

AFTER RECORDING, PLEASE RETURN TO:

Charles L. Maak
Martineau & Maak
1800 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111

753

Sundowner Phase 1

Recorded at request of Utah Title Fee Paid \$ 7.00
Date JUN 10 1976 at 3:40 P.M. MARGUERITE S. BOURNE Recorder Davis County
BY La Oell Manning Deputy Book 604 Page 753

#9

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AMENDMENT TO DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
THE SUNDOWNER CONDOMINIUM
PHASE 1

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS -- THE SUNDOWNER CONDOMINIUM PHASE 1, is made by COUNTRY HILLS, INC., a Utah corporation (referred to hereinafter and in the "Phase 1 Declaration" [identified below] as "Declarant").

RECITALS:

Abstracted
 Indexed
 Entered

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 On Margin
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A. On January 22, 1974 Declarant created Phase 1 of The Sundowner Condominium Project (hereinafter referred to as "Phase 1") by filing for record in the office of the County Recorder of Davis County, Utah an instrument entitled "Declaration of Covenants, Conditions, and Restrictions, The Sundowner Condominium Phase 1" (hereinafter referred to as the "Phase 1 Declaration") and an instrument styled "Record of Survey Map of The Sundowner Condominium Phase 1" (hereinafter referred to as the "Phase 1 Map"). The Phase 1 Declaration was recorded as Entry No. 390625 in Book 532 at Page 190. The Phase 1 Map was recorded as Entry No. 390624 in Book "S" at Page 567. The Real Property included in Phase 1 is situated in Clearfield, Davis County, Utah, and is described as follows:

Beginning at a point on the South right of way of 700 South Street being West 1687.93 feet, South 112.57' and S 89°54'15" W 90 feet from the Northeast corner of Section 7, T4N, R1W, SLB&M; thence S 0°08'33" W 150.00 feet; thence N 89°54'15" E 170.00 feet; thence S 0°08'33" W 120.00 feet; thence S 89°54'15" W 35 feet; thence S 0°08'33" W 330.00 feet; thence S 89°54'15" W 340.00 feet; thence N 0°08'33" E 230.00 feet; thence S 89°54'15" W 60.27 feet; thence N 57°24'35" W 147.80 feet; thence N 0°08'33" E 120.00 feet; thence N 89°54'15" E 140.00 feet; thence N 0°08'33" E 170.00 feet; thence N 89°54'15" E 250.00 feet to the point of beginning. (Containing 5.32 acres.)

RECORDING ORDER: #1

5-18-76

B. The Phase 1 Declaration anticipated that the Condominium Project related thereto would be but the first Phase of a larger Project which ultimately might come into existence. Accordingly, in the Phase 1 Declaration, and particularly in Paragraph 12 thereof, Declarant reserved the right, upon the occurrence of certain conditions, to include one or more additional Phases as a part of a single Condominium Project consisting of Phase 1 and all subsequent Phases which may be merged with Phase 1.

C. On October 1, 1975 Declarant created Phase 2 of The Sundowner Condominium Project (hereinafter referred to as "Phase 2") by filing for record in the office of the County Recorder of Davis County, Utah an instrument entitled "Declaration of Covenants, Conditions, and Restrictions, The Sundowner Condominium Phase 2" (hereinafter referred to as the "Phase 2 Declaration") and an instrument styled "Record of Survey Map of The Sundowner Condominium Phase 2" (hereinafter referred to as the "Phase 2 Map"). The Phase 2 Declaration was recorded as Entry No. 420454 in Book 579 at Page 513. The Phase 2 Map was recorded as Entry No. 420453 in Book 579 at Page 512. The Real Property included in Phase 2 is contiguous to the Real Property included in Phase 1, is situated in Clearfield, Davis County, Utah, and is more particularly described in the Phase 2 Declaration.

D. At the time the Phase 1 Declaration and the Phase 1 Map were recorded, the Utah Condominium Ownership Act made no provision for an "expandable" condominium project or for the creation of a project via separate phases. Consequently, in creating the expansion arrangement which is provided for in the Phase 1 Declaration, Declarant utilized general legal principles not particularly treated in said Condominium Ownership Act, including principles relating to reasonableness, certainty, and constructive and actual notice. Prior to recordation of the Phase 2 Declaration and the Phase 2 Map, the Utah Condominium Ownership Act was amended (by Laws of Utah, 1975, Chapter 173, Sections 1 through 20), and said amendments included provisions and procedures relating to the creation and expansion of an expandable condominium. The provisions of the 1975 amendments to the Utah Condominium Ownership Act concerning expandable projects are not identical with the provisions of the Phase 1 Declaration concerning the creation of additional Phases of, and the merger of such additional Phases into, The Sundowner Condominium. Nevertheless, the provisions and procedures respecting expansion and additional Phases which are set forth in the Phase 1 Declaration in many respects substantially comply with those requirements of the referenced 1975 amendments which relate to the particular subject or concept (concerning expansion) involved or, in those instances or concerning those particular subjects where such provisions and procedures do not so substantially

comply, such provisions and procedures create or employ an arrangement which substantially achieves the same policy as those requirements of the referenced 1975 amendments which relate to the particular subject or concept (concerning expansion) involved. Accordingly, under and by virtue of the provisions of Section 57-8-36, Utah Code Annotated (1953) [added to the Utah Condominium Ownership Act by Laws of Utah 1975, ch. 173, § 19], the terms of the Phase 1 Declaration concerning the creation of additional Phases of, and the merger of such additional Phases into, The Sundowner Condominium are valid, effective, and enforceable.

E. Due to the validity, effectiveness, and enforceability of the "phasing" arrangement created by the Phase 1 Declaration, and also due to the fact that various third parties had theretofore acquired an interest in Phase 1 (or in various of the Units included therein), the provisions of the Phase 1 Declaration concerning expansion or phasing of the Condominium Project -- rather than analogous provisions of the 1975 amendments to the Utah Condominium Ownership Act -- were taken into account in the preparation of the Phase 2 Declaration.

F. One difference between the expansion or phasing arrangement which is provided for in the Phase 1 Declaration (and incorporated by reference in the Phase 2 Declaration) and the provisions and procedures relating to expansion of an expandable condominium which are included in the 1975 amendments to the Utah Condominium Ownership Act concerns the point in time at which additional land to be added to a preexisting project (through expansion of such project) may become an integral part thereof. Section 57-8-13.6, Utah Code Annotated (1953) [added to the Utah Condominium Ownership Act by Laws of Utah 1975, ch. 173, § 8] provides, in part:

[E]xpansion shall be deemed to have occurred at the time of the recordation of the record of survey map under subsection 57-8-13(2) [detailing the expansion], together with an amendment to the declaration

Under the Phase 1 and Phase 2 Declarations as presently constituted, however, Declarant is handicapped in its ability to merge a Phase of The Sundowner Condominium into the Project as it previously existed until such time as both of the following have occurred:

- (i) A supplemental Declaration and Map have been recorded for such Phase;
- and

(ii) There exist no blanket Mortgages or encumbrances affecting such Phase. . . . [this second item or condition is herein-after referred to as the "Additional Merger Requirement"].

G. Declarant continues to desire and to contemplate the creation of several Phases of The Sundowner Condominium in addition to Phases 1 and 2 and the integration of Phases 1 and 2 and subsequent Phases into a single Project. Deletion of the Additional Merger Requirement from the expansion or phasing arrangement which is provided for in the Phase 1 Declaration (and incorporated by reference in the Phase 2 Declaration), while not resulting in such expansion or phasing arrangement being identical to the format and requirements concerning expandable condominiums which are provided for in the 1975 amendments to the Utah Condominium Ownership Act, would make such arrangement more closely correspond with those provisions of the referenced 1975 amendments which deal with expansion of a condominium project and, as a result and in addition, would promote certainty and economies of operation and would thereby tend to facilitate the practical, technical, administrative, and/or functional integration of separate Phases of The Sundowner Condominium into the Project as it previously existed. The purpose of this Amendment is to delete the Additional Merger Requirement from the expansion or phasing arrangement which is provided for in the Phase 1 Declaration.

H. The right, power, and authority of Declarant to amend the Phase 1 Declaration so as to accomplish the purpose referred to in Paragraph G above is provided for in Paragraph 15 of the Phase 1 Declaration which provides, in part, that until a "Notice of Merger" is filed with respect to the final Phase of The Sundowner Condominium or until 7 years after the filing of the Phase 1 Declaration with the Davis County Recorder's office (i.e., until January 22, 1981), whichever occurs earlier, Declarant alone, and acting unilaterally, shall have the right to amend the Phase 1 Declaration "as may be reasonably necessary or desirable to facilitate the practical, technical, administrative, or functional integration of any Phase into the Project." The time within which Declarant has the right to unilaterally amend, as aforesaid, has not yet expired.

I. Concurrently with the filing for record of this Amendment, there is also being recorded an "Amendment to Declaration of Covenants, Conditions, and Restrictions -- The Sundowner Condominium Phase 2," which in like manner deletes the Additional Merger Requirement from the Phase 2 Declaration.

AMENDMENT

NOW, THEREFORE, for the foregoing purposes and pursuant to the right of amendment which is provided for in Paragraph 15 of the Phase 1 Declaration, Declarant hereby amends the first sentence of subparagraph 12(c) of said Declaration to read as follows:

At any time within 7 years after this Declaration is filed for record, and at such time as a supplemental Declaration and Map have been recorded for a phase, Declarant shall have the right to execute and record a "Notice of Merger" in which notice is given that such phase is thereupon merged with the Project as it previously existed.

The Phase 1 Declaration shall hereafter and for all purposes be and consist of the Phase 1 Declaration as originally constituted, as modified and amended by this Amendment. This Amendment shall take effect upon recording in the office of the County Recorder of Davis County, Utah.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has caused this instrument to be executed this 7 day of June, 1976.

COUNTRY HILLS, INC.

ATTEST:

Jacqueline M. Jackson
Jacqueline M. Jackson,
Secretary

By Robert B. Jackson
Robert B. Jackson,
President

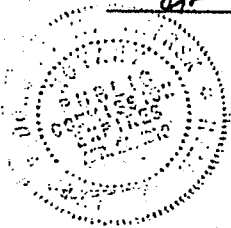
STATE OF UTAH }
COUNTY OF Weber } ss.

On this 7 day of June, 1976, personally appeared before me ROBERT B. JACKSON and JACQUELINE M. JACKSON, who being by me duly sworn, did say that they are the President and Secretary, respectively, of COUNTRY HILLS, INC., a Utah corporation, and that the foregoing Amendment to Declaration was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said Robert B. Jackson and Jacqueline M. Jackson acknowledged to me that said corporation executed the same.

My Commission Expires:

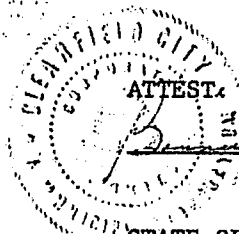
April 28, 1979

Dorothy M. Thurek
Notary Public
Residing at: Cogden, Utah



CITY APPROVAL

On this 8th day of June, 1976
CLEARFIELD CITY CORPORATION, a body corporate and politic
and the municipality in which The Sundowner Condominium Phase
1 is located, hereby gives final approval to the foregoing
"Amendment to Declaration of Covenants, Conditions, and Re-
strictions -- The Sundowner Condominium Phase 1."



ATTEST:

S. S. Hodge
City Recorder

CLEARFIELD CITY CORPORATION

By O. Ross Sanders
Mayor

STATE OF UTAH

COUNTY OF DAVIS

)
) ss.
)

On this 8th day of June, 1976, per-
sonally appeared before me O. Ross Sanders and
Bonnie S. Hodge, known to me to be the Mayor and
City Recorder, respectively, of CLEARFIELD CITY CORPORATION,
a body corporate and politic, who duly acknowledged to me that
they executed the foregoing instrument on behalf of said muni-
cipality pursuant to authority.

My Commission Expires:

July 8, 1978

Loannic Pittsburg
Notary Public
Residing at: Clearfield, Utah

