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3326495

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

TISCHNER-PHILIPS CONDOMINIUM DUPLEXES

THREE FOUNTAINS ADDITION

Intended to supplement those Condominium Covenants and Restrictions as recorded in the Office of the Salt Lake County Recorder, Amendment Entry No. 2328342-47, Book No. 2847, Pages 257-323. Incorporated by reference and creating prior and additional restrictions which take precedence over any inconsistencies contained herein are the following:

1. The above referred to amended covenants and restrictions of the Three Fountains Home Owners' Association.
2. The Lease Agreement of March 28, 1979 with an undesignated unit, a copy of said Lease Agreement with a designated unit to be recorded with each buyer's deed.
3. The plat recorded concurrently herewith of Denney, Woodward & Assoc. Engineers, dated June 5, 1979.
4. A document entitled "Attachment" to this Declaration defining the percentage of ownership of Units A, B, C and D, covered by this document.

It is the intent of this Declaration to set forth the rights of the four (4) unit owners covered by this Declaration, which rights are not to be construed as being inconsistent with the covenants and restrictions of the Declaration referred to in paragraph one above, which rights and duties are created by the Lease Agreement in paragraph two above and only to be separately exercised in the event of a withdrawal as provided herein from the said Lease Agreement dated March 28, 1979. References to Management Committee functions are to

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UTAH

be construed first in creating a duty on the Three Fountains
Home Owners' Association as a first duty and subsequently
thereto on the Management Committee created herein.

TABLE OF CONTENTS

	Page
RECITALS	1
SUBMISSION	2
NAME OF THE CONDOMINIUM PROPERTY	2
DEFINITIONS	2
DESCRIPTION OF THE PROPERTY	4
STATEMENT OF PURPOSES, USE AND RESTRICTIONS	6
OWNERSHIP AND USE	8
AGENT FOR SERVICE OF PROCESS	9
PERCENTAGE OF OWNERSHIP AND VOTING RIGHTS	9
EASEMENTS	9
MANAGEMENT	10
MEETINGS OF THE ASSOCIATION	13
ASSESSMENTS	14
INSURANCE	17
DESTRUCTION OR DAMAGE	20
TERMINATION	21
EMINENT DOMAIN	22
MORTGAGE PROTECTION	23
SALE OR LEASE; RIGHT OF FIRST REFUSAL	24
CONVEYANCES, EASEMENTS	27
MAINTENANCE OF UNITS	27
RIGHT OF ENTRY	28
ADMINISTRATIVE RULES AND REGULATIONS	28
OBLIGATION OF COMPLIANCE	28
AMENDMENT	29
NOTICES	29
NO WAIVER	30
SEVERABILITY	30
GENDER	30
TOPICAL HEADINGS	30
EFFECTIVE DATE	31

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
TISCHNER-PHILLIPS CONDOMINIUM DUPLEXES
THREE FOUNTAINS ADDITION

This Declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration", is made and executed in Salt Lake County, Utah, this 27th day of June, 1979 by Tischner-Phillips Condominium Duplexes Three Fountains Addition, a partnership, hereinafter called "Declarant", for itself, its successors, grantees and assigns, pursuant to the provisions of the Utah Condominium Ownership Act, Utah Code Anno., §57-8-1, et seq., (1953 as amended), hereinafter referred to as "Condominium Ownership Act" or "Act".

1. RECITALS.

1.1 Declarant is the owner of certain land located in Salt Lake County, Utah, hereinafter referred to as the "Land" and more particularly described in the plat of June 5, 1979, recorded concurrently herewith which is attached hereto and made a part hereof.

1.2 The aforesaid property consists of the land above described, together with certain residential buildings and certain other improvements heretofore or hereafter to be constructed upon said premises.

1.3 Declarant has constructed or will construct residential buildings and other improvements upon the aforesaid premises in accordance with the plans and drawings set forth in the Record of Survey Map filed concurrently herewith, consisting of one sheet, prepared and certified by James W. Denney, a duly registered Utah Land Surveyor.

1.4 Declarant desires by filing this Declaration and the aforesaid Record of Survey Map, to submit the above described real property and the said buildings and other improvements being constructed or to be constructed thereon to the provisions of the Utah Condominium Ownership Act as a Condominium Project known as Tischner-Phillips Condominium Duplexes Three Fountains Addition.

1.5 Declarant desires and intends to sell the fee title to the individual units contained in said Condominium Project, together with an undivided ownership interest in the Common Areas and Facilities (in accordance with Lease Agreement) appurtenant thereto, to various purchasers, subject to the covenants, conditions and restrictions herein reserved to be kept and observed.

1.6 Declarant desires and intends by filing this Declaration and the Record of Survey Map to submit the property to the provisions of the aforesaid Act as a condominium property and to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of said property and the owners thereof.

1.7 The Declarant intends to develop the above Condominium Project in one phase, that phase consisting of four (4) units constructed on the Land.

2. SUBMISSION.

Declarant hereby makes the following Declaration and submits the Land and units constructed thereon to the Act. The Land and units shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of said Land, and shall be deemed to run with the Land and shall be binding upon Declarant, its successors and assigns, and any person acquiring or owning an interest in the Condominium Project, their grantees, successors, heirs, executors, administrators, devisees and assigns.

3. NAME OF THE CONDOMINIUM PROPERTY.

The name by which the Condominium Property shall be known is Tischner-Phillips Condominium Duplexes Three Fountains Addition".

4. DEFINITIONS.

The terms used herein shall have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act.

4.1 "Declarant" shall mean Tischner-Phillips Condominium Duplexes Three Fountains Addition, a partnership, which has made and executed this Declaration.

4.2 The term "the Act" shall mean and refer to the Utah Condominium Ownership Act, Utah Code Anno., §§57-8-1, et seq., as amended and expended by Laws of Utah 1975, Chapter 173, et seq.

4.3 The term "Condominium" shall mean and refer to the Ownership of a single unit in this Condominium Project, together with an undivided interest in Common Areas and Facilities of the Property.

4.4 The term "Land" shall mean, refer to and consist of the property described in the Lease Agreement dated March 28, 1979, recorded concurrently herewith, and submitted to the Condominium Project by this Declaration.

4.5 The term "Declaration" shall mean this instrument by which the Tischner-Phillips Condominium Duplexes Three Fountains Addition is established.

4.6 The term "property" shall mean and include the land, the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

4.7 The term "Condominium Project" or "Project" shall mean and refer to the entire real estate condominium project referred to in this Declaration.

4.8 The term "Map" shall mean and refer to the Record of Survey Map of Tischner-Phillips Condominium Duplexes Three Fountains Addition recorded herewith by Declarant in

accordance with Utah Code Anno., §57-8-13 (1953 as amended), together with any supplements thereto.

4.9 The term "unit" shall mean that part of the property owned in fee simple for independent use and shall include the elements of the condominium property which are not owned in common with the owners of other units as shown on the map.

4.10 The term "unit owner" shall mean the person or persons owning a unit in fee simple and an undivided interest in the fee simple estate of the Common Areas and Facilities in the percentage specified and established in the Declaration.

4.11 The term "unit owners" shall mean and refer to unit owners of Tischner-Phillips Condominium Duplexes Three Fountains Addition.

4.12 The term "Association of Unit Owners" or "Association" shall mean and refer to all of the unit owners acting as a group in accordance with the Act and this Declaration and Lease Agreement dated March 28, 1979, attached and incorporated by reference.

4.13 The term "unit number" shall mean and refer to the number, letter or combination thereof which designates a unit in the Declaration and on the Record of Survey Map.

4.14 The terms "majority" or "majority of the unit owners" shall mean the owners of more than 50 percent in the aggregate in interest of the undivided ownership of the Common Areas and Facilities of the addition.

4.15 The term "Management Committee" or "Committee" shall mean and refer to a committee composed of persons duly elected thereto by the Association of Unit Owners, as provided in this Declaration. Said committee is charged with and shall have the responsibility and authority to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the property.

4.16 The term "Manager" shall mean and refer to the person, persons or corporation selected by the Management Committee to manage the affairs of the Condominium Project.

4.17 The term "Common Areas and Facilities" or "Common Areas" shall mean and refer to:

- A. The land described in paragraph 5.1 hereof.
- B. That portion of the condominium project not specifically included in the respective units as herein defined.
- C. All foundations, columns, girders, beams, supports, main walls, roof, exterior walkways, parking areas, service streets, stalls and social center, recreational areas and facilities, yards, gardens, fences, all installations of power, light and other utilities to the outlets, and in general all other apparatus, installations and other parts of the property necessary or convenient to the existence, maintenance and safety of the common area, or normally in common use.

D. Those Common Areas and Facilities specifically set forth and designated as such in the Map.

E. All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein, except that portion of the Condominium Project included in the respective units.

4.18 The term "Limited Common Areas and Facilities" shall mean and refer to those common areas and facilities designated in the Declaration and the Map as reserved for use of a certain unit or units to the exclusion of the other units, including but not limited to balconies, patios and parking spaces designated in the Map.

4.19 The term "Common Expenses" shall mean and refer to all expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities; to all items, things and sums described in the Act which are lawfully assessed against the unit owners in accordance with the provisions of the Act, this Declaration, such rules and regulations pertaining to the Condominium Project as the Association of Unit Owners or the Management Committee may from time to time adopt, and such determinations and agreements lawfully made and/or entered into by the Management Committee.

4.20 The term "mortgage" shall mean and include both a first mortgage on any condominium and a first deed of trust on any condominium.

4.21 The term "mortgagee" shall mean and include both a mortgage under a first mortgage of any condominium and a beneficiary under a first deed of trust on any condominium.

4.22 Those definition contained in the Act, to the extent they are applicable to and not inconsistent herewith, shall be and hereby are incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

5. DESCRIPTION OF PROPERTY.

5.1 Description of Land. The land on which the Tischner-Phillips Condominium Duplexes Three Fountains Addition is located at that tract or parcel of land in Salt Lake County, State of Utah, more particularly described in the plat of June 5, 1979, filed concurrently with this Declaration.

5.2 General Description of Buildings. The buildings constituting a part of this condominium project are two in number, the location and descriptions of which are described in the plat of June 5, 1979 recorded concurrently herewith. Each of the two buildings contains two units and is to be finished in accordance with the existing Three Fountains Condominium Project. The number of levels or floors in each such unit is shown in the Map. All buildings will consist of wood frame structures, together with an exterior composit of brick. Each unit is designed for use as a single-family residence and has the exclusive right to use and occupy the garage reserved for each unit as shown in the Map. All other details involving the respective descriptions and locations of the buildings, number of units and the principal materials of which each building is or is to be constructed and other like details are set forth in the Map which is simultaneously filed of record and incorporated herein by reference.

of: 5.3 Description of Units. Each unit shall consist

A. The space enclosed within the undecorated interior surface of its perimeter walls, floors and ceilings (being in appropriate cases the inner surfaces parallel to the roof plane of the roof rafters, and the projections thereof) projected, where appropriate, to form a complete enclosure of space.

B. Any finishing material applied or affixed to the interior surfaces of the perimeter walls, floors and ceiling, including without limitation paint, lacquer, varnish, wallpaper, tile and paneling.

C. Nonsupporting interior walls.

D. Windows and doors in the perimeter walls, whether located within the bounds of a unit or not, but not including any space occupied thereby to the extent located outside the bounds of the units.

E. All utility pipes or lines or systems and fixtures or appliances connected thereto, servicing a single unit or connecting a single unit to a main or central utility, whether located within the bounds of the unit or not, but not including any space occupied thereby to the extent located outside the bounds of the unit.

F. Units forming a part of the condominium property are more particularly described in the Map, which shows graphically all the particulars of the buildings.

G. Each unit has immediate access to the Common Areas or Facilities or Limited Common Areas and Facilities contiguous to the building in which such unit is located.

H. Every contract for the sale of a unit and every other instrument affecting title to a unit may describe that unit by its identifying number or symbol as designated in the Map or Maps with the appropriate reference to the Map(s) and to the Declaration, as each shall appear on the records of the County Recorder of Salt Lake County, Utah. Such description will be construed to describe the unit, together with the appurtenant undivided interest in the Common Areas and Facilities, and to incorporate all the rights incident to ownership of a unit and all the limitations on such ownership as described in this Declaration.

5.4 Description of Common Areas and Facilities.
The Common Areas and Facilities shall consist of all parts of

the condominium property except the units. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include the following, whether located within the bounds of a unit or not:

A. All structural parts of the building, including without limitation foundations, columns, joists, beams, supports, supporting walls floors, ceiling, and roofs.

B. Patios, yards, courts and driveways which are not Limited Common Areas and Facilities are defined herein.

C. The roadways contained therein, provided that such roadways shall cease to be part of the Common Areas and Facilities when and if dedicated to public use with the consent of the Association of Unit Owners and accepted by the public authority having jurisdiction.

D. Any utility pipe or line or system servicing more than a single unit, and all ducts, wires, conduits and other accessories used therewith, but excluding any pipe or line or accessory connecting a single unit to a main or central pipe or line or system or a pipe or line or system servicing more than a single unit.

E. All other parts of the condominium property necessary or convenient to its existence maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities in the drawings.

F. The Limited Common Areas and Facilities hereinafter described.

G. All repairs and replacements of any of the foregoing.

5.5 Description of Limited Common Areas and Facilities. Each unit owner is hereby granted an irrevocable license to use and occupy the Limited Common Areas and Facilities reserved exclusively for the use of his unit, which shall consist of all the Common Areas and Facilities, including but not limited to a balcony and/or patio, yard, and a garage and driveway which are intended for the exclusive service of the unit, the use and occupancy of which shall in each case be limited to such unit.

6. STATEMENT OF PURPOSES, USE AND RESTRICTIONS.

6.1 Purposes. The purposes of the condominium property are to provide housing and recreational facilities for the unit owners and their respective families, tenants, guests and servants.

6.2 Restrictions on Use. The units and Common Areas and Facilities shall be used and occupied as follows:

A. No part of the condominium property shall be used for other than housing and the related common purposes for which the condominium property was designed. Each unit shall be used and occupied as a

residence for a single family and for no other purpose.

B. There shall be no obstruction of the Common Areas and Facilities nor shall anything be stored in the Common Areas and Facilities without the prior written consent of the Management Committee, except as is otherwise provided herein.

C. Nothing shall be done or kept in any unit or in the Common Areas and Facilities which will increase the rates of insurance on the buildings or contents thereof beyond the customarily applicable for residential use, without the prior written consent of the Management Committee. No unit owner shall permit anything to be done or kept in his unit or in the Common Areas and Facilities which will result in the cancellation of insurance on any building, or the contents thereof, or which would be in violation of any law or regulation of any governmental authority. No waste shall be committed in the Common Areas and Facilities.

D. No unit owner shall cause or permit anything (including without limitation a sign, awning, canopy, shutter, storm door, screen door, radio or television antenna) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or the outside of windows or doors, without the prior written consent of the Management Committee.

E. No animals or birds of any kind shall be raised, bred or kept in any unit or in the Common Areas and Facilities, except that dogs, cats and other house pets may be kept in units, subject to the rules adopted by the Association of Unit Owners, provided that they are not kept, bred or maintained for any commercial purposes; and provided further that any such pet causing or creating a nuisance or disturbance shall be permanently removed from the condominium property upon ten days written notice from the Management Committee.

F. No noxious or offensive activity shall be carried on in any unit or in the Common Areas and Facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other unit owners or occupants.

G. Nothing shall be done in any unit or in, on or to the Common Areas and Facilities which will impair the structural integrity of the buildings or any part thereof, or which would structurally change the buildings or any part thereof, except as is otherwise provided herein.

H. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Areas and Facilities, except in a patio court in such manner as not to be visible except from the unit for which such courtyard is reserved. The Common Areas and Facilities shall be kept

free and clear of all rubbish, debris and other unsightly materials.

I. Except in a patio court in such manner as not to be visible except from the unit for which such court is reserved, or (subject to the rules) on driveways or in other areas specifically designed and intended for such purposes, there shall be no playing, lounging or parking or placing of baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs in or on any part of the Common Areas and Facilities.

J. No industry, business, trade, occupation or profession of any kind, whether for commercial, religious, educational, charitable or other purposes shall be conducted, maintained, or permitted on any part of the condominium property, except such as may be permitted by the Management Committee and subject to the rules, nor shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted by any unit owner on any part of the condominium property or in any unit therein, except that:

(i) The Declarant may perform or cause to be performed such work as is incident to the completion of the development of the condominium property, or to the sale or lease of units owned by the Declarant;

(ii) The Declarant or its agent may place "For Sale" or "For Rent" signs on any unsold or unoccupied units and may place such other signs on the condominium property as may be required to facilitate the sale or lease of unsold units;

(iii) The Association of Unit Owners or the Management Committee or its agent or representative may place "For Sale" or "For Rent" signs on any unit or on the condominium property for the purpose of facilitating the disposal of units by any unit owners, mortgagee or the Association of Unit Owners; and

(iv) A unit owner with respect to a unit, and the Association of Unit Owners or Management Committee or its agent or representative with respect to the Common Areas and Facilities, may perform or cause to be performed any maintenance, repair or remodeling work, or other work, required or permitted by this Declaration.

7. OWNERSHIP AND USE.

7.1 Ownership of a Unit. Except with respect to any of the Common Areas and Facilities located within the bounds of a unit, each unit owner shall be entitled to the exclusive ownership and possession of his unit and to the ownership of an undivided interest in the Common Areas and Facilities in the percentage expressed on attached Item 31 (pg. 32).

7.2 Prohibition Against Subdivision of a Unit. No unit owner shall, by deed, plat, lease or otherwise, subdivide or in any manner cause his unit to be separated into

tracts or parcels smaller than the whole unit as shown on the Map.

7.3 Ownership of Common Areas and Facilities.

The Common Areas and Facilities shall be owned by the unit owners as tenants in common, and ownership thereof shall remain undivided. No action for partition of any part of the Common Areas and Facilities shall be maintainable, except as specifically provided in the Utah Condominium Ownership Act, nor may any unit owner otherwise waive or release any rights in the Common Areas and Facilities.

7.4 Use of Common Areas and Facilities.

Except with respect to Limited Common Areas, each unit owner may use the Common Areas and Facilities in accordance with the purposes for which they are intended, but subject to this Declaration and lease agreement dated March 28, 1979, such right of use shall be appurtenant to and run with his unit.

7.5 Interest in Common Areas and Facilities.

The percentage of interest in the Common Areas and Facilities of each unit has been determined by the Declarant on the basis of size in accordance with the Utah Condominium Ownership Act, §57-8-7, Utah Code Anno.

7.6 Use of Limited Common Areas and Facilities.

A unit owner's use and occupancy of the Limited Common Areas and Facilities reserved for his unit shall be subject to and in accordance with this Declaration. Each unit owner shall maintain the patio and/or balcony, garage and driveway, the use of which is reserved for his unit. The Association of Unit Owners shall maintain the remainder of the Limited Common Areas and Facilities.

8. AGENT FOR SERVICE OF PROCESS.

The name and address of the person in Salt Lake County, State of Utah, appointed as the first agent to receive service of process in matters pertaining to the property as provided under the Utah Condominium Ownership Act is:

ROBERT M. McRAE
Attorney at Law
72 East Fourth South, #355
Salt Lake City, UT 84111

The agent may be changed from time to time by filing appropriate instruments.

9. PERCENTAGE OF OWNERSHIP AND VOTING RIGHTS.

The percentage of ownership in the Common Areas and Facilities of the Project shall be for all purposes, including voting. The common expenses shall be allocated among the unit owners in accordance therewith. The percentage of right of participation in Common Areas and Facilities shall be set forth in the Lease Agreement of March 28, 1979 and the Record of Survey Map, both of which are recorded concurrently with this document.

10. EASEMENTS.

10.1 The Management Committee may hereafter grant easements for utility purposes for the benefit of the condo-

minium property, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along, on and through any portion of the Common Areas and Facilities.

10.2 An easement in favor of each unit owner is hereby established to permit such owner to attach draperies, pictures, mirrors and like decorations and furnishings to the interior surfaces of the perimeter and interior walls and ceilings, consistent with rules and regulations established by the Management Committee.

10.3 Each unit shall be subject to such easement as may be necessary for the installation, maintenance, repair or replacement of any Common Areas and Facilities located within the boundaries of such unit.

10.4 In the event that by reason of the construction reconstruction, settlement or shifting of any building, any part of the Common Areas and Facilities encroaches or shall thereby encroach upon any part of the Common Areas and Facilities or any other unit, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such unit and the Common Areas and Facilities, as the case may be, so long as all or any part of the building containing any such unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any unit owner or in favor of the unit owners as owners of the Common Areas and Facilities if such encroachment occurred due to the willful conduct, negligent act or omission of such unit owner or owners.

11. MANAGEMENT.

11.1 The business, property and affairs of Three Fountains Condominium Addition shall be managed by a Management Committee consisting of three (3) members who are officers or agents of Declarant or unit owners in the project, said members to be elected as provided hereafter. Such Management Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration and Lease Agreement. The Management Committee may engage the services of a professional manager and fix and pay a reasonable fee or compensation. Should the Lease Agreement between Declarant and the existing Three Fountains Management renders itself in default of service therein provided, the same may be terminated by the Management Committee created herein, and further provided that any agreement for professional management of the Project which may be entered into by the Committee or the Association shall provide for a term not exceeding three (3) years and shall provide that without cause and without payment of a termination fee, such management agreement may be terminated by the Committee or Association upon not in excess of ninety (90) days written notice. Notwithstanding anything herein contained to the contrary, Declarant alone shall be entitled to select three Management Committee members as set forth herein until the first of the following occurs: (a) Declarant, at its option, terminates said right by written notice to all owners.

11.2 The Management Committee shall be subject to the Lease Agreement for the Project in accordance with the provisions of the Act, this Declaration and such administrative,

management and operational rules and regulations as it may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the Committee. The Committee shall, in connection with its exercise of any of the powers delineated in subparagraphs (A) through (I) below, constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted, the following authority and powers (all of which are, however, subject to any specific restrictive provisions of this Declaration and Lease Agreement).

A. The authority, without the vote or consent of the units owners or of any other person(s), to grant or create, on such terms as it deems advisable, reasonable utility and similar easements over, under, across and through the Common Areas and Facilities.

B. The authority to execute and record, on behalf of all the units owners, any amendment to the Declaration or Record of Survey Map which has been approved by the vote or consent necessary to authorize such amendment and the Lease Agreement recorded concurrently herewith, dated March 28, 1979.

C. The power to sue and be sued.

D. The authority to enter into contracts which in any way concern the Project but not conflict with existing Three Fountains Management Contracts so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

E. The authority to promulgate such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the unit owners and not conflict with existing Three Fountains Management Procedures, Rules and Regulations.

F. The power and authority to perform any other acts and to enter into any other transactions which may be reasonable necessary for the Management Committee to perform its functions on behalf of the unit owners.

Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

11.3 The Committee shall be composed of three (3) members. The term of each member of the Committee shall be one (1) year. At each annual owners' meeting, three (3) Committee members shall be elected, which shall be comprised of only unit owners, officers and agents of owners other than individuals. At each annual meeting the fraction of undivided

ownership interest appurtenant to a unit may be voted in favor of as many candidates for Committee membership as there are seats on the Committee to be filled. In the event a Committee seat becomes vacant, whether by reason of forfeiture or due to another cause, the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected. Unless he forfeits or otherwise loses his seat as herein provided, a member shall serve on the Committee until his successor is elected and qualifies. Any member of the Management Committee may resign at any time by giving written notice to the president of the Association or the remaining Management Committee members. Any member of the Management Committee may be removed from membership of the Management Committee by a two-thirds majority vote of the Association. Whenever there shall occur a vacancy on the Management Committee due to death, resignation, removal or any other cause, the remaining members shall elect a successor member to serve until the next annual meeting of the Association, at which time said vacancy shall be filled by the Association for the unexpired term, if any. The members of the Management Committee shall receive no compensation for their services.

11.4 The meeting of the Management Committee shall be held at such places within the State of Utah as the Management Committee shall determine. Two (2) members of the Management Committee shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Management Committee. The Management Committee shall annually elect all of the officers of the Association. The meeting for the election of officers should be held at the first meeting of the Management Committee immediately following the annual meeting of the Three Fountains Owners' Association. Special meetings of the Management Committee may be called by the president or by any two Management Committee members. Regular meetings of the Management Committee may be held without call or notice. The person or persons calling a special meeting of the Management Committee shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called; if an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda. Any member of the Management Committee may, at any time, waive notice of any meeting of the Management Committee, in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Management Committee at a meeting shall constitute a waiver of notice of such meeting except if a Management Committee member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the Management Committee are present at any meeting of the Management Committee, no notice shall be required and any business may be transacted at such meeting.

11.5 No member of the Management Committee shall be liable to the unit owners for any mistake of judgment, for negligence, or on other grounds, except for such member's own individual and willful misconduct or bad faith. The unit owners shall indemnify and hold harmless each member of the Management Committee from and against all liability, including reasonable attorney's fees, to third parties arising out of any contract made by the Management Committee on behalf of the owners, unless such contract was made in bad faith or contrary to the provisions of the Act or this Declaration. The liability of

any unit owner arising out of any contract made by the Management Committee or out of the indemnification provision set forth in the foregoing portion of this paragraph 11.5 shall be limited to the total liability concerned multiplied by such owner's undivided ownership interest in the Common Areas.

11.6 All officers of the Association shall serve at the will of the Management Committee. The officers shall be a president, secretary and treasurer. The Management Committee may appoint such other assistant officers as the Management Committee may deem necessary. An officer shall be required to be a unit owner. No officer shall receive compensation for serving as such.

The president shall be the chief executive of the Management Committee and shall preside at all meetings of the unit owners and of the Management Committee and may exercise the powers ordinarily allocable to the presiding officer of an association, including the appointment of committees. The president shall exercise general supervision over the property and its affairs. He shall sign on behalf of the Association all conveyances, mortgages and contracts or material important to its business. He shall do and perform all acts which the Management Committee may require.

The secretary shall keep minutes of all proceedings of the Management Committee and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the unit owners and the Management Committee. In the absence or inability of the president, the secretary shall perform the functions of the president.

The treasurer shall be responsible for the fiscal affairs of the Association as designated in the Lease Agreement.

12. MEETINGS OF THE ASSOCIATION.

12.1 The presence in person or by proxy at any meeting of the Association of fifty percent (50%) of the unit owners in response to notice of all unit owners of record properly given shall constitute a quorum. In the event that fifty percent (50%) of the unit owners are not present in person or by proxy, the meeting shall be adjourned for twenty-four (24) hours, at which time it shall reconvene and any number of unit owners present at such subsequent meeting shall constitute a quorum. Unless otherwise expressly provided in the Declaration, any action may be taken at a meeting of the unit owners upon a majority vote of the unit owners who are present in person or by proxy and who are voting.

12.2 There is an existing annual meeting of the Three Fountains Owners' Association at the property or at such other reasonable place as may be designated by written notice by the Three Fountains Management Committee and delivered to the unit owners and to the Three Fountains Condominium Addition. At or prior to an annual meeting, the Three Fountains Management Committee shall furnish to the unit owners: (a) a budget for the coming fiscal year that shall itemize the estimated common expenses of the coming fiscal year with the estimated allocation thereof to each unit owner; and (b) a statement of the common expenses itemizing receipts and disbursements for the previous and current fiscal year, together with the allocation thereof to each unit owner.

12.3 Special meetings of the Three Fountains Condominium Association may be held at any time at the property or at such other reasonable place to consider matters which, by the terms of the Declaration, require the approval of all or some of the unit owners, or for any other reasonable purpose. Special meetings shall be called by written notice, signed by a majority of the Management Committee, or by unit owners representing at least one-third (1/3) in interest of the undivided ownership of the Common Areas and Facilities and delivered to all unit owners not less than fifteen (15) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting, and the matters to be considered.

12.4 Robert's Rules of Order (latest edition) shall govern the conduct of the Association's meeting when not in conflict with this Declaration or Lease Agreement.

12.5 The vote attributable to and exercisable in connection with a unit shall be the fraction of undivided ownership interest which is then appurtenant thereto. In the event there is more than one owner of a particular unit, the vote relating to such unit shall be exercised as such owners may determine among themselves. A vote cast at any meeting by any of such owners shall be conclusively presumed to be the vote attributable to the unit concerned unless an objection is immediately made by another owner of the same unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists. Three Fountains Condominium Addition owners shall not be given voting privileges related to the existing Three Fountains Owners' Association.

The Committee or designatee shall maintain up-to-date records showing the name of each person who is an owner, the address of such person and the unit which is owned by him. In the event of any transfer of a fee or undivided fee interest in a unit, either the transferor or transferee shall furnish the Three Fountains Management Committee with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Three Fountains Management Committee may for all purposes act and rely on the information concerning owners and unit ownership which is thus acquired by it or, at its option, the Three Fountains Management Committee may act and rely on current ownership information respecting any unit or units which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an owner shall be deemed to be the address of the unit owned by such person unless the Three Fountains Management Committee is otherwise advised.

13. ASSESSMENTS.

13.1 Every unit owner shall pay his proportionate share of the common expenses including insurances in paragraph 14, which share shall be equal to the percentage of undivided interest in the Common Areas and Facilities as set forth in the said Lease Agreement of March 28, 1979, from time to time as provided in paragraph 25 of this Declaration. Payment thereof shall be in such amounts and at such times as the Management Committee determines in accordance with the Act and the Declaration. There shall be a lien for nonpayment of common expenses as provided by Utah Code Anno., §57-8-29, (1953 as amended). The lien for nonpayment of common expenses may be enforced as provided therein and as provided in this Declaration.

13.2 Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of twelve percent (12%) per annum, or at such rate of interest as may be set by the Management Committee, from the date when due until paid. All payments on account shall be first applied to interest and then to the assessment payment first due.

13.3 A lien for unpaid assessments shall also secure reasonable attorney's fees and all costs and expenses, including taxes, if any, incurred by the Three Fountains Management Committee incident to the collection of such assessment or enforcement of such lien.

13.4 If the unit owner shall at any time let or sublet his unit and shall default for a period of one month in the payment of assessments, the Three Fountains Management Committee may at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the owner the rent due or becoming due, and the payment of such rent to the Management Committee shall be sufficient payment and discharge of such tenant or subtenant and the owner to the extent of the amount so paid.

13.5 Within thirty (30) days prior to the annual meeting of the Association, the Management Committee shall estimate the Common Expenses for the following year. The estimated common expenses shall include such amounts as the Management Committee may deem proper for general working capital, for the general operating reserve, for a reserve fund for replacements and major maintenance, and shall take into account any expected income, surplus or deficit in the common expenses for any prior year. These estimated common expenses shall be presented at the annual meeting and thereafter shall be assessed on a monthly basis to the unit owners in proportion to their percentage of undivided interest in the Common Areas and Facilities as set forth in the Declaration. If the estimated common expenses prove inadequate for any reason, including nonpayment of any unit owner's assessments, the Management Committee may, by resolution duly adopted, make additional assessments, which shall be assessed to the unit owners in the same manner as the estimated common expenses. Each unit owner shall be obligated to pay to the Management Committee assessments made pursuant to this paragraph on or before the first day of each month, or in such other reasonable manner as the Management Committee shall designate. The funds received by the Management Committee from assessments shall be kept in a separate account and shall be expended by the Management Committee only in accordance with the provisions of the Act and this Declaration.

13.6 The rights, duties and functions of the Three Fountains Management Committee set forth in this paragraph shall be exercised by Declarant until thirty (30) days after the first annual meeting of the Association.

13.7 The failure by the Three Fountains Management Committee before the expiration of any year to estimate the common expenses as required herein shall not be deemed a waiver or modification in any respect of the provisions of the Declaration or a release of the unit owner from the obligation to pay any past or future assessments, and the estimated common expenses fixed for the previous and current year shall continue until a new estimate is fixed.

13.8 Amendments to this paragraph 13, not inconsistent with the requirements of the Act, shall be effective only upon unanimous written consent of the unit owners and their mortgages.

13.9 No unit owner may exempt himself from liability for common expenses by waiver of the use or enjoyment of any of the Common Areas and Facilities or by abandonment of his unit.

13.10 The Three Fountains Management Committee treasurer keeps detailed records of all receipts and expenditures, including expenditures affecting the Common Areas and Facilities, specifying and itemizing the maintenance, repair and replacement expenses of the Common Areas and Facilities and any other expenses incurred. Such records shall be available for examination by the unit owners during regular business hours. In accordance with the actions of the Management Committee assessing common expenses against the units and unit owners, the treasurer shall keep an accurate record of such assessments and of the payments thereof by each unit owner.

13.11 All common expense assessments shall be a separate, distinct and personal liability of the owner of the unit at the time each assessment is made. The Three Fountains Management Committee shall have the rights and remedies contained in the Act and in the Declaration and Lease Agreement to enforce the collection of assessments for common expenses.

13.12 Any person who shall have entered into a written agreement to purchase a unit shall be entitled to obtain a written statement from the treasurer setting forth the amount of unpaid assessments charged against the unit and its owners, and if such statement does not reveal the full amount of the unpaid assessments as of the date it is rendered, neither the purchaser nor the unit shall be liable for the payment of an amount in excess of the unpaid assessments shown thereon, provided that the former unit owner grantor shall remain so liable. Any such excess which cannot be promptly collected from the former unit owner grantor shall be reassessed by the Management Committee as a common expense to be collected from all unit owners, including without limitation the purchaser of the unit, his successors and assigns. The new unit owner shall, and the former unit owner shall not, be liable for any assessments made after the date of transfer of title to a unit, even though the common expenses for the expenses incurred or the advances made by the Management Committee for which the assessment is made relate in whole or in part to any period prior to that date. Notwithstanding the foregoing, an owner of record will remain primarily liable to the Association for the common expenses, and if a unit is being sold on contract, the record owner will be responsible and liable for payment of the common expenses until the final conveyance is delivered and recorded.

13.13 In the event title to a unit is transferred at sheriff's sale pursuant to execution upon any lien against the unit, the Three Fountains Management Committee shall give notice in writing to the sheriff of any unpaid assessments for common expenses which are a lien against the unit, and for any expenses of or advances by the said Management Committee which have not theretofore been reduced to a lien, which shall be paid out of the proceeds of the sale prior to the distribution of any balance to the former unit owner against whom the execution was issued. If the lien upon which the execution is predicated is prior or superior to the Association's lien for common expenses,

the purchaser at such sheriff's sale and the unit involved shall not be liable for unpaid assessments for common expenses and for any expenses of or advances by the Management Committee which became due prior to the sheriff's sale of the unit. Any such unpaid assessments which cannot be promptly collected from the former unit owner shall be reassessed by the Three Fountains Management Committee as a common expense to be collected from all of the unit owners, including the purchaser who acquired title at the sheriff's sale, his successors and assigns. To protect its right to collect unpaid assessments for common expenses which are a lien against a unit, and for any expenses of and advances by the said Management Committee, said Management Committee may, on behalf of all the unit owners, purchase the unit at sheriff's sale, provided such action is authorized by the affirmative vote of a majority of the members of said Management Committee.

13.14 In addition to the statements issuable to purchasers of units, the Three Fountains Management Committee shall provide a current statement of unpaid assessments for common expenses and for any expenses of and advances by the said Management Committee in respect of the unit, to the unit owner, to any person who shall have entered into a binding agreement to purchase the unit and to any mortgagee on reasonable request.

13.15 In all cases where all or part of any assessments for common expenses and for any expenses of and advances by the Three Fountains Management Committee cannot be promptly collected from the persons or entities liable therefor under the Act, the Declaration or Lease, the said Management Committee shall reassess the same as a common expense, without prejudice to its rights of collection against such persons or entities.

14. INSURANCE.

14.1 The Three Fountains Management Committee shall obtain and maintain at all times insurance of the type and kind as provided herein and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereby customarily be covered with respect to other properties similar to the property in construction, design and use. The said Management Committee shall obtain insurance with the following provisions or endorsements:

- A. Exclusive authority to adjust losses shall be vested in the Three Fountains Management Committee as insurance trustee.
- B. The insurance coverage shall not be brought into contribution with insurance purchased by individual unit owners or their respective mortgagees.
- C. Each unit owner may obtain additional insurance covering his real property interest at his own expense.
- D. The insurer waives its right of subrogation as to any claims against each unit owner.
- E. The insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of any one or more individual owners or their respective lessees, employees, agents, contractors and guests.

F. The insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of any officer or employee of the Association or Three Fountains Management Committee or their employees, agents or contractors, without prior demand in writing that the Management Committee cure the defect, and then only if the defect is not cured within thirty (30) days.

14.2 Hazard Insurance. The Three Fountains Management Committee or Association of Unit Owners shall at all times maintain in force hazard insurance meeting the following requirements:

A. A multi-peril type policy covering the entire condominium project (both units and Common Areas and Facilities) shall be maintained. Such policy shall provide coverage against loss or damage by fire and other hazards covered by the standard extended coverage endorsement and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage and such other risks as customarily are covered with respect to condominium projects similar to the project in construction, location and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than 100 percent of the full insurable value (based upon replacement cost). Such policy, which is an expense of the Lease Agreement, shall include, if available and appropriate (a) an "Agreed Amount Endorsement" or its equivalent or an "Inflation Guard Endorsement" or its equivalent, (b) a "Demolition and Contingent Liability from Operation of Building Laws Endorsement" or its equivalent, (c) an "Increased Cost of Construction Endorsement" or its equivalent, and (d) an "Earthquake Damage Endorsement" or its equivalent.

B. If a steam boiler is or comes to be contained in the project, there shall be maintained a boiler explosion insurance and a broad form policy of repair and replacement boiler and machinery insurance, evidenced by the standard form of boiler and machinery insurance policy in amounts determined by the Three Fountains Management Committee.

C. If the project is or comes to be situated in a locale identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, a "blanket" policy of flood insurance on the condominium project shall be obtained and maintained. The minimum amount of coverage afforded by such policy shall be the lesser of the maximum limit of coverage available under said Act or the aggregate of the unpaid principal balances of the mortgages affecting the individual units. Such policy shall be in the form of the standard policy issued by members of the National Flood Insurers' Association or in the form of a policy which meets the criteria established by the Flood Insurance Administration.

D. The named insured under each policy required to be maintained by the foregoing items A, B and C shall include in form and substance essentially as follows: "Tischner-Phillips Condominium Duplexes Three Fountains Addition, or its authorized representative, for the use and benefit of the individual owners." [Said owners shall be designated by name, if required.]

E. Each such policy shall include the standard mortgagee clause (without contribution) which either shall be endorsed to provide that any proceeds shall be paid to the Association of Unit Owners for the use and benefit of mortgagees as their interests may appear or shall be otherwise endorsed to fully protect the interests of mortgagees. In addition, the mortgage clause shall provide that the insurance carrier shall notify each mortgagee at least thirty (30) days in advance of the effective date of any reduction in our cancellation of the policy.

F. Each such policy shall provide that, notwithstanding any provision thereof which gives the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Association or if such option is in conflict with any requirement of law.

14.3 Fidelity Insurance. So long as the project maintains its Lease Agreement, the Three Fountains Management Committee or Association shall at all times while such state of affairs exists maintain in force fidelity coverage against dishonest acts on the part of managers (and employees of managers), trustees, employees, officers, Committee members or volunteers responsible for handling funds belonging to or administered by the Management Committee or Association of Unit Owners. The fidelity bond or insurance shall name the Association as the obligee or insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one and one-half times (150%) the project's estimated annual operating expenses and reserves. An appropriate endorsement to the policy shall be secured to cover persons who serve without compensation if the policy would not otherwise cover volunteers.

14.4 Liability Insurance. The Three Fountains Management Committee or Association of Unit Owners shall at all times maintain in force a comprehensive policy of public liability insurance covering all of the Common Areas and Facilities. Such insurance shall include a "Severability of Interest Endorsement" or its equivalent which shall preclude the insurer from denying the claim of a unit owner because of negligent acts of other owners, the Management Committee or the Association of Unit Owners. The coverage afforded by such public liability insurance shall include protection against water damage, liability for nonowned and hired automobile, liability for property of others, elevator collision (if applicable), garbage-keeper's liability (if applicable), and such other risks as customarily are covered with respect to condominium projects similar to the project in construction, location and use. The limits of liability under such insurance shall not be less than \$1,000,000.00 for all claims for personal injury and/or property damage arising out of a single occurrence.

14.5 General Requirements Concerning Insurance.

Each insurance policy maintained pursuant to this paragraph 14 shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best's Insurance Reports of Class VI or better, or which has a financial rating of Class V, provided it has a general policyholder's rating of at least A. No such policy shall be maintained where: (a) under the terms of the carrier's charter, bylaws or policy, contributions may be required from, or assessments may be made against, the unit owner, a mortgagee, the Management Committee, the Association of Unit Owners, a unit, the Common Areas, or the Project; (b) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members; (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds; or (d) the policy provides that the insurance thereunder shall be brought into contribution with insurance purchased by the individual unit owners or their mortgagees. Each such policy shall provide that: (i) coverage shall not be prejudiced by any act or neglect of the unit owners when such act or neglect is not within the control of the Association of Unit Owners or the Management Committee; (ii) coverage shall not be prejudiced by any failure by the Association or Committee to comply with any warranty or condition with regard to any portion of the project over which the Association and Committee have no control; (iii) coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insured named therein, including any mortgagee named as an insured; and (iv) the insurer waives any right of subrogation it might have as to any and all claims against the Association, the Management Committee, any unit owner, and/or their respective agents, employees or tenants, and any defense it might have based upon co-insurance or upon invalidity arising from acts of the insured.

15. DESTRUCTION OR DAMAGE.

15.1 In the event of damage to or destruction of part or all of the improvements on the Condominium Project, the following procedures shall apply:

A. If proceeds of the insurance maintained by the Management Committee are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

B. If less than 75 percent of the total project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all the unit owners shall be assessed for any deficiency on the basis of their respective percentages of undivided interest in the Common Areas and Facilities.

C. If 75 percent or more of the total project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Three Fountains Management Committee are not alone sufficient to accomplish restoration, and if the unit owners, within 100 days after the destruction or damage, by a vote of at least 75 percent, elect to repair or

reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subparagraph B above.

D. If 75 percent or more of the project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if the unit owners do not, within 100 days after the destruction or damage and by vote of at least 75 percent, elect to repair or reconstruct the affected improvements, the Three Fountains Management Committee shall promptly record with the Salt Lake County Recorder a notice setting forth such facts. Upon the recording of such notice, the provisions of subsections (1) through (4) of §57-8-31, Utah Code Anno., (1953 as amended), shall apply and shall govern the rights of all parties having an interest in the project of any of the units.

E. In the event of substantial damage to or destruction of any unit or to 75 percent or more of the project's improvements, the mortgagees in the event 75 percent of the project's improvements are damaged or destroyed, shall be given written notice within 30 days of such damage or destruction. No provision herein will entitle the owner of a unit or other party to priority over such mortgagee with respect to the distribution to such unit of any insurance proceeds.

15.2 Any reconstruction or repair which is required to be carried out by this paragraph 15 shall be accomplished at the instance and direction of the Three Fountains Management Committee. Any determination which is required to be made by this paragraph 15 regarding the extent of damage to or destruction of project improvements shall be made as follows: The Management Committee shall select three MAI appraisers; each appraiser shall independently arrive at a figure representing the percentage of project improvements which have been destroyed or substantially damaged; the percentage which governs the application of the provisions of this paragraph 15 shall be the average of the three appraisal figures.

16. TERMINATION.

16.1 All of the owners may remove their separate and common property from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the units consent or agree by instruments duly recorded that their liens be transferred to the percentage of the undivided interest of the unit owners in the property.

16.2 Upon removal of the property lien from the provisions of the Act, the unit owners shall own the common property and assets of the Three Fountains Condominium Addition as tenants in common, and the respective mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the unit owners. Such undivided interests of the unit owners shall be the same as the percentage of undivided interest in the Common Areas and Facilities appurtenant to the owners' units prior to removal from the Act.

17. EMINENT DOMAIN.

17.1 Insofar as not inconsistent with §57-8-32.5, Utah Code Anno., the provisions of this paragraph 17 shall apply to Three Fountains Addition only.

17.2 Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or one or more units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Management Committee and each unit owner and each mortgagee of affected units shall be entitled to notice thereof, which notice shall be provided by the Management Committee, and the Management Committee shall act as agent for each unit owner, except for those unit owners who at their respective expense participate in the proceedings incident thereto. No provision herein will entitle the owner of a unit or other party to priority over a mortgagee of such unit with respect to the distribution to such unit of the proceeds of any award or settlement.

17.3 With respect to Three Fountains existing or Addition Common Areas and Facilities, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each unit owner's interest therein. After such determination, each unit owner shall be entitled to a share in the damages in the same proportion as his percentage of undivided interest of the Common Areas and Facilities. This provision does not prohibit a majority of unit owners from authorizing the Three Fountains Addition Management Committee to use such damages or awards for replacing or restoring the Common Areas and Facilities so taken on the remaining land or on other acquired land, provided that this Declaration and Map are duly amended.

17.4 With respect to one or more units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damage or destruction pursuant to paragraph 15 hereof and shall be deposited with the Three Fountains Addition Management Committee as trustee. Even though the damage or awards may be payable to one or more unit owners, the unit owners shall deposit the damages or awards with the Management Committee as trustee, and in the event of failure to do so, at the option of the Management Committee, either a special assessment shall be made against a defaulting unit owner of a unit in the amount of this award, or the amount of such award shall be set off against the sums hereafter made payable to such unit owner. The proceeds of the damages or awards shall be distributed or used in a manner, and the units owners of affected units shall have the rights provided in paragraph 15 for insurance proceeds, provided the property is removed from the provisions of the Act. If the property is not removed from the provisions of the Act and one or more units are taken, in whole or in part the taking shall have the following effects:

A. If the taking reduces the size of a unit and the remaining portion of the unit may be made tenantable, the unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the owner of the unit. The balance of the award, if any, shall be distributed to the unit to the extent of the unpaid balance of its mortgage, and the excess, if any, shall be distributed to the unit owner. If there is a balance

of the award distributed to the unit owner or a mortgagee, the unit owner's percentage of undivided interest in the Common Areas and Facilities shall be equitably reduced. This shall be done by reducing such interest in the proportion by which the floor area of the unit is reduced by the taking, and then recomputing the percentages of undivided interests of all unit owners in the Three Fountains Condominium Addition Common Areas and Facilities.

B. If the taking destroys or so reduces the size of a unit that it cannot be made tenable, the award shall be paid to the mortgagee of the unit of the extent of the unpaid balance of its mortgage, and the excess, if any, shall be paid to the unit owner, whereupon the unit owner shall cease to be a member of the Association of Unit Owners. The remaining portion of such unit, if any, shall become a part of the Three Fountains Addition Common Areas and Facilities and shall be placed in condition for use by all unit owners in the manner approved by the Management Committee. If the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be done only if approved by a majority of the unit owners. The percentages of undivided interests in the Common Areas and Facilities appurtenant to the units that continue as part of the property shall be equitably adjusted to distribute the ownership of the Common Areas and Facilities among the reduced number of unit owners, and the Three Fountains Addition Management Committee shall file an amendment to the Declaration and Map to reflect the changes in the property and the percentages of undivided interest of the remaining units. The Management Committee is authorized to record such amendment without approval of the Association of Unit Owners.

18. MORTGAGE PROTECTION.

18.1 The existing Three Fountains Management Committee shall maintain a roster of unit owners from the evidence of change of ownership furnished to the Management Committee, which roster shall include the mailing addresses and unit number of unit owners. If the Management Committee has been given notice of the necessary information, the Management Committee shall maintain another roster which shall contain the name and address of each mortgagee of a unit. Each notice shall consist of a certified copy of the recorded instrument evidencing the title of the mortgagee. The mortgagee shall be stricken from the roster upon receipt by the Management Committee of a request from the mortgagee or of a certified copy of a recorded release or satisfaction of the mortgage. Notice of such removal shall not be given to the mortgagee unless the removal is requested by the mortgagee or mortgagor as set forth herein.

18.2 From and after the time a mortgagee makes written request to the Management Committee or the Association of Unit Owners therefor, the Committee or Association shall notify such mortgagee in writing of any default by the mortgagor of such unit in the performance of such mortgagor's obligation under the Declaration which is not cured within 30 days.

18.3 Any institutional holder of a mortgage on a unit shall, upon prior written request, be entitled to (a) inspect the books and records of the said Association of Unit Owners, (b) receive an annual financial statement of the project within 90 days following the end of any fiscal year of the Association of Unit Owners, and (c) receive a copy of the minutes of any meeting of the said Association of Unit Owners.

18.4 A mortgagee of any unit who comes into possession of the unit pursuant to the remedies provided in the mortgage, foreclosure of mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property, free of any claims or unpaid assessments or charges against the mortgaged unit which accrued prior to the time such mortgagee comes into the possession of the unit (except for claims for a prorata share of such assessments or charges resulting from a prorata reallocation of such assessment or charges to all units, including the mortgaged unit).

18.5 The existing Management Committee and the Association shall establish an adequate reserve for maintenance, repairs and replacements of those Common Areas and Facilities that must be replaced on periodic basis and shall cause such reserve to be funded by regular monthly or other periodic assessments against the units rather than by special assessments.

18.6 From and after the time a mortgagee makes written request to the Management Committees for the Associations of Unit Owners therefor, the Committees or the Associations shall notify such mortgagee in writing in the event there occurs any damage or loss to, or taking or anticipated condemnation of: (a) the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand Dollars (\$10,000); or (b) any unit involving an amount in excess of, or reasonably estimated to be in excess of, One Thousand Dollars (\$1,000). Said notice shall be given within ten (10) days after the Management Committees or said Associations learn of such damage, loss, taking or anticipated condemnation.

18.7 In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or subparagraph of this paragraph 18, the provision or subparagraph which results in the greatest protection and security for a mortgagee shall control the rights, obligations or limits of authority, as the case may be, applicable to the Management Committee and the Association of Unit Owners with respect to the subject concerned.

18.8 No amendment to this Declaration which has the effect of diminishing the rights, protection or security afforded to mortgagees shall be accomplished or effective unless seventy-five percent (75%) of the mortgagees of the individual units have given their prior written approval to such amendment. Any amendment to this paragraph 18 shall be accomplished by an instrument executed by the Management Committee and filed for record in the office of the Salt Lake County Recorder. In any such instrument an officer of the Management Committee shall certify that any prior written approval of mortgagees required by this paragraph 18 as a condition to amendment has been obtained.

19. SALE OR LEASE; RIGHT OF FIRST REFUSAL.

19.1 No unit owner may transfer a unit or any interest therein by sale or lease without first requesting approval of the Management Committee, except to another owner. The approval

of the Management Committee required for the transfer of ownership or interest of a unit or lease of a unit shall be requested as follows:

A. A unit owner intending to make a bona fide sale or lease of a unit or any interest therein shall give to the existing Management Committee notice of such intention, together with the name and address of the intended purchaser or lessee and such other information concerning the intended purchaser or lessee as the Management Committee may reasonably require. The notice shall be accompanied by an executed copy of the proposed contract of sale or proposed lease.

B. If the notice to the Management Committee herein required is not given at any time after receiving knowledge of the transaction, or in the event of transferring ownership or possession of a unit, the existing Management Committee at its election and without notice may approve or disapprove the transaction or ownership. If the existing Management Committee disapproves the transaction or ownership, the existing Management Committee shall proceed as if it had received the required notice on the date of such disapproval.

19.2 Within thirty (30) days after the receipt of such notice and information, the existing Management Committee shall approve or disapprove the proposed sale or lease. If approved, the approval shall be set forth in a certificate executed by the existing Management Committee. The certificate shall be delivered to the purchaser and shall be recorded at the expense of the purchaser.

19.3 If the existing Management Committee shall disapprove a transfer of ownership of a unit, or an interest in the unit, or a lease of a unit, within thirty (30) days after the receipt of such notice and information the existing Management Committee shall deliver or mail by certified mail to the unit owner an agreement to purchase or lease by a purchaser or lessee approved by the existing Management Committee, to whom the unit owner must sell or lease the unit upon the same terms as the disapproved agreement.

A. In the event the disapproved offer to purchase provides for payment other than by cash and/or the assumption of or taking subject to a mortgage, for example by exchange of property, the purchaser or lessee provided by the existing Management Committee shall have the option to have the fair market value of the unit or the fair market value of the lease be determined by the average of two appraisals of the unit performed by two MAI appraisers, one appointed by the existing Management Committee and one appointed by the unit owner desiring to sell or lease. The expense of the appraisal shall be paid by the proposed purchaser or lessee. The purchase price shall be the average of the two appraisals and shall be paid in cash or upon terms approved by the seller, or the lease terms shall be those as set forth in the proposed lease. The sale or lease shall be closed within 30 days after the delivery or mailing of said agreement to purchase or proposed lease or within thirty (30) days of the determination of the

sales price or the lease payments, if such is done through the appraisal method referred to above. A certificate executed by the Management Committee approving the purchaser or lessee shall be recorded at the expense of the purchaser or lessee.

B. If the existing Management Committee shall fail to provide a purchaser or lessee upon the demand of the selling unit owner, or if a purchaser or lessee furnished by the existing Management Committee shall default in the agreement to purchase or lease, then notwithstanding the disapproval, the proposed transaction shall be deemed to have been approved, and the existing Management Committee shall furnish a certificate of approval as provided, which shall be recorded at the expense of the purchaser.

19.4 In the event any unit owner shall attempt to sell or lease his unit without affording to the other unit owners the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

19.5 The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the unit owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented such interest as provided herein.

19.6 In no case shall the right of first refusal reserved herein affect the right of a unit owner to subject his unit to a trust deed, mortgage or other security instrument whereby a bank, insurance company, savings and loan association or other similar institution becomes the owner and holder of such trust deed, mortgage or security instrument.

19.7 The failure of or refusal by the existing Management Committee to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when a unit owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

19.8 In the event of default on the part of any unit owner under any first mortgage made in good faith and for value, which entitled the holder thereof to foreclose the same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of this paragraph 19, and the purchaser (or grantee under such deed in lieu of foreclosure) of such unit shall be thereupon and thereafter subject to the provisions of this Declaration. If the purchaser, following such foreclosure sale (or grantee under deed given in lieu of such foreclosure, shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the unit free and clear of the provisions of this paragraph 19, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

19.9 The transfer of a deceased joint tenant's interest to the surviving joint tenant or the transfer of the decedent's interest to a devisee by will or his heirs at law under intestacy laws shall not be subject to the provisions of this paragraph 19.

19.10 Every sale or lease shall be subject to all the provisions contained herein, including restrictions on use. Failure to comply with the terms hereof shall constitute a default under any lease.

19.11 The provisions of this paragraph 19 shall not apply to, be binding upon or enforceable against Declarant.

20. CONVEYANCES, EASEMENTS.

20.1 Every deed, lease, mortgage or other instrument may describe a unit by its identifying number and letter designation set forth in the plat dated June 5, 1979, recorded concurrently herewith, and in the Map. Every such description shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber or otherwise affect the unit owner's corresponding percentage of undivided ownership in the Common Areas and Facilities, as a tenant in common, as set forth in Plat Map dated June 5, 1979 and Lease Agreement of March 28, 1979, filed concurrently herewith, even though the same is not exactly mentioned or described.

20.2 Every deed, lease, mortgage or other similar instrument shall be deemed to:

A. Except and reserve with respect to a unit: (i) any portion of the Common Areas and Facilities lying within said unit; (ii) easements through said unit, appurtenant to the Common Areas and Facilities for encroachment upon the air space of said unit by those portions of the Common Areas and Facilities located within said unit.

B. Include with respect to a unit nonexclusive easements for ingress and support of said unit through the Common Areas and Facilities, for the repair of said unit through all other units and through the Common Areas and Facilities, and for the use of the Limited Common Areas as indicated in the Map.

C. Except and reserve, with respect to the undivided percentage interest in the Common Areas and Facilities, nonexclusive easements appurtenant to all units for ingress, egress, support and repair and exclusive easements appurtenant to each unit for the use of the Limited Common Areas as set forth in the Map.

D. Include, with respect to the undivided percentage interest in the Common Areas and Facilities, nonexclusive easements through each unit for support and repair of the Common Areas and Facilities and nonexclusive easements for encroachments upon the air space of all of the units by and for the portions of the Common Areas and Facilities lying within the units.

21. MAINTENANCE OF UNITS.

21.1 Each unit owner, at his own expense, shall keep the interior of his unit and its equipment and appurtenances in good order, condition and repair, and in a clean and sanitary condition, and shall do all redecorating and painting which may at any time be necessary to maintain the good appearance of his unit. Except to the extent that the Management Committee is protected by insurance against such injury, the unit owner shall repair all injury or damages to the unit or Condominium Project caused by the act, negligence

or carelessness of the unit owner or that of any lessee or sublessee or any member of the unit owner's family or of the family of any lessee or sublessee or any agent, employee or guest of the owner or his lessee or sublessee, and all such repairs, redecorating and painting shall be of a quality and kind equal to the original work. In addition to decorating and keeping the interior of the unit in good repair, the unit owner shall be responsible for the maintenance or replacement of any plumbing, fixtures, refrigerators, air conditioning and heating equipment, dishwashers, disposals, ranges, etc., that may be in or connected with the unit. The Management Committee shall be responsible for maintenance and upkeep of all conduits, ducts, plumbing and wiring and other facilities for the furnishing of heat, gas, light, power, air conditioning, water and sewer contained in the portions of the units that service part or parts of the property other than the unit in which they are contained. Without the written permission of the Management Committee first had and obtained, the unit owner shall not make or permit to be made any structural alteration, improvement or addition in or to the unit, patios, balconies, garages, or in or to the exterior of the building, and shall not paint or decorate any portion of the exterior of the building in which his unit is located.

22. RIGHT OF ENTRY.

22.1 The Management Committee and its duly authorized agents shall have the right to enter any and all of the units in case of an emergency originating in or threatening such unit or any other part of the project, whether or not the unit owner or occupant thereof is present at the time. The Committee and its duly authorized agents shall also have the right to enter into any and all of said units at all reasonable times as required for the purpose of making necessary repairs upon the Common Areas and Facilities of the Project or the purpose of performing emergency installations, alterations or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations or repairs are necessary to prevent damage or threatened damage to other units in the Project; and provided further that the unit owner affected by such entry shall first be notified thereof if available and if time permits.

23. ADMINISTRATIVE RULES AND REGULATIONS.

The existing Management Committee shall have the power to adopt and establish by resolution such building management and operational rules as it may deem necessary for the maintenance, operation, management and control of the project, and the Committee may, from time to time by resolution, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the unit owners, such amendment, alteration and provision shall be taken to be a part of such rules. Unit owners shall at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all unit owners and/or occupants of the Project.

24. OBLIGATION OF COMPLIANCE.

24.1 Each unit owner, tenant or occupant of a unit shall comply with the provisions of the Act, this Declaration, the rules and regulations, all agreements and determinations lawfully made and/or entered into by the Management Committee

or the unit owners when acting in accordance with their authority, and any failure to comply with any of the provisions thereof shall be grounds for an action by the Management Committee to recover any loss or damage resulting therefrom or injunctive relief.

25. AMENDMENT.

25.1 Unit owners shall have the right to amend this Declaration and/or the Map upon the approval and consent of unit owners representing not less than two-thirds of the undivided interests in the Common Areas and Facilities. Any amendment shall be accomplished by the recordation of an instrument wherein the Management Committee certifies that the unit owners representing at least two-thirds of the undivided interests in the Common Areas and Facilities have approved and consented to any such amendment.

25.2 Certain Prohibitions Imposed on Unit Owners. Unless at least 75 percent of the first mortgagee's (one vote for each mortgage owned) of individual condominium units have given their prior written approval, the Association of Unit Owners shall not, by act, omission or otherwise:

A. Change the prorata interest or obligations of any unit for purposes of (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (b) determining shares of the Common Areas and Facilities of the Project.

B. Partition or subdivide any unit or the Common Areas of the Project.

C. Abandon or terminate the condominium status of the project, except as provided by statute in case of substantial loss to the units and Common Areas of the Project.

D. Abandon, partition, subdivide, encumber, sell or transfer the Common Areas, provided the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas and Facilities by the Condominium Project shall not be deemed a transfer within the meaning of this clause.

E. Use hazard insurance proceeds for losses to any condominium property for other than the repair, replacement or reconstruction of such improvements, except as provided herein or by statute in case of substantial loss to the units and/or the Common Areas and Facilities of the Condominium Project.

26. NOTICES.

28.1 Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to be delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, return receipt requested. Notice to unit owners shall be addressed to each unit owner at the address given by such unit owner to the Management Committee for the purpose of service of such notice or to the unit of such unit owner if no such address has been

BOOK 4929 PAGE 452

given to the Management Committee. Such address may be changed from time to time by notice in writing to the Management Committee. Notice to the Management Committee shall be addressed to:

Three Fountains Owners' Association (existing)
Management Committee
5050 Three Fountains Circle
Murray, UT 84107

Three Fountains Owners' Association (addition)
D-5032 Three Fountains Circle
Murray, UT 84107

or at such other place as may be designated by the Management Committee in writing and recorded in the office of the Salt Lake County Recorder.

27. NO WAIVER.

29.1 The failure of the either Management Committee or its contractors to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restriction of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the either Management Committee or its contractor of the payment of any assessment from a unit owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by either Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Management Committee.

28. SEVERABILITY.

30.1 The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law, and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid or should operate to render this agreement invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, section or sections, has not been inserted.

29. GENDER.

29.1 The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

30. TOPICAL HEADINGS.

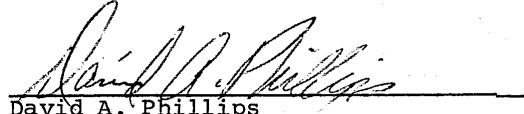
30.1 The topical headings of the paragraphs contained in the Declaration are for convenience only and do not define, limit or construe the contents of the paragraphs or of the Declaration.

21. EFFECTIVE DATE.

This Declaration shall take effect upon recording.

IN WITNESS WHEREOF, the undersigned, SHIRLEE E. TISCHNER and DAVID A. PHILLIPS, as owners of the land described in the Plat of June 5, 1979 recorded concurrently herewith, have each set their hand this 27th day of June, 1979.

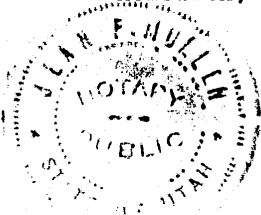

Shirlee E. Tischner

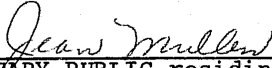

David A. Phillips

ATTEST:

STATE OF UTAH)
County of Salt Lake) ss.

On the 27th day of June, 1979, personally appeared before me SHIRLEE E. TISCHNER and DAVID A. PHILLIPS, who, being by me duly sworn, did say that they are the owners of the land described in the Plat of June 5, 1979 recorded concurrently herewith, and as owners have executed the foregoing instrument.




NOTARY PUBLIC residing in
Salt Lake County, Utah
Commission expires: 5/26/83

ATTACHMENT
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
TISCHNER-PHILIPS CONDOMINIUM DUPLEXES
THREE FOUNTAINS ADDITION

<u>Street Address</u>	<u>Unit No.</u>	<u>Percentage of Ownership in Common Area and Pro- rata Share of Common Expense</u>
5032	D	25%
5032	C	25%
5034	B	25%
5034	A	25%

LEASE AGREEMENT

Three Fountains Owners' Association, a nonprofit corporation, and the undersigned as buyers and assignees of Unit _____, located at _____ :

IT IS AGREED between the Owners' Association and the undersigned as buyers for and in consideration of the sum of \$500 per unit, to be paid by the builder to Three Fountains Owners' Association at the time of each unit closing, that buyers by executing this agreement will abide by the condominium covenants and restrictions as recorded in the office of the Salt Lake County Recorder, Amendment Entry No. 2328342-47, Book No. 2847, Pages 257-323, without voting privileges but with the privilege of meeting with the Three Fountains Board of Trustees on an annual basis for review of insurance and maintenance costs.

IT IS FURTHER AGREED the Owners' Association will provide to buyers for the monthly standard rate as charged to comparable units of existing owners ^{at Manor House} for a period of 99 years all services (hereinafter referred to as "maintenance services"), insurance benefits, general exterior maintenance, (inclusive of easement right of trespass for said maintenance) and that buyer be allowed full privileges of the Association's recreation facilities as contemplated in the above agreement as if buyers existed in the Three Fountains Condominium project.

IT IS FURTHER AGREED that as a unit owner Three Fountains Owners' Association hold rights of collection and lien rights in the event buyers should default payment pertaining to maintenance services, as provided in the above recorded documents. Buyers understand that Three Fountains Association holds covenants running with the land, as covenantor and buyer

agree to be bound by them and to permit covenantor to perform in any maintenance services, to buyers or their assigns.

DATED this _____ day of _____, 1979.

ATTESTED:

THREE FOUNTAINS OWNERS' ASSOCIATION

Quinn M. Collett
Secretary Treasurer

By Arthur Sweet
President

Buyer

Buyer

Shirlee E. Tischner

David A. Phillips

The Board of Trustees and developers do hereby endorse the above agreement this 28th day of March, 1979 and agree to execute same at the time of buyers closings.

ATTESTED:

THREE FOUNTAINS OWNERS' ASSOCIATION

Quinn M. Collett
Secretary Treasurer

By Arthur Sweet
President

Shirlee E. Tischner
SHIRLEE E. TISCHNER

David A. Phillips
DAVID E. PHILLIPS
A. DP.

Exhibit A (Site plan - water, landscape requirements and lighting pre specification required by Board of Trustees.)