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RECORDING REQUESTED BY
RIVER POINTE ASSOCIATES
AND WHEN RECORDED MAIL TO:

5710010
12 JANUARY 94 11:21 AM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
DENNIS K POOLE & ASSOCIATES
REC BY: KARMA BLANCHARD, DEPUTY

c/o Dennis K. Poole
Dennis K. Poole & Associates, P.C.
Prowswood Plaza, Suite 306
4885 South 900 East
Salt Lake City, Utah 84117

FIRST AMENDMENT TO AND RESTATED

DECLARATION

THIS FIRST AMENDMENT TO AND RESTATED DECLARATION (hereafter "Restated Amendment") is made on the 32nd day of JANUARY, 1994 by and between River Pointe Associates, a Washington general Partnership (herein referred to as "River Pointe") RT-RB Partners, a Texas general partnership (herein referred to as "RT Partners").

RECITALS:

A. On or about the 30th day of September, 1985, Utah Riverbend Associates, Ltd., a Texas limited partnership (herein "Riverbend") and Utah Riverbend II Associates, Ltd., a Texas limited partnership (herein "Riverbend II"), entered into that certain Cross-Easement, Reciprocal Rights and Use Agreement and Declaration (hereinafter referred to as "Declaration") which was recorded in the offices of the Salt Lake County Recorder on September 30, 1985, as Entry No. 4144126, in Book 5695, beginning at page 1895.

B. As of the date of the Declaration Riverbend was the owner of that certain real property described in the Declaration as "Phase I," which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (herein "Phase I").

C. As of the date of the Declaration Riverbend II was the owner of that certain real property described in the Declaration as "Phase II," which is more particularly described on Exhibit "B"

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as "Phase II," which is more particularly described on Exhibit "B" attached hereto and incorporated herein by reference (herein "Phase II").

D. Riverbend has transferred and conveyed its interest in Phase I to RT Partners and RT Partners is the current owner of Phase I which has been developed into multi-family apartments and River Pointe is the current owner of Phase II who intends to construct upon Phase II multi-family apartments.

E. Phase I is subject to certain liens and encumbrances held by The Travelers Insurance Company (herein "Phase I Lender").

F. The parties desire to amend the Declaration, to terminate and relinquish any and all rights under the terms of the original stated Declaration, and to adopt certain amendments and to restate in its entirety the Declaration, all in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the recitals set forth hereinabove, the parties hereto declare and certify as follows:

ARTICLE 1

DEFINITIONS

In addition to the terms defined in the Recitals to this Restated Declaration, the following terms, when capitalized herein, shall have the meanings set forth below, unless the context otherwise requires:

1.01. Complex: The term "Complex" shall mean the two phases described in the Recitals to this Declaration, together with all buildings, improvements and other facilities now or hereafter located or constructed thereon.

1.02. Owner: The term "Owner" shall mean collectively those persons or entities who from time to time are: (i) the owners of Phase I, or portions thereof; provided, however, in the event that Phase I, or portions thereof, is converted to condominiums, the Owners Association, and not separate owners, shall be considered an Owner as specified herein; and (ii) the owners of Phase II, or portions thereof; provided, however, in the event that Phase II, or portions thereof, is converted to condominiums, the Owners Association, and not separate owners, shall be considered an Owner as specified herein. As set forth above, in the event of

condominium conversion, an individual condominium unit owner shall not be considered an Owner, but all condominium unit owners, acting through their condominium association and management committee shall be considered one Owner.

1.03. Real Property: The term "Real Property" shall mean all or any portion of Phase I and/or Phase II owned by an Owner.

1.04. Mortgage: The term "Mortgage" shall mean and include a mortgage or deed of trust that encumbers a Real Property or a portion thereof or interest therein, excluding, however a condominium unit.

1.05. Mortgagee: The term "Mortgagee" shall mean the holder of a Mortgage.

1.06. Utility Lines: The term "Utility Lines" shall mean culinary water lines, sanitary sewers, storm drains, catch basins, electrical lines, telephone lines, cable television lines, natural gas lines, etc. for which easements are granted in accordance with the provisions of Section 3.01 hereinbelow.

ARTICLE 2

STATEMENT OF INTENT

2.01. Intent. It is the intent of this Restated Declaration to provide for and define the Owners' responsibilities with respect to Utility Lines and easements relating thereto.

ARTICLE 3

EASEMENTS, RIGHTS & PRIVILEGES

3.01. Utility Easements. RT Partners agrees to grant without additional consideration, to River Pointe as needed and, for the benefit of Phase II, one or more perpetual, non-exclusive rights, privileges and easements and rights of way, in, over, along, across, under and through Phase I to the extent reasonably necessary to connect, extend, install, repair and maintain Utility Lines, serving or reasonably necessary to serve Phase II (herein "Utility Easement," if singular, or "Utility Easements", if plural); provided, however, that such Utility Easements shall commence at locations where existing Utility Lines are located and shall extend to Phase II in a manner minimizing the impact to Phase

I. If the Owners of Phase II determine that they have a need for one or more Utility Easements, they shall request the same of the Owners of Phase I in writing not less than ten (10) calendar days prior to the commencement of construction of each Utility Line, setting forth the use to be made, the general location of each Utility Easement and the anticipated date of construction.

The easements to be granted above herein are subject however to the following:

(a) Unless otherwise approved by the Owner through or under which such utility line passes and any Mortgagee holding a Mortgage on the impacted Real Property, all Utility Lines to be located in such Utility Easements shall be installed below the surface of the ground, except where by its nature, such improvements are required to be located upon the surface of the property.

(b) The Owner through or under which such Utility Line passes shall have the right to relocate such Utility Easement and any Utility Lines located therein, at such Owner's expense, provided that such relocation shall not interfere with, increase the cost of, or diminish, any utility services to the property which such Utility Lines serve.

(c) Except as otherwise specified herein, the cost of installing, maintaining and repairing any such Utility Lines shall be paid by the Owner or Owners of the property served by such Utility Lines, and, if there be more than one property so served, such costs shall be shared among the Owners of the respective properties so served as such Owners shall agree or if no agreement can be reached, in the ratio of the total number of condominium and/or apartment units served by such Utility Lines for one property as to the total served for all properties.

(d) Any Owner or Owners installing, maintaining, repairing or replacing any such Utility Lines shall cause the same to be installed, maintained, repaired or replaced in such a manner as to minimize any damage to or disruption of the Owners, Tenants and condominium owners, shall cause such work to be done promptly and diligently in a good and workmanlike manner, and, upon completion thereof, shall immediately remove all debris and cause the improvements, including landscaping to be restored to its former condition.

(e) Each Owner shall execute such documents as may be necessary or appropriate from time to time to effectuate and implement the provisions of this Section 3.02, including but not

limited to a recordable grant of easement identifying the easement and location thereof.

ARTICLE 4

MAINTENANCE

4.01. Maintenance Responsibilities. Throughout the term of this Restated Declaration, each Owner of Real Property shall be responsible for maintaining the Utility Lines owned by such Owner, regardless of location. The Utility Lines shall be maintained in good repair and in a safe and sound condition, clean and free of rubbish, debris, snow and other hazards. The obligation to so maintain the Utility Lines or portions thereof shall include, but not be limited to:

(a) The maintenance and repair of all Utility Lines and when necessary the replacement of the same with materials of equal or better quality and function.

ARTICLE 5

ENFORCEMENT

5.01. Enforcement. Any Owner shall have the right to enforce each and every provision of this Declaration and to proceed, at law or in equity, against any person or persons who have violated or are attempting to violate any provision hereof, to enjoin or prevent them from doing so, to cause such violation to be remedied and/or to recover damages for such violation.

5.02. Attorneys' Fees. In any legal or equitable proceedings for the enforcement of, or to restrain the violation of, this Declaration, or any provision thereof, the losing party or parties shall pay the reasonable attorneys' fees of the prevailing party or parties in such amount as is fixed by the court in such proceedings.

5.03. Cumulative Remedies - Waiver. All remedies provided herein or at law or in equity shall be cumulative and non-exclusive. The failure of any party entitled under the provisions hereof to enforce any provision herein contained shall in no event be deemed a waiver of the right to do so thereafter or a waiver of the right to enforce any other provision hereof.

ARTICLE 6

TERM - MODIFICATION

6.01. Term. This Restated Declaration and all easements, rights, restrictions, covenants and obligations contained herein shall run in perpetuity, unless terminated pursuant to the provisions of Section 6.02 hereof.

6.02. Termination or Modification. This Restated Declaration may be amended, modified or terminated by the recordation, in the Office of the Recorder of Salt Lake County, Utah, of a written instrument signed by the Owners and the Mortgagees of all Real Properties, provided however, that nothing herein shall require the consent or signature of a Mortgagee of individual condominium units.

ARTICLE 7

MISCELLANEOUS

7.01. Mortgagees. Any Mortgage affecting any portion of any Real Property shall at all times be subject and subordinate to the terms of this Restated Declaration, and upon foreclosure of or sale under the power of sale contained in any such Mortgage, the purchaser shall acquire title to such property subject to all of the terms of this Restated Declaration. Upon the request of any Owner, all other Owners and their Mortgagees (excluding Mortgagees of individual condominium units) shall agree to reasonable modifications to this Declaration to meet the requirements of an institutional lender who demands such modifications as a condition precedent to the granting of a loan and the placing of the Mortgage upon the requesting Owner's Real Property, provided such modification does not materially adversely affect the rights of any other Owner or Mortgagee under this Declaration.

7.02. Covenants Running with the Land. The easements, rights, restrictions, covenants and obligations contained in this Restated Declaration shall run with the land and shall be binding upon and inure to the benefit of each successive Owner of a Real Property within the Complex, and the same shall constitute a general plan for the use, development and protection of the Complex.

7.03. Taxes. Each Owner shall be responsible for all real estate taxes, assessments and other charges that may be levied,

assessed or charged against its Real Property and any improvements, including any common facilities, located thereon.

7.04. No Joint Venture. Nothing contained in this Restated Declaration shall be construed to make the Owners of the Complex or any Real Property, partners or joint venturers or to render any Owner liable for the debts or obligations of any other Owner.

7.05. Third Parties. This Restated Declaration is for the exclusive benefit of the Owners of the Complex and not for any other persons. Nothing contained in this Declaration, express or implied, is intended to confer upon any person, other than Owners, any rights or remedies under or by this Agreement.

7.06. Severability. If any provision, or a portion thereof, of this Restated Declaration, or the application thereof to any person, entity or circumstances shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Restated Declaration or the application of such provision or portion thereof to any other persons, entities or circumstances shall not be affected thereby; the remainder of this Restated Declaration shall be given effect as if such invalid or such inoperative portion had not been included; and each provision of this Restated Declaration shall be valid and enforceable to the fullest extent permitted by law.

7.07. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

7.08. Notices. All notices and other communications provided for in this Agreement shall be in writing and shall be sufficient for all purposes if personally served, or if mailed by certified or registered U.S. Mail, return receipt requested, postage prepaid, and addressed as follows:

(a) If to RT Partners, to:

Mr. William Laney
RT-RB Partners
c/o Paragon Group, Inc.
7557 Rambler, Suite 1200
Dallas, Texas 75231

or such other address or addresses as RT Partners may hereafter designate by notice to River Pointe as herein provided.

(b) If to River Pointe, to:

Mr. Roger W. Kuula
River Pointe Associates
c/o American Capital Development, Inc.
10655 N.E. 4th, Suite 206
Bellevue, Washington 98004

or such other address or addresses as River Pointe may hereafter designate by notice to RT Partners as herein provided.

(c) If personally served, notices or other communications under this Agreement shall be deemed to have been given and received and shall be effective when personally served. If sent by mail in the form specified herein, notices and other communications under this Agreement shall be deemed to have been given and received and shall be effective when deposited in the U.S. Mail in the form specified in this Paragraph.

7.09. Headings. The Article and Section headings contained herein are for convenience and reference only, and in no way define or limit the scope or content of this Agreement, and such headings shall not be considered in any construction or interpretation of this Restated Declaration or any part thereof.

7.10. Estoppel Certificates. Within fifteen (15) days after written request by any Owner, the other Owners shall deliver to any proposed Mortgagee or purchaser of the requesting Owner's Real Property, a certificate stating that this Restated Declaration is in full force and effect, and identifying any defaults or violations of this Restated Declaration that exist with respect to such Real Property. Any such certificate shall, as to such proposed purchaser or Mortgagee, be conclusive evidence of the truth of the statements contained therein and binding upon all Owners, and may be relied upon by any proposed purchaser or Mortgagee of the Real Property.

7.11. Transfers of Title. Upon any sale or transfer of a Real Property, the selling or transferring Owner shall, concurrently with the filing for record of the instrument of conveyance or transfer, give the other Owner(s) written notice of the transfer and of the identity of the transferee. Upon any such sale or transfer, and upon payment of any and all amounts which shall then be due and payable by the selling Owner pursuant to the terms of this Restated Declaration, the selling or transferring Owner shall be relieved of any liability or obligations thereafter arising

under this Restated Declaration with respect to the Real Property so conveyed or transferred.

7.12. Phase I Lender's Agreement of Subordination. By its execution of this Declaration, The Travelers Insurance Company, a Connecticut corporation (hereinafter "Phase I Lender"), agrees, covenants and declares that this Restated Declaration shall be senior in priority to that Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing, made as of September 30, 1985, between Utah Riverbend Associates, Ltd., a Texas limited partnership, as "Trustor," and Security Title Company, as "Trustee" and Phase I Lender as "Beneficiary" (hereinafter "Trust Deed"), which Trust Deed was recorded on September 30, 1985, as Entry No. 4144127, in Book 5695, beginning at page 1913 of the Official Records of Salt Lake County, and that said Trust Deed shall be subordinate to and subject to this Restated Declaration notwithstanding the fact that this Restated Declaration is recorded later in time than the Trust Deed.

7.13. Representations of Phase II Owner. By its execution of this Declaration, River Points, as the Owner of Phase II, represents and warrants that as of the date hereof, it owns Phase II and that Phase II is not encumbered by any Mortgage.

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IN WITNESS WHEREOF, RT Partners and River Pointe have executed this Restated Declaration as of the day and year first above written.

RIVER POINTE ASSOCIATES,
a Washington general Partnership,
By American Capital Development,
Inc., its general partner

By 
ROGER W. KUULA
Vice President

RT-RB PARTNERS, a Texas general Partnership

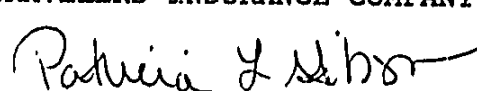
By one of its General Partners, Utah Riverbend Associates, Ltd., a Texas limited Partnership

By its sole General Partner, Utah Riverbend Company, Ltd., a Texas limited Partnership

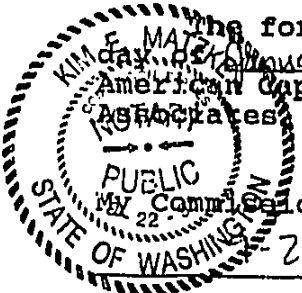
By: 
Its: General Partner

PHASE I LENDER:

THE TRAVELERS INSURANCE COMPANY

By: 
Its: Assistant Secretary

STATE OF WASHINGTON)
: SS
COUNTY OF KING)

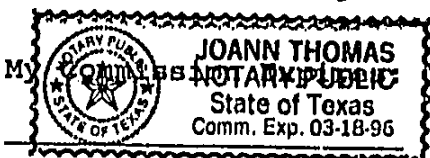


The foregoing instrument was acknowledged before me this 3 day of January, 1994, by ROGER W. KUULA, the Vice President of American Capital Development, Inc., general partner of River Pointe Associates, a Washington general partnership.

Kim E. Mathis
NOTARY PUBLIC, Residing at:
Bellevue, WA 98004

STATE OF Texas)
: SS
COUNTY OF Dallas)

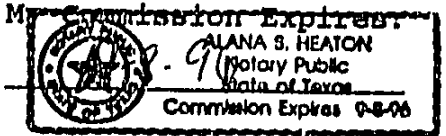
The foregoing instrument was acknowledged before me this 17th day of Dec., 1993, by D.M. Shines, the General Partner of Utah Riverbend Company, Ltd., a Texas limited partnership, the sole general partner of Riverbend Associates, Ltd., a Texas limited partnership, which is one of the general partners of RT-RB PARTNERS, a Texas general Partnership.



Joann Thomas
NOTARY PUBLIC, Residing at:

STATE OF Texas)
: SS
COUNTY OF Dallas)

The foregoing instrument was acknowledged before me this 22nd day of December, 1993, by Patricia L. Gibson, the authorized Assistant Secretary of The Travelers Insurance Company.



Alana S. Heaton
NOTARY PUBLIC, Residing at:
Dallas, Texas.

riverbd.amd (DKP/ameracap)

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EXHIBIT "A"

BEGINNING at a point North 836.55 feet and West 1008.15 feet from the Southeast corner of Section 35, Township 1 South, Range 1 West, Salt Lake Base and Meridian said point also being 800.54 feet North 89°54'15" West and South 927.90 feet from the monument at the intersection of 3900 South and 700 West Streets and running North 836.82 feet to the South right of way line of an expressway known as Project #0141; thence North 89°54'15" West along said South line 399.45 feet; thence South 87°14' West 117.14 feet; thence leaving said right of way South 654.05 feet; thence East 170.60 feet; thence South 16.83 feet; thence South 67°51'00" East 47.54 feet; thence South 46°42' East 208.56 feet; thence East 50.03 feet to the point of BEGINNING.

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DESCRIPTION**PARCEL 2 NORTH:**

BEGINNING at a point on the South right of way line of the Meadowbrook Expressway, said point being North 1668.21 feet and West 1524.60 feet from the Southeast corner of Section 35, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and also 1316.99 feet North 89°54'15" West and 91.93 feet South of the monument at the intersection of 3900 South and 700 West Streets and running thence along said South right-of-way line for three courses: (1) South 87°14'00" West 83.11 feet (equals South 87°16'23" West 82.84 feet deed); (2) North 89°54'15" West 198.40 feet (equals North 89°50'42" West 198.45 feet deed) to a point on a curve to the left, the radius point of which is South 0°05'45" West 1829.86 feet; (3) Westerly along the arc of said curve 93.20 feet through a central angle of 2°55'06" (equals South 88°36'28" West 93.41 feet deed); thence South 429.77 feet to the 4240 elevation contour line; thence Southeasterly along said 4240 elevation on the following courses: South 48°02'03" East 200.39 feet; thence South 24°03'56" East 112.81 feet; thence South 2°15'16" West 127.10 feet; thence South 29°50'08" West 156.78 feet; thence South 7°45'55" West 44.41 feet; thence South 45°49'49" East 48.80 feet; thence North 84°55'13" East 45.18 feet; thence North 58°10'21" East 102.40 feet; thence North 78°54'23" East 51.97 feet; thence North 54°02'38" East 62.47 feet, more or less, to the property line, thence leaving said 4240 elevation North 909.00 feet to the point of beginning.

PARCEL 3 NORTH:

BEGINNING at a point West 4.97 rods and North 10.00 feet and South 87°28'15" West 279.12 feet and South 187 feet, more or less, from the Southeast corner of Lot 1, Block 3, Ten Acre Plat "B", Big Field Survey; said point being on the South right of way line of a State Expressway at a point 100.00 feet radially distant Southerly from the center line of said Expressway, and also 1970.42 feet North 89°54'15" West and 154.70 feet South of the monument at the intersection of 3900 South and 700 West Streets and being North 1606.71 feet and West 2178.03 feet from the Southeast corner of Section 35, Township 1 South, Range 1 West, Salt Lake Meridian; said point of beginning also being on a curve to the right, the radius point of which is South

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11°45'45" East 1809.86 feet; running thence Easterly along the arc of said curve to the right, the radius point of which is South 11°45'45" East 1809.86 feet; running thence Easterly along the arc of said curve 88.96 feet (equals 91 feet, more or less, deed) through a central angle of 2°48'58" to a point 100.00 feet radially distant Southerly from said centerline at Engineer Station 62+00; thence North 78°04'05" East (equals North 78°03'05" East deed) 191.53 feet to a point on a curve to the right, the radius point of which is South 2°56'43" East 1829.86 feet; thence Easterly along the arc of said curve 3.92 feet (equals 7 feet, more or less, deed) through a central angle of 0°07'22"; thence South 429.77 feet to the 4240 elevation contour line; thence Northwesterly along said 4240 elevation on the following courses: West 32.45 feet; thence North 47°40'15" West 236.71 feet; thence North 86°59'14" West 71.46 feet, more or less, to the property line; thence leaving said 4240 elevation North 210.84 feet to the point of beginning.

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