

**AMENDED AND RESTATED
DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS
AND RESTRICTIONS OF CONCORD HEIGHTS
PLANNED UNIT DEVELOPMENT**

This Declaration is made by Concord Heights Planned Unit Development Homeowner's Association (Concord Heights PUD), hereinafter referred to as "Association" this 11 day of June, 2001.

WITNESSETH:

WHEREAS, Association represents the homeowners of the following described real property located in Orem, County of Utah, State of Utah:

See Exhibit "A" attached hereto and by reference made a part hereof;

and

WHEREAS, Association desires to preserve the value of the property which is the subject of this Declaration; and

WHEREAS, the real property subject to this Declaration is previously undeveloped land designated and known as Concord Heights PUD the plat thereof having been accepted by the Orem City Council and the Mayor of Orem City and the same having been recorded in the office of the County Recorder of Utah County;

NOW THEREFORE, Association hereby declares that all the lots shown on the subdivision plat of Concord Heights, PUD, shall be held, sold and conveyed subject to the following easements, covenants, conditions and restrictions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property described above and shall be binding on all

parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Concord Heights PUD Homeowner's Association, Inc., its successors and assigns.

Section 2. "Board" shall mean the Board of Trustees of the Association.

Section 3. "Common Area" shall mean all property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is set forth and designated as such on the recorded subdivision map.

Section 4. "Limited Common Area" shall mean and refer to that portion of the Common Area shown on the recorded subdivision map as "Limited Common Area." Such Limited Common Areas are reserved for the exclusive use of the particular Lot located immediately in front of and/or behind the Limited Common Area as designated on the recorded subdivision map.

Section 5. "Lot" shall mean and refer to any plot of land designated by Unit number and shown as "Private Area" on the recorded subdivision map of the Properties.

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

Section 7. "Properties" shall mean and refer to that certain property described on Exhibit "A" attached hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 8. "Unit" shall mean a structure which is designed and intended for use as a single family residence, together with all improvements located on the same Lot and used in conjunction with such residence, including anything located within or without said Unit and designated and designed to serve only that Unit.

ARTICLE II

PROPERTY RIGHTS

Section 1. *Owner's Easements of Enjoyment.* Every Owner shall have a right and easement of enjoyment in and to the Common Area which 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 dedicate or transfer all or any 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. No such dedication or transfers shall be effected unless an instrument agreeing to such dedication or transfers signed by two-thirds (2/3) of the members has been recorded.

Section 2. *Declaration of Use.* Any Owner may delegate, in accordance with the By Laws, his right of enjoyment to the Common Area to the members of his family or contract purchasers who reside on the Property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be an automatic member of the Association. Membership in the Association shall be appurtenant to and may not be separated from Ownership of any Lot which is subject to assessment.

Section 2. Members shall be all Owners, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. *Creation of the Lien and Personal Obligation of Assessments.* The Association, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) mandatory monthly assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Property 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 Property at the time when the assessment fell due. The personal 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 to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area,

Section 3. Maximum Monthly Assessment. The maximum monthly assessment shall be Fifty-Five Dollars (\$55.00) per Lot.

(a) The maximum monthly assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) The maximum monthly assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board may fix the monthly assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the monthly assessment 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 a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have

the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 above shall be sent to all members not less than thirty (30) days and not more than sixty (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 shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at 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 sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments — Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The Board shall fix the amount of the monthly assessment against each Lot at least thirty (30) days in advance of each calendar year. Written notice of the monthly assessment shall be sent every Owner subject thereto. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have

been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. *Effect of Nonpayment of Assessments — Remedies of the Association.* Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. Such unpaid assessment shall constitute a lien on the interest of the Owner of the Lot. The Association shall have the right to file a lien upon the Lot for the non-payment of any assessments and upon the recording of a Notice of Lien by the Association it is a lien upon the Unit Owner's interest in the Lot. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. *Subordination of the Lien to Mortgage.* The lien of the assessments provided for herein shall be subordinated to the lien of any first mortgage. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien or such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. *Maintenance Responsibilities.*

- (a) All front yards and open side yards will be maintained by the Association.
- (b) All back yards and remaining yards (those not mentioned in subparagraph (a) above) must be maintained at least weekly by the Owner. The Owner may contract with a third party

to maintain his yard, but any such contract will not relieve any such Owner from his responsibilities hereunder.

(c) All home exteriors must be well maintained and kept in good repair by the Owners.

(d) Landscaping, including trees, grass, shrubs, fencing and sprinkler systems (basic allowance plan), will be installed by the builder of the Units in the Common Area (front and side yards). Said landscaping will be completed at the time of closing, or within thirty (30) days thereafter, or, in case of winter months, as soon as weather permits.

(e) All roofs will be of asphalt shingle roofing. Maintenance, repairs and replacement will be the responsibility of each Owner.

(f) R.V. storage is planned for the development. Owners who use the R.V. storage facility will be initially assessed fifteen dollars (\$15.00) per month for the use thereof. The Board may adjust such fees on an annual basis.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board or by the architectural control committee composed of three (3) or more representatives appointed by the Board. In the

event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. All Units built in the project will be of a twin home design, except for one tri-plex Unit which will be of a design consistent with the twin homes, and all of which will be built by the same builder(s) as appointed by Association, using floor plans that are approved by the architectural control committee. Each Unit will contain approximately 1300 to 2600 square feet, exclusive of open porches and garages. Any variations from the approved floor plans must be accepted and approved by the architectural control committee. Each Unit will contain at least the following improvements:

- (a) At least one finished bedroom, 1 and 3/4 baths, kitchen, dining room, family room, laundry area and double car garage;
- (b) Frame construction with brick and/or brick and stucco exterior, with aluminum soffits and eaves;
- (c) A two-car garage built by the builder(s); carports will not be allowed;
- (d) Finished main floor and a fully finished garage. Basements will be unfinished by the builder, with roughed-in plumbing for baths, unless the Owner contracts separately for the completion of the basement at the time of construction.

ARTICLE VI
RESTRICTIVE USES

Section 1. No noxious or offensive activities shall be carried on upon any Lot or Unit nor shall anything be done thereon which may or may become an annoyance or nuisance to the neighborhood.

Section 2. No animals, livestock, or poultry of any kind shall be raised or kept on any Lot, or in any Unit, except that dogs, cats and other domesticated household pets may be kept provided that they are not kept or maintained for commercial purposes. No pets may be kept in unreasonable numbers and the Board may establish rules and restrictions from time to time concerning specific breeds, types, sizes or numbers of dogs, cats or other domesticated household pets.

Section 3. No automobiles, trucks, campers, trailers, boats, equipment, recreational vehicles, motor homes or other similar vehicles shall be parked or stored on a public street or right-of-way within the development for more than forty-eight (48) consecutive hours. The intent of this provision is to keep the roadways within the development open for daily traffic and to avoid the unsafe and unsightly condition of vehicles parked on the street for long periods of time. The Association may enforce this provision by first giving notice of the violation to the Owner (or where the Owner is not readily available or ascertainable, by giving notice in the form of a written request placed on the vehicle in question), and subsequently by causing that vehicle(s) or equipment parked on the street in violation of this provision to be towed away at the Owner's expense. None of the above-referenced vehicles or equipment may be kept or stored on any Lot unless stored in a garage or parking stall.

Section 4. No Lot line fence over seven (7) feet high will be permitted. The backyard fence and side yard fences will be installed by the builder(s) unless a fence currently exists. All maintenance, repairs or replacements will be at the expense of the Owner.

Section 5. Swamp coolers will be allowed; however, all swamp coolers must be placed on the back side of the roof so that no part of the cooler can be seen from the street in front of the Unit.

Section 6. No radio or short wave antennas will be allowed. All T.V. antennas must be placed on the back side of the roof so that no part of the antenna is visible from the street in front of the Unit. No satellite antenna systems (disks) may be placed or installed in the front or side yards. Any such antenna systems must be obscured from view from the street in front of the Unit.

Section 7. No commercial activity may be conducted upon or within the Properties.

Section 8. Not more than one family Unit may be maintained in or on a Lot or Unit within the project; provided, however, it is contemplated that live-in help and immediate family members, their spouses and children will be permitted to occupy the premises with the Owner.

Section 9. All Units in the project must be Owner-occupied. The leasing or renting of Units is prohibited, in order for the Association to protect the equity of the individual Property Owners and to preserve the character of the project by preventing the project from assuming the character of an apartment or renter-occupied complex.

ARTICLE VII

GENERAL PROVISIONS

Section 1. *Enforcement.* The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and

charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so after.

Section 2. Severability. An invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision of this Declaration which shall remain in full force and effect.

Section 3. Covenants Run With Land. This Declaration and all the provisions hereof shall constitute covenants which run with and bind the land and shall be binding upon and shall inure to the benefit of Association, all parties who heretofore acquired or hereafter acquire any interest in a Lot or in the Common Areas, the respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Lot or Unit shall comply with, and all interests in all Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and terminations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of the Declaration.

Section 4. Amendment. Except as provided by below, this Declaration may be amended by, and only by, an instrument recorded in the Utah County Records Office, which is executed by the Association in behalf of Owners who collectively hold at least seventy-five percent (75%) of the total outstanding votes in the Association. Such right of amendment shall be subject to the following qualifications: No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Association (in

its capacity as Association), or to a mortgagee, shall be accomplished or effected unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Association or by such mortgagee, as the case may be.

Section 5. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of seventy-five percent (75%) of the total outstanding votes in the Association.

Section 6. Duration. This Declaration shall remain in effect until such time as there is recorded in the Utah County Recorder's Office, an instrument of termination which is executed by all of the Lot Owners and the mortgagees of each and every Lot.

IN WITNESS WHEREOF, the undersigned, being the Association herein, has hereunto set its hand this 11 day of June, 2001.

CONCORD HEIGHTS PUD
HOMEOWNER'S ASSOCIATION

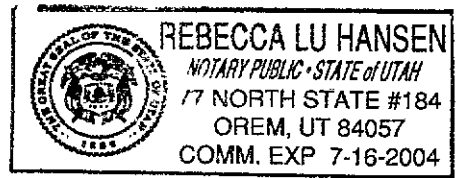

Robert Larsen, Trustee


Sybel Plehn, Trustee


Edyth S. Mackay, Trustee

STATE OF UTAH)
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COUNTY OF UTAH)

On the 11th day of June, 2001, personally appeared before me Robert Larsen, Sybel Plehn and Edyth S. Mackay, who, being by me duly sworn, did say that they are the Trustees of the Concord Heights Homeowner's Association and that the foregoing document was signed by them on behalf of said Association by authority of its By Laws (or resolution of its Board of Trustees), and the said Robert Larsen, Sybel Plehn and Edyth S. Mackay acknowledged to me that said Association executed the same.



Rebecca Lu Hansen

Notary Public