

W-77

**FIRST AMENDMENT TO DECLARATION  
OF CONDOMINIUM OF LEXINGTON VILLAGE AT OLD FARM  
A PROWSWOOD OPEN SPACE COMMUNITY**

THIS FIRST AMENDMENT TO THE DECLARATION OF CONDOMINIUM OF LEXINGTON VILLAGE AT OLD FARM A PROWSWOOD OPEN SPACE COMMUNITY ("Amendment") is made and executed as of November 16, 2007 by the undersigned Unit Owners consisting of the Management Committee of Lexington Village at Old Farm A Prowswood Open Space Community.

**WITNESSETH:**

WHEREAS, a certain Declaration of Condominium of Lexington Village at Old Farm A Prowswood Open Space Community (the "**Declaration**") and Bylaws of Lexington Village at Old Farm A Prowswood Open Space Community (the "**Bylaws**") were executed on June 13, 1974 and recorded in the office of the County Recorder of Salt Lake County, State of Utah, as Entry No. 2630434, in Book 3613, Pages 454 to 489;

WHEREAS, a certain Record of Survey Map of Lexington Village at Old Farm - A Prowswood Open Space Community was executed on June 13, 1974 and recorded on June 19, 1974 in the office of the County Recorder of Salt Lake County, State of Utah, as Entry No. 2630435, (hereinafter referred to as the "**Map**");

WHEREAS, the Declaration, Bylaws and Map created the Condominium Project known as "Lexington Village at Old Farm, A Prowswood Open Space Community" (herein "**Lexington Village**").

WHEREAS, Lexington Village has been fully developed upon and includes the land located in Salt Lake County, Utah more particularly described in the Declaration;

WHEREAS, since the inception of Lexington Village the Units have been almost exclusively owned and occupied by resident owners and the few leases that have occurred have been primarily with family Owners and the Owners desire to maintain that nature of ownership and occupancy;

WHEREAS, the amendments are required to be approved by the affirmative vote or approval and consent of Owners having ownership of not less than two-thirds of the Units and undivided interests in the Common Areas and Facilities of Lexington Village; and

WHEREAS, pursuant to meetings duly called and held by Owners, more than two-thirds of the Owners of Units voted for and granted approval of the amendments to the Declarations and Bylaws.

NOW, THEREFORE, the following amendments to the Declaration and Bylaws are hereby adopted:

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**GARY W. OTT**  
RECORDER, SALT LAKE COUNTY, UTAH  
CALLISTER NEBEKER & MCCULLOUGH  
10 E SOUTH TEMPLE STE 900  
SLC UT 84133  
BY: BRG, DEPUTY - MA 11 P.

1. **Paragraph 26 of Article III of the Declaration** is amended so as to delete said Paragraph 26 as it presently appears and substituting the following:

**26.1 Purpose of Lexington Village.** Lexington Village has been completely sold out by the original developer and is substantially owner-occupied by individual Owners who are full time residents. Lexington Village shall remain substantially owner-occupied in order for Lexington Village to:

26.1.1 Protect the equity of the individual Unit Owners in Lexington Village;

26.1.2 Carry out the purpose for which Lexington Village was formed by preserving the character of Lexington Village as a homogenous residential community of owner-occupied Units and by preventing Lexington Village from being owned by absentee owners and assuming the character of an apartment, renter-occupied complex; and

26.1.3 Comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that a condominium project be substantially owner-occupied.

**26.2 Definition of Owner-Occupied.** The term "*owner-occupied*" shall mean a Unit occupied by one of the following:

26.2.1 The vested owner (as shown in the records of the Salt Lake County Recorder);

26.2.2 The vested owner and/or her/his spouse, children, siblings or parents;  
or

26.2.3 The shareholder, partner or member of a legal entity owning a Unit or the trustor or beneficiary of a trust owning a Unit (provided, such owner holds a beneficial interest of at least 50.0% in such trust or legal entity).

**26.3 Community-wide lease limitation.** At no time may more than ten percent (10)% of the total number of Units, in Lexington Village, be leased, rented, licensed, or let (collectively referred to as "**leased**").

**26.4 Written requests; Response time.** To ensure that the above lease limitation is not exceeded, any Owner who intends to lease his/her Unit shall first send a written request to the Management Committee to the Chair or the Treasurer. Upon receiving a written request to lease, the Management Committee shall, within 30 days thereof, notify the Owner if the lease limitation has been met and, in either case, if the Owner's request has been accepted or declined. As long as the lease limitation set forth in Section 26.3 above has not been met, permission shall not be unreasonably withheld.

**26.5 Management Committee may establish lease rules.** To accomplish the purpose and requirements of the lease conditions set forth herein and to otherwise ensure that the opportunity to lease Units is provided in a fair and equitable way, the Management

Committee may, from time to time, establish rules and regulations ("**Rules**") governing leases within the provisions of this Section 26.

26.6 **Minimum and maximum term.** No Unit may be leased for a term of less than twelve (12) months or more than two (2) years.

26.7 **No consecutive terms.** Once a lease term has expired no new lease may be obtained for the Unit until more than one year has passed from the date of expiration of the prior lease to the date of a new proposed lease.

26.8 **Lease must cover entire unit.** All leases must be for the entire Unit. No more than one lease may be signed for the same Unit and same lease term.

26.9 **Occupant bound by governing documents.** Each lease for a Unit shall include a clause whereby all occupants agree to be bound by the Declaration, Bylaws, and the Rules, all of which the Management Committee shall provide to the occupants for such reasonable fee as the Management Committee may from time to time determine.

26.10 **Attorney-in-fact.** Each lease for a Unit shall include a clause whereby during the period of such occupancy the Owner has irrevocably appointed and constituted the Management Committee as the Owner's attorney-in-fact to seek, at the Owner's expense, the eviction, equitable relief and/or damages of and/or from such occupants in violation of Declaration, Bylaws, or the Rules provided that the Management Committee first gives the Owner notice of said violation and a reasonable period to affect a cure.

26.11 **Copy of lease to Management Committee.** A copy of the lease must be provided to the Management Committee prior to the occupancy of the Unit pursuant thereto.

26.12 **Subletting.** No occupant may sublet a Unit unless the Owner receives the prior written consent of the Management Committee. All terms and requirements imposed hereby upon leases and occupants shall be likewise imposed upon subleases and subtenants.

26.13 **No landlord-tenant relationship exists.** In no event shall a landlord/tenant relationship exist between the Lexington Village and the occupant of a Unit lease.

26.14 **Extensions.** If, during the course of occupancy of any lease, an occupant demonstrates such a disregard for the provisions of the Declaration, Bylaws, or the Rules that the Management Committee determines it to be in its best interests to preclude the Owner from extending said lease, the Management Committee shall so notify the Owner, in writing, of that determination, and the Owner shall thereupon be precluded from extending said lease beyond its original term.

26.15 **Exceptions.** The provisions and restrictions on leasing as contained in this Section shall not apply to or may be waived by the Management Committee for the following:

**(a) Hardship situations.** An Owner suffering from a financial or personal hardship that renders the Owner unable to reside in his/her Unit may apply to the Committee to lease the Unit even if the limitation referred to in paragraph 26.3 above has been met. In such situations, Lexington Village through the Management Committee, in its sole discretion, shall be authorized to permit the Owner to lease his/her Unit.

**(b) Immediate family of Owners.** Units occupied by an immediate family member of an Owner shall not be considered a leased Unit where no rent, lease or other payment is made for use or occupancy of the Unit.

**(c) Lender's Rights.** The provisions of this Section 26 on leasing of Units shall not impair the rights of first mortgagees to foreclose or take title and possession to Units.

**26.16 Owner's responsibilities.** The Unit Owner is legally responsible for the acts, omissions, unpaid fines, monthly assessments and damage claims of the residents of her/his Unit, and their guests, visitors and invitees while at Lexington Village, who shall be bound by and subject to the Declaration, Bylaws and Rules.

**26.17 Recovery of costs and attorneys' fees.** Lexington Village shall be entitled to recover from the Unit Owner, its costs and attorneys' fees incurred in action taken to enforce this Section 26. The costs and attorneys' fees of Lexington Village shall be paid in full upon demand. Lexington Village may assess and take action to recover such unpaid costs and attorneys' fees against the Owner in the same manner as an unpaid assessment pursuant to Article III, Section 18(f) of the Declaration.

2. **Section 18(h) of Article III of the Declaration** is deleted and replaced by the following:

(h) **Capital Improvements.** There shall be no structural alterations, capital additions to, or capital improvements of, the Common Areas requiring expenditure in excess of \$10,000 without the prior approval of Unit Owners holding a majority of the voting power.

3. **Owner's Association Incorporation.** The Condominium Owners Association of Lexington Village (the "**Association**") was initially established by the original developer of Lexington Village as an unincorporated association. In order to take advantage of the limited liability and other benefits of incorporating the Association, the Owners have approved and consented to the incorporation of the Association as a Utah nonprofit corporation.

4. **Unit Owner Approval.** The undersigned Owners of the Management Committee hereby certify that this Amendment has been approved by the affirmative vote or approval and consent of Owners having ownership of not less than two-thirds (66.7%) of the Units and undivided interests in the Common Areas and Facilities of Lexington Village.

5. **Severability of Invalid Provisions.** Any provision of this Amendment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only

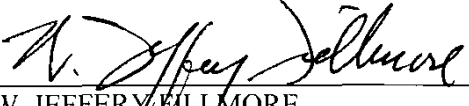
to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Amendment and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

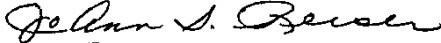

6. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which, when executed and delivered, shall be an original and all of which shall together constitute one and the same instrument.

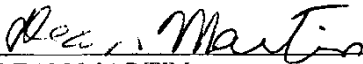
7. **Definitions.** Except as otherwise provided herein or as may be required by the context, all terms defined in the Declaration shall have such defined meanings when used in this Amendment.

8. **Declaration Remains in Effect.** As herein modified, terms of the Declaration shall remain in full force and effect.

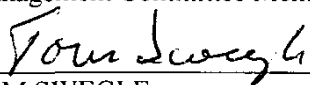
IN WITNESS WHEREOF, the undersigned, constituting all of the Owners of the Management Committee of the Association have set their hands this day and year first above written.

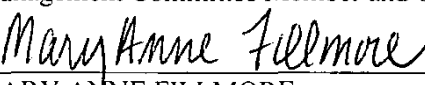
  
\_\_\_\_\_  
W. JEFFERY FILLMORE,  
Management Committee Member and Owner

  
  
\_\_\_\_\_  
JOANN REISER,  
Management Committee Member and Owner

  
\_\_\_\_\_  
DEAN MARTIN,  
Management Committee Member and Owner

  
\_\_\_\_\_  
LINDA CHRISTENSEN,  
Management Committee Member and Owner

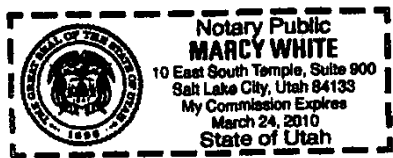
  
\_\_\_\_\_  
TOM SWEGLE,  
Management Committee Member and Owner

  
\_\_\_\_\_  
MARY ANNE FILLMORE,  
Management Committee Member and Owner

  
\_\_\_\_\_  
KEITH SCHIAGER,  
Management Committee Member and Owner

STATE OF UTAH            )  
  :SS.  
COUNTY OF SALT LAKE    )

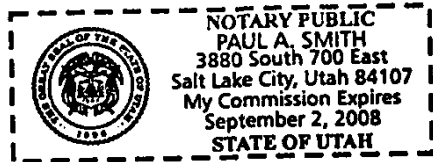
The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of November, 2007, by W. Jeffery Fillmore.



*Marcy White*  
\_\_\_\_\_  
NOTARY PUBLIC

STATE OF UTAH            )  
  :SS.  
COUNTY OF SALT LAKE    )

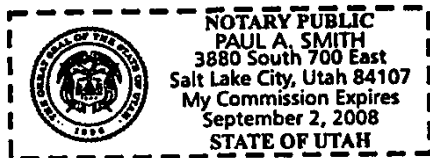
The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of November, 2007, by Dean Martin.



*Paul A. Smith*  
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NOTARY PUBLIC

STATE OF UTAH            )  
  :SS.  
COUNTY OF SALT LAKE    )

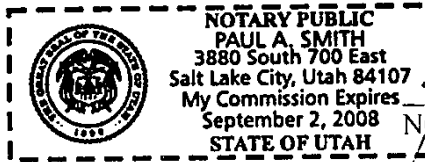
The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of November, 2007, by Tom Swegle.



*Paul A. Smith*  
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NOTARY PUBLIC

STATE OF UTAH )  
 :ss.  
COUNTY OF SALT LAKE )

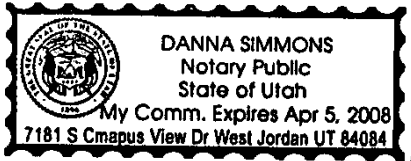
The foregoing instrument was acknowledged before me this 19th day of November, 2007, by Keith Schiager.



Paul A. Smith  
NOTARY PUBLIC

STATE OF UTAH )  
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COUNTY OF SALT LAKE )

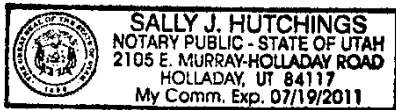
The foregoing instrument was acknowledged before me this 20 day of November, 2007, by JoAnn Reiser.



Danna Simmons  
NOTARY PUBLIC

STATE OF UTAH )  
 :ss.  
COUNTY OF SALT LAKE )

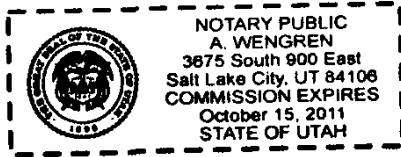
The foregoing instrument was acknowledged before me this 3rd day of ~~November~~ <sup>December</sup>, 2007, by Linda Christensen.



Sally J. Hutchings  
NOTARY PUBLIC

STATE OF UTAH                    )  
  :SS.  
COUNTY OF SALT LAKE        )

The foregoing instrument was acknowledged before me this 21 day of November, 2007, by Mary Anne Fillmore.



  
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NOTARY PUBLIC



**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF LAND INCLUDED IN**  
**LEXINGTON VILLAGE CONDOMINIUMS**

II. Submission to the Act. Declarant hereby submits to the provisions of the Act as the Tract associated with Phase No. 1 of the Project, the following described real property situated in the County of Salt Lake, State of Utah, to-wit:

Beginning at a point on the West right-of-way line of 700 East Street, said point being North  $89^{\circ}58'25''$  West 62.00 feet and South  $0^{\circ}14'13''$  West 1796.605 feet from the Northeast corner of Lot 10, Block 6, 10 Acre Plat A, Big Field Survey, said point of beginning also being South 66.38 feet and East 169.975 feet from the Northeast corner of Section 6, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence South

$0^{\circ}14'13''$  West along the West line of 700 East Street 780.885 feet; thence West 913.21 feet; thence North 175.705 feet; thence North  $60^{\circ}00'$  East 150.81 feet; thence South  $86^{\circ}00'$  East 47.54 feet; thence North  $4^{\circ}00'$  East 129.85 feet to a point of a 20.00 foot radius curve to the right; thence Northeasterly along the arc of said curve 21.29 feet to a point of tangency; thence North  $65^{\circ}00'$  East 58.53 feet to a point of a 300.00 foot radius curve to the left; thence Northeasterly along the arc of said curve 141.37 feet to a point of tangency; thence North  $38^{\circ}00'$  East 46.00 feet to a point of a curve to the left, the radius point of which is South  $79^{\circ}00'$  East 13.50 feet; thence Southerly and Easterly along the arc of said curve 22.79 feet to a point of tangency; thence South  $85^{\circ}42'36''$  East 226.26 feet; thence North  $0^{\circ}13'$  East 155.02 feet; North  $87^{\circ}59'36''$  West 245.00 feet; thence North  $20^{\circ}44'10''$  West 30.335 feet; thence North  $18^{\circ}00'$  West 44.00 feet to a point of a 200.00 foot radius curve to the left; thence Northerly along the arc of said curve 66.11 feet; thence South  $87^{\circ}59'36''$  East 588.32 feet to the beginning.

LESS the following:

Beginning at a point South 2360.50 feet and West 634.59 feet from the Northeast corner of Lot 10, Block 6, 10 Acre Plat A, Big Field Survey and running thence North  $9^{\circ}00'$  East 4.00 feet; thence South  $81^{\circ}00'$  East 4.00 feet; thence South  $9^{\circ}00'$  West 4.00 feet; thence North  $81^{\circ}00'$  West 4.00 feet to the point of beginning (the Well Property) together with a 15.00 foot easement for a water line running East of the Well Property the center line of which is described as follows:

Beginning at a point South 2358.83 feet and West 632.30 feet from the Northeast corner of Lot 10, Block 6, 10 Acre Plat A, Big Field Survey and running thence North  $81^{\circ}00'$  West 177.86 feet to the West boundary line of Lexington Village at Old Farm.

SUBJECT TO the provisions of the "Declaration of Covenants, Conditions and Restrictions Concerning the Old Farm Community" recorded in the office of the County Recorder of Salt Lake County, Utah on the 19<sup>th</sup> day of June, 1974, in Book 3613, Page 431 to 447, as Entry No. 2631436

RESERVED from the foregoing submission are such easements and rights of ingress and egress over, across, through, and under the above described tract and any improvements now or hereafter constructed thereon as may be necessary to develop each and every part of the Entire Tract as a Phase or Phases or as separate Condominium Projects. If, pursuant to this reservation, the above described real property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall terminate upon the first to occur of the following events: (a) When each and every part of the Entire Tract is part of a fully completed planned Community known as the "Old Farm Community" or (b) When the right to add additional Phases or Projects to the Community terminates.