

**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
OF
BLACKHAWK TOWNHOUSES
A PLANNED RESIDENTIAL UNIT DEVELOPMENT**

This Declaration made this 2 day of December, 1997 by BLACKHAWK CONDOMINIUMS REAL ESTATE, L.L.C., a Utah limited liability company, hereinafter referred to as "Declarant".

WITNESSETH:

Whereas, Declarant is the owner of real property described in Exhibit "A" attached hereto and incorporated herein by this reference, located in Weber County, State of Utah, and desires to create thereon a multi family Planned Residential Unit Development ("P.U.D.", or "P.R.U.D."); and

Whereas, Declarant desires to provide for the preservation of the values and amenities of said P.U.D. for the benefit of the property owners thereof and for the maintenance of open spaces and common facilities and improvements thereon, and desires to subject the real property described in Exhibit "A" hereof to the covenants and restrictions set forth hereinafter for the benefit of said property and each owner thereof; and,

Whereas, Declarant has deemed it desirable for the preservation of the values and amenities of said P.U.D. to create an association for the purpose of maintaining and enforcing the covenants and restrictions as specified herein;

Now therefore, the Declarant declares that the real property, described in Exhibit "A" hereto and such additions thereto as may hereafter be made, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, liens and easements, hereinafter set forth.

DECLARATION

The following Declaration contains covenants, conditions and restrictions relating to this Planned Residential Unit Development, which shall be enforceable equitable servitudes, and shall run with the land:

1. Name: The name by which the Planned Unit Development shall be known is Blackhawk Townhouses Planned Residential Unit Development.
2. Definitions: The terms used in this Declaration including Exhibits attached hereto shall have the meaning stated herein unless the context otherwise requires.

(a) "Additional Land" shall mean and refer to any land or an interest therein which may from time to time be added to and become subject to the terms and conditions of this Declaration. Such Additional Land may include all or part of the tracts of land situated in Weber County, State of Utah, together with all appurtenances thereto, as are adjacent to or in the proximate vicinity of the Property, and which is acquired and subjected by Declarant or its successor in interest to the provisions of this Declaration and the Utah Condominium Ownership Act. This reference to Additional Land is solely for purposes of identification and is not intended and shall not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any real

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property or interest in real property other than the Land which is expressly described on Exhibit "A" attached hereto, until such time as said Additional Land may be properly added to this expandable project.

(b) "Association" shall mean Blackhawk Townhouses Owners' Association, a corporation formed under the Utah Non-profit Corporation and Cooperative Association Act, its successors and assigns, of which all of the Unit Owners are members.

(c) "Common Areas and Facilities" shall mean and refer to:

(1) That portion of the Property not specifically included in the respective Units as herein defined;

(2) All land other than such as is part of a Unit, exterior walkways, driveways, streets, such recreational areas and facilities as may be provided, yards, fences, service and parking areas and entrances and exits, and in general all other apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance and safety of the Common Areas and Facilities or normally in common use;

(3) Those areas specifically set forth and designated in the Map as "Common Area"; and

(4) All Common Areas and Facilities, whether or not expressly listed herein.

(d) "Common Expenses" shall mean and refer to:

(1) All expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities;

(2) All things lawfully assessed against the Unit owners;

(3) All things agreed upon as common expenses by the Association; and

(4) All expenses declared as common expenses by law, this Declaration, or the Bylaws of the Association.

(e) "Unit" shall mean and refer to the ownership of a single lot or unit, as reflected and numbered upon the Map, in this Planned Unit Development.

(f) "Unit Community", "Planned Unit Development", "Planned Residential Unit Development" or sometimes the "Project" shall mean and refer to the entire Property, as defined below, together with all rights, obligations and organizations established by this Declaration. At any point in time the Project shall consist of the first, second and third Phase and all subsequent Phases which theretofore have been added to and merged with the first Phase.

(g) "Declarant" shall mean BLACKHAWK CONDOMINIUM REAL ESTATE, L.L.C., and all persons who sign as such upon this declaration. From the time of the recordation of any amendment to the declaration expanding this expandable project, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within this definition. Any successor of the persons referred to in this subsection who shall come to stand in the same relation to the project as their predecessor also shall come within this definition.

(h) "Declaration" shall mean this instrument by which Blackhawk Townhouses Planned Residential Development is established as a Planned Residential Unit Development Project, as may hereafter be modified, amended, supplemented or expanded.

(i) "Land" shall mean and refer to the real property described on Exhibit A, together with any Additional Land which is added to the Project.

(j) "Limited Common Areas and Facilities" or "Limited Common Areas" shall mean and refer to those Common Areas and Facilities designated herein or on the Map as reserved for use of a certain Unit to the exclusion of the other units including patios, entrances, garages and walkways assigned by the Association to each unit or as shown upon the Map as pertaining to and appurtenant to a corresponding unit.

(k) "Board of Trustees" shall mean the Board of Trustees of the Association elected in accordance with the Bylaws of the Association, and may sometimes be referred to as the Governing Board of Trustees, but which may also be referred to as the Board of Directors of the Association, and its members may be referred to individually as Trustees or Directors.

(l) "Manager" shall mean and refer to the person, persons or corporation selected by the Association to manage the affairs of the Property.

(m) "Map" shall mean and refer to the Record of Survey Map or maps of the Property recorded as pertaining hereto in the Office of the Weber County Recorder, State of Utah.

(n) "Member" shall mean any Unit owner holding membership in the Association as provided herein.

(o) "Phase" shall mean and refer to each separate step in development of the Land and Additional Land which is initiated through the submission of a tract. The term shall also include all improvements which are constructed and all appurtenances, rights, obligations, and legal relationships which come into existence in conjunction with the submission of any single tract.

(p) "Property" shall mean and include the land, the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

(q) "Unit" shall mean and refer to one of the numbered Units designated as a Unit on the Map. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, furnaces, stoves, fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of, inter alia and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any other property of any kind, including fixtures and appliances within any Unit, which are within the Unit but are removable without jeopardizing the soundness, safety or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit.

3. Submission to Unit Ownership. Declarant hereby submits the Land, buildings, and other improvements constructed thereon or hereafter to be constructed, together with all appurtenances thereto, to the provisions of this Declaration and to the Utah Condominium Ownership Act, Title 57, Chapter 8, Utah Code Annotated (1953), as amended, and the

governance thereof shall be construed in accordance therewith. It is the intention of Declarant that such provisions shall apply to the Property.

4. Covenants to Run with the Land. This Declaration containing covenants, conditions and restrictions relating to the Project shall be enforceable equitable servitudes which shall run with the land and this Declaration and its servitudes shall be binding upon Declarant, its successors and assigns and upon all Unit Owners or subsequent Unit Owners, the Association, their grantees, mortgagees, successors, heirs, executors, administrators, devisees and assigns.

5. Description of Property.

(a) Description of Land. The Land is that tract or parcel, more particularly described in Exhibit "A" attached hereto.

(b) Description of Improvements. The significant improvements contained or to be contained in the Project include two story buildings containing four (4) Units each, which units contain approximately 1,190 square feet each, constructed principally of concrete foundation with exterior walls of stucco, asphalt shingle roofing, interior walls of wood studs, plywood and dry wall plaster. Each unit has an assigned garage. The Project also includes landscaping, guest parking and other facilities located substantially as shown in the Map and will be subject to easements which are reserved through the Project as may be required for utility services.

(c) Description and Legal Status of Units. The Map shows the Unit Number of each Unit, its location, those Limited Common Areas and Facilities which are reserved for its use (including a garage with a number corresponding to the Unit Number), and the Common Areas and Facilities to which it has immediate access. All Units, of whatever type, shall be capable of being independently owned, encumbered and conveyed.

(1) Each Unit has immediate access to the outside and shall include that part of the building containing the Unit which lies within the boundaries of the Unit, which boundary lines of each Unit are the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, all window panes, interior surfaces of doors, window frames and door frames and trim. Each Unit shall include both the portions of the building that are not common areas and facilities within such boundary lines and the space so encompassed. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls and all utility pipes, lines, systems, fixtures, or appliances found within the boundary lines of the unit and servicing only that unit.

(d) Common Areas and Facilities. Except as otherwise provided in this Declaration, the Common Areas and Facilities shall consist of the areas and facilities described in the definitions and constitute in general all of the parts of the Property except the Units. Inasmuch as each Unit shall be similarly constructed and contain essentially identical square footage, the Unit Owners shall share equally in and have an equal interest in and to the Common Areas and Facilities. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include the following, whether located within the bounds of a Unit or not;

(1) All buildings, including structural parts thereof, which are not part of a unit, including, without limitation, foundations, columns, joists, beams, supports, supporting walls, floors, ceilings and roofs;

(2) Driveways, parking areas, lawns, shrubs, and gardens, and

recreational areas;

(3) Any utility pipe or line or system servicing more than a single Unit, and all ducts, wires, conduits, and other accessories used therewith;

(4) All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities in the Map;

and (5) The Limited Common Areas and Facilities herein described;

(6) All repairs and replacements of any of the foregoing.

(e) Description of Limited Common Areas and Facilities. Each Owner of a Unit is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas and Facilities reserved exclusively for the use of his Unit. The Limited Common Areas appurtenant to any given Unit consist of a patio, entrance walkway contiguous with the Unit, and garage, as indicated on the Map. The exclusive right to use and occupy each Limited Common Area shall be appurtenant to and shall pass with the title to the Unit with which it is associated.

6. Statement of Purpose and Restriction on Use.

(a) Purpose. The purpose of the Project is to provide residential housing, garage and parking space for Unit Owners and to tenants and guests.

(b) Restrictions on Use. The Units and Common Areas and Facilities shall be used and occupied as hereinafter set forth.

(1) Each of the Units shall be occupied by the Unit Owner, his family, servants, guests or tenants as a private residence and for no other purpose.

(2) Each Unit Owner shall also occupy a garage for vehicle use.

(3) No parking area shall be used for parking of trailers, mobile homes, boats, snowmobiles or campers which have been detached from trucks or repair of any vehicle, trailer or boat may be performed in any parking or common area. There shall be no storage of any kind, except of vehicles as above provided, in any parking stall or common area. Each Unit owner shall use only one (1) parking stall unless more parking stalls are assigned by the management.

(4) The Common Areas and Facilities shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Units.

(5) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rate of insurance on the garage, buildings or contents thereof beyond that customarily applicable for residential use, or will result in the cancellation of insurance on the buildings, or the contents thereof, without the prior written consent of the Management or the Association. No Unit Owner shall permit anything to be done or kept in his Unit garage or in the Common Areas and Facilities which is in violation of any law, ordinance or regulation of any governmental authority.

(6) No Unit Owner shall cause or permit anything, including, without limitation, a sign, awning, canopy, shutter, radio, television antenna, or satellite dish, clothes lines, pots, plants, wind chimes or other decorative items to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the inside or outside of windows or doors, without the prior written consent of the Management or the Association. Temporary open house signs may be placed subject to written approval of the Management or the Association as to location, duration, size and design. If signs are placed without written approval, the Management or the Association retains the right to remove them. No signs for the sale of a unit or motor vehicle may be placed in or upon any vehicle or common areas.

(7) Horizontal levelor type window blinds are allowed subject to Management, or Association approval of the color. No plastic, sun screen or reflective type material shall be used on the interior or exterior of the windows.

(8) No noxious or offensive activity shall be carried on or permitted in any Unit or in the Common Areas and Facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants.

(9) Nothing shall be done in any Unit garage or in, on, or to the Common Areas and Facilities which will impair the structural integrity of the buildings or any part thereof or which would structurally change the buildings or any part thereof except as is otherwise provided herein.

(10) No animals or pets of any kind are to be raised, bred or kept in any Unit garage or in the Common Areas or Limited Common Areas without the prior written approval of the Management or the Association with respect to the specific pet. Unit Owners shall keep their pets off the Common Areas. If the pet becomes a nuisance to other Unit owners, the pet owner shall remove the pet from the Project upon written notice by the Management or the Association or its representative.

(11) The Common Areas, Limited Common areas, and Facilities shall be kept free and clear of all rubbish, debris and other unsightly materials.

(12) No Owner shall violate the rules and regulations regarding use of the Units and of the Common Areas as adopted from time to time by the Management or the Association.

7. Person to Receive Service of Process. The person to receive service of process in the cases provided herein is GORDON B. LYLE, whose address 550 North Main Street, Suite 221, Logan, Utah 84321. The said person may be changed by the recordation by the Association of an appropriate instrument.

8. Ownership and Use.

(a) Ownership of a Unit. Except with respect to any of the Common Areas and Facilities located within the bounds of a Unit, each Unit Owner shall be entitled to the exclusiye ownership and possession of his Unit, in addition to the exclusive use of its appurtenant garage and other limited common areas, and shall be entitled to membership in the Blackhawk Townhouses Owners' Association.

(b) Nature of and Restrictions on Ownership and Use. Each Unit Owner shall have and enjoy the rights and privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own Units, it being intended that they may and shall be owned as any other property rights by persons, corporations, partnerships, or trusts and in the form of common tenancy. The Unit Owners may lease or rent their Units and garages with their appurtenant rights subject to terms and conditions of this declaration. All unit Owners, their tenants and other occupants or users of the Property, shall be subject to this Declaration, the Bylaws, and all rules and regulations of the Association.

(c) Prohibition Against Subdivision of Unit. No Unit Owner, by deed, plat or otherwise, shall subdivide or in any manner cause the ownership of his Unit to be separated into physical tracts or parcels smaller than the whole Unit as shown on the Map and no garage assigned to any Unit shall be conveyed separately from such Unit.

d) Ownership of Common Areas and Facilities. The Common Areas and Facilities contained in the Project are described and identified in this Declaration. Said Common Areas and Facilities shall be owned by the Blackhawk Townhouses Owners' Association, Inc. Each Unit owner will have membership in the Association. The Common Areas and Facilities shall be used only in a manner which is consistent with their community nature and with the use restrictions applicable to the Units contained in the Project.

(e) Use of Common Areas and Facilities. Except with respect to Limited Common Areas each Unit Owner may use the Common Areas and Facilities in accordance with the purpose for which they are intended, but subject to this Declaration, the Bylaws, and the rules and regulations of the Association.. This right of use shall be appurtenant to and run with each Unit.

9. Use of Limited Common Areas and Facilities. A Unit Owners exclusive right of use and occupancy of the Limited Common Areas and Facilities reserved for his Unit shall be subject to and in accordance with this Declaration and the Bylaws. Any Limited Common Area appurtenant to a Unit may be leased only to persons who reside in the Project or used by the family, servants or guests thereof on a temporary basis.

10. Voting-Multiple Ownership. Each Owner of a Unit shall be a member of the Association. The vote attributable to and exercisable in connection with a member of the Association shall be one vote for each Unit owned, subject to the special rule for Class Membership and voting as set forth in Paragraph 12.(c) below. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any meeting of the Association shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

11. Association.

(a) Association. The Association shall have, and is hereby granted, the following authority and powers:

(1) The authority to grant or create, on such terms as it deems advisable, utility and similar easements, over, under, across and through the Common Areas and Facilities; and work performed pursuant to such easements must be done in a workmanlike manner and any damage to the interior structure or decor of a Unit must be repaired;

(2) The authority to execute and record, on behalf of all members of the Association, any amendment to the Declaration or Map which has been approved by a majority vote necessary to authorize such amendment;

(3) The authority to enter into contracts which in any way concern the Project, so long as a majority vote of the members of the Association necessitated by the subject matter of the agreement has been obtained;

(4) The power and authority to convey or transfer any interest in real property, so long as a majority vote necessary under the circumstances has been obtained;

(5) The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action has been authorized by a majority vote which is necessary under the circumstances;

(6) The power and authority to add any interest in real property so long as such action has been authorized by a majority vote;

(7) The power to sue and be sued.

(8) The power and authority to borrow money, provided that no indebtedness for borrowed funds shall exceed in the aggregate at any given time the sum of \$5,000.00 without the prior vote or approval of a majority of members of the Association.

(9) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Management 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 members of the Association; and

(10) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Association to perform its functions for the members of the Association.

(b) **Manager.** The Association may carry out through a Professional Property Manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Unit Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any agreement for professional management of the project which may be entered into by the Association shall call for a term not exceeding one (1) year renewable by agreement of the parties for successive one-year periods.

12. Membership in the Association.

(a) **Membership.** Every Owner of a Unit shall be a member of the Association. Memberships in the Association shall not be assignable, except to the successor in interest of the Member, and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Unit.

(b) **Transfer.** The Association membership held by any Owner of a Unit shall not be transferred, pledged, or alienated in any way, except upon the transfer, sale or encumbrance of such Unit, and then only to the transferee, purchaser or mortgagee of such Unit. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Unit shall fail or refuse to transfer the membership registered in his name to the purchaser of such Unit upon transfer of fee title thereto, the Board of Trustees shall have the right to record the transfer upon the books of the Association. The Board of Trustees shall have the right to charge a reasonable Special Assessment against any Owner and his Unit, equal to the cost to the Association of effectuating any such transfer of his membership upon the books of the Association.

(c) **Class Voting Rights.** The Association shall have two classes of voting membership:

(1) **Class A.** Class A members shall be all Owners, with the exception of Blackhawk Condominiums Real Estate, L.L.C., and shall be entitled to one vote for each Lot or Unit owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

(2) **Class B.** The Class B member(s) shall be Blackhawk Condominiums Real Estate, L.L.C., or its successor, and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) seven (7) years from the date of recording of the Declaration.

(d) **FHA/VA Approval.** As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Areas, and amendment of this Declaration of Covenants, Conditions, and Restrictions.

13. **Easements.**

(a) Each Unit shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any Common Areas and Facilities located within the boundaries of such Unit.

(b) In the event that, by reason of the construction, reconstruction, repair, settlement, movement or shifting of any part of the building, any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon any part of any Unit or any part of the Common Areas and Facilities or any other Unit, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and the Common Areas and Facilities, as the case may be, so long as all or any part of the building containing any such Unit shall remain standing; provided, however, that in no event shall a valid easement or any encroachment be created in favor of any Unit Owner if such encroachment occurred due to the willful conduct of such Unit Owner or Owners.

(c) Some of the Common Areas are or may be located within the Units or may

be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable right, to be exercised by the Association as its 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 therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units. The Association shall also have such rights. 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 instance of the Association or of Unit Owners shall be the responsibility of the Association; provided, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all 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 Association by assessment.

14. **Change in Ownership.** The Association shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Unit which is owned by him. In the event of any transfer of a fee or undivided fee interest in a Unit either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Weber County, Utah. The Association may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Association may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Weber County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Management Committee is otherwise advised in writing.

15. **Association Assessments.** Every Unit Owner shall pay his equal share of the Common Expenses. Payment thereof shall be in such amounts and at such times as the Association determines in accordance with the Declaration, Articles of Incorporation or the Bylaws.

No assessment for a single improvement in the nature of a capital expenditure which exceeds the sum of \$5,000 shall be made without the same having been first voted on and approved by at least a majority of the members of the Association.

16. **Destruction or Damage.** In the event of destruction or damage of part or all of the improvements in the Development Project, the procedures of this section shall apply.

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

(b) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Units shall be assessed for any deficiency.

(c) Any reconstruction or repair which is required to be carried out by this section shall be accomplished at the instance and direction of the Association. Any question regarding the extent of damage to or destruction of Project improvements shall be made by an MAI

appraiser selected by the Association who shall determine the figure representing the percentage of project improvements which have been destroyed or substantially damaged.

17. **Taxes.** It is understood that each Unit is subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law. Each Unit Owner will, accordingly, pay and discharge any and all taxes which may be assessed against his Unit.

18. **Insurance.**

(a) **Hazard Insurance.** The Association shall at all times maintain in force hazard insurance meeting the following requirements:

(1) A multi-peril type "master "blanket" policy covering the entire Development (both Units and Common Areas and Facilities) shall be maintained. Such policy shall provide coverage against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as customarily are covered with respect to developments similar to the Development in construction, location, and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any coinsurance percentage specified in the Policy, but not less than one hundred percent (100%) of the full insurable value (based upon replacement cost). Such policy shall include an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and, if necessary or appropriate, an "Increased Cost of Construction Endorsement" and a "Contingent Liability from Operation of Building Laws Endorsement" or its equivalent.

(2) The named insured under each policy required to be maintained by the foregoing item (1) shall be in form and substance essentially as follows: "Blackhawk Townhouses Owners' Association, or its authorized representative, for the use and benefit of the individual Owners."

(3) Each such policy shall include the standard mortgage clause (without contribution) which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of Mortgagees as their interests may appear or shall be otherwise endorsed to fully protect the interests of Mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each Eligible Mortgagee at least thirty (30) days in advance of the effective date of any reduction in or Cancellation of the policy.

(4) Each such policy shall provide that notwithstanding any provision thereof which gives the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable if it is in conflict with any requirement of law or without the prior written approval of the Association.

(b) **Fidelity Insurance.** The Association shall at all times maintain in force fidelity coverage against dishonest acts on the part of managers (and employees of manager), trustees, employees, officers, Association members, or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance shall name the Association as the obligee or insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one hundred fifty percent (150%) of the estimated annual operating expenses of the Development including reserve-funds, unless a greater amount is required by a majority of the Mortgagees or their designees. Such fidelity bond or

insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each Eligible Mortgagee at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

(c) **Liability Insurance.** The Association shall at all times maintain enforce a Comprehensive policy of public liability insurance covering all of the Common Areas and Facilities. Such insurance shall include a "Severability of Interest Endorsement" or its equivalent which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of other Owners, or the Association. The coverage afforded by such public liability insurance shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as customarily -are covered with respect to developments similar to the Development in construction, location and use. The limit of liability under such insurance shall not be less than \$250,000 for all claims for personal injury and/or property damage arising out of a single occurrence.

(d) **General Requirements Concerning Insurance.** Each insurance policy or fidelity bond maintained pursuant to the foregoing Sections 18(a) through 18(c) shall be written by an insurance carrier which is licensed to transact business in the State of Utah. No such policy or fidelity bond shall be maintained where: (1) under the terms of the carrier's charter, bylaws, bond or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a Mortgagee, the Association, a Unit, the Common Areas, or the Project; (2) by the terms of the carriers charter, bylaws, bond or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; (3) the bond or policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds; or (4) the bond or policy provides that the insurance thereunder shall be brought into contribution with insurance purchased by the individual Unit Owners or their Mortgagees. Each such fidelity bond or policy shall provide that: (a) coverage shall not be prejudiced by any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association; (b) coverage shall not be prejudiced by any failure by the Association to comply with any warranty or condition with regard to any portion of the Development over which the Association has no control; and (c) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insureds named therein, including any Mortgagee named as an insured. If due to changed circumstances, excessive cost, or any other reason, any of the insurance coverage required to be obtained and maintained under Sections 18(a) through 18(c) hereof cannot reasonably be secured, with respect to such coverage the Association shall obtain, and maintain such substitute, different or other coverage as may be reasonable and prudent under the circumstances as they then exist, however the Association shall not self insure.

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(e) **Additional Provisions.** The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Development in construction, nature, and use.

(2) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Unit Owners or their mortgagees.

(3) Each policy of insurance obtained by the Association shall, if possible, provide: That it cannot be canceled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Association or of the Manager without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners.

(4) Any Unit Owner may obtain additional insurance at his own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Association. Any Unit Owner who individually obtains insurance covering any portion of the Development shall supply the Association with a copy of his policy within thirty (30) days after he acquires such insurance.

19. Payment of Common Expenses.

(a) Each Unit Owner shall pay the Association his allocated portion, past, present, and future, of the Common Expenses deemed necessary by the Association to manage and operate the Development, upon the terms, at the time, and in the manner herein provided without any deduction on account of any set-off or claim which the Owner may have against the Association. Each installment shall be due on or before the first day of each month. If the Unit Owner shall fail to pay any installment within ten (10) days of the time when the same becomes due, the Owner shall pay a ten dollar (\$10.00) late fee and shall pay interest on the installment at the rate of eighteen percent (18%) per annum from the date when such installment shall become due to the date of the payment thereof, together with all costs and expenses, including attorney's fees, incurred in any proceedings brought to collect such unpaid common expenses.

(b) The Common Expenses above referred to for each year, or portions of the year, are hereby defined and shall be deemed to be such aggregate sum as the Association from time to time shall determine, in its judgment, is to be paid by all the Owners of the Development then in existence to enable the Association to pay all estimated expenses and outlays of the Association to the close of such year, growing out of or in connection with the maintenance and operation of such land, buildings and improvements; which sum may include, among other things, the cost of management, special assessments, fire, casualty, flood, fidelity, public liability and other insurance or bond premiums, common lighting, landscaping, and the care of the grounds, repairs, and renovations to Common areas and Facilities, (other than services which are separately billed or metered to the individual Units by the utility or party furnishing such service), legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the payment of any deficit remaining from the previous period, the creation of a reasonable contingency or other necessary reserve or surplus fund, as well as all other costs and expenses relating to the Development. The Association may, from time to time, up to the close of the year for which such cash requirements have been so filed or determined, increase or diminish the amount previously fixed or determined for such year. It may include in the cash requirements for any year, any liabilities or items of expense which accrued or became payable in the previous year, or which might have been included in the cash requirements for a previous year, but were not included therein; and also any sums which the Association may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

(c) The portion payable with respect to each Unit in and for each year or for a portion of a year shall be a sum equal to the aggregate amount of such Common Expenses for such year, or portion of year, determined as aforesaid, divided by the number of members of the

Association or Unit. Such assessments, together with any additional sums accruing under this Declaration, shall be payable monthly in advance, or in such payments and installments as shall be required by the Association.

(d) The Association shall have discretionary powers to prescribe the manner of maintaining and operating the Development and to determine the cash requirements of the Association to be paid as aforesaid by the Owners under this Declaration. Every such reasonable determination by the Association within the bounds of this Declaration shall be final and conclusive as to the Owners, and any expenditures made by the Association, within the bounds of this Declaration, shall as against the Owner be deemed necessary and properly made for such purpose.

(e) If an Owner shall at any time let or sublet his Unit and shall default for a period of one month in the payment of any assessments, the Association may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner occupying the Unit the rent due or becoming due and payment of such rent to the Association shall be sufficient payment and discharge of such tenant or subtenant and the Owner to the extent of the amount so paid.

Each monthly assessment and each special assessment shall be separate, distinct and personal obligations of the Owner(s) of the Unit against which the same is assessed at the time the assessment is made and shall be collectible, as such. Suit to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the following lien securing the same: the amount of any assessment, whether regular or special, assessed to a Unit plus interest at eighteen percent (18%) per annum plus late fees, and costs, including reasonable attorney's fees, shall become a lien upon such Unit upon recordation of a notice of assessment. The said lien for nonpayment of common-expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

(1) Tax and special assessment liens on the Unit in favor of any assessment unit, and special district; and

(2) Encumbrances on the interest of the Unit Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

(g) A certificate executed and acknowledged by the Manager or Association stating the unpaid common expenses then outstanding with respect to a Unit shall be conclusive upon the Association and the Owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner or encumbrancer or prospective Owner or encumbrancer of a Unit upon request at a reasonable fee not to exceed Ten Dollars (\$10.00). Unless the request for a certificate of indebtedness shall be compiled within ten (10) days, all unpaid common expenses which became due prior to the date of making of such request shall be subordinate to the lien or interest held by or obtained by the person making the request. Any encumbrancer holding a lien on a Unit may pay any unpaid Common Expenses payable with respect to such Unit and upon such payment such encumbrancer shall have a lien on such Unit for the amounts paid of the same rank as the lien of his encumbrance.

Subject to the provisions of this subparagraph, 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.

(h) Upon payment of delinquent assessments concerning which a notice of assessment has been recorded or other satisfaction thereof, the Association shall cause to be recorded in the same manner as the notice of assessment a further notice stating the satisfaction and release of the lien thereof. Such lien for nonpayment of assessment may be enforced by sale of the Unit by the Association or by a bank or trust company or title insurance company authorized by the Association, such sale to be conducted in accordance with the provisions of the law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the Unit Owner shall be required to pay the costs and expenses of such proceedings including reasonable attorney's fees.

(i) In the event of foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Unit and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Association or Manager shall have the power to bid in the Unit at foreclosure or other sale and to hold, lease, mortgage and convey the Unit.

20. Maintenance.

(a) Each owner of a Unit at his own expense shall keep the interior of such Unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all interior redecorating and painting which may at any time be necessary to maintain the good appearance of such Unit. Except to the extent that the Association is protected by insurance against such injury, the unit Owner shall repair all injury or damages to the Unit or building or buildings caused by the act, negligence or carelessness of the Unit Owner or that of any tenant or subtenant, or any member of the Unit Owner's family or of the family of any tenant or subtenant and all such repairs, redecorating and painting shall be of a quality and kind equal to the original work as determined and approved in writing by the Association. In addition to decorating and keeping the interior of the Unit in good repair, the Unit Owner shall be responsible for the maintenance or replacement of any plumbing, fixtures, refrigerators, air conditioning and heating equipment, dishwashers, disposals, ranges, etc., that may be in or connected with the Unit, and the maintenance of the patio except the fences surrounding such areas. Without the written permission of the Association first had and obtained, a Unit Owner shall not make or permit to be made any structural alteration, in or to the Unit, garages or parking stalls, or in or to the exterior of the buildings, and shall not paint, decorate or plant any portion of the exterior of the Unit or of the building in which the Unit is located, including any Limited Common area.

(b) Except as hereinafter provided, the Association shall provide for such maintenance and operation of the Common Areas and Facilities and of the Limited Common Areas and Facilities as may be reasonably necessary to keep them clean, functional, attractive and generally in good condition and repair. The Association shall have no obligation regarding the interior maintenance or care of Units.

(c) In addition to maintenance upon the Common Areas, the Association shall provide exterior maintenance upon each Unit which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces. In the event that the need for exterior maintenance or repair of a unit or the improvements thereon is caused through the willful or negligent acts of its owner, or through the willful or negligent acts of the family, guests or invitees of the owner of the unit needing such

maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject.

21. **Right of Entry.** The Association and its duly authorized agents shall have the right to enter any and all of the Units and the Limited Common Areas appurtenant thereto in case of an emergency originating in or threatening such Unit or any other party of the Project, whether or not the Unit Owner or occupant thereof is present at the time. The Association and its duly authorized agents shall also have the right to enter into any and all of said Units and Limited Common Areas at all reasonable times as required for the purpose of making necessary repairs upon the Common Areas and Facilities of the Development or for the purpose of performing emergency installations, alterations or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations or repairs are necessary to prevent damage or threatened damage to other Units in the Development; and provided further, that the Unit Owner or occupant affected by such entry shall first be notified thereof if available and if time permits.

22. **Administrative Rules and Regulations.** The Association shall have the power to adopt and establish by resolution, such building management and operational rules as it may deem necessary for the maintenance, operation, management and control of the Development. The Association may, from time to time by resolution, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the Unit Owners, such amendment, alteration or provision shall be taken to be a part of such rules. Unit Owners shall at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all Unit Owners, tenants, subtenants or other occupants of the Units.

23. **Obligation to Comply with Declaration, Bylaws, Articles, Rules and Regulations.** Each Unit Owner, tenant, subtenant or other occupant of a Unit shall comply with the provisions of this Declaration, the Bylaws and Articles of Incorporation of the Association and its rules and regulations, all agreements and determinations lawfully made and/or entered into by the Association or the Unit Owners, when acting in accordance with their authority. Failure to comply with any of the provisions thereof shall be grounds for an action by the Association or other aggrieved party for injunctive relief or to recover any loss or damage resulting therefrom.

24. **Indemnification of Board of Trustees.** Each member of the Board of Trustees, which Board may from time to time be referred to as the Board of Directors of the Association, and its members may be referred to as Directors, shall be indemnified and held harmless by the Unit Owners against all costs, expenses and liabilities whatsoever, including, without limitation, attorney's fees, reasonably incurred by him or her in connection with any proceeding to which he or she may become involved by reason of being or having been a member of said Board of Trustees; provided, however, the foregoing indemnification shall not apply if the loss, expense or liability involved resulted from the willful misconduct, gross negligence or other intentional act of the member.

25. **Amendment.** This Declaration and/or the Map may be amended upon the receipt of not less than a 66.6% affirmative vote or approval of the membership of the Association. Any amendment so authorized shall be accomplished by recordation of an instrument executed by the Association. In said instrument the Association shall certify that the vote or consent required by this Section has occurred.

26. **Consent in Lieu of Vote.** In any case in which this Declaration requires the vote of the members of the Association for authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, the requisite consents in writing to such transaction from Unit Owners. The following additional provisions shall govern any application of this section:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner;

(b) Any change in ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

27. **Severability.** The invalidity of any one or more phrases, sentences, subparagraphs, paragraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this instrument should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections or section or sections had not been inserted.

28. **Declarant's Rights Assignable.** All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment.

29. **Lease of Units.** With the exception of a lender in possession of a Unit following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Unit Owner shall be permitted to lease or rent his unit for transient or hotel purposes which means the initial term of any lease shall be at least six (6) months. No Unit Owner may lease less than the entire unit except a garage may be leased to another Unit Owner. A lease agreement shall be required, and it shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Bylaws, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing and a copy of such lease shall be delivered to the Association five (5) days prior to occupancy by the tenant. The Unit Owner shall notify the Association of the names of the lessee of the Unit. In the event of a lease of a Unit, only the tenant and not the Unit Owner shall have the right to the use of the Common Areas and Facilities while the Unit is leased. In the event insurance costs covered by paragraph 18 are increased due to the percentage of rentals, then those Unit owners shall pay their portion of the increased costs of insurance charged.

30. **Legal 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 in the official records of Weber County, Utah, and in substantially the following form:

Unit _____ as shown in the Record of Survey Map for BLACKHAWK TOWNHOUSES, PHASE I, A PLANNED RESIDENTIAL UNIT DEVELOPMENT, appearing in the Records of the County Recorder of Weber County, Utah, in Book _____, Page _____ of Plats, and as defined and described in the Declaration of Covenants, Conditions and Restrictions, appearing in such records at Book _____, Page _____ thereof.

This conveyance is subject to the provisions of the aforesaid Declaration.

Such description will be construed to describe the Unit, and to incorporate all the rights incident to Ownership of a Unit and all the limitations on such ownership as described in this Declaration.

31. Expansion of the Development.

(a) Reservation of Option to Expand. Declarant hereby reserves the option to expand the Development to include additional Units in the Development. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire seven (7) years from the effective date of the Declaration unless sooner terminated by Declarant's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said seven (7) years. Such right may be exercised without first obtaining the consent or vote of Unit Owners and shall be limited only as herein specifically provided. Such Units shall be constructed on any or all portions of the Additional Property. The total number of Units in the Development, as expanded, shall not exceed ~~Two hundred & Forty~~ (240) units and the maximum number of units per acre of Additional Property shall not exceed the number permitted by local ordinance. It is anticipated that the units to be constructed upon Additional Land shall be consistent with and conform in size and design to those of the initial Phase of the project; accordingly, the maximum number of units to be constructed upon the Additional Property is expected to be approximately eight (8).

(b) Supplemental Declarations and Supplemental Maps. Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Weber County, Utah, no later than seven (7) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Units, together with supplemental Map or Maps containing the same information with respect to the new Units as was required on the Map with respect to the Phase I Units. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

(c) Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Development as so expanded. E.g., "Property" shall mean the real property initially submitted under the Declaration, plus any Additional Property added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Units after such expansion shall be effective to transfer rights in the Development, as expanded by use of the form of description set forth in Section 30, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the office of the Weber County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to Blackhawk Townhouses Owners' Association, Inc. in the Development as it existed before such expansion the respective interests in the new Common Areas added to the Development as a result of such expansion.

(d) Declaration Operative on New Units. The new Units shall be subject to all the terms and conditions of this declaration and therein shall be subject to ownership with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Map and Supplemental declaration in the said office of the Weber County Recorder. At such time, the amendment hereto or supplemental declaration shall reallocate undivided interests in the common areas and facilities so that the units depicted on the supplemental record of survey map shall be allocated undivided interests in the common areas and facilities on the same basis as the units

depicted on the record of survey map that was recorded simultaneously herewith.

(e) Other Provisions Concerning Expansion. If the Development is expanded as hereinbefore contained, then it is further provided that:

(1) All or any part of the Additional Land may be added to the Development without any limitations whatsoever save and except that all additional Units created must be restricted to multi family residential housing limited to one family per dwelling unit.

(2) Portions of the Additional Land may be added to the Development at different times without any limitations.

(3) Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Property through the easement areas as shown on the Map. The Association of Unit Owners shall not allow anything to be built upon or interfere with said easement areas.

(4) No assurances are made concerning:

(a) The locations of any improvements that may be made on any portion of the Additional Land that may be added to the Development.

(b) Type, kind or nature of improvements which may be created on any portion of the Additional Land, except that the common facilities other than community center building and recreational areas will be comparable to the Phase One, Phase Two, and Phase Three facilities on a per Unit basis and will be of a similar quality of materials and construction to Phase One, Phase Two, and Phase Three.

(c) Whether any Units created on any portion of the Additional Land will be substantially identical to those within the initial Development except that Units will be of a similar quality of materials and construction as the Units in Phase One.

(d) Type, size, or maximum number of Limited Common Areas which may be created within any portion of the Additional Land added to the Development.

(5) Notwithstanding anything to the contrary which may be contained 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 submission of any portion of the Additional Land to the provisions of the act as land under this Declaration; (ii) the creation, construction, or addition to the Development of any additional property; (iii) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or (iv) the taking of any particular action with respect to the Additional Land, the Development, or any Land.

32. Gender. The-singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

33. Invalidity. The invalidity of any provisions of this Declaration, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability, or effect

of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

34. **Waivers.** No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

35. **Topical Headings.** The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

36. **Effective Date.** This Declaration shall take effect upon recording.

37. **Party Walls.** Each wall which is built as a part of the original construction of the homes upon the Property and placed on the dividing line between the Lots or Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(a) **Sharing Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(b) **Destruction by Fire or Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Such damage to a party wall shall be repaired and the wall restored by the Owners, subject to the rights of the Association to make such repairs or restoration with respect to external structures.

(c) **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner hereunder shall be appurtenant to the land and shall pass to such Owner's successor in title.

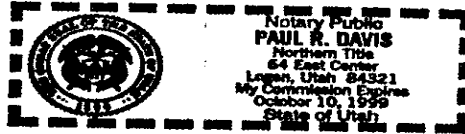
Dated the day and year first above written.

BLACKHAWK CONDOMINIUMS REAL ESTATE, L.L.C.

By:  member
Gordon B. Lyle, Managing Member

STATE OF UTAH)
 : ss.
County of Cache)

On the 2 day of December, 1997, personally appeared before me GORDON B. LYLE, known to me to be a Manager and Member in the limited liability company of BLACKHAWK CONDOMINIUMS REAL ESTATE, L.L.C., and who subscribed the said company name to the foregoing instrument, and who acknowledged to me that he executed the same in said company name, and that said limited liability company executed the same.



[Handwritten Signature]

NOTARY PUBLIC

EXHIBIT "A"
Legal Description

A part of the Northeast quarter of section 32, township 7 North, Range 1 West of the Salt Lake Base and Meridian, also a part of Lot 54, Plat B, in North Ogden City, described as: Beginning at a point located South 89° 27' 37" East 275.03 feet (275 feet by record) and South 89° 27' 37" East 126.87 feet from the Northwest corner of said Lot 54 and running thence South 89° 27' 37" East along Grantors North property line 761.83 feet; thence South 00° 45' 27" West 10.00 feet; thence South 89° 27' 37" East 160.00 feet to a point on the West Right-of-way line of 400 East Street (Washington Ave.); thence South 00° 45' 27" West along said West line 86.48 feet (86 feet by Record); thence North 88° 46' 07" West 165.00 feet; thence South 00° 45' 27" West 133.00 feet; thence North 88° 46' 07" West 101.00 feet; thence South 00° 45' 27" West 78.00 feet to a point on an existing fence line; thence North 88° 46' 07" West along said fence line 694.71 feet; thence North 00° 32' 23" East 296.37 feet to the point of beginning containing 5.37 acres and 48 units.

A utility easement including storm sewer, detention pond, irrigation and sanitary sewer described as: a part of the North East quarter of section 32, Township 7 North, Range 1 West of the Salt Lake Base and Meridian, also a part of Lot 54, Plat B, in North Ogden City, more particularly described as: Beginning at a point located South 89° 27' 37" East 275.03 feet (275 feet by Record) and running thence South 89° 27' 37" East along Grantors North property line 126.87 feet; thence South 00° 32' 23" West 57.50 feet; thence North 89° 27' 37" West 107.87 feet; thence South 00° 32' 23" West 80.00 feet; thence South 42° 23' 29" West 80.00 feet; thence North 90° 00' 00" West 56.00 feet; thence North 47° 36' 31" West 28.04 feet to a point on Grantors West property line; thence North 42° 23' 29" East along said West line 143.96 feet; thence North 01° 07' 29" East along said West line 38.11 feet to the point of beginning.