

BOOK 422 PAGE 589-625  
FEE \$150 ADS

1986 AUG 21 PM 1:51

DOCUMENT 299838

HERBERT S. BENTLEY  
WASHINGTON COUNTY RECORDER

BY 222

REQUEST OF Alpha Homes

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ALPHA I TOWNHOMES

THIS DECLARATION of Covenants, Conditions and Restrictions, hereinafter called "Declaration", is made and executed in St. George, Washington County, State of Utah, this 28<sup>TH</sup> day of APRIL, 1986, by DAVID L. WATSON, JOHN C. WILLIE, and DANIEL J. HOOPES, hereinafter collectively called "Declarant".

W I T N E S S E T H :

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

See attached "Exhibit A"

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

WHEREAS, Declarant will convey the said property subject to certain protective covenants, conditions,

299838

restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the said property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of said property and which shall be construed as covenants of equitable servitude, which shall run with the real property and shall be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I

##### DEFINITIONS

Section 1. "Association" shall mean and refer to ALPHA I HOMEOWNERS' ASSOCIATION, its successors and assigns.

Section 2. "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 an interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described and such

299838

additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) now owned by the Association or hereafter acquired 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 Declarant may increase the amount of the Common Area by filing additional subdivision plats in the Washington County Recorder's office and stating thereon that said land is subject to this Declaration and by deeding additional property to the Association. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as: All of ALPHA I TOWNHOMES, property listed on Exhibit A, less and accepting Lots 1 through 52 inclusive.

Section 5. "Lot" or "Unit" 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 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "Declarant" shall mean and refer to DAVID L. WATSON, JOHN C. WILLIE and DANIEL J. HOOPES, their successors and assigns, if such successors or assigns shall acquire more than one undeveloped Lot from the Declarant for the purpose of development.

299838

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.

Section 9. "Townhome" shall mean and refer to a single family dwelling unit constructed by Declarant on a Lot.

Section 10. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions to the Properties recorded in the office of the Recorder of Washington County, Utah.

Section 11. "Development" shall mean and refer to that certain real property, and any additions thereto, together with all buildings and improvements thereon, described in the Declaration.

Section 12. "Limited Common Area" shall mean and refer to those Common Areas designated on the subdivision plat or in the Declaration as reserved for the use of a certain lot owner or owners to the exclusion of the other lot owners.

Section 13. "Board of Directors" shall mean and refer to the governing board of the Homeowner's Association defined above.

299838

ARTICLE II

PROPERTY RIGHTS

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

(a) The right of the Association to charge reasonable admission and other fees to non-owners for the use of any common areas, provided that such fees charged by the Association shall in no way affect its status as a non-profit corporation.

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

(c) The right of the Association to suspend the voting rights of a member and to deny said member use of any common area for any period during which any assessment against his Lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

299838

(d) With the approval of all the holders of first mortgage liens on lots, and two-thirds of the owners, the right of the Association to sell, exchange, hypothecate, alienate, encumber, release or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

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

(f) 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 Area, for the installation, maintenance and inspection of lines and

299838

appurtenances for public or private utilities and the construction of additional Townhomes.

Section 2. Delegation of Use. Any member may designate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant 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, 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, (iii) easements and rights-of-way of record, and (iv) 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.

299838

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every person or entity who is a record owner of a fee 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, except Declarant.. 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.

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

- (a) Class A. Class A member(s) shall be all owners, with the exception of the Declarant unless Class B membership ceases, and shall be entitled to one vote for each Lot owned. When more than one person owns 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



299838

vote be cast with respect to any Lot. In the event such persons fail to agree then their vote shall be cast ratably among the respective interests. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

(b) Class B. The Class B member(s) shall be the Declarant and shall be entitled to five (5) 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:

1. When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or,

2. On the expiration of five (5) years from the date on which this Declaration is filed for recording in the office of the Washington County Recorder.

299838

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot in which it holds the interests required for membership.

ARTICLE IV

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 such Deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments, (b) special assessments, and (c) capital assessments, such assessments to be levied, fixed, established and collected from time to time as hereinbelow provided. The assessments, together with interest, costs and reasonable attorney's fees, 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 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 assessment became due. The personal

299838

obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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 members and in particular for the improvement, repair and maintenance of the Common and Limited Common Areas, services and facilities devoted to this purpose and related to the use and enjoyment of the Common and Limited Common Areas and of Townhomes situated upon the Properties. They shall include, but are not limited to, funds for the actual cost to the Association of all taxes and insurance and shall include a reserve for repairs, replacement and maintenance of those elements of the Common and Limited Common Areas and for the maintenance of the exteriors of the Townhomes that must be replaced on a periodic basis, caring for the grounds, landscaping, garbage pickup, snow removal and other services furnished to owners by the Association, and other charges required by this Declaration or that the Board of Directors shall determine to be necessary to meet the primary purposes of the Association. Special and capital improvement assessments shall be used exclusively for the purposes for which such assessments were levied as provided for in this declaration.

Section 3. Basis and Maximum of Annual Assessments.

Until January 1st of 1988, the maximum annual assessment for each lot shall be determined by using an annual

299838

assessment of two hundred and forty Dollars  
(\$ 240) per lot. This amount may be collected monthly  
as determined by the Board of Directors.

For any lot owned by the Declarant, but on which construction has not yet begun, the annual assessment shall be 10% of the base assessment. For any lot owned by the Declarant and on which construction of a townhome has commenced, but which has not yet been sold to a purchaser, the annual assessment shall be 50% of the annual assessment.

(a) From and after January 1, 1988, the maximum annual base assessment may be increased each year not more than ten percent (10%) above the maximum base assessment for the previous year without a vote of the membership.

(b) From and after January 1, 1988, the maximum annual base assessment may be increased more than ten percent (10%) only by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of directors shall fix the annual base assessment at an amount not in excess of the maximum.

Section 4. Capital Improvement Assessments. In addition to annual assessments, with the approval of two-thirds (2/3) of each class of members, the Association may levy, for any assessment period, capital improvement

299838

assessments applicable to the assessment period only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon any Common or Limited Common Area.

Section 5. Special Assessments. 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, repair or replacement of any capital improvement upon the Common or Limited Common Areas, including fixtures and personal property related thereto, and for the repair of the exteriors of the Townhomes, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for any Action Authorized Under Sections 3,4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3, 4, or 5 shall be sent to all members not less than 30 days, nor more than 60 days, in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not

299838

present, another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Rate of Assessment. Annual, special and capital assessments shall be fixed at uniform rates for all lots and may be collected on a monthly basis.

Section 8. Date of Commencement of Regular Assessments; Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common and Limited Common Areas 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 for payment of said assessment, which may be on a prorated monthly basis, shall be established by the Board of Directors.

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. Furthermore, a first mortgage

602

299838

holder, upon request, is entitled to a written certificate from the Association advising of any default by the Lot owner of any obligation not cured within sixty (60) days. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. 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 twelve percent (12%) per annum, or such other rate as the Board of Directors may establish from time to time. 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 of suit, and reasonable attorney's fees incurred shall be added to the amount of such assessment.

Each such owner, by his acceptance of a deed to a Lot, hereby expressly grants to the Association, its successors, assigns, or 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

299838

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.

Section 10. Nonuse and Abandonment. No owner may waive or escape personal liability for the assessments provided for herein, nor release the Lot owned by him from the liens and charges hereof, by nonuse of any Common or Limited Common Area or abandonment of his Lot.

Section 11. Subordination of the Lien to Mortgages. The lien created hereunder upon any Lot shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any first mortgage (meaning a mortgage with first priority over other mortgages) or equivalent security interest on any Lot, made in good faith and for value, recorded prior to the date any such assessment becomes due. Any holder of a first mortgage lien or equivalent security interest on a Lot who comes into possession by virtue of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take said Lot and the improvements appurtenant thereto free of any claims for unpaid assessment charges against said Lot which accrue



prior to the time such holder comes into possession of the Lot, except for the claims for a share of such expenses or charge resulting from a reallocation of such assessment or charges to all lots including the mortgaged Lot. No such sale or transfer shall relieve such Lot from liability for any assessments which thereafter became due or from the lien thereof.

Section 12. 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 any local public authority;
- (b) The Common Areas and Limited Common Areas;
- (c) All properties owned by a charitable or nonprofit 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 13. Management Agreements. The Board may employ a manager or other persons who may contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. Any contract with a person or firm appointed as a manager or managing agent shall be terminable by the Association for cause upon thirty (30) days' written notice thereof. Any such contract, and any other contract (except prepaid casualty and/or liability insurance policies of not

299838

to exceed three (3) years duration where the policy permits short term cancellation by the insured) with a third person wherein the third person is to furnish goods or services for any Common or Limited Common Area or the Association, shall be limited to a duration of one (1) year, provided, however, that such contracts may be renewable for successive one (1) year periods with the approval, for each such period, by a vote or written consent of a majority of each class of members of the Association.

Section 14. 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, against loss or damage by fire or other hazard, and shall also obtain a broad form public liability policy covering all Common and Limited Common Areas 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 the Board of Directors on townhouses shall not be a part of the common expense, but shall be an expense of the specific townhouse or townhouses

299838

so covered and a debt owed by the owners, and shall be collectable 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 11 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 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

299838

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. 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 good workmanlike manner in conformance with the original plans and specifications of said townhouse. In the event such owner refuses or fails to so

299838

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 insurance premiums, and subject to foreclosures as above provided.

ARTICLE V

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall built as a part of the original 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 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 provisions 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 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 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 Limited 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 and Limited 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

299838

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.

ARTICLE VI

ARCHITECTURAL CONTROL

No fence, wall, building, sign or other structure (including basketball standards) or exterior addition to, or change or alteration thereof, including painting, or landscaping, shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on the project or any portion thereof, until plans and specifications shall have been submitted to and approved in writing by the Board of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Said plans and specifications shall be prepared by a duly licensed architect or other person approved by the Board and shall include, where appropriate, the following:

- (a) Plot plans, showing the location of all structures and showing grade elevations and drainage;
- (b) Building plans, including floor, foundation and roof plans, with all materials therefor;
- (c) Exterior elevations, surfaces, sections, structural design and salient exterior details;
- (d) General exterior color scheme; and



299838

(e) Landscaping plans, showing type, location and elevation of trees, bushes, shrubs, plants, hedges and fences.

All such plans and specifications shall be submitted in writing over the signature of the owner of the property or such owner's authorized agent.

Approval shall be based, among other things, on adequacy of site dimensions; adequacy of structural design and material; conformity and harmony of external design with neighboring structures; effective location and use of improvements; landscaping on neighboring property, improvements, landscaping, operations and uses; relation of topography, grade and finished ground elevation of property being improved to that of neighboring property; proper facing of main elevations with respect to nearby streets, preservation of view and aesthetic beauty with respect to fences, walls and landscaping; assurance of adequate access to the Association in connection with the performance of its duties and the exercise of its powers hereunder; conformity with such rules and regulations as may be adopted by the Board in accordance with this Article; and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Declarant shall not be required to comply with any of the provisions of this Article.

In the event the Board fails to either approve or disapprove such plans and specifications within thirty (30)

299838

days after the same have been submitted to it, it shall conclusively be presumed that the board has approved such plans and specifications. All improvement work approved by the Board shall be diligently completed and constructed in accordance with approved plans and specifications.

Unless at least two-thirds (2/3) of the votes of each class of members have given their prior written approval, the Association shall not be entitled by act or omission to change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of Townhomes, the exterior maintenance of Townhomes, the maintenance of the Common and Limited Common Areas, or the upkeep of lawns and plantings on the Common and Limited Common Areas.

#### ARTICLE VII

##### EXTERIOR MAINTENANCE

In addition to the maintenance of the Common and Limited Common Areas, the Association may provide exterior maintenance upon each Lot which is subject to assessment, including but not limited to, paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces or heating and cooling units or equipment located upon any Lot or upon the roof of any Townhome.

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

## ARTICLE VIII

EASEMENTS

Section 1. Minor Encroachments. Each Lot and the Common and Limited Common Areas shall be subject to an easement for encroachment created by construction, repair, shifting, settling or movement, and overhangs as designed or constructed by the Declarant. A valid easement for said encroachment and for the maintenance of same, so long as it stands, shall and does exist.

Section 2. Utilities Easement. There is hereby granted and conveyed to the City of St. George, Jones Cable Television, and Mountain States Telephone and Telegraph Company, their successors and assigns, a blanket easement upon, across, over and under all of the said Common or Limited Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities at such location or locations as said utilities deem appropriate. By virtue of this easement, it shall be expressly permissible for the providing electrical, cable television and/or telephone company to construct and maintain the necessary

299834

equipment on said property and to affix and maintain electrical, cable television and/or telephone wires, circuits and conduits on, across and under the Common or Limited Common Area.

An easement is further granted to all police, fire protection, ambulance, trash collection and all similar persons to enter upon the streets and Common or Limited Common Area in the performance of their duties.

Notwithstanding anything to the contrary contained in this Article, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said property except as initially planned and approved by the Declarant or thereafter approved by the Board of Directors. Should any company furnishing a service conveyed 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.

Section 3. Easements for Ingress and Egress. 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 and Limited Common Areas and any Lot to perform the duties of maintenance and repair of the Townhome or Common and Limited Common Areas provided for herein. The Declarant expressly reserves to itself, its successors and assigns, a perpetual easement and right, at their own risk, to cross the Common

299838

and Limited Common Areas by the streets and roads established or hereafter established on said property by the Declarant, for the purpose of having access for ingress and egress to such other adjacent property upon which Declarant has created additional planned unit development Lots and/or Townhomes.

ARTICLE IX

RIGHT OF FIRST MORTGAGEES TO PAY TAXES  
OR OTHER CHARGES WHICH ARE IN DEFAULT

First mortgagees of lots within this planned unit development may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Lot, Common Area or Limited Common Area and may pay overdue premiums on hazard insurance coverage on the lapse of a policy for such Lot, Common Area or Limited Common Area and first mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

ARTICLE X

USE RESTRICTIONS

Section 1. Residential Use. No owner shall occupy or use his Townhome, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the owner and the owner's family or the owner's lessees or guests.

Section 2. Fee Conveyed. Each Lot shall be conveyed as a separately designated and legally described freehold

299838

estate, the owner taking title in fee simple, 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 Townhomes to maintain during the period of construction and sale of said Townhomes, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of said Townhomes, including but without limitation, a business office, storage area, construction yard, signs, model Townhomes and sales office.

Section 4. Household Pets Permitted. No animals, livestock or poultry of any kind may be raised, bred or kept on any Lot or in the Common or Limited Common Areas, except that dogs, cats or other household pets may be kept in Townhomes, or upon any Lot subject to the rules and regulations adopted by the Board of Directors.

Section 5. Signs. No signs of any kind shall be displayed to the public view on or from any Lot or the Common or Limited Common Areas without prior consent of the Board of Directors.

Section 6. Obstruction of the Common or Limited Common Area. There shall be no obstruction of the Common and Limited Common Areas. Nothing shall be stored in the Common

299834

and Limited Common Areas without the prior consent of the Board of Directors.

Section 7. Prohibited Uses. No obnoxious or offensive activities shall be carried on in any Lot or in the Common or Limited Common Areas, nor shall anything be done therein which may be or become an annoyance or nuisance to the owners.

Section 8. Oil and Mining Operations. No drilling, quarrying or mining operations of any kind shall be permitted upon or in any Lot or upon the Common or Limited Common Areas.

Section 9. Alteration of Common or Limited Common Areas. Nothing shall be altered or constructed, or removed from the Common or Limited Common Areas, except with the written consent of the Board of Directors.

Section 10. Owner's Responsibility for Maintenance. All utilities, fixtures and equipment including but not limited to heating and cooling, installed within a Townhome, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls or roof of a Townhome shall be maintained and kept in repair by the owner thereof. The Owner shall also maintain, repair and replace, at his expense, any heating or cooling unit located upon the roof of his Townhome or upon his Lot. 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

299838

which will adversely affect the other Townhomes or their owners.

Section 11. Time Sharing Prohibited. Neither the Declarant nor the owner of any Lot shall allow or permit any form of time sharing ownership.

Section 12. Leases. Any lease agreement between a Townhome owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, Articles of Incorporation of the Association and the Bylaws of said Association, and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. Furthermore, all leases shall be in writing.

## ARTICLE XI

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or the Declarant or its successors in interest, or any owner, shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, Bylaws or Articles of Incorporation. Specifically, the aggrieved party may seek to recover damages and for injunctive relief. Failure by the Association to enforce any covenant or restriction therein contained shall



299838

in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability, 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 3. 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.

621

299838

Section 4. 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 5. Conflicts. In case of any conflict between this Declaration, as the same may be amended from time to time, and the Articles 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

AMENDMENT

Except as otherwise provided herein, this Declaration may be amended by an instrument signed by not less than two-thirds (2/3) of the lot owners, 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

299838

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 the day and year first above written.

Declarants

David L. Watson  
David L. Watson

John C. Willie  
John C. Willie

Daniel J. Hoopes  
Daniel J. Hoopes

STATE OF UTAH )  
 ) ss.  
COUNTY OF WASHINGTON )

On the 28<sup>th</sup> day of April, 1986, before me, a Notary Public in and for the above State and County, personally appeared David L. Watson, John C. Willie and Daniel J. Hoopes, being by me first duly sworn, declared to me that he is the person who signed the foregoing document

299838

for and in behalf of the Declarant and that the statements therein contained are true. In witness whereof, I have hereunto set my hand and seal this 28<sup>th</sup> day of April, 1986.

*Steven M. Astor*  
NOTARY PUBLIC  
Residing at St. Helena, Calif.  
Commission Expires July 24 1988

[R-2]

624

299838

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ALPHA I TOWNHOMES

EXHIBIT A

The West 727.40 feet of the North 1/2 of Lots Four (4) and Five (5), in Block One (1), of the ST. GEORGE VALLEY IRRIGATION COMPANY SURVEY, as platted on the Official Map of said Survey on file in the Office of the Recorder of Washington County, State of Utah, embraced within Section 32, Township 42 South, Range 15 West, S1B&M. Containing 5.32 Acres M/L

TOGETHER with all improvements and appurtenances thereunto belonging. SUBJECT to Easements, Rights of way and Restrictions of Record and those enforceable in law and equity.