

Suite 299 Cottonwood Mall  
SLC 84117

Presented to the Board of Commissioners  
AND APPROVED

OCT 18 1979

*Michael T. Higham*  
CITY RECORDER

3357473

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
IRVING CIRCLE CONDOMINIUM

4600  
REC'D  
REC'D OF  
Sgt. [unclear]  
Zabala Fullmore

OCT 30 9 30 AM '79

KATIE L. DIXON  
RECORDER  
SALT LAKE COUNTY,  
UTAH

This Declaration made on the date hereinafter set forth by Equity Development, a Partnership, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property of Salt Lake County, State of Utah which is more particularly described on Exhibit "A" hereto attached,

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns shall inure to the benefit of each owner thereof. Prior to the conveyance of the first unit to an owner, Declarant shall by appropriate instrument, convey title to the common areas to Irving Circle Homeowners Association, Inc., a Utah non-profit corporation.

ARTICLE I

SECTION 1: Definitions:

As used herein or elsewhere in the Condominium Documents, unless otherwise provided, or unless the context required otherwise, the following

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terms shall be defined as in this Article provided.

1. Unit: Any one of those parts of the buildings which are separately described on the Record of Survey Map.

2. Unit Owner: The person, persons or entity holding title in fee simple to a unit in the Condominium Project and an undivided interest in the common areas and facilities as shown in the records of the County Recorder of Salt Lake County, Utah.

3. Assessment: That portion of the cost of maintaining and managing the property which is to be paid by each unit owner.

4. Properties: Shall mean and refer to that certain real property hereinabove described in attached Exhibit "A".

5. Association: "Irving Place Condominium Homeowners Association" or "Association" and its successors, a corporation duly organized under the laws of the State of Utah, with its principal place of business at Salt Lake City, Utah. Copies of the Bylaws of this corporation are annexed hereto and made a part hereof.

6. Buildings: The structure or structures containing the units located on the property.

7. Common Areas and Facilities: The common areas and facilities are that part of the property which is not within the units as such units are shown on the Record of Survey Map or which exists within the units by virtue of an easement herein created.

8. Common Expenses: The actual estimated costs of:

A. Maintenance, management, operation, repair and replacement of the common areas and facilities and those parts of the units as to which, pursuant to other provisions hereof, it is the responsibility of the Association to maintain, repair and replace;

B. management and administration of the Association, including without limiting the same to compensation paid by the Association to a managing agent, accountants, attorneys and other employees;

C. Any other items held by or in accordance with other provisions of this Declaration or the corporation Bylaws to be common expense.

9. Condominium Documents: This declaration and the Exhibits annexed hereto as the same from time to time may be amended. Said Exhibits are as follows:

Exhibit "A" Legal description of land comprising the property;

Exhibit "B" Bylaws of Irving Circle Homeowners Association;

Exhibit "C" Record of Survey Map certifying that the plans fully and accurately depict the layout, location, unit number and dimensions of the units as built;

Exhibit "D" Assignment of Parking Space.

## ARTICLE II

### SECTION 1: Condominium Name:

The name of this Condominium is:

IRVING CIRCLE CONDOMINIUM

## ARTICLE III

### SECTION 1: Name of Organization of Unit Owners:

The name of the organization of unit owners is:

IRVING CIRCLE HOMEOWNERS ASSOCIATION

a corporation duly organized under the laws of the State of Utah with its principal place of business at Salt Lake City, Utah. Irving Circle Homeowners Association, herein referred to as "Association" has enacted bylaws pursuant to the Non-profit Corporation Act of the State of Utah.

ARTICLE IV

SECTION 1: Description of Buildings:

The condominium project contains two buildings all of which are two and one-half stories in height, with one-half story underground in each building. The buildings are constructed of brick veneer, wood with asphalt roof. The condominium also contains a swimming pool and covered pavilion as part of the common areas and facilities.

ARTICLE V

SECTION 1: Description of Units:

One building contains eighteen (18) units with six (6) units on the first level, six (6) units on the second level and six (6) units on the third level. The second building contains three (3) units, one on each level. The approximate area of the units and access to the common areas and facilities are as shown on the Record of Survey Map.

ARTICLE VI

SECTION 1: Description of Common Areas and Facilities and Proportionate Interest of Each Unit Therein:

1. General Common Areas and Facilities. Except as otherwise in this Declaration provided, the common areas and facilities shall consist of the areas and facilities described in the definitions and constitute in general all of the parts of the property except the units and the limited common area. The general common areas and facilities shall include the following whether located in the bounds of the unit or not:

A. all structural parts of the buildings including, without limitation, foundations, columns, joists, beams, supports, supporting walls, floors, ceilings and roofs;

B. Driveways, parking areas, lawns, shrubs, trees, entrance ways, exterior stairways and service areas;

C. Swimming pool and covered pavilion;

D. Any utility pipe or line or system servicing more than a single unit, and all ducts, wires, conduits and other accessories used therewith;

E. All other parts of the 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 Record of Survey Map;

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

2. Use of Common Areas and Facilities. No person shall use the common areas and facilities or any part thereof in any manner contrary to or not in accordance with the rules and regulations pertaining thereto as from time to time may be promulgated by the Association.

3. Limited Common Areas. The limited common area shall be that part of each building consisting of the stairways and vehicle parking as shown on the Record of Survey Map.

4. Ownership of Common Areas. Each unit owner shall own as a tenant in common with the other unit owners an undivided 1/21 interest in the general common areas and shall have exclusive right to use that portion of the parking area assigned to the unit by the Association.

SECTION 2: Unit Description:

1. Real Property. Each unit, together with the space within it as shown on the Record of Survey Map and together with all appurtenances thereto shall for all purposes constitute a separate parcel of real property which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property independently of all other parts of the property, subject only to the provisions of this Declaration.

2. Boundaries: Each unit shall be bounded as to both horizontal

and vertical boundaries as shown on the Record of Survey Map, subject to such encroachments as are contained in the buildings whether the same exists now or are created by construction, settlement or movement of the buildings or permissible repairs, reconstruction or alteration. Said boundaries are intended to be as follows:

A. Horizontal Boundaries:

1. the upper boundary shall be the place of the lower surface of the ceiling;
2. the lower boundary shall be the place of the upper surface of the floor.

B. Vertical Boundaries:

1. between the units, the plane formed by the center line of the wall between units;
2. exterior boundaries of the plane formed by the interior side of the wall in which windows are located;
3. between unit and hallways, the plane formed by the center line of the walls.

2. Appurtenances: The unit shall also consist of:

- A. any finishing material applied or fixed to the interior surface of the perimeter walls, floors, ceilings including without limitation paint, varnish, wallpaper, tile and paneling;
- B. non supporting interior walls;
- C. windows and doors in the perimeter walls 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;
- D. all utility pipes or lines or systems and built-in fixtures and appliances including stove, refrigerator, air conditioning unit whether located within the bounds of the unit or not, but not including any space occupied thereby outside of the unit; furnace and water heater;
- E. easements for the benefit of the unit;
- F. Association membership funds and assets held by the Association for the benefit of the unit owner.

## ARTICLE VII

### SECTION 1: Assessments:

Assessments against the unit owners shall be made and approved by the Board of Directors of the Association and paid by the unit owners to the Association in accordance with the following provisions:

1. Share of Expense. Each unit owner shall be proportionately liable for his share of the common expenses in the same percentage as his share of ownership in the general common areas and facilities.
2. Assessments Other Than Common Expenses. Any assessments, the authority to levy which is granted to the Association or its Board of Directors by the condominium documents, shall be paid by the unit owners to the Association in the proportions set forth in the provisions of the condominium documents authorizing the assessment.
3. Assessments for Common Expenses. Assessments for common expenses shall be made for the calendar year annually in advance on or before the 15th day of December of the year preceeding for which the assessments are made and at such other times as in the judgment of the Board of Directors additional common expense assessments are required for the proper management, maintenance and operation of the common areas and facilities. Such annual assessments shall be due and payable in twelve (12) equal consecutive monthly payments, on the first day of each month, beginning with January of the year for which the assessment is made. The total of the assessment shall be in the amount of the estimated common expenses for the year, including a reasonable allowance for contingencies and reserves for replacements, less the amounts of unneeded common expense account balances. If an annual assessment is not made as required, a payment in the amount required by the last prior assessment shall be due upon each assessment payment date until changed by

a new assessment.

4. Assessments for Emergencies. Assessments for common expenses of emergencies which cannot be paid by the common expense account shall be made only by the Board of Directors of the Association.

5. Assessments for Liens. All liens of every nature, including taxes and special assessments levied by governmental authority which are a lien upon more than one unit or upon any portion of the common areas and facilities, shall be paid by the Association as a common expense.

6. Assessment Roll. The assessments against all unit owners shall be set forth upon a roll of the units which shall be available in the office of the Association for inspection at all reasonable times by the unit owners or their duly authorized representatives.

7. Liability for Assessments. The owners of a unit and his grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor. Such liability may not be avoided by a waiver of the use or enjoyment of any common areas or facilities or by abandonment of the unit for which the assessment is made. A purchaser of a unit at a judicial or foreclosure sale or a first mortgagee who accepts a deed in lieu of foreclosure shall be liable only for assessments coming due after such sale and for that portion of due assessments prorated to the period after the date of such sale.

8. Lien for Assessments The unpaid portion of any assessment which is due shall be secured by a lien upon the unit and all appurtenances thereto and shall be enforced in the manner provided for the foreclosure of liens by the laws of the State of Utah. Such lien shall have priority over all other liens except liens for general taxes and first mortgages or trust deed of record.



9. Application.

a. Interest; Application of Payments. Assessments and installments thereof paid on or before fifteen (15) days after the date when due shall not bear interest but all sums not paid on or before fifteen (15) days after the due date shall bear interest at the rate of eighteen percent (18%) per annum from the date when due until paid. All payments upon account shall be applied first to interest and then to the assessment payment first due. All interest collected shall be credited to the common expense account.

b. Suit. The Association at its option may enforce collection of delinquent assessments by suit at law or by foreclosure of the liens securing the assessments or by any other competent proceeding to recover in the same action, suit or proceeding the payments which are delinquent at the time of judgment or decree together with interest thereon at the rate of eighteen percent (18%) per annum, and all costs incident to the collection and the action, suit or proceeding, including, without limiting the same, to reasonable attorneys fees.

ARTICLE VII

SECTION 1: Use Restrictions:

The properties, homes and common areas and facilities shall be used and occupied as follows:

1. No part of the properties shall be used for other than housing and the related common purposes for which the properties were designed. Each unit shall be used and occupied as a residence for a single family and for no other purpose.

2. 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 Association except as is otherwise provided herein.

3. 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 that customarily applicable for residential use, without the prior written consent of the Association. No 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.

4. No owner shall cause or permit anything (including without limitation; sign, awning, canopy, shutter, storm door, screen door, radio or television antenna) to 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 Association.

5. 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 household pets may be kept in units, subject to the rules adopted by the Association and provided that they are not kept, bred or maintained for any commercial purpose and provided further that any such pet causing or creating a nuisance or disturbance shall be permanently removed from the property upon ten (10) days written notice from the Association.

6. 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.

7. 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.

8. No clothes, sheets, blankets, laundry of any kind or other article 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.

9. 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 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 property or in any unit therein, except that:

a. the Declarant may perform or cause to be performed such work as is incident to the completion of the development of the property, or to the sale or lease of units owned by the Declarant;

b. the Declarant or its agent may place "for sale" or "for rent" signs on any unsold, unoccupied or reacquired units and may place such other signs on the property as may be required to facilitate the sale or lease of an unsold unit;

c. the Association of Unit Owners or its agent or representatives may place "for sale" or "for rent" signs on any unit or on the property for the purpose of facilitating the disposal of units by any unit owner, mortgagee or the Association of Unit Owners; and

d. a unit owner with respect to a unit, and the Association or its agents or representatives 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.

## ARTICLE VIII

### SECTION 1: Insurance:

The insurance which shall be carried upon the property shall be governed by the following provisions:

1. Authority to Purchase. All insurance policies upon the property shall be purchased by the Association for the benefit of the unit owners and their respective mortgagees as their interest may appear and shall provide for the issuance of certificates of insurance mortgage endorsements to the holders of first mortgages on the units or any of them, and if insurance companies will agree, shall provide that the insurer waives its rights of subrogation as to any claims against unit owners, developer, and the Association and their respective employees, agents and invitees.

2. Unit Owners. Each unit owner shall obtain insurance, at his own expense, affording coverage upon his personal property and for his personal liability, but all such insurance shall contain the same waiver of subrogation as that referred to in Article VIII (1) above and must be obtained from an insurance company for which the Association obtains coverage against the same risk, liability or peril, if the Association has such coverage.

3. Coverage.

a. Casualty. The buildings and all other insurable improvements upon the land and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof as determined annually by the insurance company affording such coverage. Such coverage shall afford such protection against:

1. loss or damage by fire and other hazards covered by the standard extended coverage endorsement;

2. such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the buildings, including but not limited to, vandalism, malicious mischief, windstorm, water and flood damage.

b. Public liability and property damage in such amounts and in such forms as shall be required by the Association including but not limiting the same to general liability, water damage, legal liability, hired automobile, non-owned automobile and off-premises employee coverages.

c. Workmens Compensation policy to meet the requirements of law.

d. All liability insurance shall contain endorsements to cover liabilities of the Association as a group or unit owner.

4. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association, charged as a common expense.

5. Ownership and Payment of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees as their respective interests may appear and shall provide that all proceeds payable as a result of casualty loss shall be paid to the Association as Trustee. The Association shall hold such proceeds as may be paid on account of loss in trust for the purposes elsewhere stated herein, and for the benefit of the Association, the unit owners and their respective mortgagees as their interest may appear. If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such cost shall be retained by the Association or distributed to the unit owners and their mortgagees as their interest may appear. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be

distributed to the unit owner and his mortgagee jointly.

6. Reconstruction or Repair of Casualty Damage.

a. General Common Areas and Facilities. If any part of the general common areas and facilities shall be damaged by casualty the damage shall be promptly repaired and restored by the Association using proceeds of insurance, if any, on the improvements for that purpose and the unit owner shall be liable for assessments for any deficiency.

b. Single Unit. If the casualty damage is only to those parts of one unit for which the responsibility of maintenance and repair is that of the unit owner, then the unit owner shall be responsible for reconstruction and repair and the Association shall pay over to said unit owner all insurance proceeds received on account of such loss.

c. Buildings. If the casualty damage affects more than one unit in a building or buildings, and if less than three-fourths (3/4) of the building or buildings is destroyed or substantially damaged, the Association shall immediately proceed to repair and restore the building or buildings and all insurance proceeds shall be used therefor. Reconstruction and repair shall be carried out in the following manner:

1. Estimate of Cost. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association will obtain reliable and detailed estimates of cost to place the damaged property in condition as good as that before the casualty.

2. Assessments. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction or repair by the Association, assessments shall be made against the unit owners in sufficient amounts to provide funds to pay the estimated cost. If at any time during the reconstruction and repair, or upon completion of reconstruction or repair, it is determined that the insurance funds and assessments are insufficient to carry out restoration and repair, assessment shall be made against the unit owners in sufficient amount to provide funds for the payment of such additional costs.

3. Damage Exceeding Three-Fourths of the Building; Insufficiently Insurance Proceeds for Reconstruction: If three-fourths or more of a building is destroyed or substantially damaged and if insurance proceeds are insufficient to reconstruct the building and if the unit

owners by a vote of at least three-fourths of the unit owners do not voluntarily within one hundred twenty (120) days after such destruction and damage make provision for reconstruction, the Association shall record, with the County Recorder, a notice setting forth such facts, and upon recording such notice;

(a) The property shall be deemed to be owned in common by the unit owners in said building;

(b) The undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the limited common areas;

(3) The property shall be subject to an action for partition at the suit of any unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance, if any, shall be considered as one fund and shall be divided among the unit owners in said building in a percentage equal to the percentage of undivided interest owned by each owner in the property after first paying out of the respective shares of the unit owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each unitowner.

#### ARTICLE IX

##### SECTION 1: Maintenance and Repair of Units:

1. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of:

a. All portions of the unit which contribute to the support of the building, excluding, however, interior walls, ceiling and floor surfaces, and including, without intending to limit the same to, outside walls of the building, structural slabs, roof, interior boundary walls of units and loadbearing columns;

b. All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which may be contained in the unit but excluding therefrom, appliances, office machinery and plumbing fixtures;

c. All incidental damage caused to a unit by such work as may be done or caused to be done by the Association in accordance herewith;

d. Cause the building, appurtenances and grounds of the condominium to be maintained according to reasonably acceptable standards, including, but not limited to, lawn care, exterior cleaning, exterior painting, plumbing, carpentry, and such other normal maintenance and repair work as may be necessary;

e. Make contracts for sewer, water, exterior lights, refuse collection, exterior electric service, vermin extermination, and other necessary services. Also place orders for such equipment, tools, appliances, materials and supplies as are necessary to properly maintain the condominium;

f. Cause to be placed and kept in force necessary insurance needed adequately to protect the Association, its members and mortgagees holding mortgages covering condominium parcels, as their respective interest may appear (or as is required by law) including, but limited to, elevator maintenance contracts, if applicable, public liability insurance, fire and extended coverage insurance, as is more particularly set forth in this Declaration of Condominium.

Funds for the payment of the above and foregoing shall be assessed against the unit owners as a common expense.

2. The responsibility of the unit owner shall be as follows:

a. To maintain, repair and replace at his expense, all portions of the unit, including but not limited to exterior door and all glass doors and windows association with the unit;

b. To perform his responsibilities in such manner so as not unreasonably to disturb the rights of other persons occupying within the building;

c. Not to paint or otherwise decorate or change the appearance of any portion of the building not within the walls of the unit, unless the written consent of the Association is obtained;

d. To promptly report to the Association or its agent any defect or need for repairs or maintenance, the responsibility for the remedying of which is with the Association;

e. Not to make any alterations in the portions of the unit or the building which are to be maintained by the Association or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the building without first obtaining the written consent of the Association and first mortgagees of individual units, nor shall any unit owner impair any



easement without first obtaining the written consents of the Association and of the unit owner or owners for whose benefit such easement exists.

3. Nothing herein contained, however, shall be construed so as to impose a contractual liability upon the Association for maintenance, repair and replacement, but the Association's liability shall be limited to damages resulting from negligence.

#### ARTICLE X

##### SECTION 1: Membership and Voting Rights:

1. Every owner of a unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any unit which is subject to assessment. When more than one person holds an interest in any unit, all such persons shall be members. The vote for such unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any unit.

2. During the period of two (2) years from the date this Declaration is recorded or until the last unit is sold on the property described above, the Declarant shall have the right to name the governing board of the Association. This section shall not be subject to amendment during the terms set forth herein.

#### ARTICLE XI

##### SECTION 1: Mortgagee Protection:

Unless two-thirds of the mortgagees (based upon one vote for each first mortgage owned), or owners (other than the Declarant) of the individual condominium units have given their prior written approval, the Association shall not be entitled to:

1. By act or omission, seek to abandon or terminate the

condominium project;

2. Change pro rata the interest or obligation of any individual condominium unit for the purpose of:

a. Levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or

b. Determining the pro rata share of ownership of each condominium unit in the common areas.

3. Partition or subdivide any condominium unit;

4. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common areas. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common areas by the condominium project shall not be deemed a transfer with the meaning of this clause);

5. Use hazard insurance proceeds for losses to any condominium property (whether to the units or common areas) for other than the repair, replacement or reconstruction of such condominium property, except as provided by statute, case of substantial loss to the units and/or common areas of the condominium project.

6. A first mortgagee, upon request, is entitled to written notification from the Association of any default in the performance by an individual unit owner of any obligation to the Association by the owner which is not cured within sixty (60) days. First mortgagees may jointly or singly pay taxes or other charges which are in default and which are or may become a charge against any of the common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy. First Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

ARTICLE XII

SECTION 1: Service of Process:

The persons to receive service of process in cases provided herein or in the Utah Condominium Act are:

Wade Fillmore  
2163 Lorita Way  
Sandy, Utah 84070

The persons so designated may be changed from time to time by the Association.

ARTICLE XIII

SECTION 1: General Provisions:

1. Enforcement. The Association or any unit owner shall have the right to enforce by any proceeding at law or in equity all restriction, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, afterwhich time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty year period by an instrument signed by not less than a majority of the unit owners. Any amendment must be recorded. Declarant may amend this Declaration

without the vote of the membership during the term of two years from the date this Declaration is recorded or at such time as all the units are sold on the property.

4. It is the intention of the Declaration that the real property and improvements herein described is consistent with and subject to all provisions of the Utah Condominium Ownership Act and this instrument shall be interpreted in accordance therewith.

5. Condemnation. Should any part of the common property be condemned and an award given therefor, the Association shall disburse the proceeds to the Association unit owners and first mortgagees as their interest may appear, in accordance with the provisions of the Utah Condominium Ownership Act.

IN WITNESS WHEREOF the Declarant has executed this instrument September 24, 1979.

EQUITY DEVELOPMENT, A Partnership

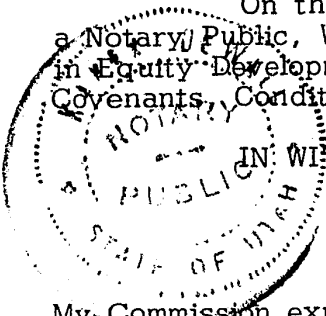
by Wade K. Fillmore

Wade Fillmore

STATE OF UTAH            )  
                                  :ss  
County of Salt Lake    )

On the 24 day of September, 1979, personally appeared before me a Notary Public, Wade Fillmore, who acknowledged to me that he is a partner in Equity Development, a Partnership, and that he executed this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, I hereunto set my hand and seal.



Karen Deebell  
Notary Public

My Commission expires:  
June 2, 1983

BYLAWS  
OF  
IRVING CIRCLE HOMEOWNERS ASSOCIATION

ARTICLE I

Name and Location

The name of the corporation is Irving Circle Homeowners Association hereinafter referred to as the "Association."

The principal office of the corporation shall be located at 2163 Lorita Way, Sandy, Utah but meetings of members and directors may be held at such places within the State of Utah, County of Salt Lake, as may be designated by the Board of Directors.

ARTICLE II

Definitions

1. "Association" shall mean and refer to Irving Circle Homeowners Association, its successors and assigns.
2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
3. "Common Area" shall mean all real property owned by the Association for the use and enjoyment of the owners.
4. "Unit" shall mean any one of those parts of the buildings which are separately described on the Record of Survey Map.
5. "Owner" shall mean and refer to the record owner whether one or more persons or entities, of the fee simple title to any unit which is a part

of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

6. "Declarant" shall mean and refer to Equity Development, a Partnership, its successors and assigns if such successors or assigns should acquire more than one unit from the Declarant for the purpose of development.

7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions applicable to the properties recorded in the office of the Salt Lake County Recorder.

8. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

### ARTICLE III

#### Meeting of Members

1. Annual Meeting. The first annual meeting of the members shall be held within one year following a term of two years or the date the last home on the property is sold, whichever date first occurs; the exact day to be fixed by resolution of the Board of Directors.

2. Special Meeting. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of a majority of the members entitled to vote.

3. Notice of Meeting. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall

specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, a majority of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his unit.

#### ARTICLE IV

##### Board of Directors, Selection, Term of Office

1. Number. The affairs of this Association shall be managed by a Board of three directors, who need not be members of the Association.

2. Term of Office. At the first annual meeting the members shall elect three directors who shall serve for the ensuing year, and thereafter until his successor has been elected and qualified.

3. Compensation. No director shall receive compensation for any services he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

4. Action taken without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at

a meeting of the directors.

## ARTICLE V

### Meetings of Directors

1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three days notice to each director.

3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the board.

## ARTICLE VI

### Powers and Duties of the Board of Directors

1. Powers. The Board of Directors shall have power to:
  - a. Adopt and publish rules and regulations governing the use of the common area and facilities, the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;
  - b. Suspend the voting rights and right to use the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty days for infraction of published rules and regulations;
  - c. Exercise for the Association, all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these bylaws, the Articles of



Incorporation, or the Declaration;

d. Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three consecutive regular meetings of the board of directors; and

e. Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties. A director may serve as manager or a corporation in which a director is an interested party may also serve as manager. The manager shall be entitled to receive reasonable compensation for services performed for the Association.

2. Duties. It shall be the duty of the Board of Directors of the Association to:

a. Cause to be kept a complete record of its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by a majority of the members who are entitled to vote;

b. Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

c. As more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each unit at least thirty days in advance of each annual assessment period;

(2) send written notice of each assessment to every owner subject thereto at least thirty days in advance of each annual assessment period;

(3) and, foreclose the lien against any property for which assessments are not paid within thirty days after due date or to bring an action at law against the owner personally obligated to pay the same.

d. Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

e. Procure and maintain adequate liability and hazard insurance on property owned by the Association; and provide blanket liability

and hazard insurance on all the properties and improvements thereon, if commercially available. If such insurance on the units is not available to the Association or the cost is greater than individual policies collectively, then the individual owner shall obtain such insurance and furnish the Association evidence thereof.

f. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

g. Cause the common area to be maintained;

h. Cause the exterior of the buildings to be maintained, as provided in the Declaration.

3. Indemnity. Each director shall be indemnified and held harmless by the members against all costs, expenses and liabilities whatsoever, including without limitation, attorney's fees reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a director of the Association.

## ARTICLE VII

### Officers and Their Duties

1. Enumeration of Offices. The officers of this Association shall be a president and vice president, who shall at all times be members of the board of directors, a secretary and a treasurer, and such other officers as the board may from time to time by resolution create.

2. Appointment of Officers. The appointment of officers shall take place following each annual meeting of the members.

3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

4. Special Appointments. The board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the board may, from time to time, determine.

5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or any time later specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6. Vacancies. A vacancy in any office may be filled by appointment of the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. A person may hold the offices of director, officer, and manager simultaneously.

8. Duties. The duties of the officers are as follows:

President

a. the president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall cosign all checks and promissory notes.

Vice President

b. The vice president shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

c. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the board of the members; keep the corporate seal of the Association and affix it in all papers requiring said seal; serve notice of meetings of the board and of the members; keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required by the Board.

## Treasurer

d. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the board of directors; shall sign all checks and promissory notes of the Association; keep proper books of record; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare and annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## ARTICLE VIII

### Committees

At the discretion of the Board of Directors, committees may be appointed to carry out the directives of the Board and to assist the Board in its corporate purposes.

## ARTICLE IX

### Books and Records

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at a reasonable cost.

## ARTICLE X

### Assessments

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon th property against which the assessment is made. Any assessments which are not paid when due shall become delinquent. If the assessment is not paid within fifteen days after the due date, the assessment shall bear interest at the rate of eighteen percent per annum, and the Association

may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common area or abandonment of his unit.

## ARTICLE XI

### Contractual Limitations

It is intended that the members of the Board of Directors shall have no person liability with respect to any contract made by them on behalf of the Association. It is also intended that the liability of any member arising out of any contract made by the Board or out of the indemnity in favor of the members of the board, shall be limited to such proportion of the total liability thereunder as his interest in the common areas bears to the interest of all of the members in the common areas. Every agreement made by the Board of by the managing agent or manager on behalf of the Association, shall provide that the members of the board of the managing agent or manager on behalf of the Association, shall provide that the members of the board of the managing agent, or the manager, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder (except as unit owners) and that each owner's liability thereunder shall be limited to such proportion of the total liability thereunder as interest in the common area, thereas to the interest of all owners in the common area.

## ARTICLE XII

### Amendments

1. These bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person

or by proxy, provided, however, prior to the meeting a written notice shall be given to each member concerning proposed amendments to be considered at such meeting.

2. In the case of any conflict between the Articles of Incorporation and these bylaws, the Articles shall control, and in the case of any conflict between the Declaration and these bylaws, the Declaration shall control.

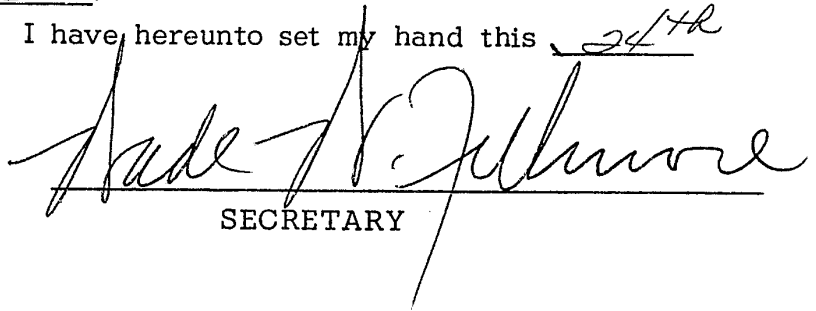
#### CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Irving Circle Homeowners Association, a non-profit corporation and;

That the foregoing Bylaws constitute the original Bylaws of the Association, as duly adopted at a meeting of the Board of Directors, held on the 24th day of September, 1979.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of September, 1979.

  
\_\_\_\_\_  
SECRETARY

## LEGAL DESCRIPTION

Beginning at a point which is South  $0^{\circ}15'07''$  West 1755.00 feet from the Northeast corner of the Southwest  $\frac{1}{4}$  of Section 27, Township 1 North, Range 1 West, S.L.B.&M.; thence South  $89^{\circ}59'34''$  East 189.75 feet; thence South  $0^{\circ}15'07''$  West 2.00 feet to the Southwest corner of Lot 1, WHITEHEAD SUBDIVISION, Plat A, according to the office plat thereof in the office of the Salt Lake County Recorder; thence South  $89^{\circ}59'34''$  East along the South line of said Lot 1 a distance of 118.66 feet to the Northeast corner of Lot 15, WHITEHEAD SUBDIVISION, Plat C according to the official plat thereof in the office of the Salt Lake County Recorder said Northeast corner of Lot 15 being on the arc of a 50 foot radius curve to the left whose radius point bears South  $37^{\circ}06'29''$  East; thence South-erly along the arc of said curve a distance of 89.88 feet through a central angle of  $102^{\circ}59'36''$  to the most Easterly corner of Lot 14 of the before mentioned WHITEHEAD SUBDIVISION, Plat C; thence South  $39^{\circ}53'55''$  West 28.36 feet; thence North  $0^{\circ}15'07''$  East 3.00 feet; thence North  $89^{\circ}59'34''$  North 330.00 feet to the East line of Redwood Road; thence North  $0^{\circ}15'07''$  East 99.00 feet along said East line; thence South  $89^{\circ}59'34''$  East 41.25 feet to the point of beginning. Containing 0.760  $\pm$  acres.

ASSIGNMENT OF PARKING SPACES

Parking spaces for the respective units as more particularly shown on the Record of Survey Map are as follows:

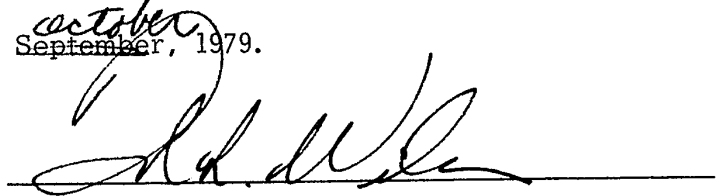
<u>UNIT</u>	<u>SPACE</u>
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21

*Exhibit D*



At a regularly scheduled meeting of the Board of Commissioners of Salt Lake City, Utah, a municipal corporation, it was determined that the developers of Irving Circle Condominium having complied with the requirements of the ordinances of the City, the said Condominium Project is approved and the documentation may be filed of record.

DATED this 18th day of ~~September~~ <sup>October</sup>, 1979.



MAYOR



*Mildred V. Higham*