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SUPPLEMENTAL DECLARATION OF AND
FIFTH AMENDMENT TO THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS AND
RESERVATION OF EASEMENTS FOR HIGH POINTE,
PHASES I, II, III, IV AND V
A UTAH PLANNED UNIT DEVELOPEMENT

This Supplemental Declaration of and Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for High Pointe, a Utah Planned Unit Development (hereinafter referred to as the "Fifth Amendment"), is made and executed this 13 day of September, 1994, by Terri Yeckley as President of the Association of Owners of the HIGH POINTE PLANNED UNIT DEVELOPEMENT, a Utah nonprofit corporation.

RECITALS:

A. A certain Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for High Pointe, a Utah Planned Unit Development thereby creating High Pointe, a Utah Planned Unit Development (hereinafter referred to as the "Project"), was recorded in the office of the County Recorder of Davis County, State of Utah, on December 24, 1984, in Book 1017, at Page 780, et seq., as Entry No. 690804; amended by that certain Supplemental Declaration of and First Amendment to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for High Pointe, a Utah Planned Unit Development, which Supplemental Declaration was recorded in the office of the County Recorder of Davis County, Utah, on February 3, 1986, as Entry No. 726021, in Book 1072, at Pages 998, et seq.; amended by that certain Supplemental Declaration of and Second Amendment to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for High Pointe, a Utah Planned Unit Development, which Supplemental Declaration was recorded in the office of the County Recorder of Davis County, Utah on May 1, 1987, as Entry No. 784171, in Book 1162, at Pages 1151, et seq.; amended by that certain Supplemental Declaration of and Second Amendment to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for High Pointe, a Utah Planned Unit Development, which Supplemental Declaration was recorded in the office of the County Recorder of Davis County, Utah on December 30, 1988, as Entry No. 846396, in Book 1272, at Pages 1020, et seq.; amended by that certain Supplemental Declaration of and Third Amendment to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for High Pointe, Phase IV, a Utah Planned Unit Development, which Supplemental Declaration was recorded in the office of the County Recorder of Davis County, Utah on February 19, 1991, as Entry No. 918155, in Book 1396, at Page 434 et seq.; amended by that certain Supplemental Declaration of and Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for High Pointe,

05-093-0001 to 0011 + 0031, (0082 common area)
05-094-001 to 0021 + (0022 common area)
05-099-0026, 0027 + (0028 common area)
05-103-0022 to 0025, 0028, (0029 common area or parcels A & B)
05-105-0029 + (0030 common area)

Phase V, a Utah Planned Unit Development, which Supplemental Declaration was recorded in the office of the County Recorder of Davis County, Utah on February 10, 1994, as Entry No. 1096502, in Book 1723, at Page 305 et seq.; (collectively the "Declaration").

B. A related subdivision plat entitled "Record of Survey Map of High Pointe, a Planned Unit Development" was recorded concurrently with the Declaration in Book 1017 of Plats at Page 779, as Entry No. 690803; as supplemented by that certain Plat of High Pointe Phase II, a Planned Unit Development, which was recorded in the office of the County Recorder of Davis County, Utah on February 3, 1986, as Entry No. 726020; as supplemented by that certain Plat of High Pointe Phase III, a Planned Unit Development, which was recorded in the office of the County Recorder of Davis County, Utah on December 30, 1988, as Entry No. 846391; as supplemented by that certain Plat of High Pointe Phase IV, a Planned Unit Development, which was recorded in the office of the County Recorder of Davis County, Utah on February 19, 1991, as Entry No. 918154; as supplemented by that certain Plat of High Pointe Phase V, a Planned Unit Development, which was recorded in the office of the County Recorder of Davis County, Utah on February 10, 1994, as Entry No. 1096501 (collectively the "Plat").

C. By recording the Declaration and the Plat, that certain real property defined and described in the Declaration and in the Plat as the "Properties" has been submitted to the covenants, conditions and restrictions set forth in the Declaration, which covenants, conditions and restrictions run with the land and inure to the benefit of and are binding upon all persons having any right, title or interest in the Project.

D. All mortgage companies holding mortgages for units in the High Pointe Planned Unit Development were contacted for votes on the Fifth Amendment to the Covenants, Conditions, and Restrictions. No negative votes were returned by the mortgage companies. Further, over sixty-seven percent (67%) of the lot owners have approved this Fifth Amendment to the original declaration.

NOW, THEREFORE, and for that purpose, the following amendments are made to the Covenants, Conditions and Restrictions of the High Pointe Homeowners Association, Planned Unit Development:

1. ARTICLE I, DEFINITIONS, Section 1.31, is amended to read, "Structural Maintenance Areas" shall mean, as the same may from time to time exist, the exterior surfaces of all attached row residential townhouse Dwelling Units and unattached garages, the patio and court yard fence surfaces, the exterior roofing material and gutters and down-spouts of such Dwelling Units and garages, the sky-lights, the exterior chimney surfaces, the exterior lighting fixtures, and the sidewalks outside the court yards. Structural Maintenance Areas shall specifically exclude all glass areas, Dwelling Unit and garage entrance doors, court yard surfaces, patio surfaces, deck surfaces, railings and trim (except scheduled staining and painting), and Dwelling Unit foundations and walls.

2. ARTICLE IX, Section 9.01, is amended to include the following: "It shall be the duty of each Lot Owner, at his sole cost and expense, subject to specifications provided by the Architectural Committee, to install electric heat tape on all non-southern exposed roofs as well as within all gutters and downspouts and to maintain and operate such heat tape as necessary to prevent the formation of ice dams or large icicles that could lead to interior water damage or present a hazard to individuals or vehicles in or around the Lot Owner's Dwelling Unit."

3. ARTICLE IX, Section 9.02, second sentence, is amended to read as follows: "Areas subject to the exclusive control of the Lot Owner shall be deemed to include, but not be limited to, the interior and all glass portions of the Lot Owner's Dwelling Unit and garage, the decks, the patios, the court yard areas, whether enclosed or not, and the individual Lot Owner's Lot."

4. ARTICLE X, Section 10.19, is amended to include the following: "If a Lot Owner (Lessor) defaults on his/her obligation to pay Common Assessments, the Lessee shall pay directly to the High Pointe Owners Association all monthly Common Assessments, beginning on the commencement of the residential lease agreement and continuing until its termination. If Lot Owner shall default in his/her obligation to pay Common Assessments, and shall fail to cure the default within fifteen (15) days after written notice thereof, Lot Owner hereby assigns, sets over and conveys to the Association automatically, and without further notice, all of his/her right, title and interest in and to the rents, issues, royalties, income and profits of his/her unit. Until Lot Owner shall default in the payment of his/her Common Assessment obligation, Lot Owner shall have the right to collect all such rents, issues, royalties, incomes and profits earned prior to default as they become due and payable. In the event of such default, however, Lot Owner's right to collect any of such monies shall cease and the Association shall have the right, with or without taking possession of the unit affected thereby, to collect all rents, royalties, issues, income and profits. Failure or discontinuance of the Association at any time or from time to time to collect any such monies shall not in any manner affect the subsequent enforcement by the Association to collect, shall be, or be construed to be, an affirmation by the Association of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of any lien or charge to any such tenancy, lease or option, nor a waiver of any claim against Lot Owner and shall be deemed exclusively to be an attempt by the Association to mitigate damages. This Assignment shall be prior and superior to any trust deeds with assignments of rent, except that of the first mortgage holder. In the event the common assessments are more than thirty (30) days delinquent, or should Lessee, persons residing with the Lessee or guests of the Lessee violate the Covenants, Conditions and Restrictions, the Bylaws, or rules and regulations of the High Pointe Owners Association, Lot Owner grants to the High Pointe Owners Association the right to evict Lessee. Should it become necessary for the Association to exercise its right of eviction as

a result of the failure to pay Common Assessments, the Association shall first give Lot Owner and Lessee five (5) days notice, with the right to bring current said fees within five (5) days. The right to evict Lessee for violation of the Covenants, Conditions and Restrictions, Bylaws, rules and regulations of the Association may be exercised by the Association after giving to Lot Owner five (5) days written notice. Thereafter, eviction shall take place as provided by the laws of the State of Utah. All covenants and representations herein are binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Lot Owner and Lessee. Notification by Lot Owner to Lessee of these provisions is to be in writing and become part of any lease agreement."

5. ARTICLE XIII, Section 13.02, is amended to include the following: "In the event of damage and/or personal injury resulting from ice or water, the cause of which could have reasonably been avoided by the installation and operation of heat tape as required in ARTICLE IX, Section 9.01, responsibility for and remedies related to such damage and/or personal injury shall be the sole responsibility of the Lot Owner, not withstanding any provision in this Declaration to the contrary."

6. ARTICLE XIII, Section 13.02, is amended to include the following: "The Association, at its option, may provide the insurance specified in this section under a single policy for all units. If such policy is provided by the Association, any deductible amount is to be paid by the Lot Owner(s) making claim for damages suffered."

7. ARTICLE XVII, Section 17.01, is amended to add the following: "(f) The Board of Trustees may, at its option, assess a fine not to exceed \$5.00 per occurrence or per day, depending on the offense, for violations of USE RESTRICTIONS outlined in ARTICLE X. Such fines may be assessed only after a verbal request and subsequent written notification have both failed to yield compliance by the offending Lot Owner with a restriction about which one or more Lot Owners have asked that compliance be enforced. Notification to the offending Lot Owner of the Board's intent to assess a fine is to be in writing and delivered in person or by registered mail. Such fine may be invoked seven days following delivery or mailing of the notification."

8. ARTICLE VIII, Section 8.11, is changed to read as follows: Treasurer. 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; shall sign all checks and promissory notes of the Association; shall keep proper books of account; shall cause an annual Engagement of Agreed Upon Procedures, to include (1) verify a random sample of paid invoices against check book, (2) confirm savings and checking account balances, and (3) verify a random sample of cancelled checks of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual

budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and shall deliver a copy of each to the Members.

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IN WITNESS WHEREOF, the undersigned has executed this instrument on the date and year first above written.

ASSOCIATION OF HOMEOWNERS OF HIGH POINTE PLANNED UNIT DEVELOPMENT

By: Terri Yeckley
Terri Yeckley
President

By: Beth Tippetts
Beth Tippetts
Secretary

STATE OF UTAH)
) :ss
County of)

On the 17th day of September, 1994, personally appeared before me TERRI YECKLEY, who being by me duly sworn did say that she is the President of the Association of Homeowners of High Pointe Planned Unit Development and said TERRI YECKLEY duly acknowledged to me that the within and foregoing instrument was signed in behalf of said association.

 David P. Gray
SALT LAKE CITY, UTAH 84101
COMMISSION EXPIRES Notary Public

STATE OF UTAH)
) :ss
County of DAVIS)

On the 7th day of Sept, 1994, personally appeared before me BETH TIPPETTS, who being by me duly sworn did say that she is the Secretary of the Association of Homeowners of High Pointe Planned Unit Development and said BETH TIPPETTS duly acknowledged to me that the within and foregoing instrument was signed in behalf of said association.

 David P. Gray
GARY ARMY
220 West 1000 South
Bldg. 1000
My Commission Expires
February 6, 1996
STATE OF UTAH
Notary Public