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Request of SECURITY TITLE COMPANY  
Fee Paid, HAZEL TAGGART CHASE  
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ORDER NUMBER  
127440

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THREE FOUNTAINS MANOR HOUSES AND TOWNHOUSES

PHASE NO. 3

This Declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration", is made and executed in Salt Lake County, State of Utah, this 31<sup>st</sup> day of May, 1968, by Richard Prows, Inc., a Utah corporation, hereinafter called "Declarant", pursuant to the provisions of the Utah Condominium Ownership Act,

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the vicinity of 700 East 4900 South Streets, Murray, Salt Lake County, State of Utah, and more particularly described as follows:

BEGINNING at a point East 1194.04 feet and North 56.39 feet from the West Quarter (1/4) Corner of Section 8, Township Two South, Range One East, Salt Lake Base & Meridian, and running thence North 1°16' East 334.92 feet to a point of a 25.0 foot radius curve to the right; thence Northerly and Easterly 39.27 feet along the arc of said curve to a point of tangency; thence South 88°44' East 444.23 feet; thence South 0°08' East 172.27 feet; thence South 88°52' East 24.00 feet; thence South 0°08' East 187.81 feet; thence North 88°44' West to the point of BEGINNING.

and

WHEREAS, Declarant is the owner of certain Manor House and Townhouse buildings and certain other improvements heretofore constructed or hereafter to be constructed upon the aforesaid premises which property constitutes a "Condominium Project" under the terms of the provisions of the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated, 1953), and it is the desire and the intention of the Declarant to divide the project into condominiums and to sell and convey the same to various purchasers,

subject to the covenants, conditions, and restrictions herein reserved to be kept and observed; and

WHEREAS, on the 7th day of June 1968, Declarant filed for record in the office of the County Recorder of Salt Lake County, State of Utah, a certain instrument entitled "Record of Survey Map of Three Fountains Manor Houses and Three Fountains Townhouses, Phase Three, "hereinafter referred to as "Map", which Map is filed of record herewith; and

WHEREAS, Declarant desires and intends by filing this Declaration and the aforesaid Map to submit the above described property and the Manor House and Townhouse buildings and other improvements constructed thereon, together with all appurtenances thereto, to the provisions of the aforesaid act as a condominium project and to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of all of said condominiums and the owners thereof.

NOW, THEREFORE, the Declarant does hereby publish and declare that all of the property described above is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions, restrictions, uses, limitations, and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into condominiums, and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. Definitions: Certain terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a different meaning therefor:

(a) "Declarant" shall mean Richard Prows, Inc.,

a Utah Corporation, which has made and executed this Declaration;

(b) "Declaration" shall mean this instrument by which the Three Fountains Manor House and Townhouse Project, Phase Three, is established as provided for under the Utah Condominium Ownership Act;

(c) "Project" shall mean the entire parcel of real property referred to in this Declaration to be divided into condominiums, including all structures thereon;

(d) "Map" shall mean the Record of Survey Map of Three Fountains Manor Houses and Three Fountains Townhouses, Phase Three, filed for record herewith by Declarant;

(e) "Unit" shall mean the elements of a condominium which are not owned in common with the Owners of other condominiums in the project as shown on the Map. The boundary lines of each Unit are the interior surfaces of its perimeter walls, bearing walls, lower level floors, upper level ceilings; windows and window frames, doors and door frames, and trim, and includes both the portions of the building so described and the air space so encompassed;

(f) "Common Area" shall mean all land and all portions of the property not located within any Unit; and also includes, but not by way of limitation, roofs, foundations, pipes, ducts, flues, conduits, wires and other utility installations to the outlets, bearing walls, perimeter walls, columns and girders, to the interior surfaces thereof, regardless of location, greens, gardens, balconies, patios, carports, garbage and equipment storage sheds, service streets, and parking areas,

recreational facilities, all installations of power, lights, gas, hot and cold water and heating existing for common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;

(g) "Condominium" shall mean the entire estate in the real property owned by any Owner, consisting of an undivided interest in the Common Area and ownership of a separate interest in a Unit;

(h) "Owner" shall mean any person with an ownership interest in a condominium in the project;

(i) "Management Committee" shall mean the governing body of the Project, elected pursuant to paragraph 5 hereof;

(j) "Manager" shall mean the person or firm designated by the Management Committee to manage the affairs of the Project;

(k) "Mortgage" shall mean a deed of trust as well as a mortgage;

(l) "Mortgagee" shall mean a beneficiary under or holder of a deed of trust as well as a mortgagee;

(m) "Record" means to file of record with the office of the County Recorder of Salt Lake County, State of Utah;

(n) "Condominium Act" shall mean the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated 1953).

2. Voting. At any meeting of the Owners, each Owner, including Declarant, shall be entitled to cast a number of votes as shown on Exhibit A, attached hereto and incorporated herein by reference thereto. Any Owner may attend and vote at such meeting in person, or by an agent duly appointed by an instrument in

writing signed by the Owner and filed with the Management Committee or the Manager. Any designation of an agent to act for an Owner may be revoked at any time by written notice to the Management Committee or Manager, and shall be deemed revoked when the Management Committee or the Manager shall receive actual notice of the death or judicially declared incompetence of such Owner or of the conveyance of such Owner of his condominium. Where there is more than one record Owner, any or all of such persons may attend any meeting of the Owners, but it shall be necessary for those present to act unanimously in order to cast the votes to which they are entitled. Any designation of an agent to act for such persons must be signed by all such persons. Declarant shall be entitled to vote with respect to any condominium owned by Declarant.

In the event that a notice of default is recorded by any mortgagee who holds a mortgage which is a first lien on a condominium against the Owner of the condominium covered by the mortgage, then and in that event and until the default is cured, the right of the Owner of such condominium to vote shall be transferred to the mortgagee recording the notice of default.

3. Meetings. The presence at any meeting of Owners having a majority of the total votes shall constitute a quorum. In the event that a quorum is not present at any meeting, the Owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the Owners in accordance with the provisions of paragraph 4 hereof, and at that meeting the presence of Owners holding in excess of thirty per cent of the total votes shall constitute a quorum for the transaction of business; but in the event a quorum is not present at that meeting, the Owners present, though less than a quorum, may give notice to all the Owners in accordance with paragraph 4 of an adjourned meeting, and, at that meeting whatever Owners are present shall constitute a quorum. Unless otherwise expressly provided in this

Declaration, any action may be taken at any meeting of the Owners upon the affirmative vote of a majority of the voting power of the Owners present and voting provided that a quorum is present as provided for above.

(a) Annual Meeting. There shall be a meeting of the Owners on the first Thursday of March of each year at 8:00 P.M., upon the Common Area or at such other reasonable place or time (not more than sixty (60) days before or after such date) as may be designated by written notice of the Management Committee delivered to the Owners not less than ten (10) days prior to the date fixed for said meeting. At the annual meeting, the Management Committee shall present an audit of the common expenses, itemizing receipts and disbursements for the preceding calendar year, the allocation thereof to each Owner, and the estimated common expenses for the coming calendar year. Within ten (10) days after the annual meeting, said statement shall be delivered to the Owners not present at said meeting.

(b) Special Meetings. Special meetings of the Owners may be called at any time for the purpose of considering matters which, by the terms of this Declaration require the approval of all or some of the Owners, or for any other reasonable purpose, said meetings shall be called by written notice, signed by a majority of the Management Committee, or by the Owners having one-third (1/3) of the total votes and delivered not less than fifteen (15) days prior to the date fixed for said meeting. Said notices shall specify the date, time and place of the meeting, and the matters to be considered thereat.

4. Notices. Any notice permitted or required to be

delivered herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each such person at the address given by such person to the Management Committee or Manager for the purpose of service of such notice or to the Unit of such person if no address has been given to the Manager. Such address may be changed from time to time by notice in writing to the Management Committee or the Manager.

5. Election and Proceedings of the Management Committee.

(a) Election. At each annual meeting, subject to the provisions of sub-paragraph 5 (e) hereof, the Owners shall elect a Management Committee for the forthcoming year, consisting of five (5) Owners; provided, however, that the first Management Committee elected hereunder may be elected at a special meeting duly called, said Management Committee to serve until the first annual meeting held thereafter. Every Owner entitled to vote at any election of members of the Management Committee may cumulate his votes and give one candidate a number of votes equal to the number of members of the Management Committee to be elected, multiplied by the number of votes to which such Owner is otherwise entitled, or distribute his votes on the same principle among as many candidates as he thinks fit. The candidates receiving the highest number of votes up to the number of members of the Management Committee to be elected shall be deemed elected.

(b) Term. Members of the Management Committee shall serve for a term of two (2) years; provided that three of the five members of the first Management Committee elected shall serve for a one-year term. The other two shall serve for a two-year term. The members of the

Management Committee shall serve until their respective successors are elected, or until their death, resignation, or removal; provided that if any member ceases to be an Owner, his membership on the Management Committee shall thereupon terminate.

(c) Resignation and Removal. Any member may resign at any time by giving written notice to the Manager, and any member may be removed from membership on the Management Committee by vote of the Owners; provided that unless the entire Management Committee is removed, an individual member shall not be removed if the number of votes cast against his removal exceeds Twenty Per Cent (20%).

(d) Proceedings. Three (3) members of the Management Committee shall constitute a quorum and, if a quorum is present, the decision of a majority of those present shall be the act of the Management Committee. The Management Committee shall elect a chairman, who shall preside over both its meetings and those of the Owners. Meetings of the Management Committee may be called, held and conducted in accordance with such regulations as the Management Committee may adopt. The Management Committee may also act without a meeting by unanimous written consent of its members.

(e) Declarant Performs Functions. Until a date three years from the date of completion of construction of the project or until all units have been sold, whichever is sooner, the rights, duties and functions of the Management Committee shall at Declarant's option be exercised by Declarant.

(f) Notice of Election. After the first election of the Management Committee, Declarant shall execute, acknowledge and record an affidavit stating the names of



all of the persons elected to membership on the Management Committee. Thereafter, any two persons who are designated of record as being members of the most recent Management Committee (regardless of whether or not they shall still be members) may execute, acknowledge and record an affidavit stating the names of all of the members of the then current Management Committee. The most recently recorded of such affidavits shall be prima facie evidence that the persons named therein are all of the incumbent members of the Management Committee and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

6. Authority of the Management Committee. The Management Committee, for the benefit of the condominiums and the Owners, shall enforce the provisions hereof and shall acquire and shall pay for out of the common expense fund hereinafter provided for, the following:

(a) Water, sewer, garbage collection, electrical, telephone and gas and other necessary utility service for the Common Area (and to the extent not separately metered or charged, for the Units);

(b) A policy or policies of fire insurance as the same are more fully set forth in paragraph 25 of this Declaration, with extended coverage endorsement, for the full insurable replacement value of the Units and Common Area, payable as provided in paragraph 27, or such other fire and casualty insurance as the Management Committee shall determine gives substantially equal or greater protection to the Owners, and their mortgagees, as their respective interests may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each condominium, if any;

(c) A policy or policies as the same are more fully set forth in paragraph 25 of this Declaration insuring the Management Committee, the Owners and the Manager against any liability to the Public or to the Owners (of Units and of the Common Area, and their invitees, or tenants), incident to the ownership and/or use of the project, and including the personal liability exposure of the Owners. Limits of liability under such insurance shall not be less than Three Hundred Thousand Dollars (\$300,000.00) for any one person injured, for any one accident, and shall not be less than One Hundred Thousand Dollars (\$100,000.00) for property damage each occurrence (such limits and coverage to be reviewed at least annually by the Management Committee and increased in its discretion.) Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(d) Workmen's compensation insurance to the extent necessary to comply with any applicable laws;

(e) The services of a person or firm to manage its affairs (herein called "the Manager") to the extent deemed advisable by the Management Committee as well as such other personnel as the Management Committee shall determine shall be necessary or proper for the operation of the Common Area, whether such personnel are employed directly by the Management Committee or are furnished by the Manager;

(f) Legal and accounting services necessary or proper in the operation of the Common Area or the enforcement of this Declaration;

(g) A fidelity bond naming the Manager, and such other persons as may be designated by the Management Committee as principals and the Owners as obligees, for the first year in an amount at least equal to forty-five per cent (45%) of the estimated cash requirement for that year as determined under paragraph 9 hereof, and for each year thereafter in an amount at least equal to forty-five per cent (45%) of the total sum collected through the common expense fund during the preceding year;

(h) Painting, maintenance, repair and all landscaping of the Common Area, and such furnishings and equipment for the Common Area as the Management Committee shall determine are necessary and proper, and the Management Committee shall have the exclusive right and duty to acquire the same for the Common Area; provided, however, that the interior surfaces of each Unit shall be painted, maintained and repaired by the Owners thereof, all such maintenance to be at the sole cost and expense of the particular Owner;

(i) Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Management Committee is required to secure or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation of the Common Area or for the enforcement of this Declaration, provided that if any such materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments, are provided for particular Units, the cost thereof shall be specially assessed to the Owners of such Units.

(j) Maintenance and repair of any Unit, if such

maintenance or repair is reasonably necessary in the discretion of the Management Committee to protect the Common Area or preserve the appearance and value of the project, and the Owner or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Management Committee to said Owner or Owners; provided that the Management Committee shall levy a special assessment against the condominium of such Owner or Owners for the cost of said maintenance or repair.

The Management Committee's power hereinabove enumerated shall be limited in that the Management Committee shall have no authority to acquire and pay for out of the common expense fund capital additions and improvements (other than for purposes of replacing portions of the Common Area, subject to all the provisions of this Declaration) having a cost in excess of Three Thousand Dollars (\$3,000.00) except as expressly provided herein.

7. Management Committee Powers, Exclusive. The Management Committee shall have the exclusive right to contract for all goods, services and insurance, payment for which is to be made from the common expense fund.

8. Alterations, Additions and Improvements of Common Area. There shall be no structural alterations, capital additions, to, or capital improvements of the Common Area requiring an expenditure in excess of Three Thousand Dollars (\$3,000.00) without the prior approval of Owners holding a majority of the total votes.

9. Common Expenses: Assessments:

(a) Within thirty (30) days prior to the beginning of each calendar year the Management Committee shall estimate the net charges to be paid during such year (includ-

ing a reasonable provision for contingencies and replacements and less any expected income and any surplus from the prior year's fund). Said "estimated cash requirement" shall be assessed to the Owners pursuant to the percentages set forth in the schedule attached hereto and marked Exhibit "A". Declarant will be liable for the amount of any assessment against completed Units owned by Declarant. If said sum estimated proves inadequate for any reason, including nonpayment of any Owner's assessment, the Management Committee may at any time levy a further assessment, which shall be assessed to the Owners in like proportions, unless otherwise provided herein. Each Owner shall be obligated to pay assessments made pursuant to this paragraph to the Management Committee in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Management Committee shall designate;

(b) The rights, duties, and functions of the Management Committee set forth in this paragraph shall be exercised by Declarant for the period ending thirty (30) days after the election of the first Management Committee hereunder;

(c) All funds collected hereunder shall be expended for the purposes designated herein.

(d) The omission by the Management Committee, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assess-

ment fixed for the preceding year shall continue until a new assessment is fixed. Amendments to this paragraph shall be effective only upon unanimous written consent of the Owners and their mortgagees. No Owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Unit.

(e) The Manager or Management Committee shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by the Owner at convenient hours of week days.

10. Default in Payment of Assessments. Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment, whether regular or special, assessed to the Owner of any condominium plus interest at seven per cent (7%), and costs, including reasonable attorney's fees, shall become a lien upon such condominium upon recordation of a notice of assessment as provided in Section 57-8-20 of The Condominium Act. The said lien for non-payment 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 Owner's condominium recorded

prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

A certificate executed and acknowledged by a majority of the Management Committee stating the indebtedness secured by the lien upon any condominium created hereunder, shall be conclusive upon the Management Committee 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 any encumbrancer or prospective encumbrancer of a condominium upon request at a reasonable fee, not to exceed Ten Dollars (\$10.00). Unless the request for a certificate of indebtedness shall be complied with within ten days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien held by the person making the request. Any encumbrancer holding a lien on a condominium may pay any unpaid common expenses payable with respect to such condominium and upon such payment such encumbrancer shall have a lien on such condominium for the amounts paid of the same rank as the lien of his encumbrance.

Upon payment of a delinquent assessment concerning which such a certificate has been so recorded, or other satisfaction thereof, the Management Committee shall cause to be recorded in the same manner as the certificate of indebtedness a further certificate stating the satisfaction and the release of the lien thereof. Such lien for nonpayment of assessment may be enforced by sale by the Management Committee or by a bank or trust company or title insurance company authorized by the Management Committee, such sale to be conducted in accordance with the provisions of 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 sale, the Owner shall be required to pay the costs

and expenses of such proceedings and reasonable attorney's fees.

In case of foreclosure, the Owner shall be required to pay a reasonable rental for the condominium 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 Management Committee or Manager shall have the power to bind in the condominium at foreclosure or other sale and to hold, lease and mortgage and convey the condominium.

11. Mortgage Protection. Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any condominium shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to paragraph 10 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein;

(b) No amendment to this paragraph shall affect the rights of the holder of any such mortgage recorded prior to the recordation of such amendment who does not join in the execution thereof;

(c) By subordination agreement executed by a majority of the Management Committee, the benefits of (a) and (b) above may be extended to mortgages not otherwise entitled thereto.



12. Delegation to Manager. The Management Committee may delegate any of its duties, power of functions, including, but not limited to, the authority to give the certificate provided for in paragraph 10 hereof, and the authority to give the subordination agreements provided for in paragraph 11 hereof, to any person or firm, to act as Manager of the project, provided that any such delegation shall be revocable upon notice by the Management Committee. The members of the Management Committee shall not be liable for any omission or improper exercise by the Manager of any such duty, power of function so delegated by written instrument executed by a majority of the Management Committee. In the absence of any appointment, the Chairman of the Management Committee shall act as Manager.

Any Manager named or employed by Declarant shall be employed to manage only until the first election of a Management Committee at which time, the new Management Committee shall have the right to retain or discharge said Manager as it determines desirable in its discretion.

13. Special Committees. The Management Committee by resolution, may designate one or more special committees, each committee to consist of two (2) or more Owners, which, to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. Such Special Committee or Committees shall have such name or names as may be determined from time to time by the Management Committee. Such Special Committees shall keep regular minutes of their proceedings and report the same to the Management Committee when required. The members of the Special Committee or Committees designated by the Management Committee shall be elected by the Owners in the same manner as the members of the Management Committee are elected as provided in Paragraph 5 above. The Management Committee may appoint Owners to fill vacancies on each of said Special Committees occasioned by

death, resignation, removal or inability to act for any extended period of time.

14. Exclusive Ownership and Possession by Owner.

Each Owner shall be entitled to exclusive ownership and possession of his Unit. Each Owner shall be entitled to an undivided interest in the Common Area in the percentage expressed in Exhibit A of this Declaration. The percentage of the undivided interest of each Owner in the Common Area as expressed in Exhibit A shall have a permanent character and shall not be altered without the consent of all owners expressed in an amended declaration duly recorded. The percentage of the undivided interest in the Common Area shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may use the Common Area in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners.

An Owner shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, lower level floors, upper level ceilings, windows and doors bounding his Unit, nor shall the Owner be deemed to own the utilities running through his Unit which are utilized for, or serve more than one Unit, except as a tenant in common with the other Owners. An Owner, however, shall be deemed to own and shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, lower level floors, upper level ceilings, windows and doors bounding his Unit.

15. Owner's Obligation to Repair. Except for those portions which the Management Committee is required to maintain and repair hereunder (if any), each Owner shall at the Owner's expense keep the interior of his Unit and its equipment and appur-

tenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition to decorating and keeping the interior of the Unit in good repair, the Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, furnaces, lighting fixtures, refrigerators, air conditioning equipment, dishwashers, disposals or ranges that may be in, or connected with the Unit. It is expressly understood that there are, appurtenant to some Units, air conditioners which are located on the roofs or in the patios appurtenant to the Units. An easement is hereby reserved in favor of each such Unit for the purpose of maintenance, repair or replacement of the said air conditioners by the respective Owners as required hereinabove.

The Owner shall also, at the Owner's own expense, keep the balcony and the interior of the patio and garbage or equipment storage shed and carports which have been assigned to his Unit in a clean and sanitary condition. The Management Committee and Manager shall not be responsible to the Owner for loss or damage by theft or otherwise of articles which may be stored by the Owner in the balcony, patio, garbage, or equipment storage shed, carports or Unit.

The Owner shall promptly discharge any lien which may hereafter be filed against his condominium and shall otherwise abide by the provisions of Section 57-8-19 of the Condominium Act.

16. Prohibition Against Structural Changes by Owner.

The Owner shall not, without first obtaining written consent of the Management Committee, make or permit to be made any structural alteration, improvement or addition in or to his Unit or in or to the exterior of the buildings or other Common Area. The Owner

shall do no act nor any work that will impair the structural soundness or integrity of the buildings or safety of the property or impair any easement or hereditament without the written consent of all owners. The Owner shall not paint or decorate any portion of the exterior of the buildings or other Common Area or any portion of the patio fences, or garbage or equipment storage sheds or carports without first obtaining written consent of the Management Committee.

17. Limitation on Use of Units and Common Area. The Units and Common Area shall be occupied and used as follows:

(a) No Owner shall occupy or use his Unit, or permit the same or any part thereof to be occupied or used for any purposes other than as a private residence for the Owner and the Owner's family or the Owner's Lessees or guests.

(b) There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Management Committee.

(c) Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Management Committee. No Owner shall permit anything to be done or kept in his Unit or in the Common Area which will result in the cancellation of insurance on any Unit or any part of the Common Area, or which would be in violation of any law. No waste will be committed in the Common Area;

(d) No sign of any kind shall be displayed to the public view on or from any Unit or the Common Area, without the prior consent of the Management Committee;

(e) No animals, livestock or poultry of any kind shall be raised, bred, or kept in any Unit or in the

Common Area, except that dogs, cats or other household pets may be kept in Units, subject to rules and regulations adopted by the Management Committee;

(f) No noxious or offensive activity shall be carried on in any Unit or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners;

(g) Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Management Committee;

(h) There shall be no violation of rules for the use of the Common Area adopted by the Management Committee and furnished in writing to the Owners, and the Management Committee is authorized to adopt such rules.

(i) None of the Rights and Obligations of the Owners created herein, or by the Deed creating the condominiums shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the wilful conduct of said Owner or Owners.

18. Entry for Repairs. The Management Committee or its agents may enter any Unit when necessary in connection with any maintenance, landscaping or construction for which the Management Committee is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Management Committee out of the common expense fund.

19. Failure of Management Committee to Insist on Strict Performance No Waiver. The failure of the Management Committee

or Manager to insist in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future, of such term, covenants, condition or restriction but such term, covenant, condition or restrictions shall remain in full force and effect. The receipt by the Management Committee or Manager of any assessment from an Owner, with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Management Committee or Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Management Committee or Manager.

20. Limitation of Management Committee's Liability. The Management Committee shall not be liable for any failure of water supply or other service to be obtained and paid for by the Management Committee hereunder, or for injury or damage to person or property caused by the elements or by another Owner or person in the project, or resulting from electricity, water, rain, dust, or sand which may leak or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless caused by gross negligence of the Management Committee. No diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Area or from any action taken to comply with any law, ordinance or orders of a governmental authority.

21. Indemnification of Management Committee Members. Each member of the Management Committee shall be indemnified by the Owners against all expenses and liabilities including attorney's fees, reasonably incurred by or imposed upon him in connec-

tion with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a member of the Management Committee, or any settlement thereof, whether or not he is a member of the Management Committee at the time such expenses are incurred, except in such cases wherein the member of the Management Committee is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Management Committee approves such settlement and reimbursement as being for the best interests of the Management Committee.

22. Sale or Lease Right of First Refusal. In the event any Owner of a condominium shall wish to resell or lease the same, and shall have received a bona fide offer therefor from a prospective purchaser or tenant, the remaining Owners shall be given written notice thereof together with an executed copy of such an offer and the terms thereof. Such notice and copy shall be given to the Management Committee for all of the Owners. The remaining Owners through the Management Committee or a person named by the Management Committee, shall have the right to purchase or lease the subject condominium upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing Owner, and a matching down payment or deposit is provided to the selling or leasing Owner during the fifteen (15) day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase or lease.

In the event the Management Committee determines that it desires to purchase or lease a condominium as above provided, but believes that the price or rental specified in the notice is unreasonable, the Management Committee shall give the Owner of said condominium written notice thereof within ten (10) days after its

receipt of notice of the proposed sale or lease. The notice thus given by the Management Committee shall state that the Management Committee has elected or thereby elects to purchase or lease said condominium and shall state further that the Management Committee believes the price or rental specified in the notice given to it is unreasonable. The Management Committee shall therefore be obliged to purchase or lease said condominium at a price or rental to be determined by a group of three (3) A.I.A. appraisers to be selected as follows: The Management Committee shall select one appraiser, the condominium Owner concerned shall select one appraiser and the two appraisers thus selected shall select a third appraiser. In the event the three appraisers cannot unanimously agree on a price or rental to be paid, the decision of any two of the three shall be binding on all parties. The Management Committee and the condominium Owner shall make every reasonable effort to select their respective appraisers and to take any action on their part to be taken so as to secure a decision respecting the price or rental which is to be paid at the earliest possible date.

In the event any Owner shall attempt to sell or lease his condominium without affording to the other Owners the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the Owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of an Owner to subject his condominium to a trust deed, mortgage or other security instrument.



The failure of or refusal by the Management Committee to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an Owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

23. Mortgages not Affected by Right of First Refusal. In the event of any default on the part of any Owner under any first mortgage made in good faith and for value, which entitled the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of paragraph 22, and the purchaser (or grantee under such deed in lieu of foreclosure) of such condominium shall be thereupon and thereafter subject to the provisions of this Declaration. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the condominium free and clear of the provisions of paragraph 22, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

The transfer of a deceased joint tenant's interest to the surviving joint tenant or the transfer of a deceased's interest to a devisee by will or his heirs at law under intestacy laws shall not be subject to the provisions of paragraph 22.

If an Owner of a condominium can establish to the satisfaction of the Management Committee that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of paragraph 22.

24. Certificate of Satisfaction of Right of First Refusal. Upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of any condominium, the Management Committee shall forthwith, or where time is speci-

fied, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing that:

(a) With respect to a proposed lease or sale under paragraph 21, that proper notice was given by the selling or leasing owner and that the remaining Owners did not elect to exercise their option to purchase or lease;

(b) With respect to a deed to a first mortgagee or its nominee in lieu of foreclosure, and a deed from such first mortgagee or its nominee, pursuant to paragraph 23, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of paragraph 22;

(c) With respect to any contemplated transfer which is not in fact a sale or lease, that the transfer is not or will not be subject to the provisions of paragraph 21. Such a certificate shall be conclusive evidence of the facts contained therein.

25. Insurance. The Management Committee shall obtain and maintain at all times insurance of the type and kind and in at least the amounts provided hereinabove, and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use which insurance shall be governed by the following provisions:

(a) All policies shall be written with a company licensed to do business in the State of Utah, and holding a rating of "AAA" or better by Best's Insurance Reports;

(b) Exclusive authority to adjust losses under policies hereafter in force in the project shall be vested in the Management Committee or its authorized representative;

(c) In no event shall the insurance coverage obtained and maintained by the Management Committee here-

under, be brought into contribution with insurance purchased by individual owners or their mortgagees;

(d) Each Owner may obtain additional insurance at his own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Management Committee, in behalf of all of the Owners, may realize under any insurance policy which the Management Committee may have in force on the project at any particular time;

(e) Each Owner shall be required to notify the Management Committee of all improvements made by the Owner to his Unit, the value of which is in excess of One Thousand Dollars (\$1,000.00);

(f) Any Owner who obtains individual insurance policies covering any portion of the project other than personal property belonging to such Owner, shall be required to file a copy of such individual policy or policies with the Management Committee within thirty (30) days after purchase of such insurance;

(g) The Management Committee shall be required to make every effort to secure insurance policies that will provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Management Committee, the Manager, the Owners and their respective servants, agents, and guests;

(2) That the master policy on the project cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Owners;

(3) That the master policy on the project cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Management Committee or Manager without a prior demand in writing that the Management Committee or Manager cure the defect;

(4) That any "no other insurance" clause in the master policy exclude individual owners' policies from consideration.

(h) The annual insurance review which the Management Committee is required to conduct as provided in Paragraph 6 above shall include an appraisal of the improvements in the project by a representative of the insurance carrier writing the master policy.

26. No Partition. There shall be no judicial partition of the project or any part thereof, nor shall Declarant or any person acquiring any interest in the project or any part thereof seek any such judicial partition, until the happening of the conditions set forth in Paragraph 27 hereof in the case of damage or destruction or unless the property has been removed from the provisions of the Condominium Act as provided in Section 57-8-22, thereof; provided, however, that if any condominium shall be owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants. But such partition shall not effect any other condominium.

27. Damage and Destruction. In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the buildings, shall be applied to such reconstruction. Reconstruction of the buildings, as used in this paragraph means restoring the buildings to substantially the same condition in

which they existed prior to the fire, casualty or other disaster, with each Unit and the Common Area having the same vertical and horizontal boundaries as before. Such reconstruction shall be accomplished by the Manager or Management Committee.

If the insurance proceeds are insufficient to reconstruct the building, damage to or destruction of the building shall be promptly repaired and restored by the Manager or Management Committee, using proceeds of insurance, if any, on the building for that purpose, and the Unit owners shall be liable for assessment for any deficiency. However, if three-fourths or more of the buildings are destroyed or substantially damaged and if the Owners, by a vote of at least three-fourths of the voting power, do not voluntarily, within one hundred days after such destruction or damage, make provision for reconstruction, the Manager or Management Committee shall record, with the county recorder, a notice setting forth such facts, and upon the recording of such notice:

(1) The property shall be deemed to be owned in common by the Owners;

(2) The undivided interest in the property owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Area;

(3) Any liens affecting any of the condominiums shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owner in the property; and

(4) The property shall be subject to an action for partition at the suit of any Owner, in which event, the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be

divided among all the Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Common Area, after first paying out of the respective shares of the Owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each Owner.

Notwithstanding all other provisions hereof, the owners may, by an affirmative vote of at least three-fourths of the voting power, at a meeting of Unit Owners duly called for such purpose, elect to sell or otherwise dispose of the property. Such action shall be binding upon all Unit Owners and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale.

28. Authority to Grant Easements. The Management Committee shall have the authority to grant such easements over and across the Common Area as shall be determined by said Management Committee to be in the interests of the Owners.

29. Enforcement. Each Owner shall comply strictly with the provisions of this Declaration and with the administrative rules and regulations drafted pursuant thereto as the same may be lawfully amended from time to time and with decisions adopted pursuant to said Declaration and administrative rules and regulations, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee or Manager on behalf of the Owners, or in a proper case, by an aggrieved Owner.

30. Personal Property. The Management Committee or Manager may acquire and hold, for the benefit of the Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such personal

property shall be owned by the Owners in the same proportion as their respective interests in the Common Area, and shall not be transferable except with a transfer of a condominium. A transfer of a condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property.

Within thirty (30) days following the completion of construction of the Project, the Declarant shall execute and deliver a bill of sale to the Management Committee in behalf of all the Owners, transferring all items of personal property located on the project and furnished by the Declarant, which property is intended for the common use and enjoyment of the Owners.

31. Audit. Any Owner may at any time at his own expense cause an audit or inspection to be made of the books and records of the Manager or Management Committee. The Management Committee, at the expense of the common expenses, shall obtain an audit of all books and records pertaining to the project at no greater than annual intervals and furnish copies thereof to the Owners.

32. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

33. 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 per cent (75%) of the total vote hereunder, which amendment shall be effective upon recordation in the Office of the Recorder of Salt Lake County, State of Utah.

34. Severability. The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall

not affect the validity or enforceability of any other provision hereof.

35. Effective Date. This Declaration shall take effect upon recording.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 31<sup>st</sup> day of May, 1968.

RICHARD PROWS, INC.

BY Richard Prows  
Its President

ATTEST:

Mas Yano  
Secretary

STATE OF UTAH            )  
                                  : ss  
COUNTY OF SALT LAKE    )

On this 31<sup>st</sup> day of May, 1968, personally appeared before me, a notary public in and for said County and State, RICHARD S. PROWS and MAS YANO, known to me to be the President and Secretary respectively of the Corporation that executed the foregoing instrument and upon oath, did depose that they are acquainted with the seal of said Corporation and that the seal affixed to said instrument is the Corporate Seal of said Corporation; that the signatures to said instrument were made by officers of said Corporation as indicated after said signatures; and that the said Corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

Janice M. Smith  
NOTARY PUBLIC, in and for  
Said County and State

My Commission Expires:

12-21-71

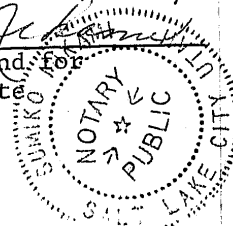




EXHIBIT ATHREE FOUNTAINS MANOR HOUSE AND TOWNHOUSE PROJECT--PHASE 3

<u>UNIT NUMBER</u>	<u>BUILDING NUMBER</u>	<u>%OWNERSHIP IN COMMON AREA (ALSO DETERMINATIVE OF VOTING RIGHT AND PRO RATA SHARE OF COMMON EXPENSES)</u>
178	3A	3.0036
179	3A	3.0036
180	3A	3.0026
181	3A	3.0026
182	3B	3.0026
183	3B	3.0026
184	3B	3.0026
185	3B	3.0026
186	3B	3.0026
187	3B	3.0026
188	3C	2.9155
189	3C	2.9155
190	3C	2.9155
191	3C	2.9155
192	3D	2.9155
193	3D	2.9155
194	3D	2.9155
195	3D	2.9155
196	3E	2.9155
197	3E	2.9155
198	3E	2.9155
199	3E	2.9155
200	3F	2.9155
201	3F	2.9155
202	3F	2.9155
203	3F	2.9155
204	3G	2.9155
205	3G	2.9155
206	3G	2.9155
207	3G	2.9155
208	3H	2.9155
209	3H	2.9155
210	3H	2.9155
211	3H	2.9155
		<u>100.0000%</u>