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**DECLARATION OF CONDOMINIUM  
OF THE  
MILL STREET QUARTERS  
CONDOMINIUMS**

Dated: April 22, 2002

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**DECLARATION OF CONDOMINIUM  
OF THE  
MILL STREET QUARTERS CONDOMINIUMS**

This Declaration of Condominium, hereinafter referred to as the "Declaration" is made and executed this 22<sup>nd</sup> day of April, 2002, by Cavalier, LLC, a Utah limited liability company, hereinafter referred to as the "Declarant."

**RECITALS**

A. Description of Land and Building. The Declarant is the owner of certain real property (the "Land") located in Davis County, State of Utah, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference, together with certain Buildings and other improvements thereon (collectively, the "Project").

B. Record of Survey Map. Concurrently with the recordation of this Declaration, Declarant will record in the office of the County Recorder of Davis County, State of Utah, a certain survey map pertaining to the Project and entitled "Mill Street Quarters Condominiums".

C. Intent and Purpose. The Declarant intends by recording this Declaration and the Map to submit the Land, the Buildings and all other improvements situated in or upon the Land to the provisions of the Utah Condominium Ownership Act, as amended, Utah Code Annotated, Section 57-8-1, et seq. (hereinafter referred to as the "Condominium Act") as a fee simple Condominium Project, and to impose upon such property mutually beneficial restrictions under a general plan of improvement for the benefit of all Condominiums within the Project and the Owners thereof

NOW, THEREFORE, the Declarant does hereby make the following declaration:

**ARTICLE 1 - DEFINITIONS**

As used herein, the following terms shall have the meanings given them below.

1.1 "Association" shall mean Mill Street Quarters Condominiums Owners Association, Inc., a Utah nonprofit corporation, organized to be the Association referred to herein. A copy of the Bylaws of the Association are attached hereto as Exhibit C and incorporated herein by this reference.

1.2 "Board of Trustees" or "Board" shall mean the governing board of the Association which constitutes the management committee under the Condominium Act and which shall be appointed or elected in accordance with this Declaration and in accordance with the Articles of Incorporation and Bylaws of the Association.

1.3 "Building" shall mean any of the buildings in the Project containing Units, as such Buildings are shown on the Map.

1.4 "Common Areas" shall mean all physical portions of the Project except all Units.

1.5 "Common Expense Fund" shall mean the fund created or to be created pursuant to the provisions of Article 9 of this Declaration and into which all monies of the Association shall be deposited

1.6 "Common Expenses" shall mean all expenses arising out of or incurred in performance of the maintenance and operation of the Common Areas, furnishing common utility services and other common items to the Condominiums, including, without limitation, expenses of management; premiums for all insurance that the Association is required or permitted to maintain under this Declaration; costs of repairs and maintenance; wages of Association employees, including fees for a Manager, if any; utility charges for utility services to the Units to the extent not separately metered or billed; legal and accounting fees incurred by the Association; any deficit remaining from a previous assessment period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance, repair, and replacement of those Common Areas that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or pursuant to this Declaration.

1.7 "Common Facilities" shall mean all furniture, furnishings, equipment, facilities and other property (real, personal or mixed) and interests therein at any time leased, acquired, owned or held by the Association for the use and benefit of the Owners and all other property (real, personal or mixed) hereafter purchased in accordance with this Declaration with monies from the Common Expense Fund. Common Facilities shall be deemed to be part of the Common Areas, except to the extent otherwise expressly provided in this Declaration.

1.8 "Condominium" shall mean a Unit and the undivided interest (expressed as a fraction of the entire ownership interest) in the Common Areas appurtenant to such Unit, as set forth in Exhibit B attached hereto and by this reference made a part hereof.

1.9 "Condominium Act" shall mean the Utah Condominium Ownership Act, Utah Code Annotated (1953), as amended, Section 57-8-1, et seq.

1.10 "Declarant" shall mean Cavalier, LLC, a Utah limited liability company, and its successors and assigns.

1.11 "FHA" shall mean the Federal Housing Administration.

1.12 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation.

1.13 "First Mortgagee" shall mean a Mortgagee which has a first mortgage lien on any Condominium in the Project. "Eligible Mortgagee" shall mean any First Mortgagee who has requested notice of those certain matters referred to in Section 14.1 hereof.

1.14 "FNMA" shall mean the Federal National Mortgage Association.

1.15 "Land" shall mean the Land upon which the Project is situated, as more particularly described in Paragraph A of the recitals above.

1.16 "Lease" shall mean any agreement for the leasing or rental of any Unit in the Project.

1.17 "Limited Common Areas" shall mean any Common Areas designated as reserved for use of a certain Unit or Units to the exclusion of the other Units in the Project. Structural separations between Units or the space which would be occupied by such structural separations may become Limited Common Areas for the exclusive use of the Owner or Owners of the Units on either side thereof as provided in Section 4.3 hereof.

1.18 "Manager" shall mean the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.

1.19 "Map" shall mean the Record of Survey Map for Mill Street Quarters Condominiums, recorded concurrently with this Declaration, and any Supplemental Maps pertaining to the Project and recorded or to be recorded in the office of the County Recorder of Davis County, State of Utah.

1.20 "Mortgage" shall mean any mortgage or deed of trust by which a Condominium or any part thereof is encumbered. "First Mortgage" shall mean any first mortgage or deed of trust by which a Condominium or any part thereof is encumbered.

1.21 "Mortgagee" shall mean (i) any persons or entities named as the mortgagee or beneficiary under any Mortgage or Deed of Trust by which the interest of any Owner is encumbered, (ii) any successor to the interest of such person or entity under such Mortgage or Deed of Trust or (iii) any insurer or guarantor of such person or entity under such Mortgage or Deed of Trust.

1.22 "Mortgage Insurer" shall mean FHA or VA.

1.23 "Mortgage Servicer" shall mean a Mortgagee who services any Mortgage on any individual Condominium in the Project on behalf of FHLMC and/or FNMA.

1.24 "Owner" shall mean the person or persons, including the Declarant, owning in fee simple a Condominium in the Project, as such ownership is shown by the records of the County Recorder of Davis County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Condominium pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Condominium under contract (until such contract is fully performed and legal title conveyed of record).

1.25 "Project" shall mean the Land, the Building and all improvements submitted by this Declaration and the Map to the provisions of the Condominium Act.

1.26 "Total Votes of the Association" shall mean the total number of votes appertaining to all Condominiums in the Project.

1.27 "Unit" shall mean an individual air space unit, consisting of enclosed rooms occupying part of the Building and bounded by the unfinished interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of the air space, as such boundaries are shown on the Map, together with all the fixtures and improvements therein contained. Paint and other wall, ceiling or floor coverings on interior surfaces shall be deemed to be part of the Unit. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or for the use and enjoyment of another Unit: bearing walls, floors, ceilings and roofs (except the interior surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The interior surfaces of a window or door mean the points at which such surfaces are located when the window or door is closed.

1.28 "VA" shall mean the Veteran's Administration.



## ARTICLE 2 - SUBMISSION AND DIVISION OF PROJECT

2.1 Submission to Condominium Act. The Declarant hereby submits the Land, the Buildings and all other improvements now or hereafter made in or upon the Land to the provisions of the Condominium Act. All of such property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used and improved as a fee simple condominium project to be known as Mill Street Quarters Condominiums, and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of such property and division thereof into Condominiums. Each and all of the provisions hereof shall be deemed to run with the Land and shall be a burden and a benefit on the Land and shall be binding upon the Declarant, its successors and assigns, and to any person acquiring, leasing or owning an interest in the Land, the Buildings, and the other improvements included within the Project and to their respective personal representatives, heirs, successors and assigns.

2.2 Division into Condominiums. The Project is hereby divided into Condominiums, each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Areas, as set forth in Exhibit B.

## ARTICLE 3 - BUILDING AND IMPROVEMENTS

3.1 Building and Improvements. The Buildings and other improvements constructed on the Land are depicted on the Map as Buildings 1, 2 and 3. Building 1 comprises two stories containing Units 5, 6, 7 and 8. Building 2 comprises two stories containing Units 9 and 10. A portion of Building 3 comprises two stories which contain Units 1, 2 and 3, and the remainder of Building 3 comprises two stories and an underground basement, which contain Unit 4. Adjacent to each Building is a covered parking area containing one parking space for each Unit contained in such Building, which covered parking spaces are designated as "Limited Common Area" on the Map. The remaining parking areas in the Project are designated on the Map as Common Area.

3.2 Description of Units. The Map contains the Unit number, location and dimensions of each Unit in the Project and all other information necessary to identify each such Unit.

3.3 Description of Common Areas. The Map contains a description of the Common Areas of the Project.

3.4 Description of Limited Common Areas. The Map contains a description of the Limited Common Areas of the Project and indicates to which Unit or Units such Limited Common Areas appertain, except that covered parking spaces shall be assigned to Units by the Board of Trustees, as provided herein.

3.5 Principal Construction Materials. The Buildings in the Project rest on reinforced concrete footings and foundations. Units 1, 2, 3, 5, 6, 7, 8, 9 and 10 consist of slab on grade construction and Unit 4 consists of slab on grade construction with full basement and reinforced concrete foundation walls. The first and second floors of each Building consist of stucco and brick over wood framing. The floors are covered with carpet, linoleum, asphalt tile or equivalent floor coverings. The Buildings will be supplied with electricity, gas, water and sewer service and fire sprinkling.

## ARTICLE 4 - NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

4.1 Interior of Units. Each Owner shall have the exclusive right to paint, repaint, tile, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of such Owner's Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries, construct and remove partition walls, fixtures and other improvements within the boundaries of such Owner's Unit and any storage areas included in the Limited Common Areas appurtenant to such Owner's Unit; provided, however, that such improvements (i) shall not impair the structural soundness or integrity of the Building; (ii) shall not interfere with facilities necessary for the support, use or enjoyment of any other part of the Project; (iii) shall be built to construction standards comparable or better than the original construction of the Project; and (iv) shall not encroach upon the Common Areas or any part thereof, unless the Board of Trustees shall consent in writing to such encroachment.

4.2 Maintenance of Units. Each Owner shall keep the interior of such Owner's Unit, including, without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. In the event that any Unit shall develop an unsanitary or unclean or unsafe condition or fall into a state of disrepair, and the Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Board of Trustees, the Board of Trustees on behalf of the Association shall have the right, but not the obligation, at the expense of such Owner and without liability to such Owner for trespass or otherwise, to enter such Unit and correct or eliminate the unsanitary or unclean condition or state of disrepair;

4.3 Right to Combine Units. With the written consent of the Board of Trustees, which consent shall not be unreasonably withheld, two or more Units may be utilized by the Owner or Owners thereof as if they were one Unit. To the extent permitted in the written consent of the Board, any walls, floors or other structural separations between any two such Units, or any space which would be occupied by such structural separations but for the utilization of the two Units as one Unit, may, for as long as the two Units are utilized as one Unit, be utilized by the Owner or Owners of the adjoining Units as Limited Common Areas, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other parts of the Project. At any time, upon the request of the Owner of one of such adjoining Units, any opening between the two Units which, but for joint utilization of the two Units, would have been occupied by structural separation, shall be closed, at the equal expense of the Owner or Owners of each of the two Units, and the structural separations between the two Units shall thereupon become Common Areas.

4.4 Title. Title to a Condominium within the Project may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to any other real property may be held or owned in the State of Utah, including, without limitation, joint tenancy or tenancy in common.

4.5 Ownership and Maintenance of Common and Limited Common Areas. The undivided interest in the Common Areas appurtenant to each Unit in the Project shall be as set forth in Exhibit B attached hereto. The undivided interest appurtenant to each Unit as shown in Exhibit B shall have a permanent character and shall not be altered except with the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Areas (other than Limited Common Areas) in any manner that does not hinder or encroach upon the rights of any other Owner and is not contrary to any rules and regulations promulgated by the Association. Except as otherwise provided in this Declaration,

any Owner shall have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner. The Association shall have the right and obligation to maintain and repair all Common Areas and Limited Common Areas. Each Owner shall also be responsible for keeping the porch area attached or adjacent to such Owner's Unit clean and free of debris.

4.6 Inseparability. Title to no part of a Condominium within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Areas appurtenant to each Unit shall always be conveyed, devised, encumbered and otherwise transferred only as a complete Condominium. Every devise, encumbrance, conveyance or other disposition of a Condominium, or any part thereof, shall be construed to be a devise, encumbrance, conveyance or other disposition, respectively, of the entire Condominium, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth. Any purported conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the Common Areas shall be void unless the Unit to which such interest is allocated is also transferred.

4.7 No Partition. The Common Areas shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

4.8 Separate Mortgage by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber such Owner's Condominium. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the undivided interest therein appurtenant to such Owner's Condominium. Any Mortgage or other encumbrance of any Condominium within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise.

4.9 Separate Taxation. Each Condominium within the Project, including each Unit and appurtenant undivided interest in the Common Areas, shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments and other charges of the State of Utah or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in accordance with the percentages set forth in Exhibit B. All such taxes, assessments and other charges on each respective Condominium shall be separately levied against the Owner thereof. No forfeiture or sale of any Condominium for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium.

4.10 Mechanics Lien. No labor performed or material furnished for use in connection with any Unit with the consent or at the request of an Owner or such Owner's agent or subcontractor shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting such labor or material or against any interest in the Common Areas, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and/or such materials shall have been furnished.

4.11 Description of Condominium. Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium within the Project may describe a Unit by its identifying number as indicated in this Declaration or as shown on the Map. Such

description shall be construed to describe the Unit, together with its appurtenant undivided interest in the Common Areas, and to incorporate all of the rights incident to ownership of a Condominium within the Project and all of the limitations on such ownership.

## ARTICLE 5 - EASEMENTS

5.1 Easements for Encroachments. In the event the construction, reconstruction, repair, shifting, settlement or other movement of any portion of the improvements causes any part of the Common Areas to encroach upon any Unit or any part of a Unit built in substantial accord with the boundaries for such Unit as depicted on the Map encroaches or shall encroach upon the Common Areas, or upon an adjoining Unit for any such reasons, an easement for such encroachment and for the maintenance of the encroaching improvement shall and does exist.

5.2 Easements for Maintenance, Cleaning and Repair. The Association shall have the irrevocable right to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair (emergency or otherwise) or replacement of any Common Areas or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas or to any Unit. In addition, agents of the Association may enter any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

5.3 Right to Ingress, Egress and Support. Each Owner shall have the unrestricted right to ingress and egress over, upon and across the Common Areas as necessary for access to such Owner's Unit and to any Limited Common Areas appurtenant to such Unit and shall have the right to horizontal, vertical and lateral support of such Unit, and such rights shall be perpetual and shall be appurtenant to and pass with title to each Condominium.

5.4 Association's Right to Use Common Areas. The Association shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain in the Common Areas (other than Limited Common Areas) facilities for use by Owners generally or by the Association and its agents exclusively.

5.5 Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Common Areas for the purpose of completing construction of the Project and making improvements therein as shown on the Map and for the purpose of doing all things reasonably necessary or appropriate in connection therewith.

5.6 Easements Deemed Created. All conveyances of Condominiums within the Project hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

## ARTICLE 6 - RESTRICTIONS ON USE

6.1 Single-Family Residential Use. All Units are intended to be used for single-family residential housing purposes and are restricted to such use; provided, however, such use may include overnight and other rental of units, in accordance with applicable laws, ordinances

and regulations. There shall be no "timesharing" of a Unit, as such term is defined by the Utah Timeshare and Camp Resort Act, Utah Code Ann. § 57-19-2 (17) (1953 as amended). E 1764409 3 3071 R 479

6.2 No Noxious or Offensive Activity. No noxious, destructive or offensive activity shall be carried on or placed in or upon any Unit, or in the Common Areas, or Limited Common Areas, or any part thereof, which shall interfere with the legal rights of other Owners, nor shall anything be done therein which is or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property. Without limiting the breadth of the foregoing, aluminum foil, newspapers, or any other similar materials may not be used to cover the windows in any Unit.

6.3 Use of Common Areas. The Common Areas shall be used only in a manner which is consistent with their community nature and with use restrictions applicable to the Units. Without limiting the breadth of the foregoing sentence: (i) no automobile or other vehicle shall be parked at any location within the Project which impairs or tends to impair vehicular or pedestrian access within the Project or to and from its various parts; (ii) no radio or television antenna or any wiring for any purpose may be installed on the exterior of the Building without the prior written approval of the Board of Trustees; (iii) no garments, rugs, or other household items, or washlines of any kind may be hung, erected, or maintained outside of an Owner's Unit; and (iv) no Owner shall discard any items, or permit any items to fall, from the windows of such Owner's Unit.

6.4 Restrictions on Signs. No signs, flags or advertising devices of any nature, including, without limitation, commercial, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, without the prior inspection and written approval of the Board of Trustees, except as may be necessary temporarily to caution or warn of danger. If the Association consents to the erection of any such signs or devices, such signs or devices shall be removed promptly at the request of the Association.

6.5 Pets and Animals. No animals of any kind may be raised, bred or kept in any Unit or anywhere else in the Project, except for household dogs and cats, so long as such animals do not constitute a nuisance or other impairment to the enjoyment of the Project by other Owners, their tenants or guests, and subject to such reasonable rules and regulations as may be promulgated by the Board of Trustees from time to time. Owners shall comply with all applicable leash laws and other ordinances affecting the ownership of pets.

6.6 Parking. The parking areas for the Project contain approximately twenty-four parking spaces. Each Unit shall have at least one parking space designated as Limited Common Area, reserved for the exclusive use of the Owner or occupant of such Unit. The location of the covered parking space designated for the use of any given Unit may be changed from time to time by the Board of Trustees in its reasonable discretion. Other spaces are part of the Common Areas, unreserved and available for use on a space available basis. The designation of the parking spaces as Common and Limited Common Areas is set forth on the Map. Notwithstanding anything to the contrary contained or implied herein or on the Map, any Owner who occupies a Unit as his or her primary residence shall not park more than one automobile in the covered parking areas of the Project at any time.

6.7 No Alterations. No Owner shall, without the prior written consent of the Board of Trustees in each specific instance, make or cause to be made any alteration, addition, removal or improvement (including but not limited to placement of screens, bars or outdoor carpet) in or to

the Common Areas, or any part thereof, or do any act that would impair the structural soundness or integrity of the Building or other improvements or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Project.

6.8 No Obstructions. No Owner shall obstruct the Common Areas or any part thereof. No Owner shall store or cause to be stored in the Common Areas (except in such Owner's storage area) any property whatsoever, unless the Board of Trustees shall consent thereto in writing.

6.9 No Overloading. No Owner shall bring anything into such Owner's Unit or permit anything to be done therein that will cause damage to the Building in which such Unit is located. No Owner shall overload the floor of such Owner's Unit. No Owner shall permit the use or operation in such Owner's Unit of any equipment, machinery or other apparatus that will in any manner injure, vibrate or shake the Building in which such Unit is located or portions thereof.

6.10 Prohibition of Damage and Certain Activities. Except with the prior written consent of the Board of Trustees, nothing shall be done or kept in any Unit, in the Common Areas or in any other part of the Project that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Project or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or by the guests, tenants, licensees or invitees of such Owner.

6.11 Rules and Regulations. Each Owner shall comply strictly with all rules and regulations adopted by the Association for the governance of the Units, the Common Areas and the Project, as such rules and regulations may be modified, amended and construed by the Association in the sole discretion of its Board of Trustees.

6.12 Construction Period Exemption. During the course of actual construction of any permitted structures or improvements within the Project, the provisions, covenants, conditions and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction nothing shall be done which will result in a violation of any such provisions, covenants, conditions or restrictions upon completion of the construction.

6.13 Leases. Any Lease between an Owner and a lessee respecting a Unit shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws and any failure by the lessee to comply with the terms of such documents shall be a default under the Lease. Each Lease shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease such Owner's Unit. An Owner shall be responsible and liable for any damage to the Project caused by such Owner's tenant.

## ARTICLE 7 - THE ASSOCIATION

7.1 Membership. Each Owner shall be entitled and required to be a member of the Association. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Condominium is held by more than one person, the membership appurtenant to that Condominium shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Condominium is held. An Owner shall be entitled to one membership for each Condominium owned by such Owner. Ownership of a Condominium within the Project cannot be separated from membership in the Association appurtenant thereto. Each membership shall be appurtenant to the Condominium to which it relates and shall be transferred automatically by conveyance of that Condominium.

7.2 Board of Trustees. Until such time as the responsibility for electing the Trustees of the Association is turned over to the Owners, the Declarant shall have the exclusive right to appoint and to remove all such Trustees. This exclusive right shall terminate after the first to occur of the following:

- (a) Five (5) years from the date on which the first Condominium in the Project is conveyed; or
- (b) The date upon which Units to which seventy-five percent (75%) of the undivided interest in the Common Areas appertain have been conveyed by Declarant to the purchasers thereof.

7.3 Votes. The number of votes appurtenant to each respective Condominium shall be as set forth in Exhibit B. The number of votes appurtenant to each Condominium as set forth in Exhibit B shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration. The Declarant shall have full voting rights with respect to each Condominium which it owns.

7.4 Professional Management. The Association may carry out through a Manager those of its functions which are properly the subject of delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any management agreement executed on or before the termination of Declarant control of the appointment of the Board of Trustees as described in Section 7.2 hereof may be terminated by the Association without cause at any time after transfer of such control. The above term and termination provisions shall not apply to any other types of service contracts.

7.5 Amplification. The provisions of this Article 7 may be amplified by the Articles and the Bylaws; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

## ARTICLE 8 - ASSOCIATION AND BOARD OF TRUSTEES

8.1 The Common Areas. The Board of Trustees, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all

improvements thereon (including the Common Facilities) and shall keep the Common Areas and Common Facilities in a good, clean, attractive, safe and sanitary condition, and in good order and repair; provided, however, that, unless otherwise stated herein, each Owner shall keep any Limited Common Areas (other than parking spaces) designated for use in connection with such Owner's Unit, if any, in a clean, sanitary and attractive condition. The Association shall be responsible for the maintenance and repair of the exterior of the Building, other improvements and grounds, including, without limitation, painting thereof, repair and replacement of exterior trim, roofs and fences and maintenance of elevators, parking areas, landscaping, walkways and driveways. The Board of Trustees shall also be responsible for maintenance, repair and replacement of Common Areas within the Building, including, without limitation, landings, stairways, utility lines, Common Facilities and all improvements and other items located within or used in connection with the Common Areas. The specification of duties of the Board of Trustees with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas. All goods and services procured by the Board of Trustees in performing its responsibilities under this Section 8.1 shall be paid for with funds from the Common Expense Fund.

8.2 Miscellaneous Goods and Services. The Board of Trustees may, on behalf of the Association, obtain and pay for the services of such personnel as the Board of Trustees shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Board of Trustees may, on behalf of the Association, obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Board of Trustees may, on behalf of the Association, acquire and pay for, out of the Common Expense Fund, water, sewer, garbage collection, electrical, gas and other necessary or desirable utility services for the Common Areas (and for the Units to the extent not separately metered or billed), insurance, bonds and other goods and services common to the Units.

8.3 Real and Personal Property. The Board of Trustees may acquire and hold on behalf of the Association real, personal and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise, provided that any acquisition or disposition of any real, personal or mixed property by the Board of Trustees wherein the value of any one item of such property exceeds Three Thousand Dollars (\$3,000) or the aggregate value of all such items purchased in any two calendar year period will exceed Fifteen Thousand Dollars (\$15,000) must be approved by a vote of at least fifty-one percent (51%) of the Total Votes of the Association at a meeting duly called for that purpose. All such property, including Common Facilities, shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such fund.

8.4 Rules and Regulations. The Board of Trustees may make reasonable rules and regulations governing the use of the Units, the Common Areas, the Limited Common Areas and all parts of the Project, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The Board of Trustees on behalf of the Association may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of such Owner arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner.

8.5 Granting Easements. The Board of Trustees may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, permits, easements, licenses and rights-of-way over, under, across and through the Common Areas for



utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

8.6 Statutory Duties and Powers. All duties, responsibilities, rights and powers imposed upon or granted to the "management committee" or to the "manager" under the Condominium Act shall be duties, responsibilities, rights and powers of the Board of Trustees hereunder.

8.7 Implied Rights. The Association may exercise any right, power or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## ARTICLE 9 - ASSESSMENTS

9.1 Obligation to Pay Assessments. Commencing upon the conveyance of the first Condominium sold by Declarant, each Owner of any Condominium (including Declarant) shall pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article 9.

(a) From and after January 1 of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased each year by up to fifteen percent (15%) above the maximum assessment for the previous year without a vote of the Owners.

(b) From and after January 1 of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased above fifteen percent (15%) if approved by a vote of sixty-seven percent (67%) of the votes of Owners who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board may fix the annual assessment at an amount not in excess of the maximum.

9.2 Annual Assessments. Annual assessments shall be computed and assessed against all Condominiums in the Project as follows:

(a) Common Expense. Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated Common Expenses for the fiscal year for which the annual assessments are levied. All funds received from assessments under this Subsection 9.2(a) shall be part of the Common Expense Fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses (the "Reserve Fund"), which together shall constitute the Common Expense Fund.

(b) Apportionment. Common Expenses (and all annual and special assessments therefor) shall be apportioned among and assessed to all Units and their Owners in proportion to the undivided interest in the Common Areas appertaining to each Unit, as set forth in Exhibit B. The Declarant shall be liable for the amount of any assessments against Condominiums owned by it.

(c) Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31, provided the first fiscal year shall begin on the date of this Declaration, and, on or before December 1 of each year thereafter, the Board of Trustees shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

(d) Notice and Payment. Except with respect to the first fiscal year, on or before December 1 each year, the Board of Trustees shall notify each Owner in writing as to the amount of the annual assessment against such Owner's Condominium for the following fiscal year. Except as otherwise provided by the Board, each annual assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year shall be based upon such portion of the first fiscal year. The Association shall have the right to charge a late fee equal to five percent (5%) of any assessment not paid within fifteen (15) days of the due date thereof. In addition, all unpaid installments of any annual assessment shall bear interest at the rate established by the Board, not to exceed eighteen percent (18%) per annum, from fifteen (15) days after the date each such installment became due until paid. In the event that any installment of the annual assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the annual assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the annual assessment installments so accelerated shall be due at the expiration of the fifteen (15) day notice period, and interest shall accrue on the entire sum at the rate of eighteen percent (18%) per annum or such other rate as may be established by the Board from time to time, not to exceed eighteen percent (18%) per annum, from such date until paid in full. The failure of the Board of Trustees to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to the date which is fifteen (15) days after notice of such assessment shall have been given to the Owners in the manner provided in this Declaration.

(e) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board of Trustees may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Section 9.3 below, except that the vote therein specified shall be unnecessary.

9.3 Special Assessments. In addition to the annual assessments authorized by this Article 9, the Board of Trustees may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the Condominiums and their Owners who are voting in person or by proxy at a meeting called for such purpose, special assessments, payable over such periods as the Board of Trustees may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses

incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This Section 9.3 shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other sections or articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners equally. Notice in writing of the amount of each such special assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this Section 9.3 shall be part of the Common Expense Fund.

9.4 Installments. Annual assessments shall be collected on a monthly basis and special assessments shall be collected as specified by the Board unless otherwise determined by a majority vote of the Owners of the Association approving the special assessment.

9.5 Notice and Quorum for Any Action Authorized Under Sections 9.1 and 9.3. Written notice of any meeting called for the purpose of taking any action authorized under Sections 9.1 or 9.3 of this Article 9 shall be sent to all Owners no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners entitled to cast fifty percent (50%) of all the votes (exclusive of suspended voting rights), in person or by proxy, shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

9.6 Lien for Assessments. All sums assessed to the Owner of any Condominium within the Project pursuant to the provisions of this Article 9, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Condominium in favor of the Association. To evidence a lien for sums assessed pursuant to this Article 9, the Board of Trustees may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the delinquent Owner and a description of the delinquent Owner's Condominium. In the event that the Board of Trustees should determine to accelerate all amounts due as allowed in Section 9.9 below, the written notice of lien may recite the total amount of the annual or special assessment of which the delinquent amount is a part. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Davis County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of an assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Owner's Condominium which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Trustees shall have the right and power on behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Condominium in the name of the Association.

9.7 Personal Obligation of Owner. The amount of any annual or special assessment against any Condominium shall be the personal obligation of the Owner of such Condominium to

the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing such obligation. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of such Owner's Condominium or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

9.8 Personal Liability of Purchaser. The personal obligation of an Owner to pay unpaid assessments against such Owner's Condominium as described in Section 9.7 above shall not pass to successors in title unless assumed by them; provided, however, a lien to secure unpaid assessments shall not be affected by the sale or transfer of the Condominium unless foreclosure by a First Mortgagee is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

9.9 Remedies Available to Association. In the event that any Owner shall fail to pay any annual or special assessment due hereunder or any portion thereof on the date on which such assessment or portion thereof is due, the Association, acting through the Board of Trustees, may (i) suspend the voting rights of such Owner until all amounts due have been paid in full; (ii) accelerate the due date of all installments for annual assessments due in the fiscal year in which such delinquency occurs; and (iii) avail itself of any other remedy available at law or in equity. All such remedies shall be cumulative, and not exclusive.

9.10 Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and Limited Common Areas. The reserve fund shall be maintained out of regular assessments for Common Expenses.

9.11 Evidence of Payment of Annual and Special Assessments. Upon receipt of a written request by an Owner or any other person, the Association within a reasonable period of time thereafter shall issue to such Owner or other person a written certificate stating (a) that all annual and special assessments (including interest, costs and attorneys' fees, if any, as provided in Section 9.2 above) have been paid with respect to any specified Condominium as of the date of such certificate, or (b) if all annual and special assessments have not been paid, the amount of such annual and special assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Condominium in question.

9.12 Amendment of Article. This Article 9 shall not be amended unless Owners entitled to vote at least seventy-five percent (75%) of the Total Votes of the Association consent and agree to such amendment and the Association reflects such consent and agreement in an instrument executed and recorded in accordance with the terms of this Declaration.

## ARTICLE 10 -INSURANCE

10.1 Insurance. The Association shall at all times maintain in force insurance meeting the following requirements:

(a) Hazard Insurance. A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Project, including: Common Areas, Limited Common Areas, the Buildings (other than the interior contents of the Units, including without limitation fixtures, appliances, and all other personal property of the Owner of such Unit, which personal property shall include all floor coverings, interior finishes, and other improvements installed or made by the Owner of such Unit), fixtures, building service equipment, personal property and supplies constituting a part of the Common Areas or Common Facilities or owned by the Association; but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity condominium insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). The maximum deductible amount for such policy shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount. All premiums shall be paid as a Common Expense.

(b) Flood Insurance. If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a "master" or "blanket" policy of flood insurance shall be maintained covering the Building, any machinery, equipment and other common property that are not part of the Building and all Common Areas and Common Facilities within the Project (hereinafter "Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for all the Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of all such facilities. Provided, however, the Building coverage shall equal one hundred percent (100%) of the insurable value of the Building, including machinery and equipment that are part of the Building. The contents coverage must include 100% of the insurable value of all contents, including any machinery and equipment that are not part of the Building, but which are owned in common by the Association members. The maximum deductible amount for any such policy shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount.

(c) The name of the insured under each policy required to be maintained by the foregoing items (a) and (b) shall be the Association for the use and benefit of the individual Owners. (Notwithstanding the immediately foregoing sentence, each such policy may be issued in the name of an authorized representative of the Association,

including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(d) Each policy required to be maintained by the foregoing items (a) and (b), shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Project is located. If FNMA is a holder of one or more Mortgages on Condominiums within the Project, such mortgage clause shall name FNMA or FNMA's servicer of such Mortgages as Mortgagee. If FNMA's servicer is named as mortgagee in such mortgage clause, such servicer's name shall be followed therein by the phrase "its successors and assigns". In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

(e) Each policy required to be maintained by the foregoing items (a) and (b), shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually; that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and that the policy is primary in the event the Owner has other insurance covering the same loss.

(f) Each policy required to be maintained by the foregoing item (a) shall also contain or provide the following: (1) "Inflation Guard Endorsement", if available; (2) "Building Ordinance or Law Endorsement", if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (3) "Steam Boiler and Machinery Coverage Endorsement", if the project has central heating or cooling, which shall provide that the insurer's minimum liability per accident is in an amount not less than the lesser of Two Million Dollars (\$2,000,000) or the insurable value of the Building containing the boiler or machinery. In lieu of obtaining this as an endorsement to the commercial package property, the Association may purchase separate stand-alone boiler and machinery coverage.

(g) Liability Insurance. The Association shall maintain in force, and pay the premium for, a policy providing comprehensive general liability insurance coverage covering all of the Common Areas, public ways in the Project, if any, all other areas of the Project that are under the Association's supervision, and commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least Two Million Dollars (\$2,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in

connection with the operation, maintenance, or use of the Common Areas and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be cancelled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each First Mortgagee on an individual Unit in the Project.

(h) Insurance Trustees and General Requirements Concerning Insurance.

Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

Each insurance policy maintained pursuant to this Section 10.1 shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Board, the Association, FNMA, or the designee of FNMA; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Association, an Owner, or FNMA) from collecting insurance proceeds.

(i) Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

10.2 Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time. Notwithstanding any other provisions contained herein to the contrary, the Association shall maintain in effect such casualty, flood and liability insurance and fidelity bonds meeting the insurance and fidelity bond requirements for condominium development projects insured by FHA, VA, FNMA and FHLMC, so long as any of them is a Mortgagee, Mortgage Insurer, Mortgage Servicer or Owner of a Condominium within the Project, except to the extent such coverage is not available or has been waived in writing by FHA, VA, FNMA or FHLMC.

10.3 Owner's Own Insurance. Each Owner, at such Owner's own expense, shall procure and maintain at all times fire and extended coverage insurance covering personal property of such Owner and additional fixtures and improvements added by such Owner against loss by fire and other casualties, including, without limitation, vandalism and malicious mischief, together with property damage liability coverage with limits of not less than Ten Thousand Dollars (\$10,000) per occurrence covering losses emanating from within such Owner's Unit. In the event that any Owner fails to carry the property damage liability insurance required herein, such Owner shall still be responsible for payment of the first Ten Thousand Dollars (\$10,000) for any loss or damages emanating from within such Owner's Unit. All policies providing such casualty insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article 10. Notwithstanding the provisions hereof, such Owner may obtain insurance at such Owner's own expense providing such other coverage upon such Owner's Condominium, personal property, for such Owner's personal liability and covering such other risks as such Owner may deem appropriate, provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article 11. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance shall contain a waiver of the insurance company's right of subrogation against the Association, the Declarant, the Manager, other Owners and their respective servants, agents and guests.

## ARTICLE 11 - DAMAGE OR DESTRUCTION

11.1 Association as Attorney-in-Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Project in the event of damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by grantee of the Association as such grantee's attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

11.2 Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

11.3 Procedures. In the event all or any part of the Project is damaged or destroyed, and subject to the provisions of Article 14 below, the Association shall proceed as follows:



(a) Notice to First Mortgagees. The Association shall give timely written notice to each Eligible Mortgagee in the event of substantial damage to or destruction of any Unit to which the Mortgage held by such Eligible Mortgagee pertains or any part of the Common Areas.

(b) Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.

(c) Sufficient Insurance. If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

(d) Insufficient Insurance--Less than Seventy-Five Percent (75%) Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a special assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such special assessment shall be allocated and collected as provided in Section 9.3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

(e) Insufficient Insurance--Seventy-Five Percent (75%) or More Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if, within one hundred (100) days following the damage or destruction, the Owners shall elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction. If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction, and if Eligible Mortgagees who represent at least fifty-one percent (51%) of the votes on Condominiums subject to Mortgages held by Eligible Mortgagees approve such termination, the Association shall record in the office of the County Recorder of Davis County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

(i) The Project shall be deemed to be owned in common by the Owners;

(ii) The undivided interest in the Project owned in common which shall pertain to each Owner shall be the percentage of the undivided interest previously owned by such Owner in the Common Areas;

(iii) Any liens affecting any of the Condominiums shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and

(iv) The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners in a percentage equal to the percentage of undivided interest owned by each respective Owner in the Common Areas, as set forth in Exhibit B hereto, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner.

(f) In no event shall an Owner of a Unit or any other party have priority over the holder of any First Mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

11.4 Repair or Reconstruction. If the damage or destruction is to be repaired and reconstructed as provided above, the Association shall, as soon as practicable after receiving an estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, (except as otherwise expressly provided herein). The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

11.5 Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to Subsection 11.3(d) hereof shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to their respective percentages of ownership of the Common Areas.

11.6 Amendment of Article. This Article 11 shall not be amended unless Owners entitled to vote at least seventy-five percent (75%) of the Total Votes of the Association consent and agree to such amendment in an instrument duly executed and recorded accordance with the provisions of this Declaration.

## ARTICLE 12 - CONDEMNATION

12.1 Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article 12 shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Trustees shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any Eligible Mortgagee whose interest may be affected thereby. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the

condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

12.2 Proceeds. All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be distributed by the Board of Trustees, on behalf of the Association as herein provided.

12.3 Complete Taking. In the event the entire Project is taken by power of eminent domain, condominium ownership pursuant thereto shall terminate and the condemnation award shall be allocated among and distributed to the Owners in proportion to their respective undivided interests in the Common Areas; provided, however, to the extent that there are significant differences in the fair market values of the Condominiums immediately prior to the condemnation, the Owners shall divide the condemnation award based upon the relative values of the Condominiums immediately prior to the condemnation. Such distribution shall be made by check payable jointly to the respective owners and their respective Mortgagees, as appropriate.

12.4 Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

(a) Allocation of Award. As soon as practicable, the Board of Trustees shall, on behalf of the Association, reasonably and in good faith, apportion the condemnation award between compensation, severance damages or other proceeds and shall allocate and pay such apportioned amounts to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken) in proportion to their respective undivided interests in the Common Areas;

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Condominiums that have not been taken in proportion to their respective undivided interests in the Common Areas;

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit;

(iv) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

(vii) No provision of this Article 12 or any other provisions in this Declaration, the Articles or the Bylaws shall entitle the Owner of a Unit or other party to priority over any First Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

(b) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows:

(i) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a member of the Association and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interest in the Common Areas;

(ii) If any partial taking results in the taking of a portion of a Unit and if no determination is made by the Board of Trustees, after duly considering any recommendations, proposals or other input from the Owners, that such taking does not make it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then, unless the interests of the Units in the Common Areas are equal, all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reduced in proportion to the reduction in square footage of floor area of such Unit resulting from the taking. The voting rights and undivided interest in the Common Areas so divested from such Unit shall be reallocated to, and shall appertain to, such Unit and the other Units in the Project in proportion to their respective undivided interests in the Common Areas; provided, however, that such Unit shall participate in such reallocation on the basis of the undivided interest reduced in accordance with the preceding sentence;

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board of Trustees, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the entire undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Areas, and the remaining portion of such Unit shall thenceforth be part of the Common Areas;

(iv) The Board of Trustees, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Subsection 12.4(b) hereof; provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board of Trustees shall defer thereto and proceed in accordance therewith.

(c) Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article 11 hereof for cases

of damage or destruction; provided, however, that the provisions of Article 11 dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

### ARTICLE 13 - TERMINATION AND SALE

13.1 Required Vote. Except as otherwise provided in Article 11 and Article 12, the Project may be terminated only by agreement of Owners entitled to vote at least seventy-five percent (75%) of the Total Votes of the Association at a meeting of Owners duly called for such purpose.

13.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by Eligible Mortgagees whose Mortgages encumber Condominiums to which at least sixty-seven percent (67%) of the votes of Condominiums subject to First Mortgages held by Eligible Mortgagees appertain. Such approval (and any other approval related to an amendment to this Declaration) shall be deemed given when an Eligible Mortgagee fails to submit a response within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the office of the County Recorder of Davis County, State of Utah and is effective only on recordation.

13.3 Sale of Project. A termination agreement may provide that all the Project shall be sold following termination. If, pursuant to the termination agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

13.4 Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 13.1 and 13.2 above. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the relative value of each Condominium. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Condominium in accordance with the terms of this Declaration. During the period of that occupancy right, all Owners and their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.

13.5 Proceeds of Sale. Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and divided among all Owners in a percentage equal to the percentage of undivided interest owned by each respective Owner in the Common Areas, as set forth in Exhibit B hereto, subject to the rights of Mortgagees with respect to such proceeds. Following termination, Mortgagees holding Mortgages on the Condominiums which were recorded before termination may enforce those liens in the same manner as any lienholder.

## ARTICLE 14 - MORTGAGEE PROTECTION

14.1 Notice of Action. Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and the number and address of the Condominium, any such First Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;
- (b) Any delinquency in the payment of assessments or charges owed by an Owner, whose Condominium is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 14.2 below or elsewhere herein.

14.2 Matters Requiring Prior Eligible Mortgagee Approval. Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Condominiums in the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on Condominiums having at least fifty-one percent (51%) of the votes of the Condominiums subject to First Mortgages held by Eligible Mortgagees shall be required to.

- (a) Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs.
- (b) Add or amend any material provision of this Declaration which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):
  - (i) voting rights;
  - (ii) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
  - (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas;
  - (iv) responsibility for maintenance and repairs;
  - (v) reallocation of interests in the Common Areas, or rights to their use;

- (vi) redefinition of any Condominium boundaries;
- (vii) hazard or fidelity insurance requirements;
- (viii) imposition of any restrictions on the leasing of Condominiums;
- (ix) imposition of any restrictions on Owner's right to sell or transfer his or her Condominium;
- (x) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration; or
- (xi) any provisions that expressly benefit Mortgagees, insurers, or guarantors.

Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

14.3 Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Condominiums in the Project. Generally, these documents shall be available during normal business hours.

Any First Mortgagee shall have the right to have an audited financial statement prepared at its own expense.

14.4 Subordination of Lien. To the extent permitted by the Condominium Act, the lien or claim against a Condominium for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Condominium if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Condominium shall take such title free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Condominium affected or previously affected by the First Mortgage concerned.

14.5 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Elements are not timely paid, or in the event the required hazard insurance described in Subsection 10.1(a) lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

14.6 Priority. No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Condominiums or the Common Elements.

14.7 Additional Information Made Available to Holders, Insurers and Guarantors of First Mortgages. In addition to the rights granted in Section 14.3 above, any holder, insurer or guarantor shall, upon request, be entitled to written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

14.8 Priority of First Mortgagee in Event of Damage. In the event of substantial damage to or destruction of any Unit or any part of the Common Areas, no provision of the Declaration, Articles or Bylaws or any amendment thereto shall entitle the owner of a Unit or other party to priority over any First Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

14.9 Priority of First Mortgagee in Event of Condemnation. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, no provision of the Declaration, Articles or Bylaws or any amendment thereto shall entitle the Owner of a Unit, or any other party, to priority over any First Mortgagee with respect to the distribution to such Unit of the proceeds of any award or settlement.

14.10 No Right of First Refusal. No "right of first refusal" shall be included or added by amendment to the Declaration, Articles or Bylaws.

#### ARTICLE 15 - COMPLIANCE WITH DECLARATION AND BYLAWS

15.1 Compliance. Each Owner shall comply strictly with the provisions of this Declaration, the Articles and Bylaws of the Association, rules and regulations promulgated by the Association and the decisions and resolutions of the Association adopted pursuant thereto, as they may lawfully be modified and amended from time to time. Failure to so comply shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Association or, in a proper case, by an aggrieved Owner.

15.2 Enforcement and Remedies. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any Supplemental or Amended Declaration, with respect to the Association or Condominiums within the Project shall be enforceable by the Declarant or by any Owner of a Condominium within the Project, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or Amended Declaration, with respect to a person or entity or property of a person or entity other than the Association shall be enforceable by the Declarant or by the Association or, in a proper case, by an aggrieved owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. No summary abatement or similar procedure may be utilized through nonjudicial means to alter or demolish items of construction.

#### ARTICLE 16 - GENERAL PROVISIONS

16.1 Intent and Purpose. The provisions of this Declaration, and any Supplemental or Amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform



plan for the development and operation of a Condominium Project. Failure to enforce any provision, restriction, covenant or condition contained in this Declaration, or in any Supplemental or Amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provisions, restrictions, covenants or conditions.

16.2 Construction. The provisions of this Declaration shall be in addition and supplemental to the provisions of the Condominium Act and all other provisions of law. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof and any gender shall include both genders. The article and section headings set forth herein are for convenience and reference only and are not intended to expand, limit or otherwise affect the meaning or interpretation of this Declaration or any provision hereof. The provisions hereof shall be deemed independent and several, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provisions hereof.

16.3 Lists of Owners and Eligible Mortgagees. The Board shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Condominium which is owned by him; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Condominium which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an insurer or governmental guarantor, the address of such person or entity, and the Condominium which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Condominium, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Davis County, Utah. The Board may for all purposes act and rely on the information concerning Owners and Condominium ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Condominium or Condominiums which is obtained from the office of the County Recorder of Davis County, Utah. The address of an Owner shall be deemed to be the address of the Condominium owned by such person unless the Board is otherwise advised.

16.4 Amendment. Except as provided elsewhere in this Declaration, any amendment to this Declaration shall require the affirmative vote of at least sixty-seven percent (67%) of the Total Votes of the Association present in person or represented by proxy entitled to be cast at a meeting duly called for such purpose or otherwise approved in writing by such Owners. Any amendment authorized pursuant to this Section 16.4 shall be accomplished through the recordation in the office of the Davis County Recorder of an instrument executed by the Association. In such instrument an officer or Trustee of the Association shall certify that the vote required by this Section 16.4 for amendment has occurred. Anything in this Article 16 or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of the Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Condominium(s) or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an amendment duly signed by or on behalf of the authorized officers of Declarant with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an amendment shall be

deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section 16.4 deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control. Within five (5) years from the date of recording this Declaration and so long as the Declarant is the owner of any Condominium in the Project this Declaration may be amended or terminated only with the written approval of the Declarant. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of any Condominium.

16.5 Effective Date. This Declaration shall take effect upon recording.

16.6 Agent for Service. The name and address of the person to receive service of process in all cases provided by the Condominium Act shall be the registered agent and address of the Association as shown on the official corporate records maintained in the office of the Division of Corporations and Commercial Code of the State of Utah. On the date of this Declaration, the registered agent of the Association is Eric D. Olsen, whose address is 3625 Harrison Boulevard, Ogden, Utah 84403.

16.7 Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any person in or upon the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any parts of the Building or their drains, pipes, conduits, appliances or equipment, or from any other place, unless caused by the gross negligence or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules or order of any governmental authority.

16.8 Owner's Obligations. All obligations of an Owner, under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that such Owner may be leasing, renting or selling under contract such Owner's Condominium. The Owner of a Condominium within the Project shall have no obligation for expenses or other obligations accruing after such Owner conveys such Condominium.

16.9 Model Units, Sales Offices and Advertising Signs. Declarant and Declarant's duly authorized agents, representatives and employees shall have the right to establish and maintain model units and sales offices of any size on the Land within the Project and the right to use such model units and sales offices during the period that Condominiums in the Project remain unsold. No more than two model units and one sales office will be established and maintained by Declarant in the Project. Declarant reserves the right to relocate such models and office from time to time within the Project. Declarant further reserves the right to maintain advertising signs on the Project and to place such signs in any location and to relocate, replace and remove such signs at the sole discretion of Declarant during the period that Units in the Project remain unsold.

16.10 Rights of Action. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association.

16.11 General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Condominiums, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Condominium.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the day and year first above written.

DECLARANT:

CAVALIER, LLC, a Utah limited liability company

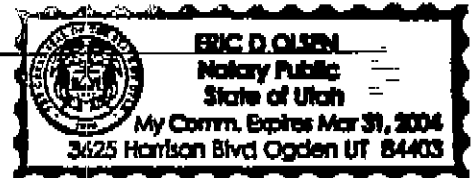
By: Jeffrey L Miller  
Name: Jeffrey L. Miller  
Title: Manager

STATE OF UTAH )  
 ) : ss.  
COUNTY OF Weber )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of April, 2002, by Jeffrey L Miller, the Manager of Cavalier, LLC, a Utah limited liability company.

Eric D. Olsen  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
3-31-04



## EXHIBIT A

## Legal Description of Land

That certain real property located in Davis County, State of Utah, and more particularly described as follows:

Beginning at a point which is an angle corner of "Three Fountains Bountiful", a Utah condominium project, at a point North 1230.81 feet and West 262.71 feet from the East Quarter corner of Section 30, Township 2 North, Range 1 East, Salt Lake Base and Meridian, and running thence South  $01^{\circ}40'17''$  West 197.24 feet; thence North  $88^{\circ}19'43''$  West 84.74 feet to a point on a non-tangent curve to the right (radius bears North  $80^{\circ}35'00''$  West 212.00 feet); thence along the arc of said curve 69.71 feet through an included angle of  $18^{\circ}50'29''$ ; thence South  $28^{\circ}15'30''$  West 14.58 feet to a point on the North right of way line of Mill Street; thence along said North right of way line North  $61^{\circ}44'30''$  West 74.39 feet; thence North  $08^{\circ}26'00''$  East 156.85 feet; thence North  $56^{\circ}15'55''$  West 99.24 feet; thence North 27.72 feet; thence East 244.82 feet to the point of beginning.

**EXHIBIT B**

(Attached to and forming a part of the Declaration of Condominium of Mill Street Quarters Condominium Project, a Utah Condominium Project.)

<b>UNIT NO.</b>	<b>SQUARE FOOTAGE</b>	<b>UNDIVIDED INTEREST (Percentage)</b>	<b>VOTES</b>
1	1130	9.4%	9.4
2	1130	9.4%	9.4
3	1130	9.4%	9.4
4	1695	14.2%	14.2
5	1150	9.6%	9.6
6	1150	9.6%	9.6
7	1150	9.6%	9.6
8	1150	9.6%	9.6
9	1150	9.6%	9.6
10	1150	9.6%	9.6

EXHIBIT C

E 1764409 B 3071 P 504

*BYLAWS OF  
MILL STREET QUARTERS CONDOMINIUMS OWNERS  
ASSOCIATION, INC.*

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**BYLAWS OF  
MILL STREET QUARTERS CONDOMINIUMS OWNERS ASSOCIATION, INC.**

The following shall be the Bylaws of the Mill Street Quarters Condominiums Owners Association, Inc., a Utah nonprofit corporation (the "Association"). All capitalized terms used but not defined herein shall have the meaning given them in the Declaration of Condominium, dated as of April \_\_, 2002, pertaining to the Project (the "Declaration"), as it may be modified or amended from time to time.

**ARTICLE 1: NAME AND LOCATION**

The name of the corporation is Mill Street Quarters Condominiums Owners Association, Inc. The principal office of the corporation shall be located at 3625 Harrison Boulevard, Ogden, Utah 84403 or such other location as may be designated by the Board of Trustees from time to time, but the meetings of Members and of the Board of Trustees may be held at such places in the State of Utah as may be designated by the Board of Trustees.

**ARTICLE 2: APPLICATION OF BYLAWS**

All present and future Owners, Mortgagees, lessees and occupants of any Unit and any other persons who may use the Project or any portion thereof in any manner are subject to the Declaration, these Bylaws, and all rules made pursuant hereto and any amendments hereof. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that the provisions of the Declaration and these Bylaws and any rules and regulations made pursuant hereto, as they may be amended from time to time, are accepted, ratified and will be complied with.

**ARTICLE 3: MEETINGS OF MEMBERS**

3.1 Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular meeting of the Members shall be held on the first Saturday of February each year thereafter, at the hour of 6:00 p.m. at the Project or some reasonable location in Davis County, Utah or on such other annual date and time fixed by the Board of Trustees. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first Saturday following which is not a legal holiday.

3.2 Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Trustees, or upon written request of one-fourth (1/4) of all of the Members entitled to vote.

3.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary of the Association or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before the meeting to each Member entitled to vote, 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.

3.4 Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, Members entitled to vote a simple majority of the Total Votes of the Association shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If, however, such a quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the 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.

3.5 Action Taken Without a Meeting. Any action that may be taken at any regular or special meeting of the Association may be taken without a meeting if the following requirements are met:

(a) A written ballot is distributed to every Member entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal and providing a reasonable time for the Member to return the ballot to the Association.

(b) The number of votes cast by ballot within the specified time under Subparagraph (a) above equals or exceeds the quorum required to be present at a meeting authorizing the action.

(c) The number of approvals of the action equals or exceeds the number of votes required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot.

3.6 Proxies. At each meeting of the Members, each Member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member or by his or her attorney thereunto duly authorized in writing. The instrument authorizing the proxy to act shall indicate the name of the secretary of the Association, or such other officer or person who may be acting as the secretary at the meeting to whom the proxy is to be given for the purpose of casting the vote to reflect the absent Member's vote as specified in the form of proxy. If a Unit is jointly held, the instrument authorizing a proxy to act must have been executed by all Owners of such Unit or their attorneys thereunto duly authorized in writing. Such

instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

#### ARTICLE 4: BOARD OF TRUSTEES, SELECTION, TERM OF OFFICE

4.1 Number. The affairs of the Association shall be managed by a Board of three (3) trustees, who need not be Members of the Association, subject to increase or decrease as provided in the Articles of the Association.

4.2 Term of Office. At the first annual meeting the Members shall elect one (1) trustee for a term of one (1) year and two (2) trustees for a term of two (2) years, and at each annual meeting thereafter the members shall elect, for a two (2) year term, trustees to fill the positions vacated at such meeting.

4.3 Removal. Any trustee may be removed from the Board of Trustees, with or without cause, by a majority of the Total Votes of the Association. In the event of death, resignation or removal of a trustee, his or her successor shall be selected by the remaining Members of the Board of Trustees and shall serve for the unexpired term of his or her predecessor.

4.4 Compensation. No trustee shall receive compensation for any service he or she may render to the Association. However, any trustee may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

4.5 Action Taken Without a Meeting. The trustees shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the trustees. Any action so approved shall have the same effect as though taken at a meeting of the trustees.

#### ARTICLE 5: NOMINATION AND ELECTION OF TRUSTEES

5.1 Nominations. Nominations for positions on the Board of Trustees shall be made by petition filed with the Secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by Owners holding two (2) or more Memberships and signed by the nominee named therein indicating his or her willingness to serve as a member of the Board of Trustees, if elected.

5.2 Election. Voting for the Board of Trustees shall be by secret written ballot. Each Membership shall be entitled to cast the vote appertaining to such Member's Unit multiplied by the number of Board of Trustee seats to be filled. Each Member may cumulate its votes and cast

all of them in favor of a single candidate, or distribute its votes on the same principle among as many candidates as the Member sees fit.

## ARTICLE 6: MEETINGS OF TRUSTEES

6.1 Regular Meetings. The Board of Trustees shall hold a regular meeting at least quarterly, without notice, at such place and hour as may be fixed from time to time by resolution of the Board of Trustees. Should a regularly scheduled meeting date 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.

6.2 Special Meetings. Special meetings of the Board of Trustees shall be held when called by the President of the Association, or by any two (2) trustees, after not less than three (3) days notice to each trustee.

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

## ARTICLE 7: POWERS AND DUTIES OF THE BOARD OF TRUSTEES

7.1 Powers. The Board of Trustees shall have power to:

(a) Adopt and publish rules and regulations governing the use of the Common Areas, and the personal conduct of the Members and their guests thereon, and to establish penalties of the infraction thereof;

(b) Suspend a Member's voting rights and right to use of any recreational portions of the Common Areas 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 (60) days for infraction of published rules and regulations;

(c) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws, the Articles, or the Declaration;

(d) Declare the office of a member of the Board of Trustees to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Trustees; and

(e) Employ a Manager, an independent contractor, and such other employees as the Board of Trustees reasonably deems necessary, and to prescribe their duties.

7.2 Duties. It shall be the duty of the Board of Trustees to:

(a) Cause to be kept a complete record of all 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 one-fourth (1/4) of the Members who are entitled to vote;

(b) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration, to:

(i) Fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period;

(ii) Send written notice of each annual assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(iii) Foreclose at its discretion the lien against any Unit for which assessments are not timely paid and/or to bring an action at law against the Owner personally obligated to pay such assessments.

(d) Issue, or 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 Trustees 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, to the extent deemed necessary by the Board of Trustees, adequate officers and trustees indemnity insurance, and all other insurance required by the Declaration;

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

(g) Cause the Common Areas to be appropriately landscaped and maintained;

(h) Permit First Mortgagees of Units in the Project to pay taxes or other charges which are in default and which may or have become a charge against the Common Areas of the Association, and such First Mortgagees may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such property, and such First Mortgagees, upon making such payments, shall be owed immediate reimbursement therefor from the Association;

(i) Assess and collect all assessments referred to or authorized in the Declaration.

### ARTICLE 8: OFFICERS AND THEIR DUTIES

8.1 Enumeration of Officers. The officers of this Association shall be a President and Vice President, who shall at all times be Members of the Board of Trustees, a Secretary, and a Treasurer, and such other officers as the Board of Trustees may from time to time by resolution create.

8.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Trustees following each annual meeting of the Members.

8.3 Term. The officers of the Association shall be elected annually by the Board of Trustees and each shall hold office for one (1) year or until his or her successor is elected and has qualified, unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

8.4 Special Appointments. The Board of Trustees 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 of Trustees may, from time to time, determine.

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

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

8.7 Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 8.4 above.

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

(a) President:

The President shall preside at all meetings of the Board of Trustees; shall see that orders and resolutions of the Board of Trustees are carried out; shall sign all leases, mortgages, deeds and other written instruments; and shall co-sign all checks and promissory notes.

(b) Vice President:

The Vice President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board of Trustees.

(c) Secretary:

The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Trustees and of the Members; serve notice of meetings of the Board of Trustees and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and perform such other duties as may be required by the Board of Trustees.

(d) Treasurer:

The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by resolution of the Board of Trustees; sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit or review of the Association books to be made by a public accountant at the completion of each fiscal year; and prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members.

#### **ARTICLE 9: INDEMNIFICATION OF OFFICERS AND TRUSTEES**

The Association shall provide any indemnification required by the laws of Utah and shall indemnify trustees, officers, agents and employees as follows:

9.1 Third Party Litigation. The Association shall indemnify any trustee or officer of the Association who was or is a party or is threatened to be made a party to any threatened,

pending, or completed action, suit or proceedings, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a trustee or officer or an employee or agent of the Association, or is or was serving at the request of the Association as a trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

9.2 Association Litigation. The Association shall indemnify any trustee or officer of the Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he or she is or was a trustee or officer or an employee or agent of the Association, or is or was serving at the request of the Association as a trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Association unless and only to the extent that the court in which such action or suit was brought, or any other court having jurisdiction in the premises, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

9.3 Expenses. To the extent that a trustee or officer of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 9.1 or 9.2 above, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him or her in connection therewith, without the necessity for the determination as to the standard of conduct as provided in Section 9.4 below.

9.4 Determination of Right to Indemnity. Any indemnification under Section 9.1 or 9.2 above (unless ordered by a court) shall be made by the Association only as authorized in the



specific case upon a determination that indemnification of the trustee or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 9.1 or 9.2 above. Such determination shall be made (i) by the Board of Trustees of the Association by a majority vote of a quorum consisting of trustees who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable, and such a quorum of disinterested trustees so directs, by independent legal counsel (who may be regular counsel for the Association) in a written opinion; and any determination so made shall be conclusive.

9.5 Advance of Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized in the particular case, upon receipt of an undertaking by or on behalf of the trustee or officer to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article 9.

9.6 Other Indemnification Rights. Agents and employees of the Association who are not trustees or officers of the Association may be indemnified under the same standards and procedures set forth above, in the discretion of the Board of Trustees of the Association.

9.7 Benefitted Parties. Any indemnification pursuant to this Article 9 shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a person who has ceased to be a trustee or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.

## ARTICLE 10: COMMITTEES

The Board of Trustees may appoint committees as deemed appropriate in carrying out its purposes.

## ARTICLE 11: BOOKS AND RECORDS

### 11.1 Accounting.

(a) The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Treasurer.

(b) At the close of each fiscal year, the books and records of the Association shall be audited by an independent public accountant approved by the Association, and financial statements shall be prepared by such accountant and distributed to all Members.

11.2 Inspection of Records. The membership register, books of account and minutes of meetings of the Association, the Board of Trustees and committees of the Board of Trustees and

all other records of the Project maintained by the Association or Manager shall be made available for inspection and copying by any Member or his or her duly appointed representative at any reasonable time and for a non-commercial purpose reasonably related to his or her interest as a Member, at the office where the records are maintained. Upon receipt of an authenticated written request from a Member along with the fee prescribed by the Board of Trustees to defray the costs of reproduction, the Manager or other custodian of records of the Association shall prepare and transmit to the Member a copy of any and all records requested. The Board of Trustees shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Member desiring to make the inspection;
- (b) Hours and days of the week when such an inspection may be made; and
- (c) Payment of the cost of reproducing copies of documents requested by a Member.

Every member of the Board of Trustees, subject to the conditions set forth above, shall have the absolute right at any reasonable time to inspect and make copies of all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association.

#### ARTICLE 12: ASSESSMENTS

All assessments shall be made in accordance with the applicable provisions of the Declaration. The Treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred. Such records shall be available for examination by the Members during regular business hours. In accordance with the actions of the Board of Trustees in assessing Common Expenses against the Units and Owners, the Treasurer shall keep an accurate record of such assessments and of the payments thereof by each Owner.

#### ARTICLE 13: AMENDMENTS

13.1 Amendment Procedure. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of the Members present in person or by proxy.

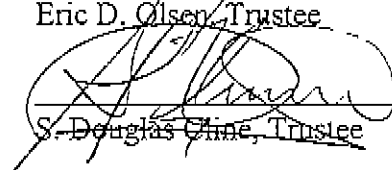
13.2 Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

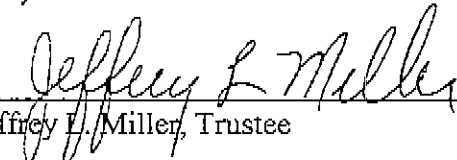
**ARTICLE 14: FISCAL YEAR**

The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of incorporation of the Association and end on the 31<sup>st</sup> day of the following December.

IN WITNESS WHEREOF, we, being all of the trustees of Mill Street Quarters  
Condominiums Owners Association, Inc., have hereunto set our hands this 22<sup>nd</sup> day of April,  
2002.

  
\_\_\_\_\_  
Eric D. Olsen, Trustee

  
\_\_\_\_\_  
S. Douglas Cline, Trustee

  
\_\_\_\_\_  
Jeffrey L. Miller, Trustee

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of the Mill Street Quarters Condominiums Owners Association, Inc., a Utah nonprofit corporation; and

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Trustees thereof, held on the 22<sup>nd</sup> day of April, 2002.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Secretary of the Association this 22<sup>nd</sup> day of April, 2002.

MILL STREET QUARTERS CONDOMINIUMS  
OWNERS ASSOCIATION, INC.,  
a Utah nonprofit corporation

By Jeffrey L. Miller  
Jeffrey L. Miller, Secretary