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NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
WOOD QUINN & CRAPO
REC BY: J MORETON ,DEPUTY - WI

WHEN RECORDED, PLEASE RETURN TO:

WOOD QUINN & CRAPO, L.C.
60 East South Temple, Suite 500
Salt Lake City, Utah 84111
Attention: David J. Crapo

6297924

SECOND AMENDMENT TO CONDOMINIUM DECLARATION

FOR

ARCADIA GREEN TOWNHOMES

On April 4, 1995, the Condominium Declaration for Arcadia Green Townhomes (the "Declaration") was recorded with the Salt Lake County Recorder as Entry No. 6054325. On May 20, 1995, the First Amendment to the Declaration was recorded with the Salt Lake County Recorder as Entry No. 6088956. Pursuant to Section 19.03, 67 percent of all Memberships have voted to amend the Declaration a second time to include provisions required by the Department of Veteran's Affairs which, among other things, will facilitate the ability of Owners to receive mortgage financing from the Department of Veteran's Affairs. Accordingly, the Arcadia Green Townhomes Owners Association, Inc. hereby amends and restates the Declaration to read in its entirety as follows:

THIS CONDOMINIUM DECLARATION FOR ARCADIA GREEN TOWNHOMES (this "Declaration") is made as of August 21, 1995 by Arcadia Green Townhomes, L.C., a Utah limited liability company ("Declarant"), for and on behalf of itself and its successors and assigns.

RECITALS

- A. Declarant is the sole owner of the real property located in the County of Salt Lake, State of Utah, that is more particularly described on Exhibit A attached hereto and made a part hereof.
- B. Declarant desires to construct and establish a condominium project on such property and on any additional property that is made subject to this Declaration, which project shall consist of multifamily residential dwellings, all pursuant to the Utah Condominium Ownership Act, Utah Code Annotated sections 57-8-1 through 57-8-36.
- C. Declarant deems it necessary and desirable to subject such property to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration.

DECLARATION

NOW THEREFORE, in consideration of the foregoing, Declarant hereby declares as follows:

ARTICLE I

DECLARATION

Declarant hereby submits the Property (as such term is defined below) to the provisions of the Act (as such term is defined below), and declares that the Property shall be held, sold and conveyed subject to

BK 7346 PG 1828

the following covenants, conditions, restrictions, reservations, easements, assessments, charges and liens, which shall run with the Property and bind all parties having any right, title or interest in the Property, or any portion thereof, and their respective successors, assigns, heirs, devisees and personal representatives.

ARTICLE II

DEFINITIONS

2.01 Basic Definitions. For purposes of this Declaration, the following terms shall have the meanings indicated:

(a) "Act" means the Utah Condominium Ownership Act, Utah Code Annotated sections 57-8-1 through 57-8-36, as it may be amended from time to time.

(b) "Additional Property" means the real property located in the County of Salt Lake, State of Utah, that is described on Exhibit B attached hereto and made a part hereof.

(c) "Articles" means the Articles of Incorporation of the Association, as the same may be amended from time to time.

(d) "Assessment" means an Initial Assessment, a General Assessment, a Special Assessment or a Default Assessment levied pursuant to Article VII below.

(e) "Assessment Lien" means the statutory lien of the Association on a Unit described in Section 7.09 below.

(f) "Association" means Arcadia Green Townhomes Owners Association, Inc, a Utah nonprofit corporation, and its successors and assigns.

(g) "Association Documents" means this Declaration, the Articles, the Bylaws and the Rules and Regulations, as they may be amended from time to time.

(h) "Bylaws" means the Bylaws of the Association, as they may be amended from time to time.

(i) "Common Areas" means all of the Property, together with all improvements located thereon; provided, the Common Areas shall not include any Unit.

(j) "Common Expenses" means (i) any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, maintaining, repairing, altering and improving the Common Areas; (B) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (C) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto; (D) regulating and managing the Project; and (E) operating the Association; and (ii) reserves for any such costs, expenses, liabilities and replacement of improvements to Common Areas and Limited Common Areas.

(k) "Declarant" means Arcadia Green Townhomes L.C., a Utah limited liability company, and its successors and assigns.

- (l) "Declarant Control Period" has the meaning assigned to such term in Section 6.02 below.
- (m) "Declaration" means this Condominium Declaration for Arcadia Green Townhomes, as it may be amended from time to time.
- (n) "Default Assessment" has the meaning given to such term in Section 7.07 below.
- (o) "Director" means a duly elected or appointed member of the Executive Board.
- (p) "Eligible Holder" means a Person who holds, insures or guarantees a First Mortgage and has delivered a written notice to the Association, containing such Person's name and address and the legal description and address of the Unit encumbered by the First Mortgage held, insured or guaranteed by such Person.
- (q) "Executive Board" means the Board of Directors of the Association which is also known as the Board of Trustees.
- (r) "First Mortgage" means any Mortgage which is not subordinate to any other lien or encumbrance, except liens for taxes or other liens which are given priority by statute.
- (s) "First Mortgagee" means any Person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.
- (t) "General Assessment" means an Assessment levied against a Unit pursuant to Section 7.05 below.
- (u) "Initial Assessment" means an assessment levied against a Unit pursuant to Section 7.04 below.
- (v) "Limited Common Areas" means the areas of the Property which are reserved for use exclusively in connection with a designated Unit or Units, as depicted on the Map.
- (w) "Map" means the Record of Survey Map of Arcadia Green Townhomes attached as Exhibit C hereto and made a part hereof, as the same may be amended from time to time.
- (x) "Membership" means a membership in the Association and the rights granted to Owners pursuant to this Declaration, the Articles and the Bylaws to participate in the Association.
- (y) "Modification Review Board" means the committee established by the Executive Board to regulate the modification of improvements to the Units.
- (z) "Mortgage" means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.
- (aa) "Mortgagee" means any Person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.
- (bb) "Owner" means the record holder of legal title to the fee simple interest in any Unit or portion thereof. If there is more than one record holder of legal title to a Unit, each record holder shall be an Owner.

(cc) "Person" means any natural person, corporation, partnership, limited liability company, association, trustee or any other entity recognized as being capable of owning real property under the laws of the State of Utah.

(dd) "Project" means the condominium project created on the Property by this Declaration, consisting of the Units, the Common Areas and Limited Common Areas.

(ee) "Property" means (i) the real property located in the County of Salt Lake, State of Utah, that is described on Exhibit A attached hereto and made a part hereof, and (ii) all of the Additional Property that is later made subject to this Declaration in accordance with the terms and conditions hereof.

(ff) "Purchaser" means a Person, other than Declarant or a Successor Declarant, who by means of a transfer, acquires legal title to the fee simple interest in any Unit or portion thereof.

(gg) "Rules and Regulations" means any instruments adopted by the Association for the regulation and management of the Project, as the same may be amended from time to time.

(hh) "Shares of Common Expenses" means the share of Common Expenses allocated to each Unit in accordance with the terms and conditions of Section 7.02 below.

(ii) "Special Assessment" has the meaning given to such term in Section 7.06 below.

(jj) "Special Declarant Rights" means the rights reserved by Declarant for itself, its successors and assigns in this Declaration.

(kk) "Successor Declarant" means any Person who succeeds to any rights of Declarant hereunder.

(ll) "Unit" means an individual residential dwelling within the Project designated as a Unit on the Map and shall include, with respect to each such dwelling: (i) all footings, pilings, foundations and other support structures; (ii) all floors and floor joists; (iii) all exterior walls, including, without limitation all exterior doors, exterior windows and exterior wall coverings; (iv) where applicable, the portion of all interior demising walls on the Unit side of a vertical plane through the center of each such demising wall; (v) all roof components below the trusses and including the trusses (the waferboard, roofing materials and shingles positioned above the trusses and all rain gutters and fascia materials are Common Area and shall be maintained by the Association), (vi) all porches, exterior fixtures, chimneys, decks and other similar items attached to the exterior of the dwelling which are intended for the exclusive benefit of the dwelling; (vii) all improvements and fixtures within the space bounded by the outside surfaces of the dwelling; and (viii) all heating, ventilation and air conditioning equipment and all other utility equipment which exclusively serves the dwelling (except underground pipelines, ducts and wires to the extent not located under the dwelling).

2.02 Gender and Number.

Wherever the context of this Declaration so requires, (a) words used in the masculine gender shall include the feminine and neuter genders; (b) words used in the neuter gender shall include the masculine and feminine genders; (c) words used in the singular shall include the plural; and (d) words used in the plural shall include the singular.

ARTICLE III

UNITS AND COMMON AREAS

3.01 Units.

(a) Declarant hereby designates 18 Units which may be constructed within the Project, the boundaries and identifying numbers of which are shown on the Map.

(b) Pursuant to Section 57-8-10(4) of the Act, Declarant hereby reserves the right to create and construct a maximum of 30 additional Units within the Project as set forth in Section 16.02, below.

(c) All Units shall be capable of being independently owned, encumbered and conveyed. The Owner or Owners of each Unit shall be entitled to the exclusive possession and control of such Unit, subject to the rights of the Association set forth in the Association Documents.

3.02 Location of Units. During the Declarant Control Period, Declarant shall have the right to alter the boundaries of the Units, as shown on the Map, and to combine two or more Units into a single Unit. Any change in the boundaries of the Units or any combination of Units into a single Unit shall be reflected by an amendment to this Declaration and of the Map, which amendment may be effected by the Declarant alone. If two or more Units are combined into a single Unit, the combined Units shall be treated as a single Unit for all purposes of this Declaration, including, without limitation, for purposes of levying Assessments.

3.03 Description of Units. The Project shall consist of 18 Units identified as Units 1 through 18 of the Arcadia Green Townhomes Condominiums. Each Unit has substantially an identical floor plan consisting of 1158 square feet of living space exclusive of the single car garage. Each Unit consists of two stories. The main level is comprised of an entry area, bathroom, kitchen, living room, dining area, utility room and accompanying closet, pantry and storage areas as indicated in the "Unit Floor Plan" which is attached hereto as Exhibit E. The upper level is comprised of a master bedroom, master bathroom, two additional bedrooms, a second bathroom, a furnace room and accompanying closet, and storage areas as indicated in the Unit Floor Plan. The Units are wood framed with vinyl siding, the roofing material is fiberglass-asphalt shingle, and the other significant building material is identified in the construction plans which may be viewed at the business office of the Declarant.

3.04 Separate Taxation of Units. Pursuant to Section 57-8-27 of the Act, each Unit constitutes a separate parcel of real estate and will be separately assessed and taxed.

3.05 Description of Common Areas. The Common areas shall consist of the lawn, landscaped areas, parking areas, and any other improvement placed on the land surrounding the Units as indicated on the Map attached hereto as Exhibit C.

3.06 Ownership of Common Areas. The Common Areas shall be owned by the Owners of all of the Units as tenants in common. A percentage of undivided interest in the Common Areas shall attach to each Unit, which percentage shall correspond to the Share of Common Expenses for such Unit as determined under Section 7.02(a) of this Declaration. If additional Units are added to the Project, such percentage shall change in the manner provided under Section 7.02(b) of this Declaration. Upon any conveyance or transfer of a Unit, the undivided interest in Common Areas attributable to such Unit shall automatically be conveyed or transferred with the Unit. No undivided interest in Common Areas may be transferred or conveyed separate or apart from the Unit to which the undivided interest is attributable. Each Owner shall have a license to use all of the Common Areas, subject to the terms and conditions of the Association Documents. The minimum number

of Units for the Project will be 18 which will give each unit owner the maximum percentage of interest in the Common Areas of 5.555%. The maximum number of Units that can be in the Project if it is fully expanded is 48 Units which will give each Unit owner the minimum percentage of interest in the Common Areas of 2.083%.

3.07 Limited Common Areas. Notwithstanding anything in the Association Documents to the contrary, only the Owner or Owners of the Unit or Units to which any Limited Common Areas relate, as designated on the Map, may use such Limited Common Areas, it being intended that Limited Common Areas shall not be available for the use of any other Owner or Owners.

ARTICLE IV

THE ASSOCIATION

4.01 Formation of the Association. On or before the date on which Declarant conveys the first Unit within the Project to a Purchaser, Declarant shall form the Association.

4.02 Purposes and Powers.

(a) The Association's purposes are (i) to manage, operate, construct, improve, alter and maintain the Common Areas and Limited Common Areas; (ii) to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby; (iii) to levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto; and (iv) to regulate and manage the Project.

(b) Unless expressly prohibited by law or any of the Association Documents, the Association may (i) take any and all actions that it deems necessary or advisable to fulfill its purposes, and (ii) exercise all powers that may be exercised in Utah by nonprofit corporations.

4.03 Association Documents.

(a) The obligations, burdens and benefits created by this Declaration touch and concern the Property and are, and shall be, covenants running with each Unit for the benefit of all other Units and the Common Areas. The Association and each Owner shall comply with and benefit from each term, provision, covenant, condition, restriction, reservation and easement contained in the Association Documents.

(b) In the event that there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Declaration shall control. In the event that there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. In the event of any conflict or inconsistency between the terms and conditions to the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

4.04 Books and Records.

Upon request, the Association shall allow Owners, Mortgagees and their respective agents to inspect current copies of the Association Documents and the books, records, budgets and financial statements of the Association during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials.

4.05 Personal Liability and Indemnification.

(a) To the full extent permitted by applicable law, no Director or officer, who was appointed by Declarant, shall be personally liable to the Association or any Owner or any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such Director or officer, unless a court of competent jurisdiction finds that such Director or officer breached a fiduciary duty that such Director or officer owed to the Association or an Owner.

(b) To the full extent permitted by applicable law, no Director or officer of the Association, who was not appointed by Declarant, and no employee, agent or committee member of the Association shall be personally liable to the Association or any Owner for any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such Director or officer, employee, agent or committee member, unless a court of competent jurisdiction finds that the act or omission of such Director or officer, employee, agent or committee member was wanton and willful.

(c) The Association shall indemnify and hold harmless each present or former Director or officer, employee, agent or committee member against any and all claims, suits, proceedings, injuries, damages, losses, costs and expenses, including, but not limited to, attorneys' fees and disbursements, asserted against or incurred by any such present or former Director or officer, employee, agent or committee member to the fullest extent permitted by the Association Documents; provided, however, that in no event shall the Association indemnify or hold harmless any such Director or officer, employee, agent or committee member to the extent that he or she is personally liable for an act or omission under paragraph 4.05(a) or paragraph 4.05(b) above.

ARTICLE V

MEMBERSHIP IN THE ASSOCIATION

5.01 Membership.

(a) There shall be one Membership appurtenant to every Unit. A Membership may not be separated from the ownership of the Unit to which it is appurtenant.

(b) Any Membership appurtenant to a Unit having more than one Owner shall be shared by such Owners.

(c) A Membership may be transferred or encumbered only in connection with the conveyance or encumbrance of a fee simple interest in the Unit to which the Membership is appurtenant. Any transfer or encumbrance of a Membership other than as permitted in this paragraph 5.01(c) shall be void and have no force or effect.

5.02 Voting.

(a) Each Membership shall be entitled to one vote, regardless of the number of Owners of the Unit to which the Membership is appurtenant. Fractional voting shall not be allowed. If the Owners of a Unit cannot agree among themselves as to how to cast their vote when they are required to cast their vote on a particular matter, they shall lose their right to vote on such matter. If any Owner casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that the Owner was acting with the authority and consent of all other Owners with whom such Owner shares the Membership, unless objection thereto is made to the chairperson of the meeting at the time the vote is cast. If more than one vote is cast for

any particular Membership, none of such votes shall be counted and all of such votes shall be deemed null and void.

(b) In any election of Directors to the Executive Board, every Membership shall have the number of votes equal to the number of Directors to be elected to the Executive Board by such election. Cumulative voting shall not be allowed in the election of Directors to the Executive Board or for any other purpose.

(c) Notwithstanding the terms and conditions of paragraph 5.03(a) above, the Association shall have no voting rights for any Membership appurtenant to any Unit owned by the Association.

ARTICLE VI

EXECUTIVE BOARD

6.01 Powers of the Executive Board.

(a) Except as provided in this Declaration, the Articles and the Bylaws, the Executive Board may act on behalf of the Association in all instances.

(b) The Executive Board may not act on behalf of the Association to (i) amend this Declaration; (ii) terminate the Project; (iii) elect Directors to the Executive Board, other than to fill a vacancy for the unexpired portion of a Director's term; or (iv) determine the qualifications, powers and duties, or terms of office, of Directors.

6.02 Declarant Control Period.

(a) Subject to the terms and conditions of paragraphs 6.02(b) and (c) below, but notwithstanding anything else to the contrary contained in this Declaration or in any other Association Document, Declarant shall have the exclusive right to appoint and remove all Directors and officers during the Declarant Control Period. The term "Declarant Control Period" means the period commencing on the date on which Declarant forms the Association and ending on the earliest to occur of:

(i) sixty days after conveyance to Purchasers of 75 percent of the maximum number of Units that may be created by Declarant hereunder; or

(ii) five years after the first conveyance of a Unit by Declarant or a Successor Declarant to a Purchaser in the ordinary course of business.

(b) Declarant may voluntarily surrender its right to appoint and remove Directors and officers prior to the expiration of the Declarant Control Period.

(c) Notwithstanding anything to the contrary contained in paragraph 6.02(a) above:

(i) not later than sixty days after the conveyance to Purchasers of 25 percent of the maximum number of Units that may be created by Declarant hereunder, at least one Director and not less than 25 percent of the Directors shall be elected by Owners other than Declarant or any Successor Declarant; and

(ii) not later than sixty days after the conveyance to Purchasers of 50 percent of the maximum number of Units that may be created by Declarant hereunder, at least 33 1/3 percent of the Directors must be elected by Owners other than Declarant or a Successor Declarant.

(d) Not later than the expiration of the Declarant Control Period, the Owners shall elect an Executive Board of at least three Directors, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant. Such Directors shall take office upon election.

6.03 Removal of Members of the Executive Board.

Notwithstanding any provision of this Declaration or any other Association Document to the contrary, the Owners, by a vote of at least 67 percent of all Memberships represented (in person or by proxy) and entitled to vote at any meeting at which a quorum is present, may remove any Director, with or without cause, other than a Director appointed by Declarant.

6.04 Professional Management of the Project.

The Executive Board may enter service and management agreements for the Project. The term of such service or management contracts may not exceed three years. In addition, any such service or management contract must provide for termination by either party without cause and without payment of a termination fee on 30 days or less written notice.

ARTICLE VII

ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS

7.01 Obligations for Assessments.

(a) Declarant, for each Unit it owns, hereby covenants and agrees, and each Owner, by accepting a deed to a Lot (whether or not it shall be expressly stated in such deed), shall be deemed to have covenanted and agreed, to pay to the Association all (i) Initial Assessments; (ii) General Assessments; (iii) Special Assessments; (iv) Default Assessments; and (v) other charges that the Association is required or permitted to levy or impose on such Owner or such Owner's Unit pursuant to this Declaration or any other Association Document.

(b) No Owner shall be exempt from liability for any such Assessment or other charge by waiving the use or enjoyment of the Common Areas, or any portion thereof, or by abandoning a Unit against which such Assessments or other charges are made.

(c) Except as provided in this paragraph 7.01(c) and paragraph 7.09(a) below, the obligation to pay to the Association any Assessment or other charges levied against any Unit shall be a joint and several obligation of the Owner or Owners of such Unit and such Owner's or Owners' successors, assigns, heirs, devisees and personal representatives. A Person acquiring fee simple title to a Unit shall be jointly and severally liable with the former Owner of the Unit for all Assessments and other charges that had accrued and were payable when such Person acquired fee simple title to the Unit, for so long as such Person holds fee simple title to the Unit.

(d) Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment or other charge, including reasonable attorneys' fees and disbursements, may be recovered by a suit for a money judgment by the Association without foreclosing or waiving any Assessment Lien securing the same.

7.02 Shares of Common Expenses.

(a) Except as otherwise set forth in this Declaration, all Common Expenses shall be allocated equally among all Units that have been created prior to the date on which the Common Expenses were incurred. Accordingly, the formula for calculating the percentage of Common Expenses allocated to each Lot shall be:

$$\text{Share of Common Expenses} = \frac{1 \times 100}{\text{Number of Units created prior to the date on which the Common Expenses were incurred}}$$

(b) The Shares of Common Expenses allocated to the initial 18 Units within the Project are set forth on Exhibit D attached hereto and made a part hereof.

(c) If any Units are added to or withdrawn from the Project, the Shares of Common Expenses for all Units within the Project after such addition or withdrawal shall be recalculated in accordance with the formula set forth in paragraph 7.02(a) above.

(d) Until the Association levies an Assessment, Declarant shall pay all Common Expenses. The Association will levy its first Assessments within sixty days after the first Unit is conveyed to a purchaser in the ordinary course of business.

7.03 Budgets.

(a) Prior to the first levy of a General Assessment, and, thereafter, on or before September 1 of each calendar year the Executive Board shall adopt a proposed annual budget for the Association for the following calendar year, which proposed budget shall, among other things, set forth (i) the Executive Board's estimates of Common Expenses for the next calendar year; (ii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through General Assessments; and (iii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Special Assessments. Within thirty days after adopting a proposed budget, the Executive Board shall deliver a summary of the proposed budget to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed budget. The date of such meeting shall not be less than fourteen days, nor more than sixty days, after the delivery of the summary of the proposed budget to the Owners. Unless at that meeting a majority of the votes allocated to all Memberships, whether or not a quorum is present, rejects the proposed budget, the proposed budget shall be deemed ratified. If the event that the proposed budget is rejected, the annual budget last ratified by the Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

(b) If the Executive Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under paragraph 7.03(a) above, the Executive Board may adopt a proposed amendment to the annual budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen days, nor more than sixty days, after the delivery of the summary of the proposed amendment. Unless at that meeting a majority of the votes allocated to all Memberships, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

7.04 Initial Assessments. Upon the first purchase of each Unit by a Purchaser other than Declarant, there shall be automatically levied a one-time assessment against such Unit in the amount of \$100 (an "Initial Assessment"). Each Initial Assessment shall be due and payable in full on or before the date upon

which the first purchase of the Unit to which the Initial Assessment relates is consummated. The Association shall hold all of the Initial Assessments in a reserve to pay Common Expenses and other expenses of the Association if other funds of the Association are not available to pay the same.

7.05 General Assessments.

(a) After the Owners ratify an annual budget under paragraph 7.03(a) above, the Association shall levy an assessment for Common Expenses (a "General Assessment") on each Unit. The amount of the General Assessment to be levied against a Unit shall equal the product obtained by multiplying (i) the amount set forth in the annual budget ratified by the Owners as the amount of Common Expenses to be raised by General Assessments, by (ii) that Unit's Share of Common Expenses. The Owners shall pay the General Assessments levied against their respective Units in such periodic installments as may be required by the Association.

(b) If the Owners ratify an amendment to the General Assessment portion of an annual budget pursuant to paragraph 7.03(b) above, the amount of the General Assessment levied against each Unit shall be adjusted accordingly, as shall the amount of each Owner's periodic installments.

(c) If the Owners fail to ratify an annual budget for any calendar year prior to January 1 of that calendar year, the Owners shall continue to pay periodic installments of the General Assessment to the Association at the rate payable during the prior calendar year until such time as the Owners ratify a new annual budget for the then current calendar year. Once the Owners ratify a new annual budget, the Association shall levy on each Unit the General Assessment for the then current calendar year and each Owner's periodic installments shall be adjusted as necessary to pay the new General Assessment in equal periodic installments over the remainder of such calendar year, giving the Owners credit for any installments that the Owners have previously paid to the Association during such calendar year.

(d) The failure of the Association to levy a General Assessment for any calendar year shall not be deemed a waiver, modification or release of the Owners' liability for the Share of Common Expenses allocated to such Owner's Unit.

7.06 Special Assessments.

(a) The Assessments that the Association may levy pursuant to this Section 7.06 are referred to in this Declaration as "Special Assessments."

(b) Notwithstanding anything to the contrary contained in Section 7.05 above, if any Common Expense benefits fewer than all of the Units, the Association may levy an Assessment for such Common Expense exclusively against the Units benefitted thereby, equally or in any other equitable proportions as the Association deems appropriate.

(c) Each Special Assessment levied against any Unit shall be shown on an annual budget, or on an amendment to an annual budget, ratified by the Owners in accordance with Section 7.03 above, and shall be paid as and when required by the Association.

7.07 Default Assessments.

(a) Notwithstanding anything to the contrary contained herein, if any Common Expense is caused by (i) the negligence or misconduct of an Owner or an Owner's family member, employee, agent, lessee or guest, or (ii) a violation of any covenant or condition of an Association Document by an Owner or an Owner's family member, employee, agent, lessee or guest, the Association may levy an Assessment against such Owner's Unit for the amount of such Common Expense. Any such Assessment levied by the Association,

and each fine, penalty, fee or other charge imposed upon an Owner for the violation of any covenant or condition of any Association Document by an Owner or an Owner's family member, employee, agent or guest, are each referred to herein as a "Default Assessment."

(b) Default Assessments need not be shown on an annual budget, or on an amendment to an annual budget. Default Assessments need not be ratified by the Owners in accordance with Section 7.03 above.

(c) With respect to any Default Assessment, or portion thereof, levied other than as a late charge, the Owner of the Unit against which the Association seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard. Owners of Units against which Default Assessments have been levied shall pay such Default Assessments when required by the Association.

7.08 Assignment of Assessments.

The Association shall have the unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Association or otherwise.

7.09 Assessment Lien.

(a) Pursuant to Section 57-8-20 of the Act, the Association shall have a statutory lien on each Unit for any Assessment levied against that Unit and any interest, attorneys' fees and disbursements and costs of collection imposed against its Owner under any Association Document. The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien secures each installment from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

(b) An Assessment Lien is prior to all other liens and encumbrances on a Unit except:

(i) tax and special assessment on the Unit in favor of any assessing unit or special improvement district; and;

(ii) liens and encumbrances recorded prior to the recordation of a notice of the Assessment Lien which by law would be prior to subsequently recorded encumbrances.

(c) This Section 7.09 does not prohibit (i) actions or suits to recover sums secured by an Assessment Lien, or (ii) the Association from taking a deed in lieu of foreclosure.

(d) In any action by the Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver of the Owner to collect all sums due to the Owner with respect to the Unit. A court may order the receiver to pay any sums collected by the receiver to the Association during the pending of the action to the extent of the Association's Assessments.

(e) An Assessment Lien may be enforced by sale or foreclosure of the applicable Unit by the Association or Executive Committee, which sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages.

7.10 Estoppel Certificates; Notices to Mortgagees.

(a) The Association shall furnish to an Owner or such Owner's designee or to a Mortgagee or its designee, upon written request, delivered personally or by certified mail, firstclass postage prepaid, return receipt requested, to the Association's registered agent, a statement setting forth the amount of

unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within fourteen calendar days after the Association's receipt of the request and shall be binding on the Association, the Executive Board and every Owner. If no statement is furnished to the Owner, the Mortgagee or their designee, delivered personally or by certified mail, firstclass postage prepaid, return receipt requested, then the Association shall have no right to assert an Assessment Lien upon the Unit for unpaid Assessments which were due as of the date of the request.

(b) The Association shall report to any Mortgagee any unpaid Assessments remaining unpaid for more than sixty days after the same shall have become due, if such Mortgagee first shall have delivered to the Association a written request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment with respect to such Unit, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, such Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as a lien of the Mortgage held by such Mortgagee.

ARTICLE VIII

MAINTENANCE OF COMMON AREAS AND UNITS

8.01 Maintenance of Common Areas.

(a) Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain all Common Areas, including, without limitation, all Limited Common Areas and the improvements and landscaping located thereon in good order and repair and shall otherwise manage and operate all Common Areas as it deems necessary and appropriate. In this regard the Association may:

- (i) construct, modify, add to, replace or renovate any improvements that are located on, or constitute a part of, any Common Areas;
- (ii) plant and replace trees, shrubs and other vegetation on any Common Areas;
- (iii) place, maintain and replace signs upon any Common Areas;
- (iv) adopt and enforce Rules and Regulations regulating the use of Common Areas;
- (v) impose and collect fees for the use of any Common Areas; and
- (vi) take any other actions that the Association deems necessary or advisable to protect and maintain the Common Areas.

(b) The Executive Board shall be the sole judge as to the appropriate maintenance, operation and management of the Common Areas.

(c) Notwithstanding anything in the Association Documents to the contrary, the Association shall not, during the Declarant Control Period, construct, modify, add to, replace or renovate any improvements that are located on, or constitute a part of, any Common Areas without obtaining the prior consent of the Declarant.

8.02 Maintenance of Units.

(a) Each Owner, at such Owner's sole cost and expense, shall maintain such Owner's Unit and the improvements constituting a part thereof, in good order and repair.

(b) If, in the reasonable judgment of the Association, an Owner fails to maintain the Owner's Unit, the or the exterior of any improvements constituting a part thereof in good order and repair, and such failure remains uncured for more than thirty days after the Association's delivery of written notice thereof to such Owner, the Association may enter upon such Unit and perform such maintenance or repair as the Association deems necessary or advisable and charge all costs and expenses incurred by the Association in connection therewith to such Owner as a Default Assessment.

ARTICLE IX

INITIAL CONSTRUCTION OF UNITS AND
COMMON AREAS

9.01 Declarant's Construction Rights. Declarant shall have the sole and exclusive right to construct all Units, construct and install all initial improvements to the Common Areas and construct and install all additions, modifications and changes to the exterior of the Units and to the Common Areas, except as follows: (i) Additions, modifications or changes to any Unit after the initial construction of the Unit has been completed may be constructed or installed by a Person other than Declarant upon the approval of the Modification Review Board; (ii) additions, modifications or changes to the improvements on the Common Areas may be constructed or installed by the Association with the prior approval of the Declarant pursuant to Section 8.01(c). Declarant's rights under this Section 9.01 shall terminate five years from the date this Declaration is executed or such earlier time as may be set forth in the Act.

9.02 Nature of Improvements. Improvements shall include landscaping, sprinkler systems, Limited Common Area fences, playground equipment and such other improvements as may be identified in the Map attached as Exhibit C hereto or as may otherwise be deemed by the Declarant to be appropriate and consistent with this Declaration.

ARTICLE X

MODIFICATION REVIEW

10.01 Modification Review Board.

(a) The Executive Board shall establish a Modification Review Board which shall consist of such odd number of regular members and alternate members as the Executive Board may designate. The members of the Modification Review Board shall be appointed by the Executive Board. The regular term of office for each member shall be one year. Any such member may be removed with or without cause by the Executive Board at any time by written notice. A successor appointed to fill any vacancy on the Modification Review Board shall serve the remainder of the term of the former member.

(b) The Modification Review Board shall select its own chairman and vice-chairman from among its members. The chairman or, in the chairman's absence, the vice-chairman shall be the presiding officer of its meetings. In the absence of both the chairman and the vice-chairman from a meeting, the members present shall appoint a member to serve as acting chairman at such meeting. Meetings shall be held upon call of the chairman or vice-chairman at the offices of the Association. A majority of members shall constitute a quorum for the transaction of business. An alternate member may participate at any meeting at

which there is not a quorum and shall have all of the authority of a regular member while so participating. In the absence of a quorum, a lesser number may adjourn any meeting to a later time or date. The affirmative vote of a majority of the members of the Modification Review Board shall constitute the action of the Modification Review Board on any matter before it. Except as set forth above, the Modification Review Board shall operate in accordance with its own Rules and Regulations which shall be filed with the Association and maintained in the records of the Association and shall be subject to inspection by all Owners and Mortgagees.

(c) The Modification Review Board is hereby authorized to retain the services of one or more consulting architects, landscape architects, urban designers or other professionals to advise and assist the Modification Review Board in performing the modification review functions prescribed in this Article X.

10.02 Modification Review Board Approval and Control.

(a) No Owner may (i) make any material alteration to exterior surfaces of existing buildings or improvements constituting a part of his Unit, or (ii) construct any additional building or improvement on any Improved Unit, without the prior written consent of the Modification Review Board. The approval of any requested alternative shall be at the sole discretion of the Modification Review Board. In determining whether he approve any requested modification, the Modification Review Board shall consider such matters as: (i) the compatibility of the modification with the overall design and appearance of the Project; (ii) the extent to which the construction of that modification may adversely impact other Owners and their respective Units; (iii) whether the requesting Owner has made the necessary arrangements for the modification to be completed expeditiously, and in a high quality, workmanship manner; and (iv) such other factors as the Modification Review Board deems relevant. The decisions of the Modification Review Board shall be conclusive and binding on all interested parties, subject only to the right of appeal and review by the Executive Board as described in Section 10.03 below.

(b) Each Owner shall comply with the Rules and Regulations of the Modification Review Board, as the same may be amended from time to time by the Modification Review Board.

(c) The Modification Review Board or its designated representative may monitor any approved project to the extent required to ensure that the construction or work on such project complies with any and all approved plans and construction procedures. The Modification Review Board or its designated representatives may enter upon any Unit at any reasonable time or times to inspect the progress, work status or completion of any project. In addition to the remedies described in Section 10.04 below, the Modification Review Board may withdraw approval of any project and require all activity at such project to be stopped, if deviations from the approved plan or approved construction practices are not corrected or reconciled promptly after written notification to the Owner specifying such deviations.

(d) Any material to be submitted or notice given to the Modification Review Board shall be submitted at the office of the Association.

10.03 Appeal to Executive Board.

Any Owner aggrieved by a decision of the Modification Review Board may appeal the decision to the Executive Board in accordance with procedures to be established by the Executive Board. Such appeal shall be in writing and shall be filed within thirty days after the decision of the Modification Review Board. In the event the decision of the Modification Review Board is overruled by the Executive Board on any issue or question, the prior decision of the Modification Review Board shall be deemed modified to the extent specified by the Executive Board and such decision, as so modified, shall thereafter be deemed the decision of the Modification Review Board.

10.04 Enforcement of Restrictions.

(a) The Modification Review Board shall have primary responsibility to enforce the restrictions set forth in this Article X and the Rules and Regulations adopted by the Modification Review Board; provided, however, that such responsibility shall not limit the right of the Association to take action under any other Article of this Declaration. If the Modification Review Board does not take action to enforce such restrictions within fifteen days after being requested to do so by the Executive Board, the Association may assume responsibility for enforcing such restrictions in any case in which the Modification Review Board declined to act.

(b) If an Owner violates any term or condition set forth in this Article X or in the Rules and Regulations of the Modification Review Board, the Modification Review Board and the Association shall have the following rights and remedies:

(i) The Modification Review Board may, by written notice to the Owner, revoke any approval previously granted to the Owner, in which event the Owner shall, upon receipt of such notice, immediately cease any development, improvement, alteration or landscaping covered by the approval so revoked.

(ii) The Modification Review Board and the Association may, but are not obligated to, enter upon the Owner's Unit and cure such violation at the Owner's sole cost and expense. If the Modification Review Board or the Association cures any such violation, the Owner shall pay to the Association the amount of all costs incurred by the Modification Review Board or the Association in connection therewith within thirty days after the Owner receives a written invoice therefor from the Modification Review Board or the Association.

(iii) The Association may sue the Owner to enjoin such violation.

(iv) The Association may sue the Owner for all damages, losses, costs and expenses, including, without limitation, reasonable attorneys fees and disbursements, incurred by the Modification Review Board or the Association as a result of the violation.

(v) The Modification Review Board and the Association shall have all other rights and remedies available to them under this Declaration, at law, or in equity. All rights and remedies of the Modification Review Board and the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

10.05 Fees.

The Modification Review Board may establish reasonable processing and review fees for considering any requests for approvals submitted to it, which fees shall be paid at the time the request for approval is submitted. The Executive Board may also establish a requirement for the escrowing of funds in an amount sufficient to guarantee completion of a proposed modification or other finish work included as a part of construction plans which have been presented to or approved by the Modification Review Board.

ARTICLE XI

COVENANTS, CONDITIONS AND RESTRICTIONS

11.1 Use of Units. Each Unit shall be used only as a single family dwelling. No gainful occupation, profession, trade or other nonresidential use shall be conducted at any Unit or in the Common

Areas and no person shall enter into any Unit or the Common Areas for engaging in such uses or for the purpose of receiving products or services arising out of such usage.

11.2 Exterior Antennas and Satellite Dishes. Exterior antennas, satellite dishes and other similar electronics hardware are prohibited.

11.3 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Unit or the Common Areas in the vicinity thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Unit or Common Areas, or to the occupants or users thereof. No other nuisance shall be permitted to exist or operate in or about any Unit so as to be offensive or detrimental to any other Unit or the Common Areas.

11.4 Parking of Vehicles. No vehicle shall be parked or stored at any location within the Project except in garages, and designated parking areas. No trailers, boats, motorcycles, racks, snowmobiles, motorhomes, recreational vehicles or any other type of vehicles shall be parked or stored within the Project except in garages. Overnight parking of Unit owner's vehicles shall only be in their respective garages and designated areas, and not in the driveways or other non-designated parking areas. The use or operation of snowmobiles, motorcycles or other recreational vehicles on the streets of the Property is not permitted, except that street legal and licensed motorcycles may be used for ingress to or egress from the Property.

11.5 Trash and Rubbish. The burning of rubbish, leaves or trash on the Property is prohibited. Trash containers shall be covered and kept screened from view from the street in suitable enclosed areas, except during collection. No Owner, shall permit any thing or condition to exist in or about his Unit which may induce, breed or harbor infectious plant diseases or noxious insects.

11.6 Signs. No signs of any kind shall be displayed to public view on any Unit.

11.7 Animals. No animal, bird, fowl, poultry or livestock of any kind shall be raised, bred or kept in or about any Unit except that domestic dogs (a maximum of two), cats (maximum of five) and other household pets may be permitted by the Association so long as they are kept within the Unit at all times, except when on a leash and under the direct control of the Owner. Pet owners shall promptly remove and dispose of all excrement emitted by their pets in any Common Area.

11.8 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Unit shall be further subdivided or separated into smaller Units by any Owner, and no portion less than all of any such Unit, nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Executive Board. No further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any Unit without the provisions thereof having been first approved in writing by the Executive Board and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Unit, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Unit has been approved by the Executive Board and the proposed use otherwise complies with this Declaration.

11.9 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the reasonable exercise by the Declarant of its rights under this Declaration with respect to the construction, installation, sale, maintenance, modification or repair of Units or the Common Areas.

11.10 Restrictions Not Exclusive. The restrictions, limitations and requirements set forth in this Article XI are in addition to, and not in lieu of, the other provisions of the Association Documents.

ARTICLE XII
EASEMENTS AND RESERVATIONS

12.01 Declarant's Easements Over Common Areas.

(a) Declarant hereby reserves for itself, its successors and assigns an easement over, across, through and under the Common Areas to (i) discharge Declarant's obligations under this Declaration; (ii) exercise any of Declarant's rights under this Declaration; and (iii) make improvements within the Project or within the Additional Property or any other real estate which may be added to the Project by Declarant under this Declaration.

(b) Declarant hereby reserves to itself, its successors and assigns, the right to (i) establish from time to time utility and other easements, permits or licenses over, across, through and under the Common Areas, and (ii) create other reservations, exceptions and exclusions for the best interest of all Owners and the Association.

12.02 Owners' Easements Over Common Areas.

Subject to the terms and conditions of this Declaration and all other Association documents, Declarant hereby grants the Owners an easement over, across and through the Common Areas (a) for ingress and egress to their Units, and (b) to use and enjoy the Common Areas.

12.03 Utility Easement.

There is hereby created a blanket easement over, across, through and under the Property for ingress to, egress from, and the installation, replacement, repair and maintenance of, all utility and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity and cable television. The Association may authorize the release of portions of the blanket easement created by this Section 12.03 upon the request of any Owner showing good cause therefor. Notwithstanding anything to the contrary contained in this Section 12.03, no sewers, electrical lines, water lines, telephone lines or other utility or service lines may be installed or relocated on any portion of the Property, except as approved by the Modification Review Board.

12.04 Association's Easements Over Units.

Declarant hereby grants the Association an easement over, across, through and under the Common Areas to (a) exercise any right held by the Association under this Declaration or any other Association document, and (b) perform any obligation imposed upon the Association by this Declaration or any other Association Document.

Notwithstanding the foregoing, the Association shall not enter upon any Unit without reasonable prior notice to the Owner of the Unit, except in cases of emergency.

12.05 Recorded Easements.

The Property shall be subject to all easements shown on any recorded plat affecting the Property and to any other easements of record or of use as of the date of recordation of this Declaration.

12.06 Encroachments.

The Executive Board may grant appropriate easements when an encroachment occurs on a Common Area or Unit due to construction, reconstruction, repair, shifting, settlement, or other movement of any portion of a Common Area or Unit improvement. Such encroachment easement shall only be valid until the encroachment is cured.

ARTICLE XIII

INSURANCE

13.01 Insurance Required to be Obtained by the Association.

The Association shall obtain and maintain all insurance required to be obtained and maintained by the Association under the Act and any additional insurance that the Executive Board deems necessary. The Owner of each Unit, and not the Association, shall be required to maintain insurance on such Unit.

13.02 Adjustments.

Any loss covered by insurance maintained by the Association shall be adjusted with the Association in accordance with the terms and conditions of the Act. The insurance proceeds payable for any such loss shall be paid in accordance with the terms and conditions of the Act.

ARTICLE XIV

CASUALTY

14.01 Casualty to Common Areas.

The Association shall respond to any damage to, or destruction of, any Common Areas in accordance with the terms and conditions of the Act.

14.02 Casualty to a Unit.

Each Owner shall be responsible for repairing or replacing any damage to, or destruction of, his Unit.

ARTICLE XV

CONDEMNATION

15.01 Condemnation of Common Areas.

Whenever all or any part of the Common Areas shall be taken by condemnation or similar proceeding, or whenever all or any part of the Common Areas is conveyed in lieu of a taking under a threat of condemnation, the award payable in connection therewith shall be paid to the Association and used by the Association (a) first, to repair any damage to Common Areas resulting from the condemnation or other taking, and (b) second, for any other Common Expenses.

ARTICLE XVI

DECLARANT RIGHTS

16.01 Improvements.

Declarant hereby reserves for itself, its successors and assigns the right to construct any improvements shown on the Map and the right to construct during the Declarant Control Period any improvement that Declarant deems necessary or advisable on any Common Element, including, without limitation, sidewalks, trails, drainage facilities, utility facilities, monuments and recreational facilities.

16.02 Development Rights.

(a) Declarant hereby reserves for itself, its successors and assigns:

(i) the right to amend this Declaration from time to time, without consent of any Unit owner, to add all or any portion of the Additional Property identified in Exhibit B to the Project;

(ii) the right to amend this Declaration to create up to 30 additional Units and certain additional Common Areas and Limited Common Areas on all or any portion of the Additional Property that is added to the Property may add to the Project pursuant to subparagraph 16.02(a)(i) above;

(b) In exercising any development right reserved hereunder, Declarant shall execute and record an amendment to this Declaration in accordance with the requirements set forth Sections 57-8-13 through 57-8-13.12 of the Act.

(c) Units on the Additional Property shall be substantially similar to the original 18 Units of this Declaration. The Common Areas and Limited Common Areas of the Additional Property shall also be substantially similar to the Common Area and Limited Common Areas associated with the original 18 Units of this Declaration.

(d) Pursuant to Section 57-8-10(4) of the Act, the Declarant's right to expand the Project shall expire on the earlier of (1) the date on which the last portion of Additional Property identified in Exhibit B is added to the Project, (2) the date which is five years from the date the first Unit is conveyed to a Purchaser in the ordinary course of business, or (3) the date which is five years from the date this Declaration is recorded.

16.03 Sales Offices and Model Homes.

Declarant hereby reserves for itself, its successors and assigns the right to construct and maintain sales offices and management offices in the Common Areas. Declarant also reserves for itself, its successors and assigns the right to construct and maintain signs advertising the Project on any and all Common Areas.

ARTICLE XVII

RIGHTS OF MORTGAGEES

17.01 Benefit of Mortgagees.

The terms and conditions contained in this Article XVII are for the benefit of Mortgagees. To the extent necessary, applicable or proper, the provisions of this Article XVII apply to this Declaration and to the Articles and Bylaws.

17.02 Notices of Action.

The Association shall give to each Eligible Holder timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a First Mortgage held, insured or guaranteed by such Eligible Holder;
- (b) any delinquency in the payment of Assessments or charges owed to the Association by an Owner whose Unit is subject to the First Mortgage of such Eligible Holder, or any default by such Owner in the performance of any of such Owner's obligations under this Declaration or any other Association Document, if the Executive Board has actual notice of such default, which is not cured within sixty days;
- (c) any lapse, cancellation or material modification of any insurance policy or fidelity bond required to be maintained by the Association; and
- (d) any proposed action which would require the consent of a specified percentage of First Mortgagees as provided in this Article XVII.

17.03 Approvals of Specified Actions.

- (a) The consent of Owners to whom at least 67 percent of the votes allocated to all Memberships are allocated, and the consent of at least 67 percent of all First Mortgagees (based on one vote for each First Mortgage held) shall be obtained before taking the following actions:
 - (i) a decision by the Association to establish self-management when professional management had been required previously by an Eligible Holder;
 - (ii) restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration; and
 - (iii) termination of the legal status of the Project after any substantial destruction or condemnation occurs.
- (b) The consent of Owners to whom at least 67 percent of the votes allocated to all Memberships are allocated, and the consent of at least 67 percent of all First Mortgagees (based on one vote for each First Mortgage held) shall be required to commence any action to terminate the legal status of the Project for reasons other than substantial destruction or condemnation of the Project.

17.04 Approvals for Amendments to Documents.

(a) Except with respect to those amendments to this Declaration that Declarant is expressly permitted to make under this Declaration, the consent of Owners to which at least 67 percent of the votes allocated to all Memberships are allocated, and the consent of at least 67 percent of all First Mortgagees (based on one vote for each First Mortgage held) shall be required to add to, delete or amend any material provisions of this Declaration, the Articles or the Bylaws which establish, provide for, govern or regulate any of the following:

- (i) voting rights;
- (ii) Assessments, the Assessment Lien or the subordination of the Assessment Lien;

- (iii) reserves for maintenance, repair and replacement of Common Areas;
- (iv) responsibility for the maintenance and repair of the Common Areas;
- (v) the reallocation of interests in the Common Areas or the rights to the use thereof;
- (vi) boundaries of any Units;
- (vii) the convertibility of Units into Common Areas or vice versa;
- (viii) the expansion or contraction of the Project or the addition, annexation or withdrawal of the property to or from the Project;
- (ix) insurance or fidelity bonds;
- (x) the leasing of Units;
- (xi) the imposition of any restrictions on an Owner's rights to sell or transfer his or her Unit; and
- (xii) any provision that expressly benefits the Eligible Holders.

(b) If the Project has been, or is to be approved by, the Federal Housing Administration or the Department of Veterans Affairs, then during the Declarant Control Period the following actions will require the prior approval of the Federal Housing Administration and/or the Department of Veterans Affairs:

- (i) amendments to this Declaration;
- (ii) amendments of the Articles or the Bylaws;
- (iii) the annexation of additional properties to this Declaration;
- (iv) the merger, consolidation or dissolution of the Association; and
- (v) the mortgaging of the Common Areas.

17.05 Implied Approval.

A First Mortgagee shall be assumed to have granted any consent or approval described in this Article XVII if it fails to submit a response to any written request therefor within thirty days after it receives such request; provided, however, that such request was delivered by certified or registered mail, return receipt requested.

17.06 Limitation to Pay Assessments and Charges.

Any First Mortgagee who obtains title to a Unit pursuant to remedies in a Mortgage or through foreclosure of a Mortgage will not be liable for the Units unpaid Assessments or other charges that accrued before the First Mortgagee acquired title to the Unit. The First Mortgagee will, however, be subject like all other Unit Owners to pay a prorated share of any such assessments and charges that are subsequently assessed on a prorate basis to all Unit Owners.

17.07 Rights to Insurance and Condemnation Proceeds.

No provision of this Declaration shall be deemed to give an Owner or any other party priority over any rights of the First Mortgagee pursuant to its Mortgage on a Unit relating to payments to the Owner of insurance proceeds or condemnation awards for losses to or a taking of the Unit.

17.08 Right to Pay Taxes and Charges.

First Mortgagees may, jointly or individually, pay taxes or other charges which are in default and which may or have become a charge against any Common Element and may pay overdue premiums on casualty insurance policies or secure new casualty insurance policies upon the lapse of the policy required to be maintained by the Association pursuant to paragraph 13.01(a) above. Any First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

ARTICLE XVIII

ENFORCEMENT AND REMEDIES

18.01 Enforcement.

(a) Each provision of this Declaration with respect to the Association or the Common Areas shall be enforceable by Declarant or any Owner by a proceeding for injunctive relief.

(b) Each provision of this Declaration with respect to an Owner or a Unit shall be enforceable by the Association by (i) a proceeding for injunctive relief; (ii) a suit or action to recover damages; and/or (iii) in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner and such Owner's family members, tenants and guests from the use of any Common Areas and from the participation in any Association affairs. In addition, if an Owner fails to perform or observe any covenant or condition on such Owner's part to be performed or observed under this Declaration or any other Association Document, the Association shall have the following rights and remedies:

(i) The Association may, but is not obligated to, cure such failure to comply at the Owner's sole cost and expense. If the Association cures any such failure to comply, the Owner shall pay to the Association the amount of all costs incurred by the Association in connection therewith within thirty days after the Owner receives a written invoice therefore from the Association.

(ii) The Association may, after notice and an opportunity to be heard, assess the Owner a special assessment in an amount not to exceed 4% of the Owner's general assessment for the year for each violation. The Owner shall pay any such special assessment to the Association within thirty days after the Owner receives a written invoice for the special assessment from the Association.

(iii) The Association shall have all other rights and remedies available to it under this Declaration, at law or in equity.

(c) All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

18.02 Attorneys' Fees.

In the event of any dispute under or with respect to this Declaration or any other Association Document, the prevailing party shall be entitled to recover from the nonprevailing party all of its costs and expenses in connection therewith, including, but not limited to, reasonable attorneys' fees and disbursements.

18.03 Interest.

If an Owner fails to pay to the Association any Assessment or other amount due to the Association as and when the same becomes due, the Owner shall pay to the Association interest on such unpaid amount at the rate of 18 percent per annum from the due date of such unpaid amount until the date paid.

ARTICLE XIX

TERM AND AMENDMENTS

19.01 Term.

The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Property until this Declaration is terminated pursuant to Section 19.02 below.

19.02 Termination.

Subject to the terms and conditions of Article XVII above, the Owners may terminate the Project, by the unanimous vote of all of the votes allocated to all Memberships. If the necessary votes and consents are obtained, the agreement of the Owners to terminate the Project and this Declaration shall be evidenced by a termination agreement or ratification thereof, executed by all of the Owners in accordance with the terms and conditions of Section 57-8-22 of the Act. Upon recordation of the termination agreement with the Recorder for Salt Lake County, Utah, the Project shall be terminated, this Declaration shall have no further force or effect, and the Association shall be dissolved.

19.03 Amendments.

(a) Subject to the terms and conditions of Article XVII above, the Owners may amend any provision of this Declaration at any time by a vote of at least 67 percent of all Memberships. If the necessary votes and consents are obtained, the Association shall cause to be recorded with the Recorder for Salt Lake County, Utah, an amendment to this Declaration, in accordance with the terms and conditions of Section 578-12 of the Act.

(b) Notwithstanding the terms and conditions of Article XVII above, Declarant may amend this Declaration as expressly provided herein, without the approval of the Owners.

(c) As long as the Declarant is in control of the Association, the Declarations and the Bylaws of the Association may not be amended without prior written approval from the Secretary of Veteran's Affairs.

ARTICLE XX

MISCELLANEOUS

20.01 Interpretation of the Declaration.

Except for judicial construction, the Association, by its Executive Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the covenants and the provisions hereof.

20.02 Severability.

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provisions hereof.

20.03 Disclaimer of Representations.

Notwithstanding, anything to the contrary contained in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Project can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that if such land is once used for a particular use, that such use will continue in effect.

20.04 Reference to Declaration and Deeds.

Deeds to and instruments affecting any Unit or any other part of the Project may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other person claiming through any deed or other instrument and his or her heirs, executors, administrators, successors and assigns.

20.05 Successors and Assigns of Declarant.

Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder, provided that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

20.06 Captions and Titles.

All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

20.07 Notices.

If notice of any action or proposed action by the Executive Board or any committee or if any meeting is required to be given to any Owner by law, this Declaration or any other Association Document, then, unless otherwise specified herein or in any other Association Document, such notice requirement shall be

deemed satisfied if such notice of such action or meeting is mailed to or hand delivered to the Owner at the address of his or her Unit. This section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other matter.

ARTICLE XXI

REGISTERED AGENT

Pursuant to Section 57-8-10(2)(d)(iii) of the Act, Mr. Gregory Nelson is designated as the person to receive service of process on behalf of the project. Mr. Nelson's address is 2958 Winsor Lane, Bountiful, Utah 84010. The Executive Board may change its designation of this registered agent as it may deem appropriate. To effectuate a change in the registered agent, the Executive Board must record a notice of change of registered agent with the Salt Lake County Recorder.

IN WITNESS WHEREOF, the Declarant has hereunto caused its name to be signed by the signature of its duly authorized agent as of the day and year first written above.

Arcadia Green Townhomes Owners Association, Inc., a Utah nonprofit corporation

By: [Signature]
Its: President

STATE OF UTAH)
COUNTY OF Salt Lake) ss.

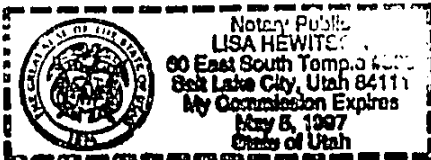
The foregoing instrument was acknowledged before me this 21st day of August, 1995, by M. Gregory Nelson.

[SEAL]

[Signature]
Notary Public

Residing at: Salt Lake County, UT

My Commission Expires: 5-5-97



LIST OF EXHIBITS

- EXHIBIT A - Legal Description of the Property - Phase I**
- EXHIBIT B - Legal Description of the Additional
Property - Additional Phases - Phase II and Phase I**
- EXHIBIT C - Plat of the Property (Phase I plat with such additions and modifications
as may be required by the Act)**
- EXHIBIT D - Shares of Common Expenses**
- EXHIBIT E - Floor Plan of Units**
- EXHIBIT F - Amendment Documents for Phase II.**
- EXHIBIT G - Amendment Documents for Phase III.**

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY - PHASE I

BEGINNING at a point that is S00°04'30"W 33.000 feet and S89°51'30W 546.660 feet from the Salt Lake County Monument at the intersection of 900 East Street and 4500 South Street, said monument being S00°10'35"E 242.380 feet and N89°54'45"W 788.920 feet from the Center of Section 5, Township 2 South, Range 1 East, Salt Lake Base & Meridian and running thence S00°04'30"W 154.360 feet; thence N89°55'30"W 3.950 feet; thence S00°04'30" W 190.420 feet; thence West 10.970 feet; thence S00°16'58"E 93.490 feet; thence S89°43'02"W 15.470 feet; thence N00°07'19"W 18.960 feet; thence S89°51'30"W 155.000 feet; thence N00°07'19"W 265.055 feet; thence N89°51'30"E 155.000 feet; thence N00°07'19"W 154.245 feet; thence N89°51'30"E 31.310 feet, to the point of beginning.

Contains 1.20 acres

EXHIBIT B

**LEGAL DESCRIPTION OF
THE ADDITIONAL PROPERTY - ADDITIONAL PHASES**

Phase II

BEGINNING at a point that is S00°04'30"W 154.360 feet; and S00°04'30"W 33.000 feet; and S89°51'30"W 546.660 feet from the Salt Lake County Monument at the intersection of 900 East Street and 4500 South Street, said monument being S00°10'35"E 242.380 feet and N89°54'45"W 788.920 feet from the Center of Section 5, Township 2 South, Range 1 East, Salt Lake Base & Meridian and running thence East 81.290 feet; thence S00°04'30"W 107.930 feet; thence S89°43'02"W 18.010 feet; thence S00°04'30"W 82.350 feet; thence N89°43'02"E 18.010 feet; thence S00°04'30"W 93.140 feet; thence S89°43'02"W 95.630 feet; thence N00°16'58"W 93.490 feet; thence East 10.970 feet; thence N00°04'30"E 190.420 feet; thence S89°55'30"E 3.950 feet, to the point of beginning.

Contains 0.54 acres.

Phase III

BEGINNING at a point that is East 81.290 feet; and S00°04'30"W 154.360 feet; and S00°04'30"W 33.000 feet; and S89°51'30"W 546.660 feet from the Salt Lake County Monument at the intersection of 900 East Street and 4500 South Street, said monument being S00°10'35"E 242.380 feet and N89°54'45"W 788.920 feet from the Center of Section 5, Township 2 South, Range 1 East, Salt Lake Base & Meridian and running thence East 176.370 feet; thence S00°04'30"W 282.560 feet; thence S89°43'02"W 176.370 feet; thence N00°04'30"E 93.140 feet; thence N89°43'02"W 18.010 feet; thence N00°04'30"E 82.350 feet; thence S89°43'02"E 18.010 feet; thence N00°04'30"E 107.930 feet, to the point of beginning.

Contains 1.18 acres.