insurable replacement value of the Project. The payee may be the Committee and all persons

holding an interest in the Project and the Units. Also, public liability insurance shall be maintained to protect the Unit Owners, the Committee and the Manager against any legally enforceable liability. The Committee shall have authority to adjust losses and any such insurance shall not be brought into contribution with insurance held by the individual Unit Owners or their mortgagees.

19. In those cases in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interests 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 the Unit Owners who collectively hold at least the necessary percentage of undivided ownership interests.

20. Except as provided below, the vote of at least 75% of the undivided ownership interests in the Common Areas and Facilities shall be required to amend this Declaration or the Record of Survey Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. Such instrument shall certify the vote required by this paragraph. The foregoing right of amendment shall be subject to the provision that until Units representing 50% of the undivided ownership interests in the Project have been sold, Declarant shall have the right to amend this Declaration and the Record of Survey Map in a manner consistent with law.

21. The Management Committee may adopt Community Rules which apply to the use and occupancy of the Common Areas and Facilities and the Units. Until others are

adopted, the following will apply:

a. the greens and walkways in front of and around the Units and the entrance-ways shall not be obstructed or used for any purpose other than for ingress and egress to and from the Units;

b. no exterior of any Unit shall be decorated nor awnings placed by any owner in any manner without the prior consent of the management;

c. no owner shall make or permit any noises that will disturb or annoy the occupants of any of the Units or do or permit anything which will unduely interfere with the rights or comfort of other owners;

d. the Units are designed for single family dwellings and none shall be used for living purposes by more people than it was designed to accomodate comfortably. No groups, unrelated by blood or marriage, shall be permitted to occupy the Units;

e. no sign, notice or advertisement shall be inscribed or exposed on or at any window or other part of the Units, except such as shall have been approved in writing by management. No noxious or offensive activity or business shall be carried on in any Unit nor in any Common Area; and

f. special rules may be adopted and circulated by the Management Committee and such shall become binding upon all Unit owners.

22. The agent for receipt of service of process is P. David Jensen, 4225 South 2300 East, Holladay, Utah, 84117. The Management Committee may select and designate a new or different agent and when such is done, that person shall automatically replace the one herein designated and shall succeed to all rights and duties relating to that responsibility.

24. The use of the masculine gender in the paragraphs above shall be deemed to include both male and female.

EXECUTED at Salt Lake City, Utah on the day  
and year first above written.

GRANITE SCHOOL DISTRICT

By Grant H. Linford  
President

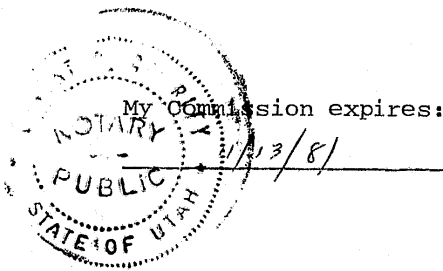
Attest:

Robert H. Boyer  
Clerk

STATE OF UTAH )  
: SS  
COUNTY OF SALT LAKE )

On the 31st day of March, 1980, personally  
appeared before me, a Notary Public, Grant H. Linford  
who being by me duly sworn did say that he is the President  
of Granite School District, the Declarant, and that the  
foregoing Declaration was signed by him on behalf of  
said District by authority of a resolution of its Board,  
and said President duly acknowledged to me that said  
District executed the same.

Edward K. Bourley  
Notary Public residing in  
Salt Lake County, Utah



4525 So 2300 E  
18.50 Suite 200  
APR 7 11 39 AM '80  
Badger JENSEN  
REC'D OF RENTALS  
REF  
KATIE L. NIXON  
RECORDER  
SALT LAKE COUNTY,  
UTAH  
BOOK 5083 PAGE 316  
DAVID DORSE