ENT 46063 BK 3723 PG 39
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1995 JUL 19 8:57 AM FEE 48.00 BY JD
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John K. M. Olsen
Attorney at Law
CottonTree Square, Bldg. 7G
2230 No. at University Parkway
Provo, UT 84604

SECOND SUPPLEMENT TO

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

OF

EAST MOUNTAIN

A Planned Unit Development (Expandable)

Provo, Utah County, Utah

THIS SECOND SUPPLEMENT TO DECLARATION is made as of this 14 day of July, 1995, by **EAST MOUNTAIN DEVELOPMENT, L.C.** , a Utah limited liability company ("Declarant"), pursuant to the following:

RECITALS:

A. Declarant is the developer of East Mountain, an expandable Planned Unit Development in Provo, Utah (the "Development").

B. On or about December 21, 1994, Declarant caused to be recorded as Entry No. 95723, Book 3591, Page 320, in the office of the Recorder of Utah County, Utah, that certain "Declaration of Easements, Covenants, Conditions and Restrictions of East Mountain, a Planned Unit Development (Expandable) (the "Declaration") relating to the Development.

C. Pursuant to §3.03 of the Declaration, Declarant is permitted to annex into the Development additional real property ("Additional Land") as set forth and described in the Declaration (including any Exhibit thereto) for purposes of development into additional Lots and Common Areas, if any, consistent with the existing phases (Plats "A" and "D") of the Development and with the Declaration.

D. Declarant desires to annex a portion of the Additional Land into the Development for development as Plats "B" and "C", respectively, of the Development.

NOW, THEREFORE, Declarant hereby declares as follows:

1. All defined terms as used in this Second Supplement to Declaration shall have the same meaning as those set forth and defined in the Declaration. The term "Declaration" shall be deemed to include the Declaration and all subsequent supplements or amendments thereto.

2. The real property situated in the City of Provo, County and State of Utah, described in Exhibit "A", attached hereto and made a part hereof, is hereby submitted to the provisions of the Declaration and, pursuant thereto, is hereby annexed into the Development to be held, transferred, sold, conveyed and occupied as a part thereof:

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, whether or not the same are reflected on the Plat.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the said property and any improvements (except buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of the Declaration): (i) to construct and complete each of the buildings and all of the other improvements described in the Declaration or in the Plat, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete on the Additional Land or any portion thereof such improvements as Declarant shall determine to build in its sole discretion (and whether or not the Additional Land or any portion thereof has been or hereafter will be added to the Development); and (iii) to improve portions of the said property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the said 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 reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire twenty (20) years after the date on which the Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described real property or any portion thereof, including, without limitation, any Mortgage (and nothing in this paragraph shall be deemed to modify or amend such Mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the said real property at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities; **AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS CONTAINED IN THE DECLARATION.**

3. Section 3.02 of the Declaration in amended in its entirety to read as follows:

3.02 Subdivision into Lots. The Development is hereby subdivided into forty-two (42) Lots, as set forth and described in the Plats, with appurtenant and equal rights and easements of use and enjoyment in and to any Common Areas, as well as appurtenant obligations, all as set forth in the Declaration.

4. Plat "B" of the Development contains no Lots but does contain Common Area labeled as Parcel A which Parcel A is encumbered in part with a 35 foot wide access easement to Lot 19 in Plat "A" of the Development. All costs of maintenance and upkeep of said easement shall be upon the owner of said Lot 19.

5. The following Lots in Plat "C" of the Development are twin home Lots as reflected on the Plat and upon which twin homes may be constructed with a party wall on the dividing line between said lots: Lots 67 and 68, 69 and 70, 71 and 72, and 73 and 74. The following provisions shall apply to any construction involving party walls:

PARTY WALLS

(a) **General Rules of Law to Apply.** Each wall to be built as a part of the original construction of the Units and placed substantially on a dividing line between Lots shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply thereto.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owner of another Lot thereafter makes use of the wall, such other Owner shall contribute to the cost of restoration thereof in proportion to such use; the foregoing provision shall not prejudice, however, the right of any Owner to call for a larger contribution from another Owner under any rule of law regarding liability for negligent or willful acts or omissions.

(d) **Weatherproofing.** Notwithstanding any other provision of this Paragraph 5, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Paragraph 5 shall be appurtenant to the land and shall pass to such Owner's successors in title.

6. Except as amended by the provisions of this Second Supplement to Declaration, the Declaration, as previously supplemented or amended, shall remain unchanged and, together with this Second Supplement to Declaration shall constitute the Declaration of Easements, Covenants, Conditions and Restrictions for the Development as expanded by the annexation of the Additional Land described herein.

7. This Second Supplement to Declaration shall be recorded concurrently with the Plats entitled "Plat "B", East Mountain, An Expandable Planned Unit Development, Provo, Utah County, Utah", and "Plat "C", East Mountain, An Expandable Planned Unit Development, Provo, Utah County, Utah, prepared and certified to by Thurman E. Madden (a duly registered Utah Land Surveyor holding Certificate No. 156204), executed and acknowledged by Declarant, accepted by Provo City, and filed for record in the office of the County Recorder of Utah County.

(The balance of this page is purposely left blank)

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first above set forth.

DECLARANT:

EAST MOUNTAIN DEVELOPMENT, L.C.

By: Ray G. Morley
Ray G. Morley, Manager

STATE OF UTAH)
: ss.
COUNTY OF UTAH)

On this 14 day of July, 1995, personally appeared before me Ray G. Morley who, being by me duly sworn, did say that he is the Manager of East Mountain Development, L.C., a Utah limited liability company; that said instrument was signed by him in behalf of said company pursuant to authority; and that said company executed the same.

Notary Public
GLEN W. ROBERT
337 West 3800 North
Provo, Utah 84604
My Commission Expires
January 1, 1997
State of Utah

Glen W. Robert
NOTARY PUBLIC

Notary Public
GLEN W. ROBER
337 West 3800 N
Provo, Utah 846
My Commission E
January 1, 19
State of Utal

Exhibit "A"

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Plat "B"

BEGINNING AT A POINT SOUTH 83.86' AND WEST 895.68' OF THE SOUTHEAST CORNER SECTION 17, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE & MERIDIAN; THENCE AS FOLLOWS:

S24°32'40"E	34.00'				
S48°18'18"W	137.49'				
S86°07'51"W	43.00'				
ARC TO LT	L=40.23'	Δ=11°56'36"	R=193.00'	CHD=N09°50'26"W	40.16'
ARC TO RT	L=233.13'	Δ=64°31'43"	R=207.00'	CHD=N16°27'07"W	221.00'
ARC TO LT	L=22.65'	Δ=06°43'22"	R=193.00'	CHD=N45°21'18"E	22.63'
S48°00'23"E	43.00'				
S13°42'33"E	116.70'	TO THE POINT OF BEGINNING			

CONTAINING 1 PARCEL AND 0.631 ACRES

BASIS OF BEARING: THE SECTION LINE BETWEEN THE SOUTHEAST CORNER OF SECTION 17 AND THE EAST QUARTER CORNER OF SECTION 17 BEARS NORTH 1°09'22" WEST.

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Exhibit "A"

Plat "C"

BEGINNING AT A POINT SOUTH 83.86' AND WEST 895.68' OF THE SOUTHEAST CORNER SECTION 17, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE & MERIDIAN; THENCE AS FOLLOWS:

N13°42'33"W	116.70'	
N48°00'23"W	72.00'	
N41°59'37"E	17.50'	
N48°00'23"W	103.30'	
S41°59'37"W	23.50'	
N48°00'23"W	420.00'	
S41°59'37"W	42.79'	TO A FENCE LINE
N47°08'07"W	137.09'	ALONG SAID FENCE LINE TO FENCE CORNER ON THE SOUTHEASTERLY LINE OF CRESCENT HILLS SUBD. PLAT "B" AS IT EXISTS ON THE GROUND
N42°34'30"E	223.65'	ALONG SAID SUBD. LINE
ARC TO LEFT	L=5.48'	Δ=1°19'35" R=228.00' CHD=N47°20'36"W 5.28'
N48°00'23"W	202.47'	
ARC TO RIGHT	L=30.74'	Δ=17°36'45" R=100.00' CHD=N39°12'00"W 30.62'
ARC TO LEFT	L=47.95'	Δ=17°36'45" R=156.00' CHD=N39°12'00"W 47.77'
N41°59'37"E	262.97'	
S23°14'19"E	440.89'	
S44°44'47"E	535.61'	
S43°48'39"E	75.96'	
S44°47'20"E	84.54'	
S41°59'37"W	93.97'	
S27°16'29"W	75.42'	
S43°13'27"W	125.37'	TO THE POINT OF BEGINNING

CONTAINING 27 PARCELS AND 6.364 ACRES

BASIS OF BEARING: THE SECTION LINE BETWEEN THE SOUTHEAST CORNER OF SECTION 17 AND THE EAST QUARTER CORNER OF SECTION 17 BEARS NORTH 1°09'22" WEST.