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RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
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DECLARATION  
FOR  
COURTYARD AT JAMESTOWN  
CONDOMINIUMS  
PHASE III

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DECLARATION  
FOR  
COURTYARD AT JAMESTOWN  
Condominiums  
Phase III

ENT 20032 BK 4981 PG 216

THIS DECLARATION is made this 2nd day of February, 1999, by COURTYARD OFFICE GROUP, L.C., a Limited Liability Company organized and existing under the laws of the State of Utah and having an office at 3585 North University Avenue, Suite 100, Provo, Utah 84604 ("Declarant").

RECITALS

A. Declarant is the owner of that certain real property located in the City of Provo, County of Utah, State of Utah, and particularly described in Exhibit "A" attached to and made a part of this Declaration.

B. Declarant intends to subdivide the Property into condominium estates subject to the provisions of the Utah Condominium Ownership Act contained in Chapter 8, Title 57, Utah Code, and to establish a plan of condominium ownership for the benefit of all the condominium estates created.

C. In furtherance of this intent, Declarant hereby declares that all of the property is and shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Declaration, as this Declaration may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property. All provisions of this Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Property, and shall be binding on and for the benefit of all of the Property and all parties having or acquiring any right, title, or interest in all or any part of the Property, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of a Condominium.

ARTICLE I

DEFINITIONS

Section 1.01. "Articles" means the Articles of Incorporation of Courtyard at Jamestown III Owners' Association and any

amendments thereto that are or shall be filed in the Office of the Department Regulation of the State of Utah.

Section 1.02. "Association" means Courtyard at Jamestown III Owners' Association, a Utah Nonprofit Corporation.

Section 1.03. "Board" means the Board of Trustees of the Association.

Section 1.04. "Bylaws" means the Bylaws of the Association and amendments thereto that are or shall be adopted by the Board. The copy of said Bylaws is attached hereto as Exhibit B.

Section 1.05. "Common Area" means the entire Project except all Units as defined in this Declaration or as shown on the Condominium Plan.

Section 1.06. "Condominium" means an estate in real property consisting of a fee interest in a Unit, the boundaries of which are shown and described on the Condominium Plan, a fractional undivided interest as a tenant in common in the Common Area of the Project, a Membership in the Association, and any Exclusive Use Common Area appurtenant to the Unit. The fractional undivided interest appurtenant to each Unit is set forth in Exhibit C, attached hereto and incorporated herein by this reference.

Section 1.07. "Condominium Plan" means that condominium plan attached to this Declaration and any amendments thereto.

Section 1.08. "Declarant" means COURTYARD OFFICE GROUP, L.C., a Utah Limited Liability Company, and its successors and assigns.

Section 1.09. "Declaration" means this Declaration and any amendments thereto.

Section 1.10. "Exclusive Use Common Area" means those portions of the Common Area reserved for the exclusive use of one or more of the Owners pursuant to Section 2.05 of this Declaration.

Section 1.11. "Governing Instruments" means this Declaration, the Articles and Bylaws of the Association, and any Rules and Regulations of the Project.

Section 1.12. "Manager" means any person or entity appointed by the Board to manage the Project should the Board desire to appoint a manager.

Section 1.13. "Member" means every person or entity entitled to membership in the Association as provided in this Declaration.

Section 1.14. "Mortgage" means a mortgage or deed of trust encumbering a Condominium or any other portion of the Project. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Condominium or other portions of the Project.

Section 1.15. "Mortgagee" means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage. "Institutional Mortgagee" means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA). "First Mortgagee" means a mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Condominium or other portions of the Project. The term "Beneficiary" shall be synonymous with the term "Mortgagee."

Section 1.16. "Mortgagor" means a Person who mortgages his, her, or its property to another (i.e., the maker of a mortgage), and shall include the trustor of a deed of trust. The term "Trustor" shall be synonymous with the term "Mortgagor."

Section 1.17. "Owner" means the record holder or holders of record fee title to a Condominium, including Declarant, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Condominium merely as security for performance of an obligation.

Section 1.18. "Person" means a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.19. "Plan" means the condominium plan entitled "Courtyard at Jamestown Condominiums, Phase III", filed in the records of Utah County, Utah, as Entry Number \_\_\_\_\_, Map Filing Number \_\_\_\_\_, Arm Number \_\_\_\_\_.

Section 1.20. "Project" means the entire parcel of real property described on the Plan and all improvements thereon.

Section 1.21. "Property" means the real property described in the Recitals.

Section 1.22. "Rules and Regulations" means any Rules and Regulations for Courtyard at Jamestown Condominiums Phase III regulating the use of the Units, the Exclusive Use Common Area, and the Common Area and adopted by the Association pursuant to Section 3.06(b) of this Declaration.

Section 1.23. "Subdivision Map" means the recorded map described in Section 1.19.

Section 1.24. "Unit" means that portion of a Condominium that consists of a fee interest in a Unit. "Unit" does not include the other elements of a Condominium. Each Unit shall be a separate freehold estate, as separately shown, numbered, and designated in the Condominium Plan. Each Unit consists of an office area space or spaces bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceiling, windows, and doors (including the wall coverings and floor coverings), as shown on the Condominium Plan.

## ARTICLE II

### THE PROPERTY

Section 2.01 The entire Project shall be subject to this Declaration. The Unit Number, Street Address, Percentage of Interest in the Common Area, and Square Footage of each Unit are set forth in Exhibit C, attached hereto and incorporated herein by this reference.

Section 2.02 Additional property may be annexed to the Project, but only as provided in Article XI of this Declaration.

Section 2.03. The following provisions govern the use and enjoyment of the Common Area:

(a) The Association shall have an easement in, to, and throughout the Common Area and its improvements to perform its duties and exercise its powers.

(b) Except as provided in this Declaration, there shall be no judicial partition of the Common Area, nor shall Declarant or any person acquiring an interest in all or any part of the Project seek any judicial partition.

(c) Subject to the provisions of this Declaration, each Owner has nonexclusive rights of ingress, egress, and support through the Common Area. These rights shall be appurtenant to and shall pass with title to every Condominium. However, these rights shall not interfere with, and shall be subordinate to, any exclusive right to use an Exclusive Use Common Area.



(d) The Members' rights of use and enjoyment of the Common Area shall be subject to the restrictions set forth in the Governing Instruments, including the following:

(1) The right of the Association to adopt and enforce Rules and Regulations for the use of the Common Area.

(2) The right of the Association to reasonably limit the number of guests and tenants using the Common Area.

(3) The right of the Association to assign or otherwise control the use of any unassigned parking spaces within the Common Area.

(4) The right of the Association to suspend the right of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area for any period during which the Owner is delinquent in the payment of any assessment.

(5) The right of the Association to cause the construction of additional improvements in the Common Area, or to cause the alteration or removal of existing improvements on the Common Area.

(6) The right of the Association to grant, consent to, or join in the grant or conveyance of easements, licenses, or rights-of-way in, on, or over the Common Area.

(7) The right of each Owner to the exclusive use of any Exclusive Use Common Area appurtenant to the Owner's Unit.

(8) The rights of Declarant as described in this Declaration.

(9) The right of the Association to reasonably restrict access to roofs, maintenance facilities or areas, landscaped areas, and similar areas of the Project.

(10) The right of the Architectural Control Committee to approve any proposed alteration or modification to the Common Area or any Unit.

(e) Declarant hereby reserves easements for common driveway purposes, for drainage and encroachment purposes, and for ingress to and egress from the Common Area. These easements may be used to complete improvements on the Common Area and to perform necessary repair work. These easements shall remain in effect for three years from the date of closing of the first sale of a Unit in the Project.

(f) The Association may grant to third parties easements in, on, and over the Common Area for the purpose of

constructing, installing, or maintaining necessary utilities and services, and each Unit Owner, in accepting his or her deed to the Unit, expressly consents to these easements. However, no such easement can be granted if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Unit or any Exclusive Use Common Area appurtenant to the Unit.

(g) A Class A Owner who has sold his or her Condominium to a contract purchaser or who has leased or rented the Condominium shall be entitled to delegate his or her rights to use and enjoy the Common Area to any contract purchaser, tenant, or subtenant who resides in the Owner's Condominium, subject to reasonable regulation by the Board. If the Owner makes such a delegation of rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective.

(h) Each Owner shall be liable to the Association for any damage to the Common Area or to Association-owned property, to the extent that the damage is not covered by insurance, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. In the case of joint ownership of a Condominium, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

Section 2.04. There shall be no judicial partition of the Project or any part of it, nor shall Declarant or any person acquiring an interest in the Project or any part of it seek any judicial partition, except as follows:

(a) If two or more persons own any Condominium as tenants in common or as joint tenants they may maintain a partition action as to their cotenancy.

(b) The Owner of a Condominium may maintain a partition action as to the entire Project, as if all of the Owners in the Project were tenants in common in the Project in the same proportion as their interests in the Common Area, and an appropriate court shall order partition by sale of the entire Project, upon a showing of any of the following:

(1) The Project has been in existence for more than 50 years and is obsolete and uneconomical, and owners holding (in the aggregate) more than a 50 percent interest in the common area oppose repair or restoration of the Project.

(2) The Project has been damaged or destroyed and the other criteria set forth in Section 8.03 of this Declaration have been satisfied.

(c) Any partition action shall comply with the sale and distribution requirements set forth in Section 8.03 of this Declaration.

Section 2.05. The portions of the Common Area listed below are or shall be for the exclusive use of certain Owners of Units and shall be appurtenant to those Units. An Exclusive Use Common Area may not be transferred independently of any other interest of the Owner. Additional Exclusive Use Common Areas may be designated in the future by the Association, provided that the designation is not inconsistent with the rights of any Owner.

(a) Each owner shall have the exclusive right to use, for parking purposes only, any parking space or spaces that have been allocated to the Owner's Unit on the Plan.

(b) All air conditioning units designed to serve a single Unit, but located outside the boundaries of the Unit are Exclusive Use Areas allocated exclusively to the separate interest. Said units are to be maintained in good condition and repair by the Owner. However, the Owner shall not be responsible for periodic structural repairs, including resurfacing, sealing, caulking, replacement, or painting of the Exclusive Use Common Area unless the repairs are necessitated by the willful or negligent acts of the Owner or the Owner's family or guests. Any maintenance costs shall be the responsibility of the Owner and shall be added to the Owner's regular monthly assessment.

(c) All internal and external telephone wiring designed to serve a single Unit, but located outside the boundaries of the Unit, are Exclusive Use Common Areas allocated exclusively to that Unit. The Owner of the Unit shall be entitled to reasonable access to the Common Area for the Purpose of maintaining this wiring, subject to the consent of the Association and to any other conditions reasonably imposed by the Association. The Association's consent shall not be unreasonably withheld.

Section 2.06 Each Owner shall maintain the Owner's Unit, including the equipment and fixtures in the Unit and the interior surfaces of the walls, ceilings, floors, and doors, in a clean, sanitary, and attractive condition. This maintenance shall be at the Owner's expense. However, the Owner shall not take any actions that would impair or otherwise alter the structural integrity or mechanical systems or lessen the support of the Unit or any other portion of the Project, without the prior written approval of the Architectural Control Committee, as provided in Article VI of this Declaration.

Section 2.07 In interpreting deeds, declarations, and plans, the existing physical boundaries of a Unit, including any Unit reconstructed in substantial accordance with the Condominium Plan and the original construction plans for the Project, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan, or Declaration. This presumption applies regardless of settling or lateral movement of the building and regardless of minor variances between boundaries, as shown on the Condominium Plan or described in the deed and Declaration, and the boundaries of the building as constructed or reconstructed.

Section 2.08. Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Unit shall include the undivided interest in the Common Area and any Exclusive Use Common Areas appurtenant to the Unit. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's Membership interest in the Association, as provided in Section 3.02 of this Declaration. Any transfer that attempts to sever those component interests shall be void.

Section 2.09. No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Project may be effected without the approval of the eligible holders of first mortgages on Units to which at least fifty-one percent of the votes of Units subject to mortgages held by such eligible holders are allocated.

### ARTICLE III

#### OWNERS' ASSOCIATION

Section 3.01. The Association is or shall be incorporated under the name of Courtyard at Jamestown II Owners' Association, as a nonprofit corporation organized under the Utah Nonprofit and Co-operative Association Act. From the closing of the escrow for the first sale of a Unit, the Association shall be charged with the duties and invested with the powers prescribed by law and set forth in this Declaration, the Articles of Incorporation, and the Bylaws.

Section 3.02. Every Owner, upon becoming an Owner, shall automatically become a Member of the Association. Ownership of a Unit is the sole qualification for membership. Each Member shall have the rights, duties, privileges, and obligations set forth in the Governing Instruments. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Condominium. All memberships shall be appurtenant to the Condominium conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a

transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Condominium shall automatically transfer the appurtenant membership to the transferee.

Section 3.03. The Association shall have two classes of voting membership as follows:

(a) All Owners, other than the Declarant, shall be Class A members. Class A membership entitles the holder to one vote for each Condominium owned. When a Condominium is owned by more than one person, only one vote may be cast for the Condominium, as provided in Section 3.04(b) of this Declaration.

(b) The Declarant shall be the sole Class B member. Class B membership shall cease and be converted to Class A membership upon the occurrence of whichever of the following is first in time:

(1) The date upon which seventy-five percent of the Units have been conveyed to Owners; or

(2) On the date which is three years following the date of the first conveyance of a Unit to an Owner.

Section 3.04 All voting rights of the Owners shall be subject to the following restrictions, limitations, and requirements:

(a) Except as provided in this Article, on each matter submitted to a vote of the Owners, each Owner shall be entitled to cast one vote for each Condominium owned.

(b) Fractional votes shall not be allowed. When there is more than one record Owner of a condominium, all of the co-owners shall be Members, but only one of them shall be entitled to cast the single vote attributable to the Condominium. Co-owners should designate in writing one of their number to vote. If no such designation is made or if it is revoked, the co-owners shall decide among themselves, by majority vote, how that Condominium's vote is to be cast. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for the Condominium on a particular matter if a majority of the co-owners present in person or by proxy cannot agree on a vote.

(c) Except as provided in Section 3.06(c) of this Declaration, governing the enforcement of certain bonded obligations, and Section 3.06 of the Bylaws, governing the removal of directors, as long as two classes of voting memberships exist, any provision of this Declaration, the

Articles, or by the Bylaws that requires the approval of a specified percentage of the voting power of the Association shall require the approval of the specified percentage of the voting power of each class of membership. Except as provided in Section 3.06(c) of the Bylaws, when the Class B Membership has terminated, any provision of this Declaration, the Articles, or the Bylaws that requires the approval of a specified percentage of the voting power of the Association shall require the vote or written consent of Owners representing the specified percentage of both the total voting power of the Association and the voting power of the Association residing in Owners other than Declarant.

(d) The Board shall fix, in advance, a record date or dates for the purpose of determining the Owners entitled to notice of, and to vote at, any meeting of Owners. The record date for notice of a meeting shall not be more than 90 nor less than 10 days before the date of the meeting. The record date for voting shall not be more than 60 days before the date of the meeting or before the date on which the first written ballot is mailed or solicited. The Board may also fix, in advance, a record date for the purpose of determining the Owners entitled to exercise any rights in connection with any other action. Any such date shall not be more than 60 days prior to the action.

(e) Every Owner entitled to vote at any election of the Board of Trustees may cumulate the Owner's votes and give one candidate a number of votes equal to the number of Trustees to be elected multiplied by the number of votes to which the Owner is entitled, or distribute the Owner's votes on the same principle among as many candidates as the Owner deems appropriate. No Owner shall be entitled to cumulate votes for a candidate or candidates unless the candidate's name or candidates' names have been placed in nomination prior to voting and an Owner has given notice at the meeting prior to the voting of the Owner's intention to cumulate votes. If any one Owner has given such notice, all Owners may cumulate their votes for candidates in nomination.

Section 3.05. Article II of the Bylaws governing meetings of the Members is hereby incorporated by reference.

Section 3.06. The Association shall have all the powers of a nonprofit corporation organized under the Utah Nonprofit Corporation and Co-operative Association Act, subject to any limitations set forth in this Declaration or in the Articles and Bylaws of the Association. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it by this Declaration or the other Governing Instruments. Its powers shall include, but are not limited to, the following:

(a) The Association shall have the power to establish, fix, levy, collect, and enforce the payment of assessments against the Owners in accordance with the procedures set forth in Article IV of this Declaration.

(b) The Association shall have the power to adopt reasonable Rules and Regulations governing the use of the Units, the Exclusive Use Common Area, and the Common Area and its facilities, and of any other Association property. These Rules and Regulations may include, but are not limited to: reasonable restrictions on use by the Owners and their guests, employees, tenants, and invitees; and rules of conduct. A copy of the current Rules and Regulations, if any, shall be given to each Owner and shall be posted at conspicuous places in the Common Area. If any provision of the Rules and Regulations conflicts with any provision of this Declaration, the Articles, or the Bylaws, the Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.

(c) The Association shall have the right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to the following:

(1) Enforcement of this Declaration, the Articles, Bylaws, and Rules and Regulation.

(2) Damage to the Common Area.

(3) Damage to the Units that the Association is obligated to maintain or repair.

(4) Damage to the Units that arises out of, or is integrally related to, damage to the Common Area or Units that the Association is obligated to maintain or repair.

The Association may enforce payment of assessments in accordance with the provisions of Article IV of this Declaration.

(d) In addition to the general power of enforcement described above, the Association may discipline its Owners for violation of any of the provisions of the Governing Instruments or Rules and Regulations by suspending the violator's voting rights and privileges for use of the Common Area subject to the following limitations:

(1) The accused Owner shall be given notice and an opportunity to be heard with respect to the alleged violation.

(2) Any suspension of an Owner's association privileges shall not exceed 60 days for each violation.

(3) Except as provided in Article IV of this Declaration, relating to foreclosure for failure to pay assessments, or as a result of the judgment of a court or a decision arising out of arbitration, the Association shall in no way abridge the right of any Owner to the full use and enjoyment of his or her Unit.

(e) The Association, acting through the Board, shall have the power to delegate its authority, duties, and responsibilities to its officers, employees, committees, or agents, including a professional management agent. The term of any agreement with a manager or the Declarant for the furnishing or maintenance, repair, and related services shall not exceed one year, renewable by agreement of the parties for successive one-year periods. Such an agreement shall be terminable by either party (1) for cause on 30 days' written notice, and (2) without cause or the payment of a termination fee on 90 days' written notice.

(f) The Association's agents or employees shall have the right to enter any Unit when necessary in connection with any maintenance, landscaping, or construction work for which the Association is responsible. This entry shall be made only upon notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable, and the Association shall repair any resulting damage at its own expense.

Section 3.07. In addition to the duties delegated to the Association or its agents and employees elsewhere in the Governing Instruments, the Association shall be responsible for the following:

(a) The Association, acting through the Board, shall operate, maintain, repair, and replace the Common Area and its improvements, all landscaping, and the exterior surfaces of all structures and Units in the Project, or contract for the performance of that work, subject to the provisions of Article VIII of this Declaration relating to destruction of improvements, Article IX of this Declaration pertaining to eminent domain, and Section 2.03(h) of this Declaration relating to damage caused by Owners. The foregoing areas and improvements shall be kept in a clean, sanitary, and attractive condition. Further, the Association shall keep the Common Areas free of infestation by wood-destroying pests or organisms. The Association shall be responsible for maintaining Exclusive Use Common Areas. The Association shall also have the exclusive right and duty to acquire and maintain any furnishings and equipment for the Common Area that it determines are necessary and proper. As a general rule, maintenance costs shall be included in the regular assessments.



(b) The Association shall use the maintenance fund described in Section 4.03 of this Declaration to, among other things, acquire and pay for the following:

(1) Water, sewer, garbage, electrical, telephone, gas, elevator, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Units;

(2) The insurance policies described in Article VII of this Declaration;

(3) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area; and

(4) Legal and accounting services necessary or proper in the operation of the Common Area or the enforcement of this Declaration.

(c) If the Association is obligee under a bond or other arrangement to secure the performance of Declarant as to any Common Area improvements that were not completed prior to the issuance of the final Certificate of Occupancy for the Project, the following provisions shall govern the initiation of action to enforce the bond:

(1) The Board of Trustees of the Association shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a Notice of Completion has not been filed within 60 days after the completion date specified for the improvement in the Planned Construction Statement appended to the bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the above question if a Notice of Completion has not been filed within 30 days after the expiration of the extension.

(2) If the Board votes not to initiate action to enforce the obligations under the bond, or if it fails to consider and vote on the matter as required, a special meeting of the Owners of the Association shall be called for the purpose of overriding the Board's decision or for taking action on the matter, upon receipt of a petition calling for such a meeting signed by Owners representing at least five percent of the total voting power of the Association. The meeting shall be held not less than 35 days nor more than 45 days after receipt of the petition by the Board. At the special meeting, only the Owners other than Declarant shall be allowed to vote on the matter. A vote by a majority of the voting power of the Association residing in Owners other than Declarant to take action to enforce

the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

(d) The Association shall prepare a pro forma operating budget for each fiscal year and distribute a copy to each Owner not less than 45 and not more than 90 days prior to the beginning of the fiscal year. This budget shall contain at least the following:

(1) The estimated revenue and expenses on an accrual basis;

(2) The amount of the total cash reserves currently available for replacement or major repair of common facilities and for contingencies; and

(3) Concerning any major components of the common area and facilities for which the Association is responsible, the following information: (i) an itemized estimate of the remaining life; (ii) the methods of funding to defray the costs of repair, replacement, or additions; and (iii) a general statement of procedures used to calculate and establish reserves for the expenses set forth in (b), above.

(e) Within 120 days after the close of each fiscal year, the Association shall prepare and distribute to the Owners an annual report consisting of the following:

(1) A balance sheet as of the end of the fiscal year;

(2) An operating (income) statement for the fiscal year;

(3) A statement of changes in financial position for the fiscal year; and

(f) Within 60 days prior to the beginning of each fiscal year, the Association shall prepare and distribute to the Owners a statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of assessments against Owners.

(g) The Association shall prepare a balance sheet, as of an accounting date that is the last day of the month closest in time to six months from the date of closing of the first sale of a Unit in the Project, and an operating statement for the period from the date of the first closing to the foregoing accounting date. The Association shall distribute this statement to the Owners within 60 days after the accounting date. This

operating statement shall include a schedule of assessments received and receivable identified by the number of the Unit and the name of the Owner assessed.

(h) The Association shall provide any Owner, or Agency or Corporation which has an interest or prospective interest in the Project, with the following documents within 10 days of the mailing or delivery of a written request therefor:

(1) A copy of the Governing Instruments.

(2) A copy of the most recent financial statement distributed pursuant to Section 3.07(d) of this Declaration.

(3) A written statement from an authorized representative of the Association specifying (i) the amount of any assessments levied on the Owner's Unit that are unpaid on the date of the statement; and (ii) the amount of late charges, interest, and costs of collection that, as of the date of the statement, are or may be made a lien on the Owner's Unit pursuant to Section 4.09 of this Declaration. The Association may charge the Owner a reasonable fee to cover its cost to prepare and reproduce those requested items.

(i) The Association shall pay all real and personal property taxes and assessments levied against it, its personal property, the Common Area, and Exclusive Use Common Areas.

Section 3.08. The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Trustees, as provided in Article III of the Bylaws, which is hereby incorporated by reference.

Section 3.09. Article XI of the Bylaws, governing the duty of the Association to maintain certain books and records and the rights of Owners and Board of Trustees to obtain and inspect those books and records, is hereby incorporated by reference.

#### ARTICLE IV

##### ASSESSMENTS AND COLLECTION PROCEDURES

Section 4.01. The Declarant covenants and agrees, for each Unit owned by it in the Project, and each Owner by acceptance of the deed to the Owner's Unit is deemed to covenant and agree to pay to the Association the regular and special assessments levied pursuant to the provisions of this Declaration. A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall be a debt of the Owner of the Unit at the time the assessment or other sums are levied. The

Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Area or abandonment of the Owner's Unit.

Section 4.02. The obligation to pay assessments shall not be subject to any exemptions or exceptions.

Section 4.03. The assessments levied by the Association shall be used exclusively to promote the safety and welfare of the Owners, for the operation, replacement, improvement, and maintenance of the Property, and to discharge any other obligations of the Association under this Declaration. All assessment payments shall be put into a maintenance fund to be used for the foregoing purposes.

Section 4.04 Within 60 days prior to the beginning of each calendar year, the Board shall estimate the net charges to be paid during that year, including a reasonable provision for contingencies and replacements, with adjustments made for any expected income and surplus from the prior year's fund. The estimated cash requirement shall be assessed to each Owner according to the ratio of the number of Units owned by that owner to the total number of Units in the Project subject to assessment. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Board in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment. Declarant shall pay its full prorated share of the regular assessments on any unsold Condominiums subject to regular assessments.

Section 4.05. If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements upon the Common Area, or any other reason, it shall make a special assessment for the additional amount needed. Special assessments shall be levied and collected in the same manner as regular assessments.

Section 4.06. Except in emergency situations, the Board may not, without the approval of Owners constituting a majority of the Owners of the Association and casting a majority of the votes at a meeting or election of the Association, impose a regular annual assessment per Unit that is more than 20 percent greater than the regular annual assessment for the preceding year, or levy special assessments that in the aggregate exceed 5 percent of the budgeted gross expenses of the Association for that year. These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

(a) Required by a court order;

(b) Necessary to repair or maintain the Project or any part of it for which the Association is responsible when a threat to personal safety in the Project is discovered; or

(c) Necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget pursuant to Section 3.07(d).

Before the Board may impose or collect an assessment in an emergency situation, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

Section 4.07. Regular assessments shall commence on all Condominiums in the project on the first day of the month following the first conveyance of a Unit in the Project.

Section 4.08. Late charges may be levied by the Association against an Owner for the delinquent payment of regular and special assessments. An assessment is delinquent 15 days after its due date. If an assessment is delinquent the Association may recover all of the following from the Owner:

(a) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees.

(b) A late charge not exceeding ten percent of the delinquent assessment or TEN DOLLARS (\$10.00), whichever is greater.

(c) Interest on the foregoing sums, at an annual percentage rate of twelve percent, commencing 30 days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments.

Section 4.09. A delinquent regular or special assessment and any related late charges, reasonable costs of collection, and interest assessed in accordance with Section 4.08 of this Declaration, shall become a lien upon the Unit when a notice of delinquent assessment is duly recorded as provided in Section 57-8-20, Utah Code. Any such lien may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial

foreclosure. If the sums specified in the notice of delinquent assessment are paid before the completion of any judicial or nonjudicial foreclosure, the Association shall record a notice of satisfaction and release of the lien. Upon receipt of a written request by the Owner, the Association shall also record a notice of rescission of any declaration of default and demand for sale.

Section 4.10. The Association shall provide any Owner, upon written request, with a statement specifying the amounts of any delinquent assessments and related late charges, interest, and costs levied against the Owner's Unit, as provided in Section 4.08 of this Declaration.

## ARTICLE V

### USE RESTRICTIONS AND COVENANTS

Section 5.01. In exercising the right to occupy or use a Unit or the Common Area and its improvements, the Owner and the Owner's guests, employees, tenants, and invitees shall not do any of the following:

- (a) Attempt to further subdivide a Unit without obtaining the prior approval of the Association.
- (b) Occupy or use a Unit, or permit all or any part of a Unit to be occupied or used, for any purpose other than as a business or professional office. Nothing in this Declaration shall prevent an Owner from leasing or renting out his or her Unit, provided that it is subject to the Governing Instruments. Each Unit shall be occupied by a business or businesses that utilize no more parking spaces (including those parking spaces situated in any Exclusive Use Common Area) than allowed under Chapter 14.37, Provo City Zoning Ordinance (Off-Street Parking Standards) or other applicable ordinances or laws.
- (c) Permit anything to obstruct the Common Area or store anything in the Common Area without the prior consent of the Board, except as otherwise provided in the Governing Instruments.
- (d) Perform any act or keep anything on or in any Unit or Exclusive Use Common Area or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept in his or her Unit, in any Exclusive Use Common Area appurtenant to the Unit, or in the Common Area that would result in the cancellation of insurance on any Unit or Exclusive Use Common Area or on any part of the Common Area or that would violate any law.

(e) Store gasoline, kerosene, cleaning solvents, or other flammable liquids in the Common Area or in any Unit.

(f) Display any temporary sign to the public view on or from any Unit or the Common Area without the prior written consent of the Board.

(g) Raise, breed, or keep animals, livestock, or poultry of any kind in a Unit or in the Common Area.

(h) Engage in any noxious or offensive activity in any part of the Project.

(i) Alter or modify the exterior of any improvements located in a Unit without first obtaining the written consent of the Architectural Control Committee.

(j) Alter, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.

Section 5.02. Each Owner shall be liable to the Association for all damage to the Common Area or other Association property that is sustained by reason of the negligence or willful misconduct of that Owner or his or her family, guests, employees, tenants, and invitees, to the extent that the damage is not covered by the casualty insurance obtained and maintained by the Association pursuant to Section 7.01 of this Declaration.

Section 5.03. Declarant shall be exempt from the restrictions of Section 5.01 to the extent necessary to complete any construction work, sales activities, or additions to or affecting the Project. This exemption includes, but is not limited to, maintaining Units as models, placing advertising signs on the Property, and generally using Project lots and the Common Area to carry on construction activity.

Section 5.04. The covenants and restrictions set forth in this Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association or by both.

Section 5.05. In the event any portion of the Common Area encroaches upon any Unit or any Unit encroaches upon the Common Area or another Unit as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

Section 5.06. The Project shall have a uniform signage plan and policy and all signs shall be in conformance thereto.

ARTICLE VIARCHITECTURAL AND DESIGN CONTROL

No building, addition, wall, fence, or alteration shall be commenced, constructed, maintained, or permitted to remain on any Unit, or on the Common Area, until complete plans and specifications of the proposed work have been submitted to and approved by the Board. The Board shall review the plans and specifications to determine whether they are compatible with the standards of design, construction, and quality of the Project and, if they are not, shall require that changes be made before approval.

ARTICLE VIIINSURANCE

Section 7.01. The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of the improvements in the Project. The amount of coverage shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Mortgagees, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Declaration.

Section 7.02. The Association shall obtain and maintain a policy or policies insuring the Association, Declarant, Manager, Owners, and the Owners' relatives, invitees, guests, employees, and their agents against any liability for bodily injury, death, and property damage arising from the activities of the Association and its Members, with respect to the Common Area. Limits of liability under the insurance shall not be less than ONE MILLION DOLLARS (\$1,000,000.00) covering all claims for death, personal injury, and property damage arising out of a single occurrence. The limits and coverage shall be reviewed at least annually by the Board and increased in its discretion.

Section 7.03. The Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws. The Association also shall purchase and maintain fidelity bond coverage which names the Association as an obligee, for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. This coverage shall be in an amount that is at least equal to the estimated maximum of funds, including reserve funds, in the custody of the Association at any



given time during the term of each bond. However, the aggregate amount of these bonds must not be less than one hundred fifty percent of each year's estimated annual operating expenses and reserves. The Association also may purchase and maintain a blanket policy of flood insurance, and demolition insurance in an amount that is sufficient to cover any demolition that occurs following the total or partial destruction of the Project and a decision not to rebuild.

Section 7.04. The Association, acting through its Board, is hereby appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Association as trustee for the use and benefit of the individual Owners. Each Owner and Each Owner's mortgagee, if any, shall be beneficiaries of the policy in the percentage of common ownership. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. Such policy shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area in which the Property is located and which appropriately names the holders of first mortgages on Units within the Project. Such policies must also provide that they may not be cancelled or substantially modified, without at least ten days' prior written notice to the Association or to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policy or policies. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried or for the purposes described in Article VIII of this Declaration. The Association, as Trustee, also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

Section 7.05. No Owner shall obtain or maintain fire and casualty insurance for the improvements in the Owner's Unit. If any Owner does so, he or she shall be liable to the Association for any resulting reduction in the insurance proceeds payable under the policy or policies of fire and casualty insurance maintained by the Association pursuant to Section 7.01. Notwithstanding the foregoing, an Owner may separately insure his or her personal property, and may obtain and maintain personal liability and property damage liability insurance for his or her Unit, provided that the insurance contains a waiver of subrogation rights by the carrier as to the other Owners, the Association, Declarant, and the institutional First Mortgagee of the Owner's Unit.

Section 7.06. Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular

assessments. That portion of the regular assessments necessary for the required insurance premiums shall be used solely for the payment of the premiums when due.

## ARTICLE VIII

### DAMAGE OR DESTRUCTION

Section 8.01. If any of the improvements in the Project are destroyed or damaged, the Association shall restore and replace the improvements, using the proceeds of insurance maintained pursuant to Article VII of this Declaration, subject to the provisions of this Article.

Section 8.02. If the proceeds of any insurance maintained pursuant to Article VII of this Declaration for reconstruction or repair of the Property are equal to at least eighty-five percent of the estimated cost of restoration and repair, the Board shall use the insurance proceeds for that purpose, shall levy a special assessment to provide the necessary additional funds, and shall have the improvements promptly rebuilt, unless the Owners by the vote or written consent of at least seventy-five percent of the total voting power of each class of Owners object to the restoration or repair work within 60 days of the damage or destruction.

Section 8.03. If the proceeds of any insurance maintained pursuant to Article VII of this Declaration for reconstruction or repair of the Property are less than eighty-five percent of the estimated cost of restoration and repair, any restoration and repair work must be authorized by the vote or written consent of Owners representing at least seventy-five percent of the total voting power of each class of Owners and beneficiaries of at least seventy-five percent of the First Mortgages on Units in the Project. This authorization must be given within 60 days of the damage or destruction, and must authorize the Board to levy a special assessment to provide the necessary funds over and above the amount of any insurance proceeds available for the work.

Section 8.04. If reconstruction or repair work is to take place pursuant to this Article, the Board shall take the following steps:

(a) Prepare the necessary documents, including an executed and acknowledged certificate stating that, damage has occurred, describing it, identifying the improvement suffering the damage, the name of any insurer against whom claim is made, and the name of any insurance trustee, stating (if applicable) that the consent described in Section 8.03 has been obtained, and reciting that the certificate is recorded pursuant to this paragraph. That declaration shall be filed for record with the

Recorder of Utah County, Utah, within 90 from the date of the damage or destruction.

(b) Obtain firm bids (including the obligation to obtain a performance bond) from two or more responsible contractors to rebuild the Project in accordance with its original plans and specifications and, as soon as possible thereafter, call a special meeting of the voting Owners to consider the bids. If the Board fails to do so within 60 days after the casualty occurs, any Owner may obtain the bids and call and conduct the special meeting in the manner required by this paragraph. At the meeting, Owners representing at least 67 percent of the total voting power may elect to reject all of the bids and thus not to rebuild, or Owners representing at least 51 percent of the total voting power may elect to reject all bids requiring amounts exceeding the available insurance proceeds by more than FIVE HUNDRED DOLLARS (\$500.00). Failure to reject all bids shall authorize the Board to accept the unrejected bid it considers most favorable. Failure to call the special meeting or to repair the casualty damage within 12 months from the date the damage occurred shall be deemed for all purposes to be a decision not to rebuild.

(c) If a bid is accepted, the Board shall let the contract to the successful bidder and distribute the insurance proceeds to the contractor as required by the contract.

(d) Levy a special assessment to make up any deficiency between the total insurance proceeds and the contract price for the repair or rebuilding, with the assessment and all insurance proceeds, whether or not subject to liens of mortgagees, to be used solely for the rebuilding. This assessment shall be apportioned equally to each Unit for any damage or destruction to the Common Area. For any damage or destruction to improvements on one or more Units, every Owner shall pay a proportionate share thereof. If any Owner fails to pay the special assessment within 15 days after it is levied, the Board shall enforce the assessment in the manner described in Section 4.09 of this Declaration.

Section 8.05. Upon an election not to rebuild, the Board, as soon as reasonably possible and as agent for the Owners, shall execute and record a certificate stating that the Association shall not rebuild. The Board shall also sell the entire Project on terms acceptable to the Board and free from the effect of this Declaration, which shall terminate upon the sale. The net proceeds shall then be distributed to the Owners and their respective Mortgagees proportionately according to the respective fair market values of the Units at the time of the destruction as determined by an independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by

the Association and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

All proceeds for damage or destruction to Units shall be distributed to the Owners of the damaged Units according to the relative fair market value of the Units. This value shall be as of the date immediately preceding the damage or destruction, and shall be determined by an appraisal by an independent appraiser who shall be selected in the manner described above. Any proceeds from damage or destruction to the Common Area shall be distributed to the Owners equally.

Section 8.06. The Association shall order restoration or repair work without complying with the other provisions of this Article whenever the estimated cost of the work for the Common Area does not exceed FIVE THOUSAND DOLLARS (\$5,000.00) and THREE THOUSAND DOLLARS (\$3,000.00) for one or more Units. If insurance proceeds are unavailable or insufficient, the Association shall levy a special assessment for the cost of the work. The Assessment shall be levied in the manner described in Section 4.05 of this Declaration.

## ARTICLE IX

### EMINENT DOMAIN

Section 9.01. As used in this Article, "taking" means condemnation by any governmental agency having the power of eminent domain or by sale under threat of the exercise of that power.

Section 9.02. If a governmental agency proposes to condemn all or a portion of the Project, the Association may sell all or any portion of the Project to the condemning authority if all Owners and institutional Mortgagees consent in writing to the sale. Any such sale shall be made by the Association in the capacity of attorney-in-fact for the Owners, acting under an irrevocable power of attorney which each Owner grants to the Association by accepting a Condominium. The sales price shall be any amount deemed reasonable by the Board.

Section 9.03. A total sale or taking occurs when (1) there is a permanent taking or a sale to a condemning authority by the Association pursuant to Section 9.02 of an interest in all or part of the Common Area or of all or part of one or more Units, which substantially and adversely affects the ownership, operation, and use of the Project in accordance with the provisions of this Declaration; and (2) 120 days have passed since the effective date of the taking and the Owners whose Units remain habitable after the taking ("Remaining Units") have not by affirmative vote of a majority of their entire voting interest approved the continuation of the Project and the repair, restora-

tion, and replacement to the extent feasible of the Common Area and the Remaining Units. Within 60 days after the effective date of any sale or taking which in the opinion of the Board would constitute a total sale or taking, the Board shall call a special meeting to determine whether or not the Owners of the remaining units will continue the Project as provided in this Section. If there is a total sale or taking, the Board shall distribute the proceeds of the total sale or taking and the proceeds of any sale pursuant to a partition action, after deducting all incidental fees and expenses related to the taking or partition, to all Owners and their Mortgagees in accordance with the court judgment or the agreement between the condemning authority and the Association, if any such judgment or agreement exists. In all other cases, the proceeds shall be distributed among the Owners and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation as determined by independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by the Association and who shall be a member of, and apply the standards of, a nationally recognized appraisal organization.

Section 9.04. A partial sale or taking occurs if there is a sale or taking that is not a total sale or taking as defined in Section 9.03. The proceeds from any sale or taking shall be disbursed in the following order of priority, which shall be incorporated into any court judgment of condemnation or agreement between a condemning authority and the Association:

(a) To the payment of related fees and expenses.

(b) To Owners of Condominiums that have been sold or taken and their respective Mortgagees, as their interests may appear, in an amount up to the fair market value of the Condominium as that value is determined by the court in the condemnation proceeding or, in the absence of such a determination, by an appraiser selected in the manner described in Section 9.03. Such a payment shall immediately terminate the recipient's status as an Owner, and the Board, acting as the attorney-in-fact of the remaining Owners, shall amend this Declaration and any other documents, as appropriate, to delete the sold or taken Condominiums from the Project and to allocate the former Owner's undivided interest in the Common Area to the remaining Owners, on the basis of their relative ownership of the Common Area. Each Owner whose interest is terminated pursuant to this Section shall, at the request of the Board and expense of the Association, execute and acknowledge any deed or other instrument that the Board deems necessary to evidence the termination.

(c) To the payment of severance damages to First Mortgagees of record of remaining units affected by the partial sale

or taking, to the extent that the Mortgagees can prove that their security has been impaired by the taking.

(d) To the repair, restoration, and replacement of the Common Area and any portions of the Remaining Units that the Owners are not obligated to restore, to the extent feasible.

## ARTICLE X

### RIGHTS OF MORTGAGEES

Section 10.01. Declarant hereby warrants that Mortgagees of Units in the Project shall be entitled to the rights and guarantees set forth in this Article. No amendment of this Article shall affect the rights of the holder of any First mortgage recorded prior to the recordation of the amendment who does not join in the execution of the amendment.

Section 10.02. Notwithstanding any other provision of this Declaration, liens created under Section 4.09 of this Declaration upon any Unit shall be subject and subordinate to, and shall not affect the rights of the holder of, the indebtedness secured by any recorded First Mortgage upon such an interest made in good faith and for value, provided that any transfer of a Unit as the result of a foreclosure or exercise of a power of sale shall not relieve the new Owner from liability for any assessments that become due after the transfer. Such a transfer shall extinguish the lien of assessments that were due and payable prior to the transfer of the Unit.

Section 10.03. Should any of the Association's Governing Instruments provide for a "right of first refusal," this right shall not impair the rights of a First Mortgagee to:

(a) Foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage;

(b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor; or

(c) Interfere with a subsequent sale or lease of a Unit so acquired by the Mortgagee.

Section 10.04. A First Mortgagee, upon request, will be entitled to written notification from the Association of any default in the performance by the Mortgagor of any obligation under the Association's Governing Instruments that is not cured within 60 days.

Section 10.05. Any First Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage or

foreclosure of the Mortgage shall not be liable for the Unit's unpaid assessments that accrue prior to the acquisition of title to the Unit by the Mortgagee.

Section 10.06. Notwithstanding Article XII of this Declaration, any amendments governing any of the following shall require the prior written notice to and approval of at least 51 percent of the First Mortgagees and at least 67 percent of the total voting power of the Owners:

- (a) Voting;
- (b) Rights to use the Common Area;
- (c) Reserves and responsibility for maintenance, repair, and replacement of the Common Area;
- (d) Boundaries of any Unit;
- (e) Owners' interests in the Common Area;
- (f) Conversion of Units into Common Area or Common Area into Units;
- (g) Leasing of Units;
- (h) Establishment of self-management by the Association, when professional management has been previously required by any First Mortgagee or any insurer or governmental guarantor of a First Mortgage.
- (i) Annexation, addition, or withdrawal of real property to or from the Project;
- (j) Assessments, assessment liens, or the subordination of these liens.
- (k) Casualty and liability insurance or fidelity bonds; or
- (l) Any provisions expressly benefitting First Mortgagees or insurers or governmental guarantors of first mortgages.

Notwithstanding the foregoing, any first Mortgagee who receives a written request from the Board to approve a proposed amendment or amendments requiring consent under this Section who does not deliver a negative response to the Board within 30 days of the receipt of the request shall be deemed to have approved the proposed amendment or amendments.

Section 10.07. Unless at least 67 percent of the First Mortgagees (based upon one vote for each First Mortgage owned), or 67 percent of the Owners other than Declarant, have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission, seek to abandon or terminate the Project;

(b) Change the pro rata interest or obligations of any individual Unit for either of the following purposes, unless the change is due to an annexation pursuant to Article XI of this Declaration:

(1) Levying assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards, or

(2) Determining the pro rata share of ownership of ownership of each Unit in the Common Area and the improvements thereon.

(c) Partition or subdivide any Unit;

(d) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area unless due to an annexation pursuant to Article XI of this Declaration (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this clause); or

(e) Use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Area) for other than the repair, replacement, or reconstruction of that property, except as provided by statute in case of substantial loss to the Units and/or Common Area of the Project.

Section 10.08. All taxes, assessments, and charges that may become liens prior to the First Mortgage under local law, shall relate only to the individual Units and not to the Project as a whole.

Section 10.09. No provision of the Governing Instruments of the Association gives any Owner, or any other party, priority over any rights of the First Mortgagee of the Unit pursuant to its Mortgage in the case of a distribution to the Owner of insurance proceeds or condemnation awards for losses to, or a taking of, all or a portion of a Unit or Units and/ or the Common Area.



Section 10.10. Association assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those common elements that must be replaced on a periodic basis. The reserve fund shall be funded by the regular assessments rather than by special assessments.

Section 10.11. Any agreement for professional management of the Project shall not exceed three years and shall provide that either party may terminate the agreement, with or without cause and without the imposition of a termination fee, on 30 days' written notice. The approval of holders of at least 75 percent of First Mortgages shall be obtained before the Association terminates a professional management agreement.

Section 10.12. Institutional First Mortgagees, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours and (2) require the submission of any financial data furnished to the Owners by the Association.

Section 10.13. First Mortgagees may, jointly or severally, pay taxes or other charges that are in default and that may or have become a charge against the Common Area, and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area, and First Mortgagees making these payments shall be entitled to immediate reimbursement from the Association.

Section 10.14. Each Owner hereby authorizes the First Mortgagee of a First Mortgage on the Owner's Condominium to furnish information to the Board concerning the status of the First Mortgage and the loan that it secures.

## ARTICLE XI

### ANNEXATION OF ADDITIONAL PROPERTY

Additional land may be annexed to the Project by the Declarant without the consent of the Owners within seven (7) years of the date of this Declaration. Thereafter, additional land may be annexed with the consent of two-thirds (2/3) of the Owners.

## ARTICLE XII

### AMENDMENTS

Section 12.01. At any time before the close of the first sale of a Condominium to a purchaser other than Declarant, Declarant and any Mortgagee of record may, by executing an

appropriate instrument, revoke this Declaration. During any period in which Declarant is in control of the Association, Declarant may, by executing an appropriate instrument, amend this Declaration.

Section 12.02. During any period in which Declarant is not in control of the Association, this Declaration may be amended by the vote or written consent of Owners representing not less than fifty-one percent of the voting power of each class of Owners of the Association. If only one class of membership exists at the time an amendment is proposed, then it must be approved by not less than seventy-five percent of the voting power of the Association, which shall include at least a majority of the votes residing in Owners other than Declarant. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision. An amendment becomes effective after (1) the approval of the required percentage of Owners has been given, (2) that fact has been certified in a writing executed and acknowledged by the President of the Association, and (3) that writing has been filed for record with the Utah County Recorder.

### ARTICLE XIII

#### GENERAL PROVISIONS

Section 13.01. Each remedy provided for in this Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

Section 13.02. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

Section 13.03. This Declaration, as well as any amendment thereto and any valid action or directive made pursuant to it, shall be binding on the Declarant and the Owners and their heirs, grantees, tenants, successors, and assigns.

Section 13.04. The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce that provision or any other provision of this Declaration.

Section 13.05. The liability of any Owner for performance of any of the provisions of this Declaration shall terminate upon sale, transfer, assignment, or other divestment of the Owner's entire interest in his or her Unit with respect to obligations arising from and after the date of the divestment.

Section 13.06. Neither Declarant nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Unit to any person on the basis of race, color, sex, religion, ancestry, or national origin.

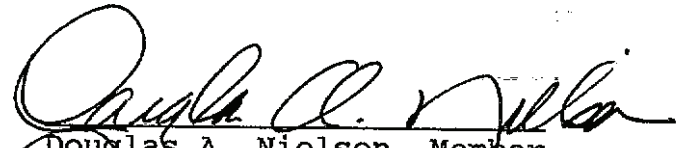
Section 13.07. As used in this Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of this Declaration, and shall not affect the interpretation of any provision.

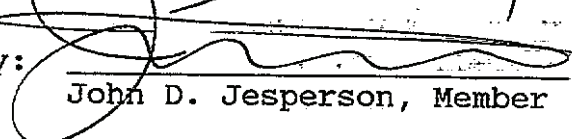
Section 13.08. Pursuant to the provisions of Section 57-8-10(h), Utah Code, Douglas A. Nielson, Attorney at Law, 3585 North University Avenue, Suite 100, Provo, Utah 84604, is hereby appointed to receive service of process.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 2nd day of February 1999.

DECLARANT:

COURTYARD OFFICE GROUP, L.C.,  
A Utah Limited Liability Company

By:   
Douglas A. Nielson, Member

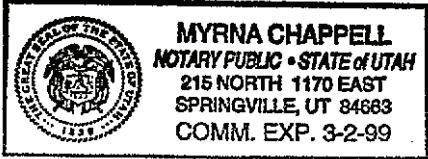
By:   
John D. Jespersen, Member

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF UTAH        )

On February 2, 1999, personally appeared before me Douglas A. Nielson and John D. Jespersen who being by me duly sworn did say, each for themselves, that they, the said Douglas

A. Nielson and John D. Jespersen are Members of Courtyard Office Group, L.C., A Utah Limited Liability Company and that the within and foregoing instrument was signed in behalf of said company and said Douglas A. Nielson and John D. Jespersen duly acknowledged to me that said company executed the same.

*Myrna Chappell*  
\_\_\_\_\_  
NOTARY PUBLIC



## BOUNDARY DESCRIPTION - BUILDING 4 & 5

COMMENCING S 00°36'48" E ALONG THE SECTION LINE 648.81' AND WEST 1.86' FROM THE EAST QUARTER CORNER OF SECTION 24, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE & MERIDIAN; THENCE AS FOLLOWS:

| COURSE  | DISTANCE | REMARKS   |
|---|----------|---|
| S 00°15'18" E   | 69.32'   | THENCE  |
| N 88°39'04" E   | 82.88'   | THENCE  |
| S 01°20'56" E   | 109.76'  | THENCE  |
| N 88°39'04" E   | 72.00'   | THENCE  |
| N 01°20'56" W   | 66.38'   | THENCE  |
| ARC   | L=96.15' | R=316.00' $\Delta = 17^{\circ}26'02''$ ; THENCE |
| ARC   | L=76.07' | R=250.00' $\Delta = 17^{\circ}26'02''$ ; THENCE |
| N 01°20'56" W   | 116.35'  | THENCE  |
| N 88°39'04" E   | 40.00'   |   |
| S 01°20'56" E   | 454.23'  |   |
| S 87°54'12" W   | 221.37'  | THENCE  |
| S 00°36'48" E   | 231.86'  | THENCE  |
| S 89°23'12" W   | 136.70'  | THENCE  |
| N 06°36'00" W   | 519.76'  | THENCE  |
| N 89°44'42" E   | 189.06'  | TO THE POINT OF BEGINNING                       |
| CONTAINING 3.08 ACRES, MORE OR LESS                     |          |   |
| BASIS OF BEARING - S 00°36'48" E ALONG THE SECTION LINE |          |   |

## BOUNDARY DESCRIPTION - BUILDING 7

COMMENCING S 00°36'48" E ALONG THE SECTION LINE 207.96' AND EAST 0.90' FROM THE EAST QUARTER CORNER OF SECTION 24, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE & MERIDIAN; THENCE AS FOLLOWS:

|   |          |   |
|---|----------|---|
| S 00°15'18" E   | 190.95'  | THENCE  |
| S 89°38'59" W   | 7.00'    | THENCE  |
| ARC   | L=8.97'  | R=7.00' $\Delta = 73^{\circ}23'55''$ (NON-TANGENT CURVE); THENCE  |
| N 00°15'18" W   | 11.50'   | THENCE  |
| S 89°44'42" W   | 123.00'  | THENCE  |
| S 00°15'18" E   | 11.24'   | THENCE  |
| ARC   | L=12.60' | R=7.00' $\Delta = 103^{\circ}09'11''$ (NON-TANGENT CURVE); THENCE |
| S 84°15'47" W   | 72.84'   | THENCE  |
| N 06°36'00" W   | 200.05'  | THENCE  |
| EAST  | 238.20'  | TO THE POINT OF BEGINNING   |
| CONTAINING 0.95 ACRES, MORE OR LESS                     |          |   |
| BASIS OF BEARING - S 00°36'48" E ALONG THE SECTION LINE |          |   |

EXHIBIT B  
BYLAWS OF  
COURTYARD AT JAMESTOWN  
CONDOMINIUMS  
PHASE III

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ARTICLE I

PLAN OF CONDOMINIUM  
OWNERSHIP

Section 1.01. The name of the corporation is COURTYARD AT JAMESTOWN III OWNERS' ASSOCIATION ("Association").

Section 1.02. The principal office of the Association is located at 3585 North University Avenue, Suite 100, Provo, Utah. The Board of Trustees is hereby granted full power and authority to change the principal office of the Association from one location to another in the County of Utah, Utah. Any such change shall be noted by the Secretary in these Bylaws, but shall not be considered an amendment of these Bylaws.

Section 1.03. These Bylaws are applicable to the business and professional condominium project known as Courtyard at Jamestown III Owners' Association ("Project"), located at the intersection of 3700 North Street and 100 East Street, City of Provo, County of Utah, Utah.

Section 1.04. Unless otherwise specified in these Bylaws, the definitions set forth in Article I of the Declaration for Courtyard at Jamestown III Owners' Association, a condominium project ("Declaration") recorded or to be recorded in the Office of the Recorder of Utah County, Utah, apply to these Bylaws.

Section 1.05. The qualification for membership provisions of Section 3.02 of the Declaration are hereby incorporated by reference.

ARTICLE II

MEETINGS OF MEMBERS

Section 2.01. All meetings of the Members shall be held at a place designated by the Board. This meeting place shall be within the Project or as close to it as possible. If no meeting place is designated, the meetings shall be held at the principal office of the Association. No meeting of the Members shall, unless unusual conditions exist, be held outside of Utah County, Utah.

Section 2.02. The first meeting of the Members of the As-



sociation shall be held within 45 days after the close of escrow for the sale of the eleventh Unit or within six months after the closing of the sale of the first Unit within the Project, whichever is earlier. Thereafter, the annual meeting of the Members shall be held on the second Monday in December of each succeeding calendar year at the hour of 7:00 p.m.

Section 2.03. Special meetings of the Members may be called for any lawful purpose by a majority of a quorum of the Board or by a written request signed by Members representing at least 50 percent of the total voting power of the Association. The special meeting shall be held not less than 35 nor more than 90 days after adoption of the resolution or receipt of the request. Only that business stated in the notice of meeting given pursuant to Section 2.04 of these Bylaws shall be transacted at the special meeting.

Section 2.04. The Board shall give written notice of any Members' meeting to each Member of record. Except as otherwise provided in this Section, the notice shall be given at least 10 but not more than 90 days before the meeting, by first class [or registered or certified] mail or by personal delivery. The notice shall be addressed to the Member at the address appearing on the books of the Association, or the address supplied by the Member to the Association for this purpose. If there is no such address, notice shall be given at the principal office of the Association or by publication at least once in a newspaper of general circulation in the county in which the principal office is located. The notice shall state the place, date, and time of the meeting. If Trustees are to be elected at the meeting, the notice shall include the names of all those who are nominees at the time the notice is given. In the case of an annual meeting, the notice shall also state those matters that the Board, at the time the notice is given, intends to present for action by the Members. In the case of a special meeting, the following additional notice requirements apply: (1) the notice shall state those matters that the Board, at the time the notice is given, intends to present for action by the Members; and (2) if the special meeting is called by Members, pursuant to Section 2.03 of these Bylaws, the notice shall be given within 20 days after receipt of the request for the meeting. If that 20-day requirement is not satisfied, the Members who called the meeting may give the notice.

Section 2.05. The transactions of any meeting of Members, however called and noticed, shall be as valid as though taken at a duly called, noticed, and held meeting, if: (1) a quorum is present either in person or by proxy; and (2) either before or after the meeting, each of the Members not present in person or by proxy signs a written waiver of notice, or a consent to the holding of the meeting, or an approval of the Minutes of the meeting. Any such waiver, consent, or approval shall be filed

with the corporate records or made a part of the Minutes of the Meeting.

Section 2.06. The voting of membership provision set forth in Section 3.04 of the Declaration is hereby incorporated by reference.

Section 2.07. The Board shall fix, in advance, a record date or dates for the purpose of determining the Members entitled to notice of and to vote at any meeting of Members. The record date for notice of a meeting shall not be more than 90 nor less than 10 days before the date of the meeting. The record date for voting shall not be more than 60 days before the date of the meeting or before the date on which the first written ballot is mailed or solicited. The Board may also fix, in advance, a record date for the purpose of determining the Members entitled to exercise any rights in connection with any other action. Any such date shall not be more than 60 days prior to the action.

Section 2.08. At any meeting, the presence either in person or by proxy of Members entitled to cast at least 51 percent of the total voting power of the association shall constitute a quorum for any action except as otherwise provided in the Articles, Bylaws, or the Declaration. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, if the action taken, other than adjournment, is approved by at least a majority of members required to constitute a quorum. If a quorum is not present at any time at a duly called meeting, a majority of those Members present in person or by proxy may adjourn the meeting to a time not less than five days nor more than 30 days from the meeting date, but no other business may be transacted. An adjourned meeting may be held without written notice, provided that notice is given by announcement at the original meeting. If no such announcement is made, or if the selected date is changed after adjournment, notice of the time and place shall be given to Members in the manner provided in Section 2.04 of these Bylaws. The quorum for the adjourned meeting shall be 51 percent.

Section 2.09. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. All members must be placed on notice as to the various reasons which a proxy may not be utilized. Every proxy shall be revocable and shall automatically cease upon conveyance of its maker's membership, or upon receipt of written notice by the Secretary of the maker's death or judicially declared incapacity. No proxy shall be valid after the expiration of 11 months from its date of execution, unless otherwise provided in the proxy. However, the maximum term of any proxy shall be three years from its date of execu-

tion. The maker of a proxy may revoke it by delivering a written revocation to the Association, by executing a subsequent proxy and presenting it to the meeting, or by attending any meeting and voting in person.

Any revocable proxy covering any of the following matters that require a vote of the members is not valid as to those matters unless it sets forth the general nature of the matter to be voted upon:

(a) Removing a trustee without cause, pursuant to Section 3.06(b) of these Bylaws;

(b) Filling trustee vacancies pursuant to Section 3.07 of these Bylaws;

(c) Entering into or approving a contract or transaction between the Association and one or more of the Trustees, or between the Association and any entity in which one or more of the Trustees has a material financial interest, when the material facts of the contract or transaction are fully disclosed.

(d) Amending the articles or bylaws to repeal, restrict, create, or expand proxy rights;

(e) Amending the Articles after approval by the Board, in accordance with the Utah Code;

(f) Disposing of assets other than in the usual and regular course of corporate activities;

(g) Approving merger terms pursuant to the provisions of the Utah Code;

(h) Adopting an amendment to a merger agreement that changes any of the principal terms pursuant to the provisions of the Utah Code;

(i) Electing to dissolve the Association, by approval of a majority of all members pursuant to the provisions of the Utah Code; or

(j) If the corporation has more than one class of memberships outstanding upon dissolution, approving a plan of distribution of assets which is not in accordance with the liquidation rights of those classes, pursuant to the provisions of the Utah Code.

ARTICLE IIIBOARD OF TRUSTEES

Section 3.01. The affairs of this Association shall be managed and its duties and obligations performed by an elected Board of Trustees, consisting of three (3) persons.

Section 3.02. Except in the case of Initial Trustees, nominations for election to the Board of Trustees may be made by any of the following:

(a) A nominating committee appointed by the Board at least 90 days prior to an annual meeting of Members, provided the Board receives the committee's nomination or nominations at least 30 days prior to the annual meeting of Members.

(b) A written petition signed within 11 months preceding the annual meeting by Members representing 51 percent of the "voting power" of the Association. The petition shall identify the nominee, contain that person's written consent to serve as a Trustee, and be delivered to the Secretary of the Association at least 30 days prior to the annual meeting.

(c) Any Member who is present in person, or by the proxy of any Member who is present by proxy, at the annual meeting of Members at which the Trustee is to be elected.

Section 3.03. As soon as possible after the filing of Articles of Incorporation for the Association, Declarant shall elect Initial Trustees who shall serve until the first annual meeting of the Members. At the first annual meeting of the Association, the Members shall fill, by election, all positions on the Board of Trustees. Subsequent elections shall also be held at the annual meetings. However, if an annual meeting is not held or does not include an election, the election may be held at a special meeting of members called for that purpose. Voting for Trustees shall be by secret written ballot. At an election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of these Bylaws. Each Member entitled to vote on the election may cumulate his or her votes and give one candidate a number of votes equal to the number of Trustees to be elected multiplied by the number of votes to which the Member is entitled, or distribute the Member's votes on the same principle among as many candidates as the Member deems appropriate. No Member shall be entitled to cumulate votes for a candidate or candidates unless the candidate's name or candidates' names have been placed in nomination prior to voting and a Member has given notice at the meeting prior to the voting of the Member's intention to cumulate votes. If any one Member has given this notice, all Members may

cumulate their votes for candidates in nomination. The persons receiving the highest number of votes shall be elected.

Section 3.04. Notwithstanding any other provision of these Bylaws, for so long as a majority of the voting power of the Association resides in Declarant, or so long as there are two classes of membership in the Association, at least one (1) Trustee shall have been elected solely by the votes of Members other than Declarant. If, at any election, Members other than Declarant do not have a sufficient percentage of the voting power to satisfy that requirement, the one position on the Board or the number of positions on the Board necessary to satisfy that requirement shall be filled by the candidate receiving the highest number of votes cast by Members other than Declarant. Any remaining positions on the Board shall be filled in accordance with normal voting procedures.

Section 3.05. Each Trustee shall hold office until the election of his or her successor or until the Trustee's death, removal, or judicial adjudication of mental incompetence. The term of office of each Trustee shall be three years. Thereafter, at each annual meeting, any vacancies on the Board created by death, resignation, removal, judicial adjudication of mental incompetence, or expiration of term shall be filled. The term of office of each Trustee elected to fill a vacancy created by the expiration of the term of office of the preceding Trustee shall be the same length as his or her predecessor's term. The term of office of any Trustee elected or appointed to fill a vacancy created by any event other than the expiration of the predecessor Trustee's term shall be the balance of the unserved term of the predecessor. Any person serving as a Trustee may be re-elected, and there shall be no limitation on the number of terms a Trustee may serve.

Section 3.06. Trustees may be removed as follows:

(a) The Board may declare vacant the office of a Trustee on the occurrence of any of the following events:

- (1) The Trustee is declared of unsound mind by a final order of court;
- (2) The Trustee is convicted of a felony;
- (3) The Trustee has failed to attend three meetings of the Board.

(b) One or more Trustees may be removed prior to the expiration of their terms, without cause, at an annual or special meeting of the Members. Any removal without cause shall be approved by a majority of the total voting power of the Association. Notwithstanding the foregoing, unless the entire

Board is removed from office by the vote of the Members, an individual Trustee shall not be removed prior to the expiration of his or her term of office if the number of votes cast against the removal, or not consenting in writing to the removal, would be sufficient to elect the Trustee if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of Trustees authorized at the time of the Trustee's most recent election were then being elected. A Trustee who has been elected to office solely by the votes of Members other than Declarant as required by Section 3.04 of these Bylaws may be removed from office prior to the expiration of his or her term of office only by the vote of at least 51 percent of the voting power of Members other than Declarant. If a Trustee is removed at a meeting, a new Trustee may be elected at the same meeting.

Section 3.07. Any vacancy on the Board caused by the death or resignation of a Trustee shall be filled by the remaining Trustees. The successor shall serve for the unexpired term of his or her predecessor. The Board shall not fill a vacancy on the Board created by the removal of a Trustee, except with the vote or written assent of a majority of each class of Members.

Section 3.08. No Trustee shall receive any compensation for any service he or she may render to the Association; provided, however, that a Trustee may be reimbursed for actual out of pocket expenses incurred by the Trustee in the performance of his or her duties.

Section 3.09. The Board's powers and duties shall include, but shall not be limited to, the following:

(a) Enforcing the applicable provisions of this Declaration, the Articles, Bylaws, and any other instruments governing the ownership, management, and control of the Project.

(b) Paying taxes and assessments that are, or could become, a lien on all or a portion of the Common Area.

(c) Contracting for casualty, liability, and other insurance on behalf of the Association.

(d) Contracting for goods and services for the Common Area, facilities, and interests of the Association, subject to the limitations set forth in Section 3.10(a) of these Bylaws.

(e) Delegating its powers to any committees, Officers, or employees of the Association expressly authorized by the Governing Instruments.

(f) Preparing budgets and financial statements for the

Association as prescribed in the Governing Instruments.

(g) Formulating Rules and Regulations for the use and operation of the Common Area and facilities owned or controlled by the Association.

(h) Initiating and executing disciplinary proceedings against Members for violations of provisions of the Governing Instruments in accordance with procedures set forth in the Governing Instruments.

(i) Entering any Unit to perform necessary construction, maintenance, or emergency repair work for the benefit of the Common Area or the Members in the aggregate.

(j) Electing the Officers of the Association.

(k) Filling vacancies on the Board of Trustees, except for a vacancy created by the removal of a Trustee.

(l) Reviewing the following on at least a quarterly basis:

- (1) A current reconciliation of the operating accounts of the Association.
- (2) A current reconciliation of the reserve accounts of the Association.
- (3) The actual reserve revenues and expenses for the current year compared to the budget for the current year.
- (4) The most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.
- (5) An income and expense statement for the operating and reserve accounts of the Association.

(m) Authorizing of the withdrawal of moneys from the Association's reserve accounts, upon the signatures of two Trustees or one Trustee and one Officer who is not a Trustee.

Section 3.10. Notwithstanding the provisions of Section 3.09, the Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of each class of Members, or when Class B membership no longer exists, with the approval of a majority of the total voting power of the Association as well as the approval of a majority of the total voting power residing in Members other than Declarant:

(a) Entering into a contract with a third person under which the third person will furnish goods or services for the Common Area or the Association for a term longer than one year, with the following exceptions:

- (1) A management contract approved by the Federal Housing Administration or Veterans Administration;
- (2) A contract with a public utility if the rates charged are regulated by the Public Utilities Commission, provided that the term shall not exceed the shortest term for which the utility will contract at the regulated rate;
- (3) Prepaid casualty and/or liability insurance of not more than three years duration, provided that the policy provides for short rate cancellation by the insured;
- (4) Lease agreements for laundry room fixtures and equipment of not more than five years duration, provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect ownership interest of 10 percent or more;
- (5) Agreements for cable television services and equipment or satellite dish television services and equipment for a term of up to five years, provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of 10 percent or more; and
- (6) Agreements for the sale or lease of burglar alarm and fire alarm equipment, installation, and services for a term of up to five years, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of 10 percent or more.

(b) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of 5 percent of the budgeted gross expenses of the Association for that fiscal year.

(c) Selling during any fiscal year property of the Association having an aggregate fair market value in excess of 5 percent of the budgeted gross expenses of the Association for that fiscal year.

(d) Paying compensation to Trustees or to Officers of the Association for services rendered in the conduct of the Associ-



ation's business; provided, however, that the Board may reimburse a Trustee or Officer for expenses incurred in carrying on the business of the Association.

(e) Filling a vacancy on the Board of Trustees created by the removal of a Trustee.

#### ARTICLE IV

##### MEETINGS OF Trustees

Section 4.01. Regular meetings of the Board of Trustees shall be held Quarterly at a time and place within the Development fixed by resolution of the Board. Notice of the time and place of the meeting shall be posted at a prominent place or places within the Common Area and shall be communicated to the Trustees not less than four days prior to the meeting; provided, however, that notice need not be given to any Trustee who has signed a waiver of notice or a written consent to holding of the meeting.

Section 4.02. Special meetings of the Board shall be held when called by written notice signed by any two Trustees. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Notice of any special meeting must be given to each Trustee not less than three days nor more than fifteen days prior to the date fixed for the meeting; provided, however, that notice need not be given to any Trustee who has signed a waiver of notice or a written consent to holding of the meeting. A copy of the notice shall also be posted in a prominent place or places in the Common Area of the Project.

Section 4.03. A majority of the Board shall constitute a quorum and, if a quorum is present, the decision of a majority of the Trustees present shall be the act of the Board.

Section 4.04. Regular and special meetings of the Board shall be open to all Members of the Association; provided, however, that Association Members who are not on the Board may not participate in any deliberation or discussion unless expressly authorized to do so by the vote of a majority of a quorum of the Board.

Section 4.05. The Board may, with the approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 4.06. A majority of the Trustees present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of the adjournment shall be given, prior to the time of the adjourned meeting, to the Trustees who were not present at the time of the adjournment.

Section 4.07. The Board may take actions without a meeting if all of the Trustees consent in writing to the action to be taken. If the Board resolves by unanimous written consent to take action, an explanation of the action taken shall be posted at a prominent place or places within the Common Area within three days after the written consents of all Trustees have been obtained.

#### ARTICLE V

##### OFFICERS

There shall be no officers of this Association unless so appointed by the Board.

#### ARTICLE VI

##### BOOKS AND RECORDS

Section 6.01. The Association shall maintain at its principal office:

- (a) Copies of the Governing Instruments as last amended;
- (b) Adequate and correct books and records of account;
- (c) Written minutes of the proceedings of its Members, of its Board, and of committees of its Board; and
- (d) A Membership Register containing the name, address, and class of membership of each Member.

Section 6.02. The above books and records shall be made available for inspection as follows:

(a) Any Member shall have the right to inspect the Governing Instruments at the principal office of the Association, at any reasonable time during office hours.

(b) Any Member shall have the right to inspect the books and records described in Section 11.01(b)-(d) and to copy them at any reasonable time and for a purpose reasonable related to his

or her interest as a Member. This right is subject to the power of the Board to set reasonable times for inspection, notice requirements, and fees to cover the cost of making copies of the documents requested by a Member.

(c) Every Trustee shall have the absolute right to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association at any reasonable time. The right of inspection by a Trustee includes the right to make extracts and copies of documents.

## ARTICLE VII

### NONLIABILITY AND INDEMNIFICATION

Section 7.01. For purposes of this Article, "Agent" means any present or former Trustee or Officer or any other employee or agent of the Association.

Section 7.02. Except as provided by law, no right, power, or responsibility conferred on the Board or the Architectural Committee by the Governing Instruments shall be construed as a duty, obligation, or disability charged upon any Agent. No Agent shall be liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from the Agent's acts or omissions within what the Agent reasonable believed to be the scope of his or her Association duties ("Official Acts"), except to the extent that the injuries or damage result from the Agent's willful or malicious misconduct. No Agent shall be liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from the Agent's Official Acts, except to the extent that the injuries or damage result from the Agent's negligence or willful or malicious misconduct.

Section 7.03. The Association shall pay all expenses actually and reasonably incurred by, and satisfy any judgment or fine levied against, any Agent as a result of any action or threatened action against the Agent to impose liability on the Agent for his or her Official Acts, provided that:

(a) The Board determines that the Agent acted in good faith and in a manner the Agent reasonable believed to be in the best interests of the Association;

(b) In the case of a criminal proceeding, the Board determines that the Agent had no reasonable cause to believe his or her conduct was unlawful; and

(c) In the case of an action or threatened action by or in

the right of the Association, the Board determines that the Agent acted with the care (including reasonable inquiry) that an ordinarily prudent person in a like position would use under similar circumstances.

Section 7.04. Any determination of the Board required under this Article must be approved by a majority vote of a quorum consisting of Trustees who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, the determination may be made by the vote or written consent of a majority of a quorum of the Members, provided that the Agent to be indemnified shall not be entitled to vote.

Section 7.05. Payments made pursuant to this Article shall include amounts paid and expenses incurred in settling the action or threatened action. This Article shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law.

Section 7.06. The Association may purchase and maintain insurance on behalf of its Agents to the extent and under the circumstances provided in the Declaration.

#### ARTICLE VIII

##### AMENDMENTS

So long as a two-class voting system is in effect, any amendment of these Bylaws shall require the vote or written consent of Members representing 51 percent of the voting power of each class of Members or a quorum of Members of each class provided said amendment is approved in writing by the Administrator of the United States Department of Veterans Affairs. After conversion of the Class B Membership to Class A Membership, these Bylaws may be amended by the vote or written consent of 51 percent of a quorum and 51 percent of the votes of Members other than the Declarant. Notwithstanding the foregoing, the percentage of a quorum or of the voting power of the Association or of Members other than Declarant necessary to amend a specific clause or provision in these bylaws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision.

#### ARTICLE IX

##### EXEMPT STATUS

The Board and Members of the Association shall conduct the business of the Association in such a manner that the Association

shall qualify and be considered an organization exempt from federal and state income taxes pursuant to Section 528, Internal Revenue Code of 1986, as amended and appropriate sections of the Utah Code.

CERTIFICATE OF BOARD

We hereby certify that we are the duly elected and acting Trustees of Courtyard at Jamestown III Owners' Association and that the foregoing Bylaws, comprising 15 pages, constitute the Bylaws of the Corporation as duly adopted at a meeting of the Board of Trustees of the Corporation held on \_\_\_\_\_ 19\_\_\_\_\_.

Dated: \_\_\_\_\_ 19\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## EXHIBIT C

| <u>Unit<br/>Number</u> | <u>Percentage of<br/>Interest<br/>In Common Area</u> | <u>Square<br/>Footage<br/>of Unit</u> |
|------------------------|--|---------------------------------------|
| <u>Building #4</u>     |  |                                       |
| Unit A                 | 3.7038%  | 2,309                                 |
| Unit B                 | 3.4824%  | 2,171                                 |
| Unit C                 | 2.9755%  | 1,855                                 |
| Unit D                 | 3.2145%  | 2,004                                 |
| Unit E                 | 2.9482%  | 1,838                                 |
| Unit F                 | 2.9851%  | 1,861                                 |
| Unit G                 | 3.7343%  | 2,328                                 |
| Unit H                 | 2.8793%  | 1,795                                 |
| Unit J                 | 6.7195%  | 4,189                                 |
| Unit K                 | 5.8276%  | 3,633                                 |
| <u>Building #5</u>     |  |                                       |
| Unit A                 | 3.5097%  | 2,188                                 |
| Unit B                 | 3.4536%  | 2,153                                 |
| Unit C                 | 2.8985%  | 1,807                                 |
| Unit D                 | 3.1777%  | 1,981                                 |
| Unit E                 | 3.5449%  | 2,210                                 |
| Unit F                 | 2.9177%  | 1,819                                 |
| Unit G                 | 2.8760%  | 1,793                                 |
| Unit H                 | 2.8038%  | 1,748                                 |
| Unit J                 | 6.4612%  | 4,028                                 |
| Unit K                 | 5.6816%  | 3,542                                 |
| <u>Building #7</u>     |  |                                       |
| Unit A                 | 3.5449%  | 2,210                                 |
| Unit B                 | 2.8038%  | 1,748                                 |
| Unit C                 | 2.9178%  | 1,819                                 |
| Unit D                 | 2.8760%  | 1,793                                 |
| Unit E                 | 6.4917%  | 4,047                                 |
| Unit F                 | 5.5709%  | 3,473                                 |