

**AMENDED DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS & RESTRICTIONS**

**OF**

**EVERGREEN COURT TOWNHOMES, PHASES I AND II**

ENT 11459 BK 4192 PG 15  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
1997 Feb 13 1:25 pm FEE 124.00 BY JRD  
RECORDED FOR EVERGREEN COURT ASSOCIATES

P.O. Box 1377  
Orem, Ut 84059

This declaration is made and executed this 17 day of October, 1996, by Evergreen Court Townhomes, Phase I, a California limited partnership, and is made pursuant to Utah Code Annotated 57-8-1 et. seq. (1953), as amended.

WHEREAS, the Declarant is the Owner of the following described real property, a townhome project located at Orem, Utah, and more particularly described as follows:

Phase I, a sixteen (16) unit townhome project legally described as follows:

Commencing at a point located North 00°37'00" West along and the Quarter section line 2673.02 feet and East 460.37 feet from the South Quarter of Section 15, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 00°03'15" East 68.00 feet; thence North 03°49'55" West 185.14 feet; thence North 00°00'00" East 67.51 feet; then 88°47'27" East 106.03 feet; thence South 30°23'10" East 57.44 feet; thence North 88°47'27" East 86.00 feet; thence 01°12'33" East 275.01 feet; thence North 89°56'45" West 214.53 feet to the point of beginning.

Phase II, a twenty-one (21) unit townhome project legally described as follows:

Commencing at a point located North 00°37'00" West along the one-quarter Section line 2993.28 feet and East 541.51 feet from the South one-quarter corner of Section 15, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 345.62 feet; thence South 88°50'47" East 212.91 feet; South 01°12'33" East 386.91 feet; thence South 88°47'27" West 86.00 feet; thence North 30°23'10" West 57.44 feet; thence South 88°47'27" West 106.03 feet to the point of beginning.

WHEREAS, the real property consists of the land above described, together with certain residential buildings hereafter to be constructed upon said premises, and

WHEREAS, the Declarant will construct said residential buildings and other improvements upon the real property in accordance with the plans and drawings set forth in the record of survey map filed for record concurrently herewith, consisting of 1 sheet, prepared and certified by Dudley and Associates, Utah Registered Land Surveyors, and

WHEREAS, the Declarant desires and intends to sell the fee title to the individual units contained in such townhome project, together with an undivided Ownership interest in the common areas and facilities appurtenant thereto, to various purchasers, subject to the Covenants, limitations, and restrictions herein contained.

### DECLARATION

NOW, THEREFORE, the Declarant hereby declares and certifies as follows:

1. **DEFINITIONS.** The terms used herein shall have the meaning stated in Utah Code Annotated Section 57-8-1 et. seq. (1953), as amended, and as follows unless the context otherwise requires:
  - a. The term the "Act" shall mean and refer to Utah Code Annotated Section 47-8-1 et. seq. (1953), as amended, as the same may be amended from time to time.
  - b. The term the "Project" shall mean and refer to the entire parcel of real property referred to in this Declaration and such additional real property as may be included in any expansion of the Project.
  - c. The term "Map" shall mean and refer to the Record of survey Map of Evergreen Court Townhomes filed for record simultaneously herewith by the Declarant, and any expansions or amendments thereto.
  - d. The term "Common Areas and Facilities" or simply the "Common Areas", shall mean and refer to:
    - (1) The above described land, as defined and delineated on the Map;
    - (2) Those Common Areas and Facilities specifically set forth and designated as such on the Map;
    - (3) The part of the Townhome Project not specifically included in the respective units as hereinafter defined;
    - (4) All foundations, columns, girders, beams, supports, main walls, retaining walls, roofs, halls, corridors, stairs, stairways, entrances and exits of the buildings, exterior walkways, service streets, yards, gardens, fences, all open parking spaces, installations of central services such as power, light, gas, all apparatuses and installations existing for common use, such community facilities as may be provided for, and all other parts of the Real Property necessary or convenient to its existence, maintenance, and safety of the Common Areas or normally in Common Areas;

- (5) All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein;
- (6) Any expansions thereto.
- e. The term "Unit Owners" or "Owners" shall mean and refer to any entity, including the Declarant, at any time owning a unit including a proportionate share of the Common Areas as defined herein. The term "Unit Owner" or "Owner" shall not refer to any Mortgagee as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure, or any proceeding in lieu of foreclosure.
- f. The term "Property" shall mean and refer to the land above described, (see Exhibit "A"), the building, all other improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles or personal property intended for use in connection therewith and any expansions thereto.
- g. The term "Unit" shall mean and refer to one of the residential units, owned in fee simple by Unit Owner which is designated as a Unit on the Map and in Exhibit "B" attached hereto (and incorporated herein by this reference). A Unit shall include any walls, partitions, and floor 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 on Unit.
- h. The term "Common Expenses" shall mean and refer to all items, things and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration, the By-Laws, such rules and regulations and other determinations and agreements pertaining to the Project as the Management Committee may from time to time adopt.
- i. The term "Management Committee" shall mean and refer to those persons duly elected thereto by the Unit Owners in accordance with the By-Laws hereto attached as Exhibit "C" and the provisions of paragraph 11.a. hereof.
- j. The term "Manager" shall mean and refer to the person, persons, corporation, or other entity engaged by the Management Committee to manage the affairs of the Project.
- k. The term "Mortgagee" shall mean and refer to any person named as the Mortgagee or beneficiary under any Deed of Trust under which the interest of any Unit Owner is encumbered.

1. Limited Common Areas. The words "Limited Common Areas and Facilities" or sometimes simply "Limited Common Areas" shall mean those common areas designated herein as reserved for the use of the particular Units to which they are adjacent, attached, or appurtenant, and/or as designated on the Map to the exclusion of the other Units.
  - m. To the extent applicable to the tenure hereof and not inconsistent herewith, the definitions contained in the Act are incorporated herein by reference and shall have the same affect as if expressly set forth herein and made a part hereof.
  
2. SUBMISSION TO TOWNHOME OWNERSHIP. The Declarant hereby submits the above-described land, the building, and other improvements constructed thereon, in addition to expansions thereto, together with all appurtenances therein, to the provisions of the Act as a Project to be known as Evergreen Court Townhomes. Declarant hereby declares that the Project and every party thereof is held and shall be held, conveyed, devised, leased, granted, encumbered, used, occupied and otherwise affected in any manner, subject to the provisions of this Declaration and the Act. Each and all of the provisions hereof are hereby declared to be in furtherance of the general plan and scheme of townhome Ownership, and are further declared to be for the benefit of the Project and every part hereof shall be deemed to run with the land as covenants running with the land, or as equitable servitude, as the case may be, and shall bind all persons hereafter acquiring or owning any interest in the Projects, however such interest may be obtained.
 

All present and future Owners, tenants, visitors, Mortgagees, and occupants of units shall be subject to, and shall comply with the provisions of this Declaration. Acceptance of a deed of conveyance, or the entering into a lease, or the entering into occupancy of any unit or accepting a mortgage on one of the units, shall constitute an agreement that the provisions of this accepted and ratified by such Owner, tenant, mortgagee, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage, or lease thereof.
  
3. THE BUILDINGS AND FACILITIES.
  - a. The Project (in addition to other improvements providing therefore) consists of thirty-seven (37) residential buildings as shown in the Map and any expansions thereto.
  - b. All other details involving the description and location of the Building, Units the number of stories, number of Units and other like details are shown on the Map which is filed of record simultaneously herewith and any expansions thereto.

- c. The common areas consists of landscaped areas and some common parking spaces, as denoted on the Map, and any expansions thereto.

4. NATURE AND INCIDENTS OF TOWNHOME OWNERSHIP.

- a. The Project is hereby divided into thirty-seven (37) Townhome Units each consisting of a fee simply interest in a Unit and an undivided fee simple interest in the Common Areas in accordance with the attached Exhibit "A", setting forth the respective undivided interest in the Common Areas appurtenant to each Unit. Such undivided interest in the Common Areas are hereby declared to be appurtenant to the respective units. The proportionate share of the Unit Owners in the Common Areas is based on the proportionate value that each of the Units bears to the total value of the Property. The percentage of Ownership in the Common Areas shall be for all purposes including, but not limited to, voting and assessment for common expense. The Project may be expanded by amendments to the Project documents.
- b. The limited Common Areas shall consist of the Property indicated and located as shown on the Map.
- c. Title to a Unit may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenant in common.
- d. No part of the Unit or of the legal rights comprising Ownership of the Unit may be separate from any other part thereof during the period of townhome Ownership prescribed herein, so that each unit, the undivided interest in the Common Areas appurtenant to such Unit and the exclusive right to use and occupy the Limited Common Area appurtenant to such Unit, shall always be conveyed, devised, encumbered, and otherwise affected only together and may never be separated from one another. Every gift, devised, bequest, transfer, encumbrance, conveyance, or other disposition of the Unit or any part thereof shall constitute a gift, devise, bequest, transfer, encumbrance, with all appurtenant right created by law or by this Declaration.
- e. The Common Areas shall be owned in common by all the Owners of Units, and no Unit Owner may bring any action for partition thereof, except as provided by law.
- f. Subject to the limitations contained in this Declaration, any Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas, and shall have the exclusive right to use and enjoy the Limited Common Areas designed herein for exclusive use by such Unit Owner.

- g. Each Owner shall have the exclusive right at his sole cost and expense to maintain, repair, paint, repaint, tile, wax, paper or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair, or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in, or connected with his Unit.
- h. Each Owner shall keep the Limited Common Areas designed for use in connection with his Unit in a clean, sanitary and attractive condition.
- i. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachment shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building on the Property, by error in the Map, by settling, arising, or shifting of the earth, or by changes in position caused by repair or construction of the Project or any part thereof.
- j. Some of the Common Areas, are or may be located within the Units or may be conveniently accessible only through the exercise by the Management Committee as their agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located herein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Area; or to another unit or Units. The Management Committee shall also have right independent of any agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the insistence of the Management Committee or of Unit Owners shall be an expense of all the Unit Owners; provided, however, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financial responsible for all of such damage. Such damage shall be repaired and the Property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Management Committee by assessment, pursuant to Paragraph 12 below.

- k. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to this Unit, and to the Limited Common Areas designated for us in connection with his Unit; and each Owner shall have the right to the horizontal and lateral support of a Unit and such rights shall be pertinent to and pass with the title to each Unit.
- l. The Management Committee shall have a non-exclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the Common Areas maintenance and storage facilities for the use by the Management Committee.
- m. Easements are reserved through the Project as may be required for utility services.
- n. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to subparagraphs i., j., k., l. and m., above even though no specific reference to such easements or to those sub-paragraphs appear in any such conveyance.
- o. Parking of any recreational vehicles on the premises is prohibited, except in regulated areas, including but not limited to, trailers, campers, motor homes, boats, snowmobiles, etc. All vehicles must have a valid current year registration.

5. RIGHT TO EXPAND AND STATE OF TITLE TO NEW UNITS. There is hereby granted unto Declarant, and Declarant hereby reserves, the absolute right and option to expand the Project at any time (within the limits herein prescribed) and from time to time, by adding to the Project, the Additional Land, or a portion or portions thereof. Notwithstanding any provision of the Act or this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Unit Owner, Mortgagee, Eligible Mortgagee or Eligible Insurer or Guarantor, or the Management Committee) and shall be limited only as specifically provided in the Act and this Declaration. Any given portion of the Additional Land shall be deemed added to the Project at such time as a supplement to this Declaration and to the Survey Map containing the information required by the Act and by the following section has been recorded with respect to the portion of the Additional Land concerned. After the recordation of such supplements, title to each Unit thereby created within the portion of the Additional Land concerned and its appurtenant percentage of the undivided Ownership interest in the Common Areas, shall be vested in and held by Declarant, and none of the other Unit Owners shall have any claim or title to or interest in such Unit or its appurtenant percentage of undivided Ownership interest. If at any time a particular portion of the Additional Land is added to the Project, there is of record a mortgage or deed of trust which by its term describes the real property thereby encumbered by a metes and bounds description or other description describing the lateral or perimetric boundaries of such real property (as distinguished from the description of a Condominium Unit), and if the parcel of real property defined by the description set forth in such mortgage or deed of trust includes the portion of the Additional

Land then being added to the Project and irrespective of whether or not any partial release or reconveyance pertaining to such mortgage or deed of trust has theretofore been recorded with respect to any other Condominium Unit in the Project, then in that even such mortgage or deed of trust, shall, upon the addition to the Project of that portion of the Additional Land concerned and whether or not such mortgage or deed of trust does so by its terms, automatically cover, encumber, and include each Unit thereby created within such portion of the Additional Land and such (Units') appurtenant undivided Ownership interest in the Common Areas. Nothing herein shall prevent the granting of a mortgage or a deed of trust on any Condominium Unit produced by the addition to the Project of a portion of the Additional Land, but any such mortgage or deed of trust shall be subject and inferior to the lien on or interest in such Condominium Unit which arise by operation of the immediately preceding sentence.

6. RIGHTS AND STATEMENTS RESPECTING ADDITIONAL LAND. Declarant hereby furnishes the following information and statements respecting the Additional Land and Declarant's right and Option concerning expansion of the Project by the addition thereto of the Additional Land or a portion or portions thereof:
- a. All of the Additional Land need not be added to the Project if any of such Land is added. Rather a portion or portions of the Additional Land may be added to the Project at any time (within the limits herein prescribed) and from time to time.
  - b. Except for the limitations and requirements set forth in the following item d., there are no limitations or requirements relative to the size, location, or configuration of any given portion of the Additional Land which can be added to the Project or relative to the order which particular portions of the Additional Land can be added to the Project.
  - c. There are no limitations or requirements relative to the location of improvements that may be made on any portion of the Additional Land which is added to the Project.
  - d. Assuming that the entirety of the Additional Land is added to the Project, the maximum number of Units which may be created on the Additional Land is two hundred and forty-nine (249). The maximum number of Units per acre that may be created on any portion of the Additional land added to the Project is eighteen (18).
  - e. Any Building or other structure erect on a portion of the Additional Land added to the Project need not be of the same architectural style or comprised of the same materials as structures within the preexisting Project. Nevertheless, any such Building or other structure shall be constructed in a good and workmanlike manner.
  - f. In addition to the Building or Buildings, if any, created on a portion of the Additional Land added to the Project, the significant improvements made to such portion may include, but are not limited to, asphalt roadways, open parking spaces, fully enclosed garages designed to accommodate one or two automobiles each, carports, concrete



sidewalks or walkways, fences, concrete patios, and porches, outdoor lighting, landscaping, additional recreational facilities, and other related improvements. All of the mentioned improvements may be of the type and in the location reasonably determine to be appropriate by Declarant, so long as such determination is not inconsistent with any limitation imposed by this Declaration.

- g. Each Building which is created on a portion of the Additional Land added to the Project may have a basement, may consist of either one, two, or three above-ground stories, may include one or more patios, porches, balconies, and/or decks, and may contain one or more Units. The aggregate floor space of any Unit (computed by measurements running from the interior surfaces of the walls surrounding the Unit, taking into account all finished and unfinished areas at each separate level, stormy, or floor contained within or making up the unit, and not excluding areas underlying interior partitions, utilized in stairwells, and the like) contained in such a Building may range from minimum of approximately 600 square feet to a maximum of approximately 5,000 square feet. Any such Unit may be of either a townhouse (multifloor) or apartment (single floor) style, and may include space located on one, two, or three levels. The overall configuration or any such Unit shall be reasonable in light of the total floor area thereof and the configuration of the Building within which it is contained.
- h. In conjunction with the addition to the Project of a portion of a portion of the Additional Land, Declarant shall have the right to create Limited Common Areas within such portion. Each of said Limited Common Areas shall be appurtenant to a Unit located within such portion of the Additional Land. Such Limited Common Areas may include and consist of: (1) patios, porches, balconies, decks and/or private yard areas attached or adjacent to a Unit located on the portion of the Additional Land concerned; and (2) storage areas or enclosed garages located anywhere on such portion of the Additional Land. The size, type, and total number of Limited Common Areas created within each portion of the Additional Land which is added to the Project shall be reasonable in light of the number and nature of Units created within the portion of Additional Land concerned and those Limited Common Areas which are located on other portions of the Tract.
- i. In conjunction with the addition to the Project of a portion of the Additional Land, Declarant shall have the right to reserve, in the instruments through which the addition is accomplished, reasonable rights-of-way and/or easements for purposes of enabling access to, furnishing utilities to, and facilitating or enabling development of, such of the Additional Land as has then not been added to the Project.
- j. Any expansion(s) of the Project through the addition thereto of the Additional Land or portions thereof, and through the creation on the portions of the Additional Lands concerned of additional Units, shall be such that the percentage of undivided Ownership interest in the Common Areas which at any point in time is appurtenant to any unit then in the Project is not more than 4% and not less than .045%.

- k. Taxes and assessments relating to any portion of the Additional Land added to the Project and relating to a period prior to the addition of such portion to the Project shall, prior to such addition, be either paid by the Declarant if then due or escrowed for later payment with a title company in the State of Utah if not then due.
7. PROCEDURE FOR EXPANSION. The supplements to this Declaration and to the Survey Map by which addition to the Project of any portion of the Additional Land is accomplished shall be executed by Declarant, shall be in recordable form, must be filed for record in the office of the County Recorder of Utah County, Utah on or before ten (10) years from the date that this Declaration is recorded, and when taken together shall contain the following information for that portion of the Additional Land which is being added to the Project.
- a. Data sufficient to identify this Declaration and the Record of Survey Map.
  - b. The legal description of the portion of the Additional Land being added to the Project.
  - c. A description of the Building(s), if any, located or to be located, on the portion of the Additional Land concerned and of all other significant improvements located or to be located on such portion. Such description shall provide essentially the same type of information as is provided in this Declaration with respect to the Buildings and improvements initially included in the Project.
  - d. The Unit Number of each Unit being created within the portion of the Additional Land concerned and any other data necessary for the proper identification thereof.
  - e. A description of any Limited Common Areas being created within the portion of the Additional Land concerned, together with a description of the Unit to which each is appurtenant.
  - f. The Survey Map information required to be furnished by Section 57-9-13(2) of the Act.
  - g. Such rights-of-way and/or easements as are being reserved by Declarant pursuant to item i. of the foregoing Section.
  - h. An amended Exhibit "A" to this Declaration setting forth the percentage of undivided Ownership interest which, after addition of that portion of the Additional Land concerned, shall appertain to each Unit in the Project, computed and derived as described in Section 4 of this Article III.

Upon the recordation of the supplements contemplated above, the revised schedule of undivided interests contained therein shall automatically become affective for all purposes and shall completely supersede any similar schedule which was contained in any Declaration or supplement previously recorded in connection with the Project or any portion of the Additional Land. And upon the recordation of such supplements they shall automatically

supplement this Declaration, the Survey Map, and any supplements previously recorded. At any point in time, the Declaration and Survey Map for the Project shall consist of this Declaration and the Survey Map initially effective hereunder, as amended and expanded by all supplements theretofore recorded pursuant to the terms hereof.

8. ADDITIONAL LAND -- MISCELLANEOUS. Until such time as any given portion of the Additional Land added to the Project has been fully developed and improved in the manner contemplated by the instruments through which such portion was added, unless Declarant gives its prior written consent thereto, neither the Management Committee nor the Association shall grant or create an easement, right-of-way, or similar matter affecting any part of such portion, improve or work on any part of such portion, or take any other action with respect to such portion which would or might impair Declarant's ability to exercise its rights concerning the same.

The legal description of the Additional Land is comprised of two separate components referred to as Phases III and IV and remainder, respectively, and are incorporated herein by this reference.

9. NO OBLIGATION TO EXPAND. Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed so as, to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (i) The addition to the Project of any or all of the Additional Land; (ii) the creation or construction of any Unit, Building, or other improvement; (iii) the carrying out in any particular way or within any particular time of any development or addition to the Project which may be undertaken; or (iv) the taking of any particular action with respect to the Tract, the Project, or any portion of the Additional Land. Except to the extent specifically indicated herein, no covenant, restriction, limitation, representation, or commitment in this Declaration concerning anything that is or is not to occur, apply, or be done on or relative to the Additional Land or any portion thereof shall be binding as to such of the Additional Land as is never added to the Project.

10. DESCRIPTION OF A UNIT. Every conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown on the Map with the appropriate reference to the Map and to this Declaration, as each shall appear on the records of the County Recorder of Utah County, Utah, in substantially the following fashion:

UNIT \_\_\_\_\_ IN BUILDING \_\_\_\_\_, as shown in the Record of Survey Map for Evergreen Court Townhomes, appearing in the records of the County Recorder of Utah County, Utah, in Book \_\_\_\_\_, Page \_\_\_\_\_, of Declaration of Easements, Covenants, Conditions, and Restrictions of townhomes for Evergreen Court Townhomes, Phase I and II appearing in such records in Book \_\_\_\_\_, Page \_\_\_\_\_, of Records, together with an undivided interest in and to the Common Areas, as the same is established and identified in

the Declaration and Map referred to herein above. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Areas, and to incorporate all the rights incident to Ownership of a Unit and all the limitations on such Ownership as described in this Declaration.

11. MANAGEMENT COMMITTEE, RIGHTS AND OBLIGATIONS

- a. The business, Property and affairs of the Project shall be managed by the Management Committee composed of three members (President, Vice-President, and Secretary/Treasurer). At the office of President, who's term of office shall be for eighteen months for the very first term. Thereafter, the term of the office of President will be fore one year. Only Unit Owners and Officers, Directors, Agents and Employees of Owners, other than individuals, shall be eligible for Committee membership. At the annual meeting, each Unit Owner may vote his percentage of undivided interest in favor of as many candidates for Committee membership as there are seats on the Committee to be filled; provided, however, that until the annual Owners meeting occurs, the Declarant alone shall be entitled to select the three Committee members. Until the first annual meeting of the Owners, the members of the Committee shall be as follows:

President  
 Vice-President  
 Secretary/Treasurer

The first annual meeting of the Owners shall be held on the first Tuesday of the month following the sale of 75 percent of the undivided interest in the Common Areas and Facilities have been conveyed or within three years of the date of this Declaration, whichever comes first.

In the event a Committee seat which was filled by Declarant becomes vacant, Declarant shall have the right to select a replacement member to sit on the Committee for the balance of the term associated with the vacated seat. In all other cases of vacancy, the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected.

- b. The Management Committee, subject to the right of the Owners set forth in paragraph 4 hereof, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair; provided, however, that each Owner of a Unit shall keep the Limited Common Areas designated for use in connection with his/her Unit, in a good, clean, sanitary and attractive condition. The Management Committee

shall be responsible for the maintenance and repair of roofs, the maintenance and repair of other Common Areas and all other improvement of material located within or used in connection with the Common Areas. The Management Committee shall have the exclusive right to contract for all goods, services, and insurance payment of which is to be made from the common expense fund subject to the provisions of subparagraph f. below. The specification of duties with respect to other Common Areas, as set forth in the first sentence in this paragraph. The cost of such management, operation, maintenance, and repair by the Management Committee shall be borne as provided in paragraph 12 of this Declaration.

- c. The Management Committee may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Management Committee shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Management Committee or by any person or entity with who or which it contracts. The Management Committee may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Management Committee may arrange with others to furnish lighting, water, snow removal, grounds maintenance, and other common services to each Unit. The cost of such services shall be borne as provided in Paragraph 12 of this Declaration.
- d. The Management Committee may acquire and hold for the use and benefit of all of the Owners' tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interest in the Common Areas. Such interest shall not be transferable except with the transfer of a Unit. A transfer of a Unit shall transfer to the transferee Ownership of the transferor's beneficial interest in such Property without any reference thereto, and such beneficial interest may in no event be reserved by the transferor of the Unit. Each Owner may use such Property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.
- e. The Management Committee may make reasonable rules and regulations governing the use of the Units and of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Management Committee may suspend any Owner's voting rights in the meeting of Unit Owners during any period or periods during which such Owner fails to comply with such rules and regulations, or with any other obligations of such Owner under this Declaration, after sending such Owner a notice of non-compliance, at least ten (10) days prior to the meeting of the Committee at which action may be taken. The Management Committee may also take judicial action against any Owner to enforce compliance with such rules, regulations or other obligations or to obtain damages for non-

compliance, all to the extent permitted by law. The Owner may appear at such meeting to present evidence supporting his position.

- f. The Management Committee may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## 12. ASSESSMENTS.

- a. Declarant, for each Unit owned by it within the Project, and for and as the Owner of the Project and every part thereof, hereby covenants, and each Owner of any Unit by the acceptance of a deed therefore, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Management Committee to pay to the Management Committee for the purposes provided in this Declaration, any special assessments for capital improvement and other matters as provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time in the manner provided hereunder.
- b. The total annual assessments against all Units shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas or furnishing among other things, expenses of Management; grounds maintenance; taxes and special assessments levied by governmental authorities until the Units are separate assessed as provided herein; premiums for all insurance which the Management Committee is required or permitted to maintain pursuant hereto; common lighting and hearing; common water charges; repairs and maintenance; wages for Management Committee employees' legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Management Committee for the benefit of the Owners under or by reason of this Declaration.

Each townhome Unit shall be separately metered for gas and electricity. Costs of gas and electric service shall be paid by the individual Unit Owners. Water, sewer, and garbage shall be metered individually. The Owners' Association shall pay the costs of common water.

- c. Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among all Units in proportion to their respect undivided interest in the Common Areas. For this purpose Declaration shall be considered to own only the undivided interest in Common Areas based upon Units not conveyed by Declarant.

To evidence a lien for sums assessed pursuant to this Section, the Management Committee may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by the Management Committee and may be recorded in the office of the County Recorder of Utah County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Management Committee in the same manner in which mortgages on the real property may be foreclosed in Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses of filing the notice of lien and all reasonable attorney's fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The lien shall also secure, and the Owner shall also be required to pay to the Management Committee any assessments against the Unit which shall become due during the period of foreclosure. The Management Committee shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the same as the Owner thereof.

A release of lien shall be executed by the Management Committee and recorded in the office of the County Recorder of Utah County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

An encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Management Committee with respect to such lien, including priority.

The Management Committee shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for longer than ninety (90) days after the same shall have become due; provided, however, that such encumbrancer first shall have furnished to the Management Committee written notice of such encumbrance.

- g. The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Management Committee. Suit to recover a money judgment for such personal obligation shall be maintainable by the Management Committee without foreclosing or waiving the lien securing the same. No Owner may void or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit.
- h. Upon payment of a reasonable fee not to exceed ten dollars (\$10.00), and upon written request of any Owner of any Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, the Management Committee shall issue a written statement setting forth the amount of the unpaid assessment, if any, with respect to such Unit; the amount of the current yearly assessment and the portion thereof which has heretofore been paid; credit for advanced payments or prepaid items, including,

- d. Annual assessment shall be made on a calendar year basis. The Management Committee shall give written notice to each Owner as to the proposed budget and the amount of the annual assessment with respect to this Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year, provided, however, that the first annual assessment shall be for the balance of the calendar year remaining after the date fixed by the Management Committee as the date of commencement of the Project. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessments for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period. Each annual assessment shall be due and payable in monthly installments on the 1st day of each and every month and no separate notices of such monthly installment shall be required. Each monthly assessment shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.
- e. In addition to the annual assessments authorized herein under, the Management Committee may levy in any assessment year a special assessment, payable over such a period as the Management Committee may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part hereof, or for any other expense incurred or to be incurred as provided in this Declaration. This paragraph shall not be construed as an independent source of authority for the Management Committee in incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other paragraphs thereof which shall make specific reference to this paragraph. Any amounts assessed pursuant hereto shall be assessed to the Owners in proportion to their respective undivided interest in Common Areas shall be determined on the same basis set forth in subparagraph c. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.
- f. All sums assessed to a Unit pursuant to this Section, together with interest thereon as provided herein shall be secured by a lien on such Unit in favor of the Management Committee. Such lien shall be superior to all other liens and encumbrances on such Unit, except only for: (a) valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; and (b) encumbrances on the interest of the Unit Owner recorded prior to the date notice of the lien provided for herein is recorded encumbrances. All other lienors acquiring liens on any Unit after this Declaration shall have been recorded in said records shall be deemed to consent that such liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.



but not limited to, an Owners' share of prepaid insurance premiums; and such statement shall be conclusive upon the Management Committee in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, all unpaid assessments which become due prior to the making of such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligations of the purchase shall be released automatically if the statement is not furnished within ten (10) days provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Unit.

- i. Subject to the provisions of subparagraph h., a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice, to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.
- j. The Association may levy fines against the Unit Owner who violates any of the provisions of the Articles of Incorporation, Declaration of Easements, Covenants, Conditions and Restrictions, and such rules and regulations as may be adopted from time to time pursuant to the procedures outlined herein. Said fines shall be secured by a lien on such unit and shall be superior to all other liens and encumbrances on such Unit and shall be superior to all other liens and encumbrances on such Unit except only for (a) valid tax and special assessment liens on the Unit in favor of any governmental assessment authority; (b) encumbrances on the interest of the Unit Owner recorded prior to the date notice of the lien provided for herein is recorded; and (c) other annual and special assessments recorded prior to the date notice of this lien is recorded.

### 13. USE OF TOWNHOME UNITS.

- a. Each of the thirty-seven (37) Units in the Project is intended to be used for single family housing in compliance with Orem City ordinances.
- b. No Unit shall be used or occupied by any person not falling within the definition of "family" as such term as defined by the Orem City ordinances.
- c. There shall be no obstruction of the Common Areas by the Owners and/or their guests without the prior written consent of the Management Committee. The Management Committee, may by rules and regulations, prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Management

Committee, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from, the Common Areas except upon the prior written consent of the Management Committee.

- d. Nothing shall be done or kept in any Unit or in the Common Areas or any part hereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Management Committee, but for such activity, would pay, without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental 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 Management Committee and the other Owners, harmless against all loss resulting from any such damage or waste caused by him or his invitees; provided, however, that any invitee to the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner. No obnoxious, destructive, or offensive activities 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.
- e. The Management Committee may by rules and regulations prohibit or limit the raising, breeding, or keeping of animals in any Unit or on the Common Areas or any part thereof.
- f. No Owner shall violate the rules and regulations for the use of the Units and of the Common Areas as adopted from time to time by the Management Committee.
- g. Each Owner shall keep the interior of this Unit, including without limitation, interior walls, windows, glass, ceilings, floors, and permanent fixtures and appurtenances thereof, in a clean, sanitary and attractive condition, and in good state of repair.
- h. No structural alterations to any Unit shall be made, and no plumbing, electrical or similar work within the Common Areas shall be done, by any Owner without the prior written consent of the Management Committee, except emergency repair.
- i. Notwithstanding anything herein to the contrary, until the Declarant has completed and sold all of the Units, neither the Unit Owners who have purchased Units from the Declarant, nor the Management Committee, shall interfere with a completion of the contemplated improvements and sale of the Units. The Declarant may make such use of the unsold Units and the Common Areas as may facilitate such completion and sale, including but not limited to, the maintenance of a sales office, the showing of the Units, and the displays of signs.

- j. No animals, livestock, or poultry of any kind shall be permitted on any Lot or within any Unit except such domesticated household pets or birds as are allowed pursuant to the rules and regulations, including leash laws, adopted by the Board.
- k. No parking of vehicles of any kind on the streets or parking areas within the Development shall be permitted without designation as given in rules and regulations in this Declarant.
- l. No outside television or radio aerial or antenna, or other similar devise for reception or transmission shall be permitted on any Lot or the exterior of any Unit except pursuant to written approval of the Architectural Control Committee pursuant to rules and regulations adopted by it and/or as set forth in this Déclaration.
- m. No Unit within the Development shall contain any coal or wood-burning fireplace, stove, or other similar devise unless the same is EPA approved or unless such fireplace, stove or other devised is fueled by natural gas only.
- n. All construction of improvements on the Covered Property, any reconstruction or alteration thereof, shall be done in accordance with the permits and ordinances of Orem City.
- o. All Units and all Improvements thereon shall be kept and maintained by the Owner thereof in a clean, safe, attractive, and sightly condition and in good repair.
- p. Hanging, drying, or airing of clothing or household fabrics shall not be permitted on any Unit if visible from surrounding Units of areas within the Project.
- q. No hazardous activity shall be conducted on any Unit or within the Project and no improvements shall be constructed thereon which are or hazardous to any person or Property.
- r. Notwithstanding anything herein to the contrary, until the Declarant has completed and sold all of the Units, neither the Unit Owners who have purchase Units from the Declarant, nor the Management Committee shall interfere with a completion of the contemplated improvements and sale of the Units. The Declarant may make such use of the unsold Units and the Common Areas as may facilitate such completion and sale, including but not limited to, the maintenance of a sales office, the showing of the Units, and the displays of signs.

#### 14. INSURANCE.

- a. The Management Committee shall obtain and keep in full force and effect at all times, the following insurance coverage provided by companies duly authorized to do business in Utah. The provisions of this Section shall not be construed to limit the power or authority of the Management Committee to obtain and maintain insurance

coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Management Committee may deem appropriate from time to time.

- b. The Management Committee shall obtain insurance on the Project in such amounts as shall provide for full replacement thereof in the event of damage or destruction from the casualty against which such insurance is obtained, all in the manner in which a corporation owning similar multiple family residential buildings in the vicinity of the Project would, in the exercise of prudent business judgment, obtain such insurance. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, war risk insurance if available and if deemed appropriate by the Management Committee, and such other risks and hazards against which the Management Committee shall deem it appropriate to provide insurance protection. The Management Committee may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Management Committee's opinion are consistent with good business practice.
- c. The Management Committee shall purchase broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Management Committee, and activities in connection with the Ownership, operation, maintenance, and other use of the Project.
- d. The Management Committee shall carry workmans' compensation and employer's liability insurance and all other similar insurance in respect to employees of the Management Committee in the amounts and in the forms now or hereafter required by law.
- e. The Management Committee shall purchase a fidelity bond in the amount of 150 percent of the Association's estimated annual operation expenses and reserves, to insure against dishonesty of employees, destruction or disappearance of money or securities, and forgery.
- f. The Management Committee may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including any personal property of the Management Committee located thereon.
- g. The Management Committee may in its discretion elect to obtain insurance on the personal property and furnishings initially placed in the Units of Owners by Declarant upon completion of construction of the Project in such amounts as shall provide for the full replacement thereof in the event of damage or destruction from casualty against which such insurance is obtained.

- h. Casualty insurance shall be carried in a form or forms naming the Management Committee the insured, as trustee for the Owners and for Declarant, whether or not it is an Owner, which policy or policies shall provide a standard, non-contributory mortgages clause in favor of each first Mortgagee which from time to time shall give notice to the Management Committee of such first mortgage. Each policy also shall provide that it cannot be canceled by either the insured or the insurance company until after ten (10) days prior written notice is first given to each Owner, to Declarant, and to each first Mortgagee. All policies of insurance shall, if possible, provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence, or noncompliance with any provision of such policy, including payment of the insurance premium applicable to the Owners' interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall, if possible, provide further that the insurance under any such policy as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Public liability and property damage insurance shall name the Management Committee the insured, as trustee for the Owners and for Declarant, whether or not it is an Owner, and shall protect each Owner and Declarant against liability for acts of the Management Committee in connection with the Common Areas and Facilities, operation, maintenance or other use of the Project. Such policies of insurance shall provide that all insured (including, but without limitation, the Declarant, Owners, Management Committee, and officers of the Management Committee) shall be considered as separate insured and coverage shall be afforded each such insured and in the same manner as though separate policies had been issued to each such insured and the insurance afforded any person or organization as insured under this policy shall not in any way be prejudiced by the inclusion there of more than one person and/or organization as insured, but the operation to increase the limits of the company's total liability under the policy.

- i. Insurance coverage on the furnishings initially placed in the Unit by Declarant, except to the extent that the Management Committee pursuant to subparagraph b. hereof elects to arrange for casualty insurance, and, regardless of the Management Committee's election, insurance coverage on items of personal property placed in the Unit by Owner, and casualty and public liability insurance coverage within each individual Unit shall be the responsibility of the respective Owners.
- j. The Management Committee shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained pursuant to this Section. To the extent that reconstruction is required here, the proceeds shall be used for such purpose.

- k. Notwithstanding the provisions of subparagraph a. and b. above, each Owner may obtain insurance at his own expense providing coverage upon his Unit, his personal property for his personal liability, and covering such other risks as he may deem appropriate, but each such policy shall provide that it does not diminish insurance carrier's coverage for liability arising under insurance policies which the Management Committee, the other Owners, and the servants, agents, guests of any of them, if such insurance can be obtained in the normal practice without additional premium charge for the waiver of rights of subrogation.

15. CASUALTY DAMAGE OR DESTRUCTION

- a. Title to each Unit is hereby made subject to the terms and conditions hereof which bond the Declarant and all subsequent Owners, whether or not it be so expressed in the deed by which any Owner acquired his Unit.
- b. All of the Owners irrevocably constitute and appoint the Management Committee their true and lawful agent in their name, place, and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute appointment of the attorney in fact herein provided.
- c. As attorney in fact, the Management Committee shall have full and complete authorization, right and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of a Unit Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs mean restoring the Project to substantially the same condition and in which it existed prior to damage, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.
- d. In the event any Mortgagee should not agree not to rebuild, the Management Committee shall have the option to purchase such Mortgagee's interest by payment in full of the amount secured therein. The Management Committee shall obtain the funds of such purpose by special assessments under paragraph 12 of this Declaration.
- e. As soon as practicable after receiving these estimates, the Management committee shall diligently pursue to complete repair or reconstruction of the part of the Project damage or destroyed if the Project is damaged or destroyed to the extent of 75 percent or less than the value thereof. The Management Committee may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary to connection therewith. Such repair or reconstruction shall be substantially in accordance with the original plans and specifications of the Project or may be in accordance with any other plans and specifications the Owners may approve, provided that in such latter event the number of cubic feet and the number of square feet of any

Unit may not vary by more than 5 percent from the number of cubic feet and the number of square feet for such Unit as originally constructed pursuant to such original plans and specifications, and the location of the building shall be substantially the same as prior to damage or destruction. The same easements for encroachments as declared in Section 4.h. shall and do hereby apply under the provisions of this Section. In the event the Project is destroyed or damaged to the extent of more than 75 percent of the value thereof, the Unit Owners shall, at a meeting with 100 days after such damage or destruction duly called by the Management Committee for the purpose, determine whether or not said premises should be rebuilt, repaired or disposed of. Unless Owners representing not less than 80 percent of the withdrawal of the Project from the provisions of the Act and to its subsequent disposal, the premises shall be repaired, rebuilt or restored to substantially the same condition they were in immediately prior to such destruction or damage.

- f. The proceeds of any insurance collected shall be available to the Management Committee for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Management Committee, pursuant to paragraph 12 hereof, may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs or repair or reconstruction. Such assessment shall be allocated and collected as provided in that Paragraph. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.
- g. The insurance proceeds held by the Management Committee and the amounts received from the assessments provided in subparagraph f. above constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost or repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Unit Owners in proportion to the contributions each Owner made pursuant to the assessments the Management Committee made under subparagraph f. of this Declaration.
- h. If 75 percent of the Unit Owners and all holders of first mortgages of Units agree not to rebuild, as provided herein, the Project may be removed from the provisions of the Act as prescribed therein. Withdrawal shall be in accordance with Section 57-8-31 of the Utah Statutes.

16. DUTY OF OWNER TO PAY TAXES OF UNIT OWNED. It is understood that under the Act, each Unit (and its percentage of interest in the Common Areas) in the Project is subject to separate assessment and taxation of each taxing authority and the special district(s) for all types of taxes and assessments authorized by law, and that as a result thereof no taxes will be assessed or levied against the Project as such. Accordingly, each Unit Owner will pay and discharge any and all taxes and assessments which may be assessed against him on this Unit.

17. AMENDMENT OF THIS DECLARATION. The Unit Owners at any time, and from time to time, have the right to amend this Declaration and/or the Map upon the approval of Unit Owners representing not less than two-thirds of the undivided interests in the common Areas, which approval shall be by duly recorded instrument.
18. SERVICE OF PROCESS. The name of the person to receive service of process in the cases contemplated by the Act and the place of his residence is:
- Arthur Billings - Agent  
P.O. Box 1377  
Orem, UT 84059
19. MORTGAGE PROTECTION. Notwithstanding all other provisions hereof:
- a. The liens created hereunder upon any Unit shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage or a trust deed with first priority over other mortgages) upon such interest made in good faith and for value, provided that after the foreclosure of any mortgage there may be a lien created pursuant to Paragraph 12 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.
  - b. No amendment to this Paragraph shall affect the rights of the holder of any such amendment who does not join the execution thereof.
  - c. By subordination agreement executed by a majority of the Management Committee, the benefits of a. and b. above may be extended to mortgages not otherwise entitled.
20. INDEMNIFICATION OF MANAGEMENT COMMITTEE. Each member of the Management Committee shall be indemnified and held harmless by the Unit Owners against all cost, expenses, and liabilities whatsoever, including, without limitation, attorneys' fees, reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Committee.
21. ENFORCEMENT OF RESTRICTIONS. The following persons shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with, or to obtain redress for violation of this declaration; (a) any Common Areas and Facilities; (b) the association; or (c) any Mortgagee.

The prevailing party in an action for the interpretation of, the enforcement of, or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorneys' fees.



- 22. NUMBER AND GENDER. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the singular, and the use of any gender shall include all genders.
- 23. SEVERABILITY. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, or word, or the application thereof in any circumstance by invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.
- 24. TOPICAL HEADINGS. The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning, or intent of this Declaration of any paragraph or provision hereof.
- 25. EFFECTIVE DATE. This Declaration shall take effect upon recording in the office of the County Recorder of Utah County, Utah.
- 26. CONFLICT. In case any provisions shall conflict with Utah law, Utah law shall be deemed to control.

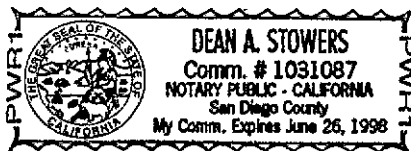
Dated this 17 day of October, 1996

EVERGREEN COURT TOWNHOMES, PHASE I,  
a California limited partnership

By: Arthur Billings Jr. President  
ARTHUR BILLINGS, JR. - President  
ARTHUR BILLINGS, INC.

STATE OF UTAH )  
                          ) ss  
COUNTY OF UTAH )

On the 17 day of October 1996, personally appeared before me ARTHUR BILLINGS, the signor of the foregoing instrument who duly acknowledged to me that he executed the same.



Arthur Billings Jr.  
Notary Public

DATED this 16 day of January, 19 97

CAROL STROM

Unit Owner

WALLACE SMITH

MICHELLE SMITH

Unit Owner

MARILYN ANDENGAARD

Unit Owner

KARL KINKADE

JEAN KINKADE

Unit Owner

UWE KLINDT

DEANNA KLINDT

Unit Owner

BRENT STANDING

KAREN STANDING

Unit Owner

KIM PARK THATCHER

JEREMY THATCHER

AUSTIN THATCHER

Unit Owner

*Dora Schoenfeld*  
*Schoenfeld*

Beverly Porter  
BEVERLY PORTER  
Unit Owner

J.P. Crandall  
JAMES P. CRANDALL, JR.  
JAMES P. CRANDALL, SR.  
Unit Owner

FERNANDO A. MUNIZ  
MONICA MUNIZ  
Unit Owner

Robert Folsom  
Michele Folsom  
ROBERT A. FOLSOM  
MICHELE FOLSOM  
Unit Owner

Wallace Hayward  
WALLACE M. HAYWARD  
Unit Owner

Carol Wellander  
~~RONALD D. COLEMAN~~ Carol Wellander  
Unit Owner

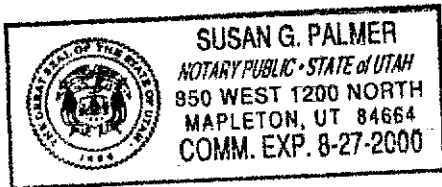
Narda Macomber  
Kandy Macomber  
DAVID MOOY Randall Macomber  
Unit Owner Narda Macomber

James Rawson  
Bonnie Rawson  
Unit Owner

JAMES RAWSON  
BONNIE RAWSON  
Miriam Kitchen  
Unit Owner  
MIRIAM KITCHEN

STATE OF UTAH )  
                  ) ss  
COUNTY OF UTAH )

SUBSCRIBED and sworn to before me this 13 day of February, 1997.



Susan G. Palmer  
Notary Public

EXHIBIT "A"

Total Project

## PHASE I

Commencing at a point located North  $00^{\circ}37'00''$  West along and the Quarter section line 2673.02 feet and East 460.37 feet from the South Quarter of Section 15, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North  $00^{\circ}03'15''$  East 68.00 feet; thence North  $03^{\circ}49'55''$  West 185.14 feet; thence North  $00^{\circ}00'00''$  East 67.51 feet; then  $88^{\circ}47'27''$  East 106.03 feet; thence South  $30^{\circ}23'10''$  East 57.44 feet; thence North  $88^{\circ}47'27''$  East 86.00 feet; thence  $01^{\circ}12'33''$  East 275.01 feet; thence North  $89^{\circ}56'45''$  West 214.53 feet to the point of beginning.

## PHASE II

Commencing at a point located North  $00^{\circ}37'00''$  West along the one-quarter Section line 2993.28 feet and East 541.51 feet from the South one-quarter corner of Section 15, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 345.62 feet; thence South  $88^{\circ}50'47''$  East 212.91 feet; South  $01^{\circ}12'33''$  East 386.91 feet; thence South  $88^{\circ}47'27''$  West 86.00 feet; thence North  $30^{\circ}23'10''$  West 57.44 feet; thence South  $88^{\circ}47'27''$  West 106.03 feet to the point of beginning.

EXHIBIT "B"UNIT NUMBERPERCENTAGE OF COMMON  
SPACE OWNERSHIP

1	2.7
2	2.7
3	2.7
4	2.7
5	2.7
6	2.7
7	2.7
8	2.7
9	2.7
10	2.7
11	3.3
12	2.7
13	2.7
14	2.7
15	2.7
16	2.7
17	2.7
18	2.7
19	2.7
20	2.7
21	2.7
22	2.7
23	2.7
24	2.7
25	2.7
26	2.7
27	2.7
28	2.7
29	2.7
30	2.7
31	2.7
32	2.7
33	2.7
34	2.7
35	2.7
36	2.7
37	2.7

EXHIBIT "C"

## BY-LAWS OF

**EVERGREEN COURT TOWNHOMES, PHASES I AND II**1. IDENTITY

These are the By-Laws of Evergreen Court Townhomes Homeowners Association.

2. APPLICATION

All Unit Owners, tenants, or any other person(s) who might use the facilities of Evergreen Court Townhomes in any manner are subject to the regulations set forth in these By-Laws. The mere acquisition or rental of any of the Units or the Common Areas will signify that these By-Laws are accepted, ratified, and will be complied with such persons.

3. ADMINISTRATION

- a. Place of Meeting. Meetings of the Unit Owners shall be held at such place within the State of Utah as the Management Committee may specify in the notice, except as herein otherwise specified.
- b. Annual Meetings. The first annual meeting of the Unit Owners shall be held on the first Tuesday of the month following the sale of 75 percent of the Units, or within three (3) years of the date of this Declaration, whichever comes first, at such place as the Management Committee shall specify. Thereafter, the annual meeting shall be held on such day of each succeeding year; provided, however, that whenever such date falls on a legal holiday, the meeting shall be held on the next succeeding business day, and provided further, that the Management Committee may by resolution fix the date of the annual meeting on such date and at such place as the Management Committee may deem appropriate.
- c. Special Meetings. Special meetings of the Unit Owners may be called at any time by written notice served by the Management Committee, or by Unit Owners having 35 percent of the total votes, delivered not less than seven (7) days prior to the date fixed for such meeting. Such meeting shall be held on the Project or such other place as the Management Committee may specify and the notice thereof shall state the place, date, time, and matters to be considered.

- d. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Unit Owner at the address given by such person to the Management Committee or Manager.
- e. Quorum. Any such meeting of the Unit Owners, the Owners of more than fifty (50) percent in the aggregate in interest of the undivided ownership of Common Areas shall constitute a quorum for any and all purposes, except where by express provisions a greater vote is required, in which even a quorum shall be the number required for such vote. In the absence of a quorum, the Chairman of the meeting may adjourn the meeting from time to time, without notice other than by announcement at the meeting, until holders of the amount of interest requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.
- f. Voting. When a quorum, as provided in the Utah Townhome Ownership Act, is present at any meeting, the vote of Unit Owners representing at least fifty-one (51) percent, or more, of the undivided ownership of Common Areas and Facilities, present in person or represented by proxy, shall decide any question of business brought before such meeting, including the election of the Management Committee, unless the question is one upon which, by express provision of the statutes, the Declaration, or of these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question. All votes may be cast either in person or by proxy. All proxies shall be in writing, and in the case of proxies for the annual meeting, they shall be delivered to the Secretary at least three (3) days prior to said annual meeting. Proxies for special Unit Owners' meetings must be of record with the Secretary at least three (3) days prior to said special meeting.
- g. Waivers of Notice. Any Unit Owner may at any time waive any notices required to be given under these By-Law, or by an statutes or otherwise. The presence of a Unit Owner in person at any meeting of the Unit Owners shall be deemed such waiver.

#### 4. MANAGEMENT COMMITTEE

- a. Purpose and Powers. The business, Property and affairs of the Townhome shall be managed and governed by the Management Committee pursuant to Paragraph 11 of the Declaration. The Management Committee, as it deems advisable, may enter into such management agreement of agreements with a third person, firm, or corporation to act as the Manager of the Project.



The Board of Managers shall have the powers and duties necessary for administration of the affairs of the Townhome and may do all such acts and things except as by law or by the Declaration of these By-Laws may not be delegated to the Board of the Managers by the Unit Owners. Such powers and duties of the Board of Managers shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the Common Areas.
- (b) Collection of the Common Areas charges from the Unit Owners.
- (c) Employment and dismissal of the personnel necessary for the maintenance and operation of the Common Areas.
- (d) Obtaining insurance for the Property, including the Units pursuant to the provisions of the Declaration.
- (e) Making of repairs, additions, and improvements to or alteration of the Property and repairs to and restorations of the Property in accordance with the provisions of the Declaration and these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.
- (f) Determination of the Common Expenses required for the affairs of the Townhome, including without limitation, operation and maintenance of the Property.
- (g) Adoption and amendment of rules and regulations covering the details of the operation and use of the Property, as authorized in the Declaration.
- (h) Opening of bank accounts on behalf of the Townhome and designating the signatories required therefore.
- (i) Purchasing or leasing or otherwise acquiring in the name of the Board of Managers, or its designee, corporate or otherwise, on behalf of all Unit Owners, Units offered for sale or lease or surrendered by their Owners to the Board of Managers.
- (j) Selling, leasing, mortgaging, voting the votes appurtenant to, or otherwise dealing with Units acquired by, and subleasing units leased by, the Board of Managers or its designee corporate or otherwise, on behalf of all Unit Owners.
- (k) Organizing a corporation to act as designees of the Board of Managers in acquiring title to or leasing of Units on behalf of all Unit Owners.

- (l) Levying sanctions against Unit Owners for violation of any Rules and Regulations established by it to govern the conduct of the Unit Owners.
  - (m) Controlling the use of all common elements adjoining the Building, including but not limited to, designated parking spaces therein for use by the respective Unit Owners and leasing such common elements to third parties, provided, however, that no lease or other legal transaction shall be entered into without the approval of a majority of the Unit Owners.
  - (n) Taking all other necessary and proper actions for the sound management of the Townhome and fulfillment of the terms and provisions of the Townhome Declaration and By-Laws.
- b. Regular Meetings. A regular meeting of the Management Committee shall be held immediately after the adjournment of each annual Unit Owners meeting. Regular meeting, other than the annual meeting, shall or may be held at regular intervals at such times as either the President or the Management Committee may from time to time designate.
- c. Special Meetings. Special meetings of the Management Committee shall be held whenever called by the President, the Vice Preside, or by thirty-five (35) percent of the members of the Association. By unanimous consent of the Management Committee, special meetings may be held without call or notice at any time or place.
- d. Quorum. A quorum for the transaction of business at any meeting of the Management Committee shall consist of a majority of the Management Committee then in office.
- e. Compensation. Members of the Management Committee, as such, shall not receive any stated salary or compensation; provided that nothing herein contained shall be construed to preclude any member of the Management Committee from serving the Project in any other capacity and receiving compensation therefore. When a member of the Management Committee is to receive compensation for any purpose he shall excuse himself from voting as to the resolutions approving and enabling his employment furthermore at least one bid will be invited on the work in question in addition to the bid submitted by the Committee member and said bid shall become a permanent record of the Committee's proceedings.
- f. Waiver of Notice. Before or at any meeting of the Management Committee, any member thereof may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Management Committee at any meeting thereof shall be a waiver of notice by him of the time and place thereof.

- g. Adjournment. The Management Committee may adjourn any meeting from day to day or for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.
- h. Fidelity Bonds. The Management Committee shall require that all officers and employees of the Management Committee provide adequate fidelity bonds. The premium on such fidelity bonds shall be paid by the Management Committee.

## 5. OFFICERS

- a. Designation and Election. The principal officers of the Management Committee shall be a President, a Vice President, and a Secretary/Treasurer, all of whom shall be elected by a majority vote of the members of the Association. Such election shall regularly take place at each annual meeting. The Management Committee may appoint such other officers, as in its judgment may be necessary or desirable.
- b. Other Officers. The Management Committee may appoint such other officers, in addition to the officers hereinabove expressly named, as it shall deem necessary, who shall have authority to perform such duties as may be prescribed from time to time by the Management Committee.
- c. Removal of Officers and Agents. All officers and agents shall be subject to removal, with or without cause, at any time by the affirmative vote of the majority of the members of the Association.
- d. President. The President shall be the chief executive of the Management Committee, and shall exercise general supervision over its Property and affairs. He shall sign on behalf of the Townhome Project all instructions and contracts of material importance to its business, shall do and perform all acts and things which the Management Committee may require of him. He shall have all of the general powers or duties which are normally vested in the office of the President of a corporation, including but not limited to, the power to appoint committees from among the members from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Townhome Project.
- e. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent, or unable to act. If neither the President nor the Vice President is able to act, the members of the Association, at a special meeting, shall elect some other member thereof to perform the duties of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be prescribed by the Management Committee.
- f. Secretary/Treasurer. The Secretary/Treasurer shall keep the minutes of all meetings of the Management Committee and of the Unit Owners; he shall have charge of the books and papers as the Management Committee may direct; and he shall in general,

perform all the duties incident to the office of Secretary. He shall also have the responsibility for the funds and securities of the Management Committee and shall be responsible for keeping full and accurate accounts of all receipts and of all disbursements in books belonging to the Management Committee. He shall be responsible for the deposit of all monies and all other valuable effects in the name, and to the credit of, the Management Committee in such depositories as may from time to time be designated by the Management Committee.

- g. Compensation. No compensation shall be paid to the officers for their services as officers. No remuneration shall be paid to an officer for services performed by him for the Management Committee in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Management Committee before the services are undertaken.

## 6. ACCOUNTING

- a. Books and Accounts. The books and accounts of the Management Committee shall be kept under the direct of the Treasurer and in accordance with the reasonable standards of accounting procedures.
- b. Report. At the close of each accounting year, the books and records of the Management Committee shall be reviewed by a person or firm approved by the Unit Owners. Report of such review shall be prepared and submitted to the Unit Owners at or before the annual meeting of the Unit Owners; provided, however, that a certified audit by a certified public accountant approved by the Unit Owners shall be made if at least ninety (90) percent of the Owners of undivided interest in the Common Areas determine to do so.
- c. Inspection of Books. Financial reports, such as are required to be furnished, shall be available at the principal office of the Management Committee or the Manager for inspection at reasonable times by any Unit Owners.

## 7. BUILDING RULES

The Management Committee shall have the power to adopt and establish, by resolution, such Building, management, and operational rules and regulations as it may deem necessary for the maintenance, operation, management, and control of Evergreen Court Townhomes, and it may, from time to time by resolution, alter, amend, and repeal such rules and regulations. Unit Owners shall at all time obey such rules and regulations and use their best efforts to see that they are faithfully observed by their Lessees and the persons over whom they have or may exercise control or supervision, it being clearly understood that such rules and regulations shall be binding upon all Unit Owners of the Townhome Project. Provisions of the Act pertaining to rules and regulations are incorporated herein by reference and shall be deemed a part hereof. Unit Owners shall have the authority to approve or amend such rules and regulations by majority vote at the annual meeting of the Unit Owners.

8. AMENDMENT OF BY-LAWS

These By-Laws may be amended at any duly constituted meeting of the Unit Owners called for that purpose by the affirmative vote of at least two-thirds of the ownership in the Common Areas. Notice of such meeting shall be sent to each Owner at least ten (10) days prior to such meetings.

EXHIBIT "D"

ENT 11459 BK 4192 PG 52

Additional Land

PHASES III and IV

Commencing at a point located North  $00^{\circ}37'00''$  West along the Section line 2999.88 feet and East 16.00 feet from the South one quarter corner of Section 15, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North  $00^{\circ}40'22''$  West along the Easterly boundary line of 400 West Street 347.90 feet; thence South  $88^{\circ}50'47''$  East 439.76 feet; thence South along Evergreen Court Phase II 325.64 feet; thence South  $88^{\circ}14'27''$  West 435.79 feet to the point of beginning.

Area = 3.38 Acres

Remainder

Commencing at a point located North  $00^{\circ}37'00''$  West along the  $\frac{1}{4}$  Section line 2698.13 feet and East 16.30 feet from the South  $\frac{1}{4}$  corner of Section 15, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North  $00^{\circ}40'22''$  West 301.75 feet; thence North  $88^{\circ}14'27''$  East 435.79 feet; thence South 87.49 feet; thence South  $03^{\circ}49'55''$  East 185.14 feet; thence South  $00^{\circ}03'15''$  West 68.00 feet; thence North  $89^{\circ}56'45''$  West along the Northerly boundary of Center street 419.37 feet; thence along the arc of a 25.00 foot radius curve to the right 38.95 feet (chord bears North  $45^{\circ}18'34''$  West 35.13 feet) to the point of beginning.

Area = 3.36 Acres