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*Paul Wilt*  
Washington County Recorder

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

TEMPLE TERRACE TOWNHOUSE SUBDIVISION

TO: THE PUBLIC:

THIS DECLARATION OF covenants, conditions and restrictions, hereinafter called "Declaration," is made and executed in St. George, Washington County, State of Utah, this 2nd day of November, 1977, by Joseph E. Wilson and J. E. Wilson Foundation, a non-profit California Trust, hereinafter called "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Washington, State of Utah, which is more particularly described as follows:

All of Lot 5 and the  $\frac{1}{2}$  of Lot 4, Block 28, Plat "B" St. George City Survey, being more particularly described as follows: Beginning at the NW Corner of Lot 5, Block 28, Plat "B", St. George City Survey, and running thence S.00° 08'44"W. 198.49feet to the SW Corner of the  $\frac{1}{2}$  Lot 4 of said Block 28; thence S.89° 59' 20"E. 264.00 feet to the SE corner of the  $\frac{1}{2}$  of said Lot 4; thence N.00° 08' 44"E. 198.50 feet to the NE corner of Lot 5 of said Block 28; thence N. 89° 59' 27"W. 264.00 feet to the point of beginning, containing 1.203 acres.

WHEREAS, Declarant is the owner of certain townhouses and other improvements heretofore constructed or hereafter to be constructed upon the properties and it is the desire and intention of the Declarant to subdivide the properties into lots and to sell and convey the same to various purchasers, and

WHEREAS, Declarant will convey the said properties subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW THEREFORE, Declarant hereby declares that all of the said property is and shall be held and conveyed upon and subject to the easements, conditions, covenants, restrictions and reservations hereinafter set forth; all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said property. These easements, covenants, restrictions, conditions and reservations shall constitute covenants to run with the land and shall be binding upon all persons claiming under them and also that these conditions, covenants, restrictions, easements and reservations shall inure to the benefit of and be limitations upon all future owners of said property, or any interest therein.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to TEMPLE TERRACE TOWNHOUSE ASSOCIATION, a non-profit corporation organized under the laws of the State of Utah, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members, and not dedicated for use by the general public, specifically exempting therefrom all lots as hereafter defined which shall be deeded to grantees of Declarant. The Common Area shall be owned by the Association. The Declarant, in its sole discretion, may increase the amount of Common Area by deeding other portions of Block 28, Plat "B", St. George City Survey, to the Association in which event the Association must accept said addition or additions to the Common Area.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the Common Area.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Declarant" shall mean and refer to J. E. Wilson & J. E. Wilson Foundation, its successors and assigns, if such successors or assigns shall acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 8. "Conveyance" shall mean and refer to actual conveyance of fee title to any lot to any owner by a Warranty Deed or other document of title and shall not mean the mere execution of an installment sales contract document.

Section 9. "Townhouse" shall mean and refer to a single family dwelling unit with or without walls or roofs in common with other single family dwelling units and shall include the fee title to the real property lying directly below the exterior walls of the said single family dwelling unit.

Section 10. "Driveway" shall mean and refer to the concrete area commencing on the front lot line of each lot and running to the right-of-ways within the subdivision or to a public street as the case may be.

Section 11. "Mortgage" shall mean and refer to any mortgage or deed of trust, and "Mortgagee" shall refer to the mortgagee or trustee under a deed of trust.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Declarant reserves the right to expand TEMPLE TERRACE TOWNHOUSE SUBDIVISION as set forth herein. Additional property within Block 28, Plat "B", St. George City Survey, may be annexed to the TEMPLE TERRACE TOWNHOUSE SUBDIVISION planned unit development by Declarant without the consent of members for a period of five years from the date of recording of this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah. Thereafter any additional properties may be annexed providing that such annexation be approved by sixty percent (60%) of the members at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. In the event that sixty percent (60%) of the membership is not present in person or by proxy, members not present may give their written assent to the action taken thereat.

In the event the Declarant, within the time period set forth in this Article, filed other subdivision plat(s) creating additional planned unit developments in Block 28, Plat "B", St. George City Survey, under the name and style of TEMPLE TERRACE TOWNHOUSE SUBDIVISION, and states on said Plat(s) the intention to have the property described on said plat bound by the terms, covenants and conditions of this Declaration, then, upon recording of said plat, the property described herein shall be subject to this Declaration. The terms covenants and conditions contained herein run not only to, with and from the property described herein, but also, with and from all adjoining additions thereto made pursuant to this Article.

Any additional planned unit developments annexed hereto by the Declarant shall be exclusively for residential single family

dwelling, architecturally compatible to the existing townhouse; substantially identical to the townhouses already constructed; constructed out of similar materials; and shall be subdivided into no more than twelve lots per acre. The Declarant shall have the sole discretion to develop the Common Area in said addition(s) and to include any facilities or amenities thereon that Declarant deems necessary.

Furthermore, if additional planned unit developments are created by the Declarant pursuant to the terms of this Article, the lot owners in said addition shall be members of the Association and shall have the same rights to the use and enjoyment of the property and facilities of the Association as any other member, either an owner in TEMPLE TERRACE TOWNHOUSE SUBDIVISION, or otherwise. The Common Area in any such additional planned unit development(s) as set forth herein shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens, within one year of the date of recordation of said plat and the Association must accept the deed to said Common Area.

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### ARTICLE III

#### MEMBERSHIP

Every person or entity who is a record owner of a free or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one (1) membership. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership, and shall automatically commence upon a person becoming such owner

and shall automatically terminate and lapse when such ownership in said property shall terminate or be terminated.

#### ARTICLE IV

##### VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot 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.

Class B. The Class B member(s) shall be the Declarant 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) On January 1, 1980.

#### ARTICLE V

##### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which easement shall be appurtenant to and shall pass with the title to every assessed lot, subject to the following provisions:

(a) The right of the Association to limit the number of guests of members permitted to use a particular part of the common areas at any one time;

(b) The right of the Association to charge reasonable admission and other fees for the use of any recreational

facility situated upon the Common Area;

(c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the owners hereunder;

(d) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his lot remains unpaid; and for a period of not to exceed thirty (30) days for any infraction of its published rules and regulations;

(e) The right of the Association to sell, exchange, hypothecate, dedicate or transfer all or part of the Common Area to any private, individual, corporate entity, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members;

(f) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure;

(g) The right of the Declarant and of the Association to grant and reserve easements and right-of-ways through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, electricity and other utilities, and the right of the Declarant to grant and reserve easements and right-of-ways through, over, upon and across the Common Areas for the completion of improvements upon the Common Area, or townhouses in any portion of Block 28, Plat "B", St. George City Survey and for the operation and maintenance of the Common Area;

(h) The right of individual owners to the exclusive use of a driveway appurtenant to each lot and a front yard area as provided in this article.

(i) The right of the Directors of the Association to promulgate reasonable rules and regulations governing such rights of use, from time to time, in the interest of securing maximum safe

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usage of such Common Areas by the members of the Association without unduly infringing upon the privacy or enjoyment of the owner or occupant of any part of said property, including, without being limited thereto, reasonable rules restricting persons under or over designated ages from using certain portions of said property during certain times, and reasonable regulations and restrictions regarding parking.

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Section 2. Parking Rights. Ownership of each lot shall entitle the owner or owners thereof to the exclusive use of the driveway in front of said lot, together with the right of ingress and egress in and upon said driveway to the owner's garage. Parking in such a manner as to prevent ingress or egress to a garage shall be prohibited. No owner shall convert his garage into living area, or permit its use to interfere with the parking of the owner's motor vehicle, vehicles and/or boat or trailer therein. Boats, trailers, recreational vehicles or inoperative motor vehicles shall not be parked upon a driveway for a period in excess of seventy-two hours (72).

Section 3. Front Yard Area. Ownership of each lot shall entitle the owner or owners thereof to the exclusive use of the front yard area bounded by the front lot line of each lot, the width of said lot, and extending to the private right-of-way, patio and enclosed area in front of said lot. Nothing herein contained to the contrary, the Association shall have the exclusive right to plant and maintain said front yard area, and its employees may enter thereon for these purposes. Furthermore, the owner shall not permit anything to become affixed to the Common Area without the prior approval of the Association.

Section 4. Delegation of Use. Any member may designate, in accordance with the Bylaws or rules and regulations as adopted from time to time by the Directors, his right or enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

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Section 5. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, except, (i) any state of facts an accurate survey may show, (ii) covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration, and (iii) a covenant to maintain the Common Area in good repair and condition at all times and to operate the same at its own expense in accordance with high standards, which shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns.

ARTICLE VI  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the properties, hereby covenants, and each owner of any lot by acceptance of a Deed therefore, whether or not it shall be so expressed in any Deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessment and/or charges, and (2) special assessments for capital improvements to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such lot at the time when the assessments shall not pass to his successors in title unless expressly assumed by them.

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Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the properties and in particular for the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the homes situated upon the properties. They shall include, but are not limited to, funds for the actual cost to the Association of all taxes, insurance, repair, replacement and maintenance of the Common Area and of the maintenance of the exteriors of the lots or townhouses as may from time to time be authorized by the Board of Directors, and other facilities and activities including, but not limited to, mowing grass, caring for the grounds, sprinkler system, landscaping, roofs, garbage pickup and water service furnished to townhomes and lots by the Association, and other charges required by this Declaration or that Board of Directors of the Association shall determine to be necessary to meet the primary purposes of the Association, including the establishment and maintenance of a reserve for repair, maintenance, taxes and other charges as specified herein. That portion of the assessment which is designated for water service shall be maintained in a separate account and shall be disbursed only in payment for water and maintenance of the water distribution system.

Section 3. Basis and Maximum of Annual Assessments.

until January 1st of the year immediately following the conveyance of the first lot to any owner, the maximum annual assessment shall be THREE HUNDRED SIXTY AND NO/100 DOLLARS (\$360.00) per lot.

(a) From and after January 1st of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

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(b) From and after January 1st of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of the votes of the members who are voting in person or by proxy, at a meeting duly called for this purpose. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area or townhouses, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on an annual, quarterly, or monthly basis at the discretion of the Directors.

Section 6. Quorum for Any Action Authorities Under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all votes

shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called, subject to the notice requirements set forth in the Bylaws, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 7. Date of Commencement of Annual Assessments;  
Due Dates. The annual assessments provided for herein shall commence as to all lots in any one particular phase on the first day of the month following the conveyance of the Common Area for that phase to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors and, unless otherwise provided, the Association shall collect each month from the owner of each lot one-twelfth (1/12) of the annual assessment for such lot.

The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-Payment of Assessments;  
Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action

at law against the owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment.

Each such owner, by his acceptance of a deed to a lot, hereby expressly vests in the TEMPLE TERRACE TOWNHOUSE ASSOCIATION, or its agents the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed or trust lien on real property, and such owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other lot owners.

The Association, acting on behalf of the lot owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, and to subrogate so much of its right to such liens as may be necessary or expedient to an insurance company continuing to give total coverage notwithstanding non-payment of such defaulting owner's portion of the premium. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or mortgages, now or hereafter placed upon any lot. Any and all assessments which may have become due and payable prior to a sale or transfer of the lot pursuant to a decree of foreclosure or by conveyance in lieu of foreclosure shall be paid by the purchaser. Sale or transfer of any lot shall not affect the assessment lien.

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Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All properties dedicated to and accepted by local public authority;
- (b) The Common Area; and,
- (c) All properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Utah.

However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Management Agreements. Each owner of a lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all such agreements shall be available to each owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be cancelled by an affirmative vote of sixty percent (60%) of the votes of the members of the Association. In no event shall such management agreement be cancelled prior to the effecting by the Association or its Board of Directors of a new management agreement with a party or parties, which new management agreement will become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type.

Section 12. Insurance Assessments. The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the buildings, including

all townhouses, unless the owners thereof have supplied proof of adequate coverage to the Board of Directors' complete satisfaction, and approval, which shall not be unreasonably withheld, against loss or damage by fire or other hazard, and shall also obtain a broad form public liability policy covering all Common Area, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism.

Premiums for all such insurance coverage, including insurance on townhouses obtained by the Board of Directors shall be written in the name of the Association as Trustee for each of the townhouse owners in the same proportions as the square footage of each townhouse bears to the total square footage of all the townhouses combined. Insurance on individual townhouses obtained by such townhouse owners may be written in the name of the individual owners. Premiums for insurance obtained by the Board of Directors on townhouses shall not be part of the common expense, but shall be an expense of the specific townhouse or townhouses so covered and a debt owed by the owners, and shall be collectible by a lawful procedure permitted by the laws of the State of Utah.

In addition, if said debt is not paid within twenty (20) days after notice of such debt, such amount shall automatically become a lien upon such owner's lot and townhouse and shall continue to be such a lien until fully paid. This lien shall be subordinate to liens as set forth in Section 9 above, and shall be enforceable in the same manner as any lien created by failure to pay the maintenance assessments. In addition to the aforementioned insurance required to be carried by the owners and/or the Association, any owner may, if he wishes, at his own expense, insure his own townhouse unit for his own benefit and carry any and all other insurance he deems advisable. It shall

be the individual responsibility of each owner at his own expense to provide, as he sees fit, homeowner's liability insurance, theft and other insurance covering personal property damage and loss.

In the event of damage or destruction by fire or other casualty to any properties covered by insurance written in the name of the Association, the Board of Directors shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the properties to as good condition as formerly.

All such insurance proceeds shall be deposited in a bank or other financial institution, whose accounts are insured by a Federal Governmental Agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors. The Board of Directors shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings.

In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all owners of the damaged townhouses in such proportions as the Board of Directors deem fair and equitable in the light of the damage sustained by such townhouses to make up any deficiency, except that a special assessment shall be levied against all townhouse owners, as established by Article VI, Section 1, above, to make up any deficiency for repair or rebuilding of the Common Area not a physical part of a townhouse unit. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the

respective mortgagees and owners in such proportions as the Board of Directors deem fair and equitable in the light of the damage sustained by such townhouses. Such payments shall be made to all such owners and their mortgagees in proportion to their percentage interests.

In the event of damage or destruction by fire or other casualty to any townhouse or other property covered by insurance written in the name of an individual owner, said owner shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to repair or rebuild such damaged or destroyed portions of the exterior of the townhouse in a good workmanlike manner in conformance with the original plans and specifications of said townhouse. In the event such owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the townhouse area within thirty (30) days, the Association, by and through its Board of Directors, is hereby irrevocably authorized by such owner to repair and rebuild any such townhouse in a good and workmanlike manner in conformance with the original plans and specifications of the townhouse. The owner shall then repay the Association in the amount actually expended for such repairs, and the Association shall have a lien securing the payment of same identical to that provided above in this section securing the payment of insurance premiums; and subject to foreclosures as above-provided.

## ARTICLE VII

### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall is built as a part of the orginal construction of a townhouse upon the properties and placed between two (2) separate living units intended for use and occupancy as a residence by a single family shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law

regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the owners who make use of the wall.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, 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 equal proportions 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 negligence or willful acts or omissions. The word "use" as referred to herein means ownership of a dwelling unit or other structure which incorporates such wall or any part thereof.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of an owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors of the Association shall

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select an arbitrator for the refusing party.

*Section 7. Encroachment.* If any portion of a party wall or other part of a building or structure now or hereafter constructed upon said property encroaches upon any part of the Common Areas or upon the Lot or Lots used or designated for use by another lot owner, an easement for the encroachment and for the maintenance of same is granted and reserved and shall exist, and be binding upon the Declarant and upon all present and future owners of any part of said property for the benefit of the present and future owners of such encroaching building or structure for the purpose of occupying and maintaining the same; in the event a structure consisting of more than one dwelling unit becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements are granted and reserved upon the Common Areas and in and upon each Dwelling Unit and Lot for the benefit of the Association and the adjacent owner or owners to the extent reasonably necessary or advisable to make repairs and replacements; and minor encroachments resulting from any such repairs and/or replacements and the maintenance thereof are hereby granted and reserved for the benefit of the present and future owners thereof. The easements for encroachment herein granted and reserved shall run with the land.

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## ARTICLE VIII

### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon any lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board

of Directors of the Association. In the event the Board of Directors fail to approve or disapprove such plans and specifications as may be submitted to it within thirty (30) days after such submission, approval will not be required and this Article will be deemed to have been fully complied with.

#### ARTICLE IX

##### EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces, or maintenance of the patio or interior patio walls within each townhouse.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the owner, his family, or guests, or invitees, and not covered or paid for by insurance on such lot, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

#### ARTICLE X

##### EASEMENTS

Section 1. Minor Encroachments. Each lot and the property included in the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the multi-family structure containing two or more townhouses is partially or totally destroyed, and then rebuilt, the owners of the townhouses so affected agree that minor encroachments of parts of the adjacent townhouse units

or Common Areas due to reconstruction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Construction Encroachments. It is understood that the actual location of certain homes and other improvements constructed or to be constructed on the lots might inadvertently deviate slightly from the location indicated by the official plat of the properties. The Common Area shall therefore be subject to minor encroachments of such homes and other improvements which extend slightly beyond the boundaries of their respective lots but are in substantial compliance with the official plat. Each lot owner shall therefore be deemed to have an easement on the Common Area to the extent of any such minor encroachment from his lot.

Section 3. Utilities Easement. There is hereby created a blanket easement upon, across, over and under all of the said property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said townhouses. An easement is further granted to all police, fire protection, ambulance, trash collection and all similar persons to enter upon the streets and Common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or to cross over the Common Area and any townhouse to perform the duties of maintenance and repair of the townhouses or Common Area provided for herein.

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Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said property except as initially programmed and approved by the Declarant or thereafter approved by the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said property without conflicting with the terms hereof. The easements provided for in this Article XI shall in no way affect any other recorded easement on said premises.

ARTICLE XI

USE RESTRICTIONS

Section 1. Residential Use. Except for land designated as Common Area as shown on the recorded plat of TEMPLE TERRACE TOWNHOUSE SUBDIVISION in the County of Washington, State of Utah, all of the lots contained in said area shall be used for residential purposes only. All buildings or structures erected upon said property shall be of new construction and no building or structure shall be moved from other locations onto the property and no subsequent buildings or structures other than townhouse dwelling units, being single-family townhouses joined together by a common exterior, roof and foundation shall be construed. No structures of a temporary character, trailer, basements, tents, shacks, barn or other out-building shall be used on any portion of said property at any time as a residence or otherwise either temporarily or permanently.

Section 2. Fee Conveyed. Each lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof.

Section 3. Uses Permitted by Declarant During Construction. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant on the building of said

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townhouses to maintain during the period of construction and sale of said townhouses, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonable required, convenient or incidental to the construction and sale of said townhouses, including but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 4. Household Pets Permitted. No animals, live-stock or poultry of any kind shall be raised, bred or kept on any said lots, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

Section 5. Signs, Commercial Use Prohibited, Nuisance. No advertising signs, (except one of not more than five square feet "for rent" or "for sale" sign per parcel), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on said property, nor shall said property be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any townhouse or any resident thereof, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No business activities of any kind whatsoever shall be conducted in any building or in any portion of said property provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of Declarant, its agents and assigns during the construction and sale period, and of TEMPLE TERRACE TOWNHOUSE ASSOCIATION, a non-profit corporation incorporated under the laws of the State of Utah, its successors, and assigns, in furtherance of its powers and purposes as hereinafter set forth.

Section 6. Storage Prohibited Upon Common Area. No personal property of an owner shall be kept or stored upon any of

the Common Area. All rubbish, trash, or garbage shall be regularly removed from the townhouses, and shall not be allowed to accumulate herein or be placed upon the Common Area. All clotheslines shall be confined to patio areas within each townhouse.

*Section 7. Prohibited Uses Common Area.* No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Common Area, except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or their designated representative. Except for the right of ingress and egress, the owners of lots are hereby prohibited and restricted from using any of said Common Area outside the exterior building lines, except as herein prescribed or as may be allowed by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all owners of lots in the TEMPLE TERRACE TOWNHOUSE SUBDIVISION and is necessary for the protection of said owners.

*Section 8. Oil and Mining Operations.* No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

*Section 9. Owner's Responsibility for Maintenance.* All utilities, fixtures and equipment including but not limited to heating and cooling, installed within a townhouse, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls or roof of a townhouse shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other townhouses or their owners.

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Section 10. Exterior Antennas. Without prior written approval and the authorization of the Board of Directors, no exterior television, radio or shortwave antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the property, nor upon any structure situated upon the property other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 11. Enforcement. The Association or the Declarant or its successors in interest, or any owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 12. Construction and Validity of Restrictions. All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant and lot owners, their successors, heirs, and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason become unenforceable.

Section 13. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal

representative, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and Restrictions of this Declaration may be amended during the first five (5) year period from the date hereof by an instrument signed by the Declarant without the approval of the lot owners, and thereafter by an instrument signed by not less than sixty percent (60%) of the lot owners. Any amendment must be properly recorded in the Deed Records of Washington County, Utah.

Section 14. Gender and Grammar. The singular wherever used in this Declaration 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, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 15. Conflicts. In case of any conflict between this Declaration, as the same may be amended from time to time, and the Certificate of Incorporation and the Bylaws of the Association, as they may be amended from time to time, the provisions of this Declaration shall be controlling.

#### ARTICLE XII

##### ASSIGNMENT OF POWERS

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned. "Declarant" shall include all assigns or successors in interest of Declarant.

#### ARTICLE XIII

##### AGE RESTRICTION

It is a requirement of this subdivision that no children under the age of 14 years will be allowed to reside at any unit in this subdivision. The specific purpose of the development is for adult persons. Units and Lots can not be sold or resold to persons with children under the age of 14 years. Should members of the

association be found to be in violation of this article, said persons will be required to correct the violation within 60 days of receiving written notice of said violation. If the violation is not corrected, the violator may be subject to a damage claim from the association or the individual lot owners.

ARTICLE XIV

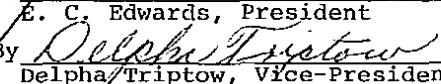
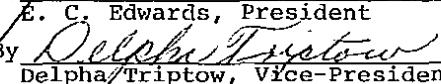
AMENDMENT

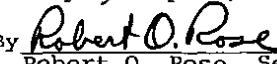
Except as otherwise provided herein, the provisions of this Declaration may be amended by an instrument in writing signed and acknowledged by record owners holding seventy-five percent (75%) of the total vote hereunder, which amendment shall be effective upon recordation in the Office of the Recorder of Washington County, State of Utah. Prior to any material amendment to this Declaration, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the members will vote on said amendment.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 2<sup>nd</sup> day of November, 1977.

J.E. WILSON FOUNDATION, a non-profit California Trust as to 10% interest

  
JOSEPH E. WILSON aka - J.E. Wilson, a married man as to 90% interest  
By   
E. C. Edwards, President

  
By   
Delpha Triptow, Vice-President

By   
Robert O. Rose, Secretary

STATE OF CALIFORNIA )  
ss.  
COUNTY OF Los Angeles )

On the 2nd day of November, 1977, before  
me a Notary Public in and for the above State and County, personally  
appeared E. C. Edwards, who being by me first duly sworn, did depose  
and say: That he, the said E. C. Edwards is the President of J. E.  
Wilson Foundation, a non-profit California Trust; that the above  
and foregoing instrument was signed by said Trust by authority of  
a resolution of its Board of Trustees; and that said Trust duly  
executed the same.



*Lorine P. Nielsen*

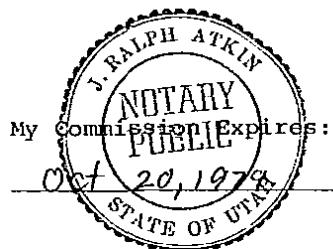
NOTARY PUBLIC  
Resident at:  
505 W. Seventh St., Los Angeles, Ca. 90014

My Commission Expires: June 21, 1978

STATE OF UTAH )  
ss.  
COUNTY OF WASHINGTON )

On the 2nd day of November, 1977, before me a Notary  
Public in and for the above state and county, personally appeared  
Joseph E. Wilson, who being by me first duly sworn, did depose and  
say: That he is the signer of the foregoing instrument.

*J. Ralph Atke*  
NOTARY PUBLIC  
Residing at St. George, Utah



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STATE OF ARIZONA )  
COUNTY OF Maricopa ) ss.

On the 20th day of October, 1977,

before me a Notary Public in and for the above State and County,  
personally appeared Robert O. Rose, who being by me first duly  
sworn, did depose and say: That he, the said Robert O. Rose is  
the Secretary of J. E. Wilson Foundation, a non-profit California  
Trust; that the above and foregoing instrument was signed by  
said Trust by authority of a resolution of its Board of Trustees;  
and that said Trust duly executed the same.

Ruth L Patterson  
NOTARY PUBLIC  
Residing at: Phoenix, Az

My Commission Expires: Nov. 22, 1980

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STATE OF UTAH )  
                  ss.  
COUNTY OF Salt Lake)

On the 28th day of Oct, 1977, before  
a Notary Public in and for the above State and County, personally  
appeared Delpha Triptow, who being by me first duly sworn, did depose  
and say: That she, the said Delpha Triptow is the Vice-President  
of J. E. Wilson Foundation, a non-profit California Trust; that the  
above and foregoing instrument was signed by said Trust by authority  
of a resolution of its Board of Trustees; and that said Trust duly  
executed the same.

*Howard B. Hansen*  
NOTARY PUBLIC  
Residing at: Salt Lake City, Utah

My Commission Expires:  
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