

27760

VILLAGE GREEN COMMERCIAL CENTER  
A Planned Development (Expandable)

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

THIS INSTRUMENT, dated as of August 29, 1985, is made and entered into by C & M MAGLEBY PROPERTIES, a general partnership, in its capacity as the Declarant hereunder.

I

PURPOSE AND EFFECTUATION

1. Purpose. The purpose of this instrument is to provide for the preservation of the values of both Lots and Common Areas within the Village Green Commercial Center, a Planned Development in Provo, Utah (the "Development"), and for the maintenance of the roadways, sidewalks, open spaces, landscaping, trees and all other Common Areas therein.

2. Consent of Mortgagee. Equitable Life Assurance Society of the United States, a New York corporation, the Mortgagee holding or having an interest in a mortgage outstanding against the Property, has consented to this instrument by separate document recorded concurrently herewith.

3. Effectiveness. From and after the effective date hereof: (a) Each part of the Property and each lot and unit lying within the boundaries of the Property shall constitute but constituent parts of a single Planned Development; (b) The Development shall consist of the Lots and of the Common Areas which are described and depicted on the Plat, together with such additional Lots and Common Areas as may come into existence pursuant to the provisions relating to annexation or expansion of the Development; (c) The Declaration for the Development shall consist of this document as the same may be modified, amended, supplemented, or expanded in accordance with the provisions hereof; and (d) The Plat of the Development shall consist of the instrument which is identified as Plat "A", Village Green Commercial Center, A Planned Development, Provo, Utah, and filed for record concurrently herewith in the office of the Utah County Recorder, Provo, Utah, as the same may be amended, and any subsequent plats which may be filed for record pursuant to the provisions hereof relating to annexation or expansion of the Development.

II

DEFINITIONS

When used in this Declaration each of the following terms shall have the meaning indicated:

1. Declaration shall mean this "Declaration of Easements, Covenants, Conditions and Restrictions of Village Green Commercial Center, a Planned Development (Expandable)".

2. Association shall mean THE VILLAGE GREEN COMMERCIAL CENTER PROPERTY OWNERS ASSOCIATION, a Utah nonprofit corporation, and its successors and assigns.

3. Articles shall mean and refer to the Articles of Incorporation of the Association, which are or shall be filed in the Office of the Secretary of State of Utah, as amended from time to time.

RECORD AS # 3

[PLAT "A" TO BE RECORDED AS # 2]

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RECORDED AT THE REQUEST OF  
MAGLEBY PROPERTIES  
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UTAH COUNTY RECORDER  
NINA J. HILL  
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4. Floor Area shall mean the square footage of floor space on each fully or partially enclosed floor within each Unit utilizing exterior measurements and including any floor/ceiling areas comprising stairwells or open spaces which shall be deemed to be bounded in such areas by a horizontal plane, as extended, which passes through the center of the floor/ceiling area in question; provided, however, that as to Lot 1, as set forth on the Plat, the following special provisions shall apply in calculating the Floor Area within the Unit presently located thereon or in any successor structure constructed or rebuilt in a manner intended to substantially duplicate the location and configuration of said Unit:

(a) The floor/ceiling open lobby area comprising approximately one-third of the main floor of the Unit on the south shall be counted only once, as ground Floor Area; and

(b) The dimensions of the covered drive-through area of Lot 1, shown on the Plat as the cross-hatched area, shall be included and utilized in calculating the total Floor Area of Lot 1.

5. Board shall mean the Board of Trustees of the Association.

6. Common Areas shall mean all portions of the Development except the Lots and Units, and shall include all property owned by the Association for the common use and enjoyment of the Owners such as all undedicated roads or streets, open spaces, structural common areas, if any, and the like, together with all easements appurtenant thereto.

7. Unit shall mean a structure which is designed and intended for use or occupancy as a commercial establishment, business or professional office, together with all improvements located on the same Lot and used in conjunction with such establishment or office.

8. Managing Agent shall mean any person or entity appointed or employed as Managing Agent by the Association.

9. Mortgage shall mean any recorded mortgage, recorded deed of trust or trust deed or the act of encumbering any property by a mortgage, or deed of trust or trust deed; and Mortgagee shall mean any mortgagee of a recorded mortgage and any trustee or beneficiary of a recorded deed of trust or trust deed.

10. Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Utah County, Utah) of a fee or undivided fee interest in any Lot, and any contract purchaser of any Lot. Notwithstanding any applicable theory relating to mortgages, no Mortgagee shall be an Owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Lot owned by it. Multiple owners of a particular Lot shall be jointly and severally liable as to all responsibilities of an Owner.

11. Property shall mean all land covered by this Declaration, including Common Areas and Lots and other land annexed to the Property, as provided in this Declaration. The initial Property shall consist of the land described in Article III hereof.

12. Lot shall mean any lot of land within the Property as designated on the Plat.

13. Additional Land shall, at any point in time, mean all of the land in Utah County, Utah, described as follows:

Beginning at a point east along the section line 838.38 ft. and south 1365.43 ft. from the north 1/4 corner of Section 36, T. 6 S. R 2 E, SLB & M; thence S 0 degrees 36'30" W. 132.00 ft. to the north line of Lot 12, Block 2, Plat "A", Parkway Subdivision, Provo, Utah, according to the official plat thereof; thence N. 89 degrees 14' W. along the north line of said Lot 12, 76.92 ft., more or less, to the northwest corner of said Lot 12; thence S. 0 degrees 46' W. along the west line of said Lot 12, 56.00 ft.; thence N. 89 degrees 14' W. 126.94 ft. to the easterly right-of-way line of 300 West Street; thence N. 5 degrees 14' W. along said right-of-way line, 56.31 ft.; thence continuing along said right-of-way line, N. 0 degrees 46' E. 100.26 ft.; thence S. 89 degrees 09'42" E. 1.64 ft.; thence N. 0 degrees 36'30" E. 32.00 ft.; thence S. 89 degrees 09'42" E. 207.83' ft. to the point of beginning. Containing an area of 0.801 acres.

TOGETHER WITH AND SUBJECT TO a nonexclusive and perpetual right-of-way for access by vehicular and pedestrian traffic over and across the entirety of the following described property: Beginning at a point on the westerly right-of-way line of 200 West Street, Provo, Utah, which beginning point is east along the section line 1169.52 ft. and south 1372.92 ft. from the north 1/4 corner of Section 36, T. 6 S., R. 2 E., SLB & M; thence west 121.41 ft; thence S. 66 degrees 02'12" W. 125.58 ft; thence S 10 degrees 28'48" E. 82.15 ft; thence S 1 degree 44'48" W. 112.21 ft. to the north right-of-way line of 1625 North Street; thence N 89 degrees 14' W. along said north right-of-way line of 1625 North Street 30.00 ft; thence N. 1 degree 44'48" E. 109.51 ft; thence N. 10 degrees 28'48" W. 110.60 ft; thence N. 89 degree 09'42" W. 267.86 ft. to the easterly right-of-way line of 300 West Street; thence along said easterly right-of-way line of 300 West Street N. 0 degrees 36'30" E. 32.00 ft; thence S. 89 degrees 09'42" E. 285.00 ft; thence S. 0 degrees 50'18" W. 16.00 ft; thence S. 35 degrees 41'10" E. 11.41 ft; thence N. 66 degrees 02'12" E. 90.29 ft; thence N. 35 degrees 41'10" W. 158.15 ft; thence N. 29 degrees 41'10" W. 114.80 ft; thence N. 35 degrees 41'10" W. 185.62 ft; thence S. 21 degrees 45' W. 339.54 ft; thence S. 87 degrees 36'30" W. 26.30 ft; thence N. 21 degrees 45' E. 401.22 ft; thence S. 35 degrees 41'10" E. 233.25 ft; thence S. 29 degrees 41'10" E. 114.80 ft; thence S. 35 degrees 41'10" E. 159.78 ft; thence east 143.00 ft. to the westerly right-of-way line of 200 West Street; thence S. 5 degrees 32' W. along said westerly right-of-way line of 200 West Street, 34.16 ft to the point of beginning.

And also:

Beginning at a point on the southwesterly right-of-way line of University Parkway (BYU Diagonal), Provo, Utah, which beginning point is east along the section line 720.51 ft. and south 544.02 ft. from the north 1/4 corner of Section 36, T. 6 S., R. 2 E., SLB & M; thence S. 37 degrees 09' E. along the southwesterly right-of-way line of said University Parkway, 639.87 ft.; thence

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continuing along the southwesterly right-of-way line of said University Parkway, S. 35 degrees 41'10" E. 141.10 ft. to the westerly right-of-way line of 200 west street; thence S. 5 degrees 32' W. along the westerly right-of-way line of said 200 west street, 205.16 ft.; thence west 152.25 ft.; thence N. 35 degrees 41'10" W. 180.05 ft.; thence N. 29 degrees 41'10" W. 114.80 ft.; thence N. 35 degrees 41'10" W. 239.76 ft.; thence N. 20 degrees 56'30" E. 12.08 ft.; thence N. 3 degrees 36'30" E. 184.00 ft.; thence N. 6 degrees 52' W. 129.39 ft.; thence N. 4 degrees 02' E. 64.97 ft. to the point of beginning. Containing an area of 4.028 acres.

TOGETHER WITH AND SUBJECT TO a nonexclusive and perpetual right-of-way for access by vehicular and pedestrian traffic over and across the entirety of the following described property: Beginning at a point on the westerly right-of-way line of 200 West Street, Provo, Utah, which beginning point is east along the section line 1169.52 ft. and south 1372.92 ft. from the north 1/4 corner of Section 36, T. 6 S., R. 2 E., SLB & M; thence west 121.41 ft; thence S. 66 degrees 02'12" W. 125.58 ft; thence S 10 degrees 28'48" E. 82.15 ft; thence S 1 degree 44'48" W. 112.21 ft. to the north right-of-way line of 1625 North Street; thence N 89 degrees 14' W. along said north right-of-way line of 1625 North Street 30.00 ft; thence N. 1 degree 44'48" E. 109.51 ft; thence N. 10 degrees 28'48" W. 110.60 ft; thence N. 89 degree 09'42" W. 267.86 ft. to the easterly right-of-way line of 300 West Street; thence along said easterly right-of-way line of 300 West Street N. 0 degrees 36'30" E. 32.00 ft; thence S. 89 degrees 09'42" E. 285.00 ft; thence S. 0 degrees 50'18" W. 16.00 ft; thence S. 35 degrees 41'10" E. 11.41 ft; thence N. 66 degrees 02'12" E. 90.29 ft; thence N. 35 degrees 41'10" W. 158.15 ft; thence N. 29 degrees 41'10" W. 114.80 ft; thence N. 35 degrees 41'10" W. 185.62 ft; thence S. 21 degrees 45' W. 339.54 ft; thence S. 87 degrees 36'30" W. 26.30 ft; thence N. 21 degrees 45' E. 401.22 ft; thence S. 35 degrees 41'10" E. 233.25 ft; thence S. 29 degrees 41'10" E. 114.80 ft; thence S. 35 degrees 41'10" E. 159.78 ft; thence east 143.00 ft. to the westerly right-of-way line of 200 West Street; thence S. 5 degrees 32' W. along said westerly right-of-way line of 200 West Street, 34.16 ft to the point of beginning.

A description of the Additional Land is set forth in this Declaration solely for purposes of identification. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any portion of the Additional Land unless and until such portion is added to the Development in accordance with the provisions of this Declaration.

14. Plat shall mean and refer to the subdivision plat of the Village Green Commercial Center, a Planned Development, Provo, Utah, initially creating Common Areas and nine (9) Lots (specifically Lots 1, 2, 3A, 3B, 4, 9A, 9B, 9C, and 10) recorded concurrently with this Declaration, as the same may be amended or supplemented from time to time pursuant to the provisions of this Declaration.

15. Declarant shall mean C & M Magleby Properties, a general partnership, and its successors and assigns.

16. Development shall mean the Property as it exists at any given time.

17. Reimbursement Assessment shall mean a charge against a particular Owner or his Lot for the purpose of reimbursing the Association for costs incurred in bringing the Owner or his Lot into compliance with the provisions of this Declaration, the Articles, or rules and regulations of the Association, or any other charge designated as a Reimbursement Assessment in this Declaration, the Articles, or rules and regulations of the Association, together with costs, interest, attorney's fees and other charges payable by such Owner, pursuant to the provisions of this Declaration.

### III

#### PROPERTY DESCRIPTION AND ANNEXATION

1. Submission. The Property which initially is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property in Utah County, State of Utah:

Beginning at a point at the intersection of the westerly right-of-way line of 200 West Street, Provo, Utah, (as constructed) and the south right-of-way line of a 34.0 ft. wide private roadway, (as constructed), which beginning point is east along the section line 1169.52 ft. and south 1372.92 ft. from the north 1/4 corner of Section 36, T. 6 S., R. 2 E., SLB & M; thence S. 5 degrees 32' W. along said westerly right-of-way line of said 200 west street, 169.61 ft.; thence continuing along said right-of-way line S. 1 degree 46' W. 81.91 ft.; thence along the northerly right-of-way line of 1625 north street, Provo (as constructed), by the following courses and distances: N. 89 degrees 14' W. 87.42 ft.; thence N. 64 degrees 14' W. 9.46 ft.; thence N. 89 degrees 14' W. 143.00 ft.; thence S. 0 degrees 36'30" W. 4.00 ft.; thence N. 89 degrees 14' W. 70.00 ft.; thence leaving said northerly right-of-way line of said 1625 north street and going N. 0 degrees 36'30" E. 122.00 ft.; thence N. 89 degrees 23'30" W. 6.00 ft.; thence N. 0 degrees 36'30" East 132.00 ft.; thence N. 89 degrees 09'42" W. 207.83 ft. to the easterly right-of-way line of 300 west street, Provo, Utah, thence N. 16 degrees 36'30" E. along said easterly right-of-way line of said 300 west street 75.27 ft.; thence S. 87 degrees 36'30" W. 90.69 ft.; thence N. 25 degrees 06'30" E. 200.00 ft.; thence N. 20 degrees 56'30" E. 193.52 ft.; thence S. 35 degrees 41'10" E. 239.76 ft.; thence S. 29 degrees 41'10" E. 114.80 ft.; thence S. 35 degrees 41'10" E. 180.05 ft.; thence east 152.25 ft. to the point of beginning. Containing an area of 4.037 acres.

Together with and subject to a nonexclusive and perpetual right-of-way for access by vehicular and pedestrian traffic over and across the entirety of the following described property: beginning at a point on the westerly right-of-way line of 200 west street, Provo, Utah, which beginning point is east along the section line 1169.52 ft. and south 1372.92 ft. from the north 1/4 corner of section

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36, T.6 S., R.2 E., SLB & M; thence west 121.41 ft.; thence S. 66 degrees 02'12" W. 125.58 ft.; thence S. 10 degrees 28'48" E. 82.15 ft.; thence S. 1 degrees 44'48" W. 112.21 ft. to the north right-of-way line of 1625 north street; thence N. 89 degrees 14' W. along said north right-of-way line of 1625 north street 30.00 ft.; thence N. 1 degree 44'48" E. 109.51 ft.; thence N. 10 degrees 28' 48" W. 110.60 ft.; thence N. 89 degrees 09'42" W. 267.86 ft. to the easterly right-of-way line of 300 West Street; thence along said easterly right-of-way line of 300 West Street, N. 0 degree 36'30" E. 32.00 ft.; thence S. 89 degrees 09'42" E. 285.00 ft.; thence S. 0 degrees 50'18" W. 16.00 ft.; thence S. 35 degrees 41'10" E. 11.41 ft.; thence N. 66 degrees 02'12" E. 90.29 ft.; thence N. 35 degrees 41'10" W. 158.15 ft.; thence N. 29 degrees 41'10" W. 114.80 ft.; thence N. 35 degrees 41'10" W. 185.62 ft.; thence S. 21 degrees 45' W. 339.54 ft.; thence S. 87 degrees 36'30" W. 26.30 ft.; thence N. 21 degrees 45' E. 401.22 ft.; thence S. 35 degrees 41'10" E. 233.25 ft.; thence S. 29 degrees 41'10" E. 114.80 ft.; thence S. 35 degrees 41'10" E. 159.78 ft.; thence east 143.00 ft. to the westerly right-of-way line of 200 west street; thence S. 5 degrees 32' W. along said westerly right-of-way line of 200 West Street, 34.16 ft. to the point of beginning.

2. Annexation by Declarant. Declarant may from time to time, expand the Property subject to this Declaration by the annexation of all or part of the lands constituting the Additional Land. Subject to compliance with the conditions imposed by the following Section 3, the annexation of any such land shall become effective upon the concurrent recordation in the office of the County Recorder of Utah County, Utah, of a Plat of such Additional Land and of a Supplemental Declaration which (a) are signed by the then owners of such Additional Land; (b) describe the land to be annexed; (c) declares that the annexed land is to be held, transferred, sold, conveyed, and occupied as part of the Property subject to this Declaration; (d) amends Exhibit "A" hereto to reflect the change in voting rights as a result of the annexation of the Additional Land; and (e) sets forth such additional limitations, restrictions, easements, covenants and conditions, not inconsistent with those of this Declaration, as are applicable to the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Property and subject to the provisions of the Declaration and any amendment or supplement thereto.

3. Limitation on Annexation. Declarant's right to annex land to the Property shall be subject to the following limitations:

(a) The annexed land must be part of the land which is Additional Land as of the date of this Declaration;

(b) Declarant shall not effectuate any annexation of land which would cause the total number of Lots existing on the Property to exceed twenty-four (24);

(c) The holder of each mortgage, deed of trust or other security device affecting any part of the Additional Land being annexed into the Development must subordinate, through appropriate instruments recorded in Utah County, Utah, the encumbrance held by such holder to the Supplemental Declaration and to the Plat to which such Supplemental Declaration relates;

(d) The Additional Land added to the Property must be subdivided into Lots and Common Areas designed to be used for purposes similar to those contemplated by this Declaration, with any Units being similar in architectural style and concept as that of such Lots, Units and uses in Plat "A";

(e) All Common Areas covered by the Supplemental Declaration designated on the Plat related thereto shall be conveyed to the Association pursuant and subject to the provisions of Section 3, Article VIII of this Declaration;

(f) A document shall be recorded wherein the then holder, if any, of that certain Utah Mortgage, dated January 22, 1980, executed by Declarant in favor of The Equitable Life Assurance Society of the United States, a New York corporation (said Mortgage recorded in Utah County, Utah on January 24, 1980, as Entry No. 3592 in Book 1809, Page 821), consents to such annexation, which consent may be given or withheld in the discretion of such holder; and

(g) Declarant's right to annex land to the Property shall expire ten (10) years after this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

4. No Obligation to Annex or Develop. Declarant has no obligation hereunder to annex any Additional Land to the Property or to develop or preserve any portion of Additional Land in any particular way or according to any particular time schedule. No land other than the Property as defined on the date hereof and land annexed thereto in accordance with the terms of this Article shall be deemed to be subject to this Declaration, whether or not shown on any subdivision plat filed by Declarant or described or referred to in any documents executed or recorded by Declarant.

5. Other Annexation. Anything herein to the contrary notwithstanding, to the extent that Declarant does not now or in the future may not own all of the Additional Land, the then owners of such Additional Land or parts thereof ("Adjoining Owners") may annex all or any part of the Additional Land to the Property and subject the same to the terms of this Declaration, provided that (a) the same limitations which are imposed on Declarant under Section 3 of this Article III shall be applicable to Adjoining Owners; and (b) Adjoining Owners make the recordings and comply with all the other requirements referred to in Section 2 of this Article III.

#### IV

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

1. Membership. Every Owner upon acquiring title to a Lot shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association with respect to such Lot shall automatically cease and the successor Owner shall become a member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Lot.

2. Voting Rights. The total number of votes in the Association shall be 10,000. The number of votes appurtenant to each Lot at any given time is equal to the ratio between the Floor Area of the Unit constructed thereon and the total aggregate Floor Area of all Units, multiplied by the number 100. The

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number of votes in the Association which is appurtenant to each Lot initially contained in the Development has been computed in the manner set forth in this Section 2 and is set forth in Exhibit "A", attached hereto and made a part hereof. In utilizing the foregoing formula for determining the number of votes in the Association appurtenant to a Lot, minor adjustments may have been made in some or all of the numbers of votes which result from a strict application thereof for the purposes, but only for the purposes, of assuring that the total votes in the Association equal 10,000 and that no vote in the Association is divided into fractional parts.

3. Adjustment of Voting Rights. At such time as any of the Additional Land is annexed into the Development pursuant to the appropriate provisions of Article III, the number of votes in the Association which is appurtenant to each Lot in the Development following such annexation shall be recomputed in the manner provided in Section 2 of this Article IV. Such recomputation shall be reflected in an amendment to Exhibit "A" hereto which amendment shall be attached to the Supplemental Declaration recorded in connection with such annexation and which shall be effective as of such annexation. No adjustment to voting rights shall be made by reason of the partial or total destruction of any Unit unless upon the reconstruction of such Unit the total Floor Area thereof shall be greater than that set forth in Exhibit "A".

4. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves, but in no event shall more than the total number of votes appurtenant to such Lot be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Lot concerned unless an objection is made at the meeting or in writing by another Owner of the same Lot, in which event no vote will be counted with respect to such Lot except to determine the presence or absence of a quorum.

5. Records of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract or notice of interest) to him of his Lot and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein shall notify the Secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the Secretary of the Association shall maintain all such information in the records of ownership. The Association may at any time obtain and rely on information from the Utah County Recorder regarding the Owners and Mortgagees of Lots.

V

DUTIES AND POWERS OF THE ASSOCIATION

1. Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

(a) The Association shall accept all Owners as members of the Association.



(b) The Association shall accept title to all Common Areas conveyed to it, whether by Declarant or by others.

(c) The Association shall maintain, repair, replace and landscape the Common Areas and that part of any Lot not occupied by a Unit.

(d) If any Owner shall fail to maintain the exterior of his Unit and other improvements in a manner that meets the standards of this Declaration, the Association, after a majority vote of the full Board, shall have the right, through its agents, employees or independent contractors, to enter upon such Lot and to maintain and repair the exterior of such Owner's Unit and other improvements erected thereon. The cost of such maintenance and repair shall be added to and become part of the Reimbursement Assessment to which such Lot is subject under this Declaration.

(e) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

(f) The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

(g) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable as specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days' written notice thereof; and the term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive periods of one (1) year each. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

2. Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) At any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

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(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Lots (to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, the Association shall have the power and authority (a) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed for the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (b) to obtain, contract and pay for, or otherwise provide for:

(1) Construction, maintenance, repair and landscaping of the Common Areas on such terms and conditions as the Board shall deem appropriate;

(2) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board and the Owners;

(3) Such Common Area related utility services as the Board may from time to time deem desirable;

(4) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

(5) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and

(6) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

3. Association Rules. The Board from time to time, subject to and not inconsistent with the provisions of this Declaration, may adopt, amend, repeal and enforce reasonable rules and regulations governing, among other things: (a) the use of the Common Areas; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal of refuse; and (d) other matters concerning the use and enjoyment of the Common Areas and the conduct of Owners and their invitees within the Common Areas.

4. Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee or the Managing Agent.

## VI

### DUTIES AND OBLIGATIONS OF OWNERS

1. Maintenance and Repairs. Each Owner shall at his own cost maintain his Lot and any improvements constructed thereon in good repair at all times, including Unit exteriors. In the event of the damage or destruction of any Unit, the Owner of the Lot on which such Unit is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed building in the Development.

2. Insurance. Owners shall obtain fire and extended coverage insurance to the full insurable value of any Unit constructed on such Owner's Lot.

3. Assessments and Rules Observance. Each Owner shall be responsible for the prompt payment of all assessments provided for in this Declaration and for the observance of the rules and regulations promulgated by the Association from time to time.

4. Transfer of Interests. Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Lot to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration.

## VII

### ASSESSMENTS

1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the annual, special assessments and Reimbursement Assessments described in this Article, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the Development, the interests of the Owners therein, paying costs properly incurred by the Association, and the maintenance, operation and carrying of the Common Areas. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; establishment and funding of a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation.

3. Annual Assessments. Annual assessments shall be computed and assessed against all Lots in the Development based upon advance estimates of the Association's cash requirements to provide for payment of the cost of those items set forth in Section 2, above. Annual assessments shall be apportioned among and assessed to all Lots in proportion to the voting rights appurtenant to such Lots as set forth in Exhibit "A" and as Exhibit "A" may be amended from time to time pursuant to the provisions of Article III. The Declarant shall be liable for the amount of any assessments against Lots owned by it.

4. Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following; provided the first fiscal year shall

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begin on the date of recordation of this Declaration. On or before December 15, 1985, and on or before December 15, of each year thereafter, the Association shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. Such operating budget for the first fiscal year shall be prepared and furnished to each Owner within thirty (30) days of the recordation of this Declaration. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, and any deficit or surplus from the prior operating period. Included in any anticipated receipts shall be the obligations of any owners of adjoining property to pay for proportionate costs of maintenance and upkeep of any roads or rights of way or other Common Areas jointly used by the Development and such adjoining property owners. The budget shall serve as the supporting document for the annual assessments for the upcoming fiscal year and as the major guideline under which the Development shall be operated during such annual period.

5. Notice and Payment of Annual Assessments. Except with respect to the fiscal period ending December 31, 1985, the Association shall notify each Owner as to the amount of the annual assessment against his Lot on or before December 15 of the year preceding the year for which such annual assessment is made. Each annual assessment shall be payable in twelve (12) equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessments for the fiscal period ending December 31, 1985, shall be based upon such portion of the calendar year 1985 as follows the date of recordation of this Declaration and shall be payable in such installments and at such times as the Association, in the sole discretion of its Board of Trustees, may determine. The failure of the Association to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

6. Special Assessments. The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by annual assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of the Common Areas. Any such special assessment shall be apportioned among and assessed to all Lots in the same manner as annual assessments. Such special assessments must be assented to by a majority of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

7. Quorum Requirements. The quorum at any meeting required for any action authorized by Section 6, above, shall be as follows: At the first meeting called, the presence of Owners of or proxies entitled to cast sixty percent (60%) of the total votes of the membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 6, above) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

8. Reimbursement Assessment on Specific Lot. In addition to the annual assessment and any special assessment authorized pursuant to Section 6, above, the Board may levy at any time Reimbursement Assessments (a) on every Lot especially benefited (i.e., benefited to a substantially greater degree than any other Lot) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on every Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 1 (d) of Article V or other provisions of this Declaration. The aggregate amount of any such Reimbursement Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs, and shall be allocated among the affected Lots according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefited.

9. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

10. Effect of Nonpayment -- Remedies. Any assessment (whether annual, special or Reimbursement Assessment) not received within ten (10) days of the date on which it becomes due shall be subject to a late charge equal to 5% thereof, which together with interest and costs of collection shall be, constitute, and remain a continuing lien on the affected Lot. If any assessment is not received within ten (10) days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of one and one-half percent (1 1/2%) per month; and the Association may bring an action against the Owner who is personally liable therefor or may foreclose its lien against the Lot, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.

11. Subordination of Lien to First Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or purchaser who comes into possession of or becomes the Owner of a Lot by virtue of the foreclosure of such first Mortgage or the exercise of a power of sale under such first Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment instalment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such first Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such first Mortgage, the lien shall apply to such excess. No

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sale or transfer of a Lot in connection with any foreclosure of a first Mortgage shall relieve any Lot from the lien of any assessment instalment thereafter becoming due.

12. No Abatement. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from any construction within the Development, the making of any repairs or improvements to or maintaining of the Development, or any part thereof, or from any action taken to comply with the provision of this Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

## VIII

### PROPERTY RIGHTS AND CONVEYANCES

1. Easement Concerning Common Areas. Each Lot shall have appurtenant thereto a nonexclusive right and easement of use and enjoyment in and to the Common Areas for their intended purposes. Such right and easement shall be appurtenant to and shall pass with title to each Lot and shall in no event be separated therefrom.

2. Form of Conveyancing; Leases. Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_ as identified in the Plat recorded in the office of the Utah County Recorder in Book \_\_\_\_\_, Page \_\_\_\_\_, as Entry No. \_\_\_\_\_, contained within Plat "\_\_\_\_\_" of the Village Green Commercial Center, A Planned Development, SUBJECT TO the "Declaration of Easements, Covenants, Conditions, and Restrictions of Village Green Commercial Center, A Planned Development (Expandable)," recorded in the office of the Utah County Recorder in Book \_\_\_\_\_, at page \_\_\_\_\_, as Entry No. \_\_\_\_\_ (as said Declaration may have heretofore been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Easements, Covenants, Conditions and Restrictions (as said Declaration may have heretofore been amended or supplemented).

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

3. Transfer of Title to Common Areas. Concurrently with the recordation of this Declaration and the Plat, Declarant shall convey to the Association title to the various Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any nondelinquent assessments, charges, or taxes, imposed by governmental or quasi-governmental authorities).

4. Limitation on Easement. Each Lot's appurtenant right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to govern by reasonable rules and regulations the use of the Common Areas so as to provide for the enjoyment of the Common Areas in a manner consistent with the collective rights of all of the Owners.

(b) The right of the City of Provo, Utah, and any other governmental or quasi-governmental body having jurisdiction over the Property to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection and providing any other governmental or municipal service; and

(c) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; provided that such dedication or transfer must first be assented to in writing by (a) the holder of each and every Mortgage that encumbers any Lot and (b) the Owners of Lots to which at least sixty percent (60%) of the total votes in the Association appertain.

5. Utility Easements. Each Lot has appurtenant easements for underground lines for utility purposes under and through such portions of the Common Areas as are comprised of roads, walkways and landscaped areas. If any Owner utilizes such easement rights with respect to his Lot or Unit, he shall be responsible for the restoration to its former state of any portion of the Common Areas which may have been disturbed or damaged as a result.

6. Easements for Encroachments. If any structure (including without limitation, roof overhangs) heretofore constructed on any Lot or hereafter constructed on any Lot in replacement of the structure previously located thereon (so long as such structure is in substantially the same configuration and location as such prior structure) now or hereafter encroaches upon any other Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure (including without limitation, roof overhangs) on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to substantially duplicate the location and configuration of the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Areas due to the reconstructed structure's being in a slightly different location than its predecessor shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

## IX

### USE RESTRICTIONS

1. Use of Common Area. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Units.

2. Use of Lots and Units. All Lots are intended to be improved with Units and are restricted to such use or to being vacant and not used for any purpose, in which event the Lot shall be improved by the Owner thereof with suitable landscaping until such time as there may be a Unit constructed thereon. Each Unit shall be used only as a commercial establishment, business or professional office. No Lot or Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Units, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

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3. Special Restrictions: Lot 1. Use of that portion of Lot 1 shown on the Plat as the cross-hatched area, shall be restricted to use as a covered drive through area. No portion of said cross-hatched area shall be enclosed.

X

ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three-member Architectural Control Committee (the "Committee"), the function of which shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed the Board itself shall perform the duties required of the Committee.

2. Submission to Committee. No Unit, accessory of or addition to a Unit which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee.

3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures. Any structure hereafter constructed on any Lot in replacement of the structure previously located thereon shall be constructed in substantially the same configuration, location and architectural style and be approximately the same size as the prior structure; and if the plans and specifications therefor meet such criteria, the Committee must approve the same.

4. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission; provided, however, that plans and specifications for any replacement structure to be constructed in substantially the same configuration, location and architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within ten (10) days after submission. In the event the Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

5. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the Common Areas in the vicinity of the activity provided that they shall restore such areas to their prior condition when the use thereof is no longer required.

6. Liability for Damages. Neither the Committee nor any member thereof shall be held liable for damages by reason of any action, inaction, approval, or disapproval taken or given without malice by such member or the Committee with respect to any request made pursuant to this Article X.

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7. Declarant's Obligation. Declarant hereby covenants in favor of each Owner (a) that all Units erected by it and all improvements of the Common Areas accomplished by it in the Development are and will be architecturally compatible with respect to one another; and (b) that on the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah, there are substantially completed and useable all Common Areas of the Development, all approximately in the locations shown on the Plat.

## XI

### PARTY WALLS

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

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

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

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

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

## XII

### INSURANCE

1. Hazard Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide, a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the Common Areas owned by the Association (including all building service equipment, if any, and the like) with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements as any first Mortgagee of a Lot shall reasonably require. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

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(a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage; and

(b) such other risks as shall customarily be covered with respect to facilities similar in construction, location and use.

2. Liability Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Association, the Board, the Managing Agent and employees of the Association and the Owners against claims for bodily injury and property damage arising out of the conditions of the Common Areas or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried in connection with properties of comparable character and usage in the County of Utah nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The Policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The Policy shall provide that the Policy may not be cancelled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

3. Additional Insurance; Further General Requirements. The Board may also procure insurance which shall insure the Common Areas and the Association or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:

(a) a waiver of the insurer's right of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants;

(b) that it cannot be cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners;

(c) that it cannot be cancelled, suspended or invalidated due to the conduct of the Association without a prior written demand that the defect be cured; and

(d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

4. Fidelity Coverage. The Association may elect to maintain fidelity coverage to protect against dishonest acts on the part of officers, trustees, managing agents, directors and employees of the Association and all others (including volunteers) who handle, or are responsible for handling, funds of the Association. In that event, such fidelity bonds shall:

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(a) name the Association as an obligee;

(b) be written in an amount based upon the best business judgment of the Association and shall not be less than the estimated maximum of funds (including reserve funds) in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months' assessment on all Lots plus reserve funds;

(c) contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression; and

(d) provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the insured.

5. Review of Insurance. The Board shall periodically, and whenever requested by Owners entitled to exercise at least twenty percent (20%) of the outstanding votes in the Association, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot and to the holder of any Mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner and any Mortgagee.

6. Lots and Units Not Insured by Association. The Association shall have no duty or responsibility to produce or maintain any fire, liability, extended coverage or other insurance covering any Lot or Unit and acts and events thereon.

7. Other Insurance Provisions. All insurance required pursuant to this Article shall be written by insurers licensed in the State of Utah. Notwithstanding anything in this Article to the contrary, any insurance required to be obtained by the Association pursuant to Section 1, 2, 3 or 4 of this Article shall be required only to the extent that such coverage is reasonably obtainable at reasonable rates and is customarily obtained with respect to improvements or facilities having the same or similar characteristics of the Common Areas.

### XIII

#### CONDEMNATION

If at any time or times an insubstantial or minor part of the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. In the event of any other taking or condemnation, the interests of the Association, the Owners and Mortgagees shall be as they may appear.

### XIV

#### RIGHTS OF MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of Mortgagees shall be in effect:

1. Title and Mortgage Protection. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property (including any such Mortgagee which is a signatory to this Declaration or which consents thereto) shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

2. Preservation of Common Area. The Common Areas shall remain substantially of the same character, type and configuration as when such Common Areas became part of the Development. Unless the Association shall receive the prior written approval of (a) all first Mortgagees of Lots and (b) the Owners of all Lots, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Areas, except to grant reasonable easements for utilities and similar or related purposes.

3. Notice of Matters Affecting Security. The Association shall give written notice to any Mortgagee of a Lot requesting such notice whenever:

(a) there is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within sixty (60) days after default occurs; or

(b) damage to the Common Areas from any one occurrence exceeds \$10,000.00; or

(c) there is any condemnation or taking by eminent domain of any material portion of the Common Areas.

4. Notice of Meetings. The Board shall give to any Mortgagee of a Lot requesting the same, notice of all meetings of the Association; and such Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

5. Right to Examine Association Records. Any Mortgagee shall, upon request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Lot securing the Mortgage.

6. Right to Pay Taxes and Charges. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on insurance policies pertaining to the Common Areas, or secure new insurance

coverage pertaining to the Common Areas on the lapse of a policy; and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

7. No Priority Accorded. No provision of this Declaration gives or may give a Lot Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for loss to or taking of Lots and/or the Common Areas.

8. Construction. In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article XIV, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

XV

MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or any officer or Trustee of the Association. Any notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Managing Agent or the Association or any member of the Architectural Control Committee.

2. Amendment. Except as provided below, this Declaration may be amended by, but only by, an instrument recorded in Utah County, Utah, which is executed by: (a) Owners who collectively hold at least seventy-five percent (75%) of the total outstanding votes in the Association; and (b) the first Mortgagee of each and every Lot. The foregoing right of amendment shall, however, be subject to the right to supplement this Declaration in the manner and to the extent provided for in Article III of this Declaration. In addition, such right of amendment shall be subject to the following qualification: no amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant) herein shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant.

3. Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 3:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.

(b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed.

(c) Any change in ownership of a Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

(d) Unless the consent of all Owners whose memberships are appurtenant to the same Lot are secured, the consent of none of such Owners shall be effective.

4. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property or the Additional Land may be assigned.

5. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

6. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who heretofore acquired or hereafter acquire any interest in a Lot or in the Common Areas, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Unit shall comply with, and all interests in all Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

7. Enforcement of Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with or to obtain redress for violation of this Declaration:

- (a) Any Owner;
- (b) The Association; or
- (c) Any Mortgagee.

The prevailing party in an action for the interpretation of, the enforcement of or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

8. Duration. This Declaration shall remain in effect until such time as there is recorded in Utah County, Utah, an instrument of termination which is executed by all of the parties called for by Section 2 of Article XV hereof.

9. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah.

EXECUTED by Declarant on the day and year first above written.

Declarant's Address:  
1675 No. 200 West, Ste. 9A  
Provo, Utah 84604

C & M MAGLEBY PROPERTIES,  
a General Partnership

By: *H. Mark Magleby*  
H. Mark Magleby

By: *Calvin C. Magleby*  
Calvin C. Magleby

STATE OF UTAH     )  
                          : ss.  
COUNTY OF UTAH    )

On this 29th day of August, 1985, personally appeared before me H. Mark Magleby and Calvin C. Magleby, who duly acknowledged to me that they are the partners in C & M MAGLEBY PROPERTIES, a General Partnership, and that they executed the foregoing Declaration as partners in, and on behalf of, said General Partnership.



My Commission Expires:

10-26-86

*Elaine Neal*  
Notary Public  
Residing at:  
Utah County

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**EXHIBIT "A"**  
**TO**  
**DECLARATION OF EASEMENTS, COVENANTS,**  
**CONDITIONS AND RESTRICTIONS**  
**OF**  
**VILLAGE GREEN COMMERCIAL CENTER**  
**A Planned Development (Expandable)**

<u>Lot No.</u>	<u>Floor Area</u>	<u>Floor Area Ratios</u>	<u>Number of Votes</u>
1	10,907	24.30	2,430
2	6,334	14.13	1,413
3A	1,150	2.60	260
3B	1,150	2.60	260
4	1,840	4.10	410
9A	6,400	14.28	1,428
9B	3,200	7.14	714
9C	2,100	4.67	467
10	<u>11,731</u>	<u>26.18</u>	<u>2,618</u>
	44,812	100.00	10,000

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**27760**