

**WHEN RECORDED RETURN TO:**

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Date 10-AUG-2001 11:54am  
Fee: 98.00 Check  
CALLEN B. PESHELL, Recorder  
Filed By MRT  
For JAMES R BLAKESLEY  
TOOELE COUNTY CORPORATION

**AMENDMENT TO DECLARATION AND BYLAWS  
OF THE BENCH MARK VILLAGE CONDOMINIUM PROJECT**

This AMENDMENT to the DECLARATION AND BYLAWS OF THE BENCH MARK VILLAGE CONDOMINIUM PROJECT, dated for reference July 3, 2001, is executed by the BENCH MARK VILLAGE HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation, located at P.O. Box 171014, Salt Lake City, Utah 84117 (hereinafter referred to as the "Association").

**RECITALS**

A. On September 22, 1977, the BENCH MARK VILLAGE CONDOMINIUM PROJECT (hereinafter, the "Project") was created by the filing of record in the office of the County Recorder of Tooele County, Utah: (1) an instrument entitled "DECLARATION AND BYLAWS of the BENCH MARK VILLAGE CONDOMINIUM PROJECT" (hereinafter, "Declaration") as Entry No. 320367 in Book 152 at Page 119; and (2) an instrument styled "Record of Survey Map of the BENCH MARK VILLAGE CONDOMINIUM PROJECT" (hereinafter, "Original Map").

B. The Declaration was amended by a written instrument entitled "Amendment # 1B" recorded December 13, 1990 as Entry No. 38376 in Book 311 at Page 484 of the Official Records of the County Recorder of Tooele County, Utah.

C. Section 21 of the Declaration provides that the vote of at least 3/4ths in the aggregate of the ownership in the common areas and facilities shall be sufficient to amend the Declaration.

D. By signing below, the Management Committee certifies that all of the voting requirements of the Declaration have been satisfied.

**AMENDMENT**

NOW, THEREFORE, for the reasons recited above, and for the benefit of the Project and the Unit Owners thereof, the Association hereby executes this AMENDMENT TO THE DECLARATION AND BYLAWS OF THE BENCH MARK VILLAGE CONDOMINIUM PROJECT for and on behalf of all of the Unit Owners.

1. Section 17 of the Declaration is amended to add the following provisions:

17.5. Generally. *All* of the Units in the Project must be owner-occupied. The leasing of Units is prohibited (except for the grandfathered units and the hardship exceptions outlined below) in order for the Association to:

- a. Protect the equity of the individual property owners;
- b. Carry out the purpose for which the Project was formed by preserving the character of the Project as a homogeneous residential community of predominantly owner-occupied Units and by preventing the Project from assuming the character of an apartment, renter-occupied complex; and
- c. Comply with the eligibility, requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, leasing of a Unit or Units shall be prohibited, except in the case of undue hardship as provided below.

17.6 Definition of "Owner-Occupied". For purposes of these subsections the term "owner-occupied" shall mean occupied by the vested owner of record or his spouse, children or parents.

17.7 Percentage Limitation. The Management Committee shall be empowered to allow up to ten percent (10.0%) of the Units in the Project to be leased or occupied by nonowner residents either as a Grandfathered Unit or as a Hardship Exemption.

17.8 Hardship Exception. The Management Committee, in its sole discretion, shall be empowered to allow reasonable leasing of Units upon written application to avoid undue hardship on an Owner. By way of illustration and not by limitations, examples of circumstances which would constitute undue hardship are those in which: a) an Owner must relocate his residence and cannot, within ninety (90) days from the date the Unit was placed on the market, sell the Unit while offering it for sale at a reasonable price no greater than its current appraised market value; b) the Owner dies and the Unit is being administered by his estate; c) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Unit; d) the Unit is to be leased to a member of the Owner's immediate family, which shall be deemed to encompass children, grandchildren, grandparents, brothers, sisters, parents, and spouses; or e) other good cause. Those Owners who have demonstrated that the inability to lease their Unit would result in undue hardship and have obtained the requisite approval of the Management Committee may lease their Units for such duration as the Management Committee reasonably determines is necessary to prevent undue hardship.

17.9 Application for Hardship Exception. Any Owner who believes that he must lease his Unit to avoid undue hardship shall submit a written application to the Management Committee setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Management Committee may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Management Committee's written approval of the Owner's application. When a lease is approved, a copy of the lease, signed by the lessee and lessor, shall be

submitted to the Management Committee within ten (10) days after it has been signed by both parties.

17.10 Grandfather Clause. Anything to the contrary notwithstanding, the foregoing restrictions shall not apply to the Units (the "Grandfathered Units") noted below. The Grandfathered Units may continue to be leased without restriction for so long as record title to said Units remains vested in the name of the respective Owner(s) thereof (the "Grandfathered Owner(s)"). The term "Grandfathered Owner" shall include a succeeding "Trust" or other "Person" (i.e., natural person, corporation, partnership, limited liability company, trust or other legal entity) (the "Qualified Successor Owner(s)") in which the Grandfathered Owner or such Owner's spouse, son, daughter, father or mother holds a beneficial interest in such Qualified Successor Owner of at least fifty percent (50%). Upon the conveyance of the Grandfathered Unit by the Grandfathered Owner or Qualified Successor Owner, the said Unit shall immediately become subject to the restrictions set forth above.

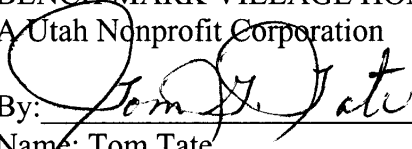
Unit No.            Unit Address:            Owner(s)

EXHIBIT "B"  
[LIST UNITS CURRENTLY BEING LEASED]

2. The effective date of this Amendment is the date it is recorded in the office of the County Recorder of Tooele County, Utah.

IN WITNESS WHEREOF, the Association has executed this instrument the day and year first above written.

BENCH MARK VILLAGE HOMEOWNERS ASSOCIATION  
A Utah Nonprofit Corporation

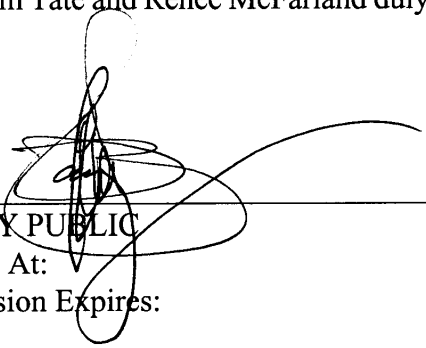
By:   
Name: Tom Tate  
Title: President

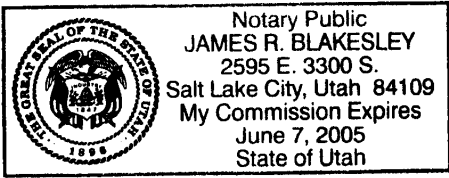
By:   
Name: Renee McFarland  
Title: Secretary

### ACKNOWLEDGMENT

STATE OF UTAH            )  
                                  )ss:  
COUNTY OF TOOELE    )

On the 3 day of July, 2001, personally appeared before me Tom Tate and Renee McFarland who by me being duly sworn, did say that they are the President and Secretary of the BENCH MARK VILLAGE HOMEOWNERS ASSOCIATION, and that the within and foregoing instrument was signed in behalf of said Association by authority of its Articles of Incorporation or a Resolution of its Management Committee and said Tom Tate and Renee McFarland duly acknowledged to me that said Association executed the same.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing At:  
Commission Expires:



# EXHIBIT "A"

Legal Description

The land referred to the foregoing document is located in Tooele County, Utah, and is described more particularly as follows:

<u>Unit No.</u>	<u>Parcel No.</u>
1	08-009-0-0001
2	08-008-0-0002
3	08-009-0-0003
4	08-009-0-0004
5	08-008-0-0005
6	08-009-0-0006
7	08-012-0-0007
8	08-012-0-0008
9	08-012-0-0009
10	08-012-0-0010
11	08-012-0-0011
12	08-012-0-0012
13	08-012-0-0013
14	08-012-0-0014
15	08-012-0-0015
16	08-012-0-0016
17	08-012-0-0017
18	08-012-0-0018
19	08-013-0-0019
20	08-013-0-0020
21	08-013-0-0021
22	08-013-0-0022
23	08-010-0-0023
24	08-010-0-0024
25	08-010-0-0025
26	08-010-0-0026
27	08-010-0-0027
28	08-010-0-0028
29	08-010-0-0029
30	08-010-0-0030
31	08-009-0-0031
32	08-009-0-0032
33	08-010-0-0033
34	08-010-0-0034
35	08-010-0-0035
36	08-010-0-0036

<u>Unit No.</u>	<u>Parcel No.</u>
37	08-010-0-0037
38	08-010-0-0038
39	08-010-0-0039
40	08-010-0-0040
41	08-010-0-0041
42	08-010-0-0042
43	08-011-0-0043
44	08-011-0-0044
45	08-011-0-0045
46	08-011-0-0046
47	08-013-0-0047
48	08-013-0-0048
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67	08-010-0-0067
68	08-009-0-0068
69	08-009-0-0069
70	08-009-0-0070
71	08-009-0-0071
72	08-009-0-0072
73	08-009-0-0073
74	08-009-0-0074
75	08-009-0-0075

## EXHIBIT "B"

### Grandfathered Units

<u>Unit No.</u>	<u>Name of Owner</u>	<u>Address</u>
02	Jerry Medley	Bench Village #2
03	Diane Rich	Bench Village #3
06	W. E. Ellington	Bench Village #6
08	Joyce Buzianis	Bench Village #8
16	George Cochrane	Bench Village #16
53	Jerry Syndergarrd	Bench Village #53