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CALLEN B. PESHELL, Recorder  
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For HOLMES & ASSOCIATES LC  
TOOELE COUNTY CORPORATION

WHEN RECORDED, RETURN TO:

Patrick H. Holmes  
HOLMES HOMES, INC.  
9345 South 1300 East  
Sandy, Utah 84094

PARCEL I.D. #13-042-0-0895

**DECLARATION OF CONDOMINIUM  
OF  
COMISKEY PARK CONDOMINIUMS  
AN EXPANDABLE CONDOMINIUM PROJECT  
IN  
TOOELE COUNTY, UTAH  
HOLMES HOMES, INC., A UTAH CORPORATION  
AS DECLARANT  
June 29, 2001**

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**BYLAWS**  
**OF**  
**COMISKEY PARK**  
**CONDOMINIUMS ASSOCIATION**  
**A Utah Nonprofit Corporation**

**BYLAWS  
OF  
COMISKEY PARK  
CONDOMINIUMS ASSOCIATION  
A Utah Nonprofit Corporation**

Pursuant to the provisions of the Utah Revised Nonprofit Corporation Act (the "Act"), the Management Committee of Comiskey Park Condominiums Association, a Utah nonprofit corporation, hereby adopts the following Bylaws for such nonprofit corporation.

**ARTICLE I  
NAME AND PRINCIPAL OFFICE**

1.1 Name. The name of the nonprofit corporation is Comiskey Park Condominiums Association (the "Association").

1.2 Offices. The principal office of the Association shall be located at 9345 South 1300 East, Sandy, Utah 84094 (the "Project").

**ARTICLE II  
DEFINITIONS**

2.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in Article I of the Declaration of Condominium of the Project (the "Declaration") shall have such defined meanings when used in these Bylaws.

**ARTICLE III  
MEMBERS**

3.1 Annual Meetings. The annual meeting of Members shall be held on the second Tuesday of April of each year at 7:00 p.m., beginning with the year following the year in which the Articles are filed, for the purpose of electing Committee Members and transacting such other business as may come before the meeting. If the election of Committee Members shall not be held on the day designated herein for the annual meeting of the Members, or at any adjournment thereof, the Management Committee shall cause the election to be held at a special meeting of the Members to be convened as soon thereafter as may be convenient. The Management Committee may from time to time by resolution change the date and time for the annual meeting of the Members.

3.2 Special Meetings. Special meetings of the Members may be called by the Management Committee, the President, or upon the written request of Members holding not less than thirty-three percent (33%) of the Allocated Interest of the Association, such written request to state the purpose or purposes of the meeting and to be delivered to the Management Committee or the President.

3.3 Place of Meetings. The Management Committee may designate any place in Tooele County, Utah as the place of meeting for any annual meeting or for any special meeting

called by the Management Committee. A waiver of notice signed by all of the members of the Management Committee may designate any place, within the State of Utah, as the place for holding such meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be at the principal office of the Association.

3.4 Notice of Meetings. The Management Committee shall cause written or printed notice of the time and place, and in the case of a special meeting, the purpose or purposes for all meetings of the Members (whether annual or special) to be delivered, not more than sixty (60) nor less than ten (10) days prior to the meeting, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Member at the Member's registered address, with first-class postage thereon prepaid. Each Member shall register with the Association such Member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a Member's Unit address shall be deemed to be the Member's registered address for purposes of notice in this Section 3.4.

3.5 Members of Record. Upon purchasing a Unit in the Project, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Unit has been vested in such Owner, which copy shall be maintained in the records of the Association. For the purpose of determining Members entitled to notice of or to vote at any meeting of the Members, or any adjournment thereof, the Management Committee may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for determining Members entitled to notice of or to vote at any meeting of the Members. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining Members entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the Owners of record of Units in the Project shall be deemed to be the Members of record entitled to notice of and to vote at the meeting of the Members.

3.6 Quorum. At any meeting of the Members, the presence of Members holding, or holders of proxies entitled to cast, more than one-half ( $\frac{1}{2}$ ) of the Allocated Interest of the Association shall constitute a quorum for the transaction of business; provided however that if a quorum is not achieved at the duly called meeting, the Members, including those that are present and represented by proxy, may reconvene the meeting within twenty-four (24) hours if more than thirty-three and one-third percent (33 $\frac{1}{3}$ %) of the Allocated Interest of the Association is present, in person or by proxy, and transact all business as if there is a quorum.

3.7 Proxies. At each meeting of the Members, each Member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member or by the Member's attorney when duly authorized in writing. If a Unit is owned by more than one Person, the instrument authorizing a proxy to act must have been executed by all such Persons or their attorneys when duly authorized in writing. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act. Such instrument shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting.

The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.8 Votes. With respect to each matter submitted to a vote of the Members, each Member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit of such member, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Members, unless a greater proportion is required by the Articles, these Bylaws, the Declaration, or the Act. The election of Committee Members shall be by secret ballot. When more than one Person owns an interest in a Unit, such Persons shall designate to the Association, in writing, a representative who shall exercise the vote for such Unit on behalf of all co-Owners of the Unit. In no event shall fractional votes be exercised in respect to any Unit.

3.9 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, form of proxies and the method of ascertaining Members present shall be deemed waived if no objection is made either at the meeting or within thirty (30) days of the date of the meeting.

3.10 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the Members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter of such meeting.

#### ARTICLE IV MANAGEMENT COMMITTEE

4.1 General Powers. The property, affairs and business of the Association shall be managed by a Board of Directors to be known as the Management Committee. The Management Committee may exercise all of the powers of the Association, whether derived from the Act or the Articles, except such powers that the Articles, these Bylaws, the Declaration, or the Act vest solely in the Members. The Management Committee may by written contract delegate, in whole or in part, to a professional management organization or person such of its duties, responsibilities, functions and powers as are properly delegable. Any management agreement must be terminable for cause upon thirty (30) days' notice, have a term not to exceed two years, and may be renewed with consent of the manager and the Management Committee.

4.2 Number, Tenure and Qualifications. The property, business and affairs of the Association shall be governed and managed by a Management Committee composed of not less than three (3) nor more than five (5) persons, each of whom, except for those appointed and serving as first Committee Members, must either be an Owner of a Unit, a spouse of an Owner or an agent of Declarant, for so long as Declarant owns a Unit in the Project. At each annual meeting, the Members shall elect for terms of one (1) year each the appropriate number of Committee Members to fill vacancies by expiring terms of Committee Members. All Committee Members, except such members appointed by Declarant, shall be Members of the Association.

4.3 Regular Meetings. The Management Committee shall hold regular meetings at least quarterly, at the discretion of the Management Committee. The Management Committee may designate any place in Tooele County, Utah as the place of meeting for any regular meeting called by the Management Committee. A waiver of notice signed by all of the members of the Management Committee may designate any place, within the State of Utah, as the place for holding such meeting. If no designation is made the place of the meeting shall be at the principal office of the Association.

4.4 Special Meetings. Special meetings of the Management Committee may be called by or at the request of any Committee Member. The person or persons authorized to call special meetings of the Management Committee may fix any place, within the State of Utah, as the place for holding any special meeting of the Management Committee called by such person or persons. Notice of any special meeting shall be given at least five (5) days prior thereto by written notice delivered personally, or mailed to each Committee Member at such Committee Member's registered address. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail so addressed, with first-class postage thereon prepaid. Any Committee Member may waive notice of a meeting.

4.5 Quorum and Manner of Acting. A majority of the then authorized number of Committee Members shall constitute a quorum for the transaction of business at any meeting of the Management Committee. The act of a majority of the Committee Members present at any meeting at which a quorum is present shall be the act of the Management Committee. The Committee Members shall act only as a Management Committee, and individual members shall have no powers as such.

4.6 Compensation. No Committee Member shall receive compensation for any services that such member may render to the Association as a Committee Member; provided, however, that a Committee Member may be reimbursed for expenses incurred in performance of such duties as a Committee Member to the extent such expenses are approved by the Management Committee.

4.7 Resignation and Removal. A member of the Management Committee may resign at any time by delivering a written resignation to either the President or the Management Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Committee Member, except such member appointed by Declarant, may be removed at any time, with or without cause, by the affirmative vote of at least fifty-one percent (51%) of the Allocated Interest of the Association at a special meeting of the Members duly called for such purpose. A Committee Member appointed by Declarant may be removed at any time, with or without cause, by the Declarant.

4.8 Vacancies and Newly Created Committee Memberships. If vacancies shall occur in the Management Committee by reason of the death, resignation or disqualification of a Committee Member (other than such member appointed by Declarant), the Committee Members then in office shall continue to act, and such vacancies shall be filled by a vote of the Committee Members then in office, though less than a quorum, in any way approved by such Committee Members at the meeting. Any vacancy in the Management Committee occurring by reason of removal of a Committee Member by the Members or if the authorized number of Committee



Members shall be increased, such vacancies or newly created Committee Memberships may be filled by election by the Members at the meeting at which such Committee Member is removed or new Committee Membership is created. If vacancies shall occur in the Management Committee by reason of death, resignation or removal of a Committee Member appointed by the Declarant, such vacancies shall be filled by appointments to be made by the Declarant. Any Committee Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor or for the term of the newly created Committee Membership, as the case may be.

4.9 Informal Action by Committee Members. Any action that is required or permitted to be taken at a meeting of the Management Committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Committee Members.

## ARTICLE V OFFICERS

5.1 Officers. The officers of the Association shall be a President, Secretary, Treasurer and such other officers as may from time to time be appointed by the Management Committee.

5.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Management Committee annually at a regular meeting of the Management Committee. In the event of failure to choose officers at such regular meeting of the Management Committee, officers may be chosen at any regular or special meeting of the Management Committee. Each such officer (whether chosen at a regular meeting of the Management Committee or otherwise) shall hold such office until the next ensuing regular meeting of the Management Committee and until a successor has been chosen and qualified, or until such officer's death, or until resignation, disqualification or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two or more of such offices, except that the President may not also be the Secretary. No person holding two or more offices shall act in or execute any instrument in the capacity of more than one office. The President, Secretary and Treasurer shall be and remain Committee Members of the Association during the entire term of their respective offices. No other officer need be a Committee Member.

5.3 Subordinate Officers. The Management Committee may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Management Committee may from time to time determine. The Management Committee may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities and duties. Subordinate officers need not be Committee Members.

5.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President or the Management Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Management Committee at any time, with or without cause.

5.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Management Committee at any regular or special meeting.

5.6 The President. The President shall preside at meetings of the Management Committee and at meetings of the Members. The President shall sign on behalf of the Association all conveyances, mortgages, documents and contracts, and shall do and perform all other acts and things as required by the Management Committee.

5.7 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration or any resolution the Management Committee may require such person to keep. The Secretary shall also act in the place and stead of the President in the event of the President's absence or inability or refusal to act. The Secretary shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same, and shall perform such other duties as required by the Management Committee.

5.8 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Management Committee, and, when requested by the President, shall report the state of the finances of the Association at each meeting of the Members and at any meeting of the Management Committee. The Treasurer shall perform such other duties as required by the Management Committee.

5.9 Compensation. No officer shall receive compensation for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Management Committee.

## ARTICLE VI COMMITTEES

6.1 Designation of Committees. The Management Committee may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions and powers. The membership of each such committee designated hereunder shall include at least two (2) Committee Members. No committee member shall receive compensation for services rendered to the Association as a committee member; provided, however, that a committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Management Committee.

6.2 Proceeding of Committees. The Management Committee may designate one or more committees, each of which shall consist of two or more Committee Members. Each committee designated hereunder by the Management Committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Management Committee.

6.3 Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Management Committee, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Management Committee hereunder shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may exercise the authority of the Management Committee subject to Section 16-6a-817 of the Act, as amended, or a similar provision then in effect.

6.4 Resignation and Removal. Any member of any committee designated hereunder by the Management Committee may resign at any time by delivering a written resignation to the President, the Management Committee, or the presiding officer of the such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Management Committee may at any time, with or without cause, remove any member of any committee designated by it thereunder.

6.5 Vacancies. If any vacancy shall occur in any committee designated by the Management Committee due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Management Committee.

## ARTICLE VII INDEMNIFICATION

7.1 Indemnification. No Committee Member or officer shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Committee Member or officer performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Committee Member or officer of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that Committee Member having heretofore or hereafter been a Committee Member or officer of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by such person as such Committee Member or officer, and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Association shall have the power to defend such person from all suits or claims; provided further, however, that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Committee Members, officers, employees and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

7.2 Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be under any Bylaw, agreement, vote of disinterested Committee Members or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent hereof that all Committee Members and officers be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a Committee Member, officer or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

7.3 Insurance. The Management Committee, in its discretion, may direct that the Association purchase and maintain insurance on behalf of any person who is or was a Committee Member, officer or employee of the Association or is or was serving at the request of the Association as a Committee Member, officer, employee or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Article VII.

7.4 Settlement by Association. The right of any person to be indemnified shall be subject always to the right of the Association by the Management Committee, in lieu of such indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

#### ARTICLE VIII FISCAL YEAR AND SEAL

8.1 Fiscal Year. The fiscal year of the Association shall begin on the first day of January each year and end on the 31st day of December, except that the first fiscal year shall begin on the date of incorporation.

8.2 Seal. The Management Committee may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, and the words "Corporate Seal."

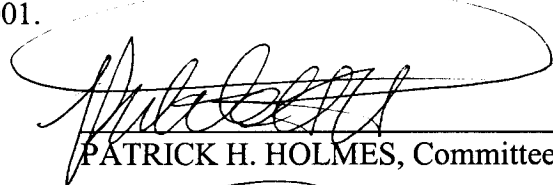
#### ARTICLE IX RULES AND REGULATIONS


9.1 Rules and Regulations. The Management Committee may from time to time adopt, amend, repeal and enforce reasonable rules and regulations governing the use and operation of the Project, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles, the Declaration, these Bylaws or by law. The Members shall be provided with copies of all rules and regulations adopted by the Management Committee, and with copies of all amendments and revisions thereof.


ARTICLE X  
AMENDMENTS

10.1 Amendments. Except as otherwise provided by law, by the Articles, by the Declaration, or by these Bylaws, these Bylaws may be amended, altered or repealed and new Bylaws may be made and adopted by the Members upon the affirmative vote of a majority of the Allocated Interest of the Association; provided, however, that such action shall not be effective unless and until a written instrument setting forth (i) the amended, altered, repealed or new bylaw, (ii) the number of votes cast in favor of such action, and (iii) the total votes of the Association, shall have been executed and verified by the current President of the Association and recorded in the office of the County Recorder of Tooele County, Utah. Notwithstanding the foregoing, after the Department of Veterans Affairs has approved the Condominium Project, these Bylaws may not be amended or the Condominium Project and the Association merged into a successor condominium regime without the prior written approval of the Department of Veterans Affairs.

IN WITNESS WHEREOF, the undersigned, constituting all of the Committee Members of Comiskey Park Condominiums Association, have executed these Bylaws on this 29 day of June, 2001.

  
\_\_\_\_\_  
PATRICK H. HOLMES, Committee Member

  
\_\_\_\_\_  
SPENCER M. HOLMES, Committee Member

  
\_\_\_\_\_  
HEIDI C. TOPHAM, Committee Member

**DECLARANT'S CONSENT**

On this 29 day of June, 2001, the undersigned, Holmes Homes, Inc., a Utah corporation, as the Declarant and owner of the land upon which the Project is located, does hereby consent to and execute these Bylaws in accordance with the provisions of the Utah Condominium Ownership Act.

HOLMES HOMES, INC., a Utah corporation

By: \_\_\_\_\_

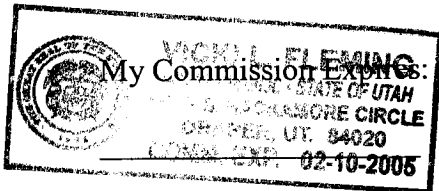
Its: \_\_\_\_\_

ACKNOWLEDGMENTS

STATE OF UTAH )  
COUNTY OF Salt Lake : ss.

On the 29 day of June, 2001, personally appeared before me PATRICK H. HOLMES, SPENCER M. HOLMES, and HEIDI C. TOPHAM, the signers of the within and foregoing BYLAWS OF COMISKEY PARK CONDOMINIUMS ASSOCIATION, each of whom duly acknowledged to me that they executed the same.

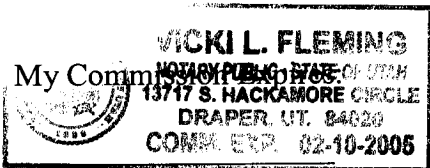
[Signature]  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_



STATE OF UTAH )  
COUNTY OF Salt Lake : ss.

On the 29 day of June, 2001, personally appeared before me Patrick H. Holmes, who being by me duly sworn, did say that he is the member of HOLMES HOMES, INC., a Utah corporation, and that the foregoing instrument was signed on behalf of said company by express authority residing in \_\_\_\_\_ by law.

[Signature]  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_



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**EXHIBITS**

- “A” Legal Description – Parcel
- “B” Legal Description – Additional Land
- “C” Form of Bylaws
- “D” Schedule of Units, Square Footage, Votes and Undivided Interests in Common Areas

**DECLARATION OF CONDOMINIUM  
OF  
COMISKEY PARK CONDOMINIUMS  
(An Expandable Condominium Project)**

THIS DECLARATION OF CONDOMINIUM (“Declaration”) is made as of the date of the recording in the Tooele County Recorder’s Office by HOLMES HOMES, INC., a Utah corporation (“Declarant”) pursuant to the Utah Condominium Owners5hip Act.

RECITALS

- A. Capitalized terms in this Declaration are defined in Article 1.
- B. Declarant is the fee owner of that certain real property situated in Tooele County, Utah, described in Exhibit “A,” attached to and incorporated in this Declaration by reference (the “Parcel”).
- C. Declarant desires to submit the Parcel, together with all buildings and improvements now or hereafter constructed on the Parcel, and all easements and rights appurtenant thereto (collectively, the “Property”), to a condominium project originally consisting of eight (8) residential Units and related Common Area pursuant to Utah Code Ann. § 57-8-1 et seq. (the “Condominium Project”).
- D. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners or Occupants of the Condominium Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein (collectively, the “Restrictions” which shall run with and be a burden upon the Property).
- E. Declarant intends that the Owners, Occupants, Lenders (as those terms are defined in Article 1 below) and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of condominium ownership for the Property, and for establishing rules for the use, occupancy, management and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Condominium Project and the quality of life therein.
- F. Declarant reserves the right, as more fully set forth in Article 16 below, to expand the Condominium Project to include the Additional Land (as defined in Article 1) and the improvements thereon.

NOW, THEREFORE, Declarant, as owner of the Parcel and for the purposes above set forth, declares as follows:

**ARTICLE 1  
DEFINITIONS**

As used herein, unless the context otherwise requires:

**“Act”** shall mean the Condominium Ownership Act, codified at Sections 57-8-1 through 57-8-36, Utah Code Annotated, pertaining to the creation, ownership and management of a condominium project in the State of Utah, as the same may be amended.

**“Additional Land”** shall mean all or any portion of the real property legally described on Exhibit “B,” attached to and incorporated by reference in this Declaration.

**“Allocated Interest”** shall mean the undivided interest (expressed as a fraction or percentage in this Declaration) in the Common Area, the Common Expense liability, and votes in the Association allocated to each Unit.

**“Articles”** shall mean the Articles of Incorporation by which the Association is formed under the Utah Revised Nonprofit Corporation Act, codified at Title 16, Chapter 6a, Utah Code Annotated, as the same may be amended.

**“Assessments”** shall mean the charges against Owners to defray the Common Expenses as well as miscellaneous special assessments, special assessments for capital improvements, and special assessments for the purpose of restoring and reconstructing the Condominium Project in the event of casualty, all as provided in this Declaration.

**“Association”** shall refer to COMISKEY PARK CONDOMINIUMS ASSOCIATION, whose membership shall include each Owner of a Unit in the Condominium Project, as required by the Act. The Association will be incorporated as a Utah nonprofit corporation prior to the conveyance of the first Unit in the Condominium Project by Declarant.

**“Association Rules”** shall mean and refer to the rules and regulations adopted by the Association pursuant to this Declaration and in furtherance of the Bylaws and Section 57-8-8 of the Act.

**“Bylaws”** shall mean the Bylaws adopted by the Association pursuant to Section 57-8-15 of the Act for the purpose of regulating the affairs of the Association, as the same may be amended from time to time. The form of the Bylaws is attached to and incorporated by reference in this Declaration as Exhibit “C.”

**“Committee Member”** shall mean a duly qualified and elected or appointed member of the Management Committee.

**“Common Area”** shall, unless otherwise provided in this Declaration or any Supplemental Declaration, mean:

- (a) The land included within the Condominium Project, whether leasehold or in fee simple;

- (b) As applicable, the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of any buildings in the Condominium Project;
- (c) The basements, yards, gardens, parking areas, and storage spaces not part of the Limited Common Area or part of a Unit;
- (d) The premises for lodging of janitors or persons in charge of the property;
- (e) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating;
- (f) As applicable, the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;
- (g) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Condominium Project and intended for the common use of all Owners, such as telephone, electricity, natural gas, water, cable television, and sewer;
- (h) Such community, recreational and commercial facilities as may be provided for in this Declaration; and
- (i) All other parts of the Condominium Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.

The undivided interest in the Common Area appurtenant to each Unit is described in Section 3.4 of this Declaration and is set forth on Exhibit "D" attached to and incorporated in this Declaration by reference.

**"Common Expenses"** shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area which is maintained by the Association; (b) deficiencies arising by reason of unpaid Assessments; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees; (d) utilities (other than separately metered utilities for the Units), including, common lighting and heating, water charges, trash collection and sewer service charges, extermination, security, gardening and other related services; (e) insurance and bonds required by this Declaration or any additional insurance and bonds obtained by the Management Committee in its discretion; (f) the establishment of reasonable reserves as the Management Committee shall deem appropriate in its discretion for the periodic maintenance, repair and replacement of the Common Area, which shall in no event be less than two (2) months of the estimated Assessments for each Unit; (g) expenses agreed upon as Common Expenses by the Association; and (h) other miscellaneous charges incurred by the Association or the Management Committee pursuant to the Act, this Declaration, the Bylaws or the Association Rules in furtherance of the purposes of the Association or in discharge of the duties and powers of the Association.

**“Condominium Project”** shall mean this real estate condominium project wherein fee simple title to single units in a multi-unit project, together with an undivided interest in the Common Area of the Property, are owned separately.

**“Declarant”** shall mean HOLMES HOMES, INC., a Utah corporation, and the successors and assigns of Declarant’s rights hereunder.

**“Declaration”** shall mean this Declaration, including all attached exhibits which are incorporated by reference, and any and all amendments and supplements to this Declaration.

**“Eligible Mortgagee”** shall mean and refer to a First Mortgagee which has requested notice of certain matters from the Association in accordance with Section 13.1 of this Declaration.

**“FNMA”** shall mean and refer to the Federal National Mortgage Association.

**“First Mortgage”** shall mean any mortgage or deed of trust against a Unit which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

**“First Mortgagee”** shall mean any person named as a Lender under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

**“Insurance Trustee”** shall mean any trustee with which the Association may enter into an Insurance Trust Agreement, and which shall have exclusive authority to negotiate losses under the policies of insurance in accordance with such agreement.

**“Lender”** shall mean a holder of a mortgage or deed of trust on a Unit.

**“Limited Common Area”** shall mean a portion of the Common Area specifically designated as a Limited Common Area in this Declaration or the Plat and allocated by this Declaration or the Plat for the exclusive use of one or more Units to the exclusion of other Units.

**“Management Committee”** shall mean the Management Committee of the Association elected pursuant to the Bylaws and serving as the management body of the Association.

**“Occupant”** shall mean a Person or Persons, other than an Owner, in possession of, or using a Unit, including, without limitation, family members, tenants, guests, or invitees.

**“Owner”** shall mean the Person or Persons who are vested with record title of a Unit, and whose interest in the Unit is held in fee simple, according to the records of the County Recorder of Tooele County, Utah; however, Owner shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation. Declarant shall be considered the record Owner of any Unit prior to its initial conveyance by Declarant.

**“Parcel”** shall mean the real property legally described in Exhibit “A.”



**“Person”** shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency or other legal entity capable of holding title to real property.

**“Plat”** shall mean the record of survey map of the Property submitted with respect to the Condominium Project recorded in the records of the County Recorder of Tooele County, Utah and all amendments thereto. “Plat” shall also refer to any additional plat which may be recorded with any Supplemental Declaration.

**“Property”** shall mean the Parcel, together with all the buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

**“Restrictions”** shall mean the covenants, conditions, assessments, easements, liens and restrictions set forth in this Declaration.

**“Supplemental Declaration”** shall mean a written instrument recorded in the records of the County Recorder of Tooele County, Utah, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

**“Unit”** shall mean and refer to any of the separately numbered and individually described units now or hereafter shown on the Plat. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Allocated Interest in the Common Area appurtenant to such Unit.

**“Unit Number”** shall mean the number, symbol or address that identifies one Unit in the Condominium Project.

## ARTICLE 2 CREATION OF THE CONDOMINIUM PROJECT

2.1 Submission. Declarant hereby submits and subjects the Parcel to a Condominium Project pursuant to the Act, and in furtherance thereof, makes and declares the Restrictions contained in this Declaration, and Declarant hereby declares and agrees that the Condominium Project and all of the Units shall be held, conveyed, transferred, sold, leased, mortgaged, encumbered, occupied, used and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of Declarant, the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns.

2.2 Name and Location. The Condominium Project shall be named and known as COMISKEY PARK CONDOMINIUMS. The Condominium Project is located in Tooele County, Utah, and the legal description of the real estate included in the Condominium Project is the Parcel set forth on Exhibit “A.” The name of the Association is COMISKEY PARK CONDOMINIUMS ASSOCIATION.

2.3 Interpretation of Declaration and Applicability of the Act. Declarant intends that the Condominium Project shall be governed by the Act, except where (in compliance with the Act) Declarant has included specific provisions in this Declaration which legally vary, supersede

or supplement the Act, in which event such specific provisions of this Declaration which are contrary to the Act shall govern the Condominium Project.

2.4 Agent for Service of Process. Patrick H. Holmes, located at 9345 South 1300 East, Sandy, Utah 84094, shall be the person to receive service of process for the Condominium Project pursuant to Section 57-8-10(2)(d)(iii) of the Act, until such time as the Management Committee shall duly appoint a new agent and file a Supplemental Declaration.

**ARTICLE 3**  
**DESCRIPTION OF THE UNITS, LIMITED COMMON AREA**  
**COMMON AREA, ALLOCATED INTERESTS AND PLAT**

3.1 Description of Boundaries of Each Unit and Unit Number. The cubic content space and Unit Number of each of the Units within the Condominium Project are set forth on the Plat. The vertical boundaries of each Unit shall be the underside of the finished but undecorated ceiling of the second floor of the Unit and the top of the finished but undecorated floor of the first floor or basement of the Unit, as applicable, as shown on the Plat. The horizontal boundaries of each Unit shall be the interior of the finished but undecorated walls located on the perimeter lines of the respective Units as shown on the Plat. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting any part of the finished surfaces are part of the Unit, and all other materials constituting any part of the finished surfaces are part of the Unit, and all other and structural portions of the walls, floors, columns, or ceilings are part of the Common Area. If any pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lies partially or wholly within or outside the designated boundaries of a Unit, any portion serving only that Unit is a Limited Common Area allocated solely to that Unit and any portion serving more than one Unit or any portion of the Common Area is part of the Common Area. Subject to the preceding sentence, each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries shall be part of the Unit. Conveyance of a Unit includes the use of the Limited Common Area appurtenant to the Unit.

3.2 Description of Limited Common Area for Parking. The parking space or spaces set forth on the Plat and designated for the respective Unit by corresponding number shall be an exclusive Limited Common Area for the Unit and such Owner. Such Limited Common Area shall be appurtenant to each respective Unit and may not be severed from the ownership of the Unit.

3.3 Description of Limited Common Area for Patios, Backyard, Balconies, Entryways, Fireplaces and Storage Areas. The patio, backyard, balcony (or balconies), exterior screens and shutters and entryway, if any, which are adjacent to each respective Unit as set forth and depicted on the Plat shall be exclusive Limited Common Area for the Unit. The Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.

3.4 Division into Units, Minimum and Maximum Ownership Interests. The Condominium Project is hereby divided into 8 Units as set forth on the Plat, each such Unit

consisting of a Unit and an appurtenant undivided but equal interest in and to the Common Area. Such Units comprise the minimum number of Units in the Condominium Project and give each Owner a maximum 1/8<sup>th</sup> (or 12.50%) undivided interest in the Common Area. The Plat or Exhibit "D" hereto contain the Unit number and undivided interest of each Unit in the Condominium Project. If all of the Additional Land is added to the Condominium Project pursuant to Article 16 of this Declaration, the maximum number of Units in the Project will be 112 Units and each Owner will have a 1/112th (or .08929%) undivided interest in the Common Area.

3.5 Allocated Interest of Each Unit in the Votes of the Association. Except as provided in Section 5.3(b) of this Declaration, the designation of the Allocated Interest which each Unit has in the votes of the Association is one vote for each Unit; thus, if the minimum number of Units in the Condominium Project is constructed, each Unit will have a 1/8<sup>th</sup> vote for all matters of the Association. The number of votes allocated to each Unit is set forth in Exhibit "D" attached hereto. In the event all of the Additional Land is added to the Condominium Project, each Unit will have a 1/112th vote for all matters of the Association.

3.6 Allocated Interest of Each Unit in the Common Expenses of the Condominium Project. The designation of the Allocated Interest which each Unit bears in the Common Expenses of the Condominium Project is deemed to be equally divided; thus, if the minimum number of Units in the Condominium Project is constructed, each Unit will have a 1/8<sup>th</sup> Allocated Interest in the Common Expenses. In the event all of the Additional Land is added to the Condominium Project, each Unit will have a 1/112th Allocated Interest in the Common Expenses.

3.7 Plat. The Plat is hereby incorporated into, and made an integral part of, this Declaration and all requirements and specifications set forth on the Plat and which are required by the Act are deemed included in this Declaration.

#### **ARTICLE 4 MAINTENANCE AND UTILITIES**

4.1 Maintenance of Units and Exclusive Limited Common Area. Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repairs and replacements within the Owner's Unit and within any Limited Common Area appurtenant to the Owner's Unit, subject to Section 4.2(e) below. Such obligation shall include, without limitation: (a) the maintenance of all interior and exterior doors, including thresholds and door jams, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, fireboxes of fireplaces and any other materials constituting the finished surfaces of floors, ceilings, or interior walls (all other portions of the walls, floors, or ceilings are part of the Common Area); (b) the repair and replacement of all windows, skylights, and door glass or equivalent materials and the interior and exterior cleaning of such windows and door glass; (c) the maintenance, in an open and unobstructed condition, of all sewer and drainage pipes, water and other utility lines serving an Owner's Unit between the points at which the same enter the Owner's Unit and the points where the same join the utility lines serving other Units; (d) the maintenance, replacement, repair and restoration of all of the following which serve an Owner's Unit exclusively: lighting fixtures (except exterior building mounted lights and walkway lights

which are not located within patios and balconies), fans, plumbing fixtures, stoves, refrigerators, hot water heaters, air conditioning units (including compressors, condensers and forced air units), intercoms, security systems, and such other appliances, fixtures and decorations as an Owner may install; (e) the maintenance of the Unit and all exclusive Limited Common Area, such as enclosed parking, patios, backyards, fencing and balconies (including all materials above or upon the support structure, and railings and posts), exterior screens, shutters, and chimney flues, that are within an Owner's exclusive control in a clean and sanitary condition, free of pests and rodents, and in good order and repair; and (f) the maintenance of the backyard within an Owner's exclusive control. An Owner may make nonstructural alterations within the Owner's Unit, but an Owner shall not make any structural or exterior alterations of the Common Area or the Limited Common Area without the prior written approval of the Management Committee.

4.2 Maintenance of Common Area and Nonexclusive Limited Common Area. The Association, or its fully delegated representative, shall:

(a) Maintain and otherwise manage the Common Area and nonexclusive Limited Common Area, including, but not limited to, Condominium Project building exteriors, the landscaping, open areas and recreational facilities, if any, located thereon and maintain all open areas and exterior building mounted lights not within enclosed parking areas, patios and balconies, walkway and landscape area lights (located outside enclosed parking areas, patios and balconies), the structural support components of patios and roofs and flashings and other materials on patios and roofs that were installed to exclusively function as a roof, excluding skylights;

(b) Replace injured and diseased trees or other vegetation in any Common Area, and plant trees, shrubs and ground cover to the extent that the Management Committee deems necessary for the conservation of water and soil or for aesthetic purposes;

(c) Place and maintain upon any Common Area, such signs, markers and lights as the Management Committee may deem appropriate for the proper identification use and regulation thereof, subject to the approval of the Management Committee;

(d) Pay all electrical, water, natural gas, sanitary sewer, and other utility charges or fees for services furnished to the Common Area as the same become due and payable;

(e) Remove snow from sidewalks running throughout the Condominium Project and Limited Common Area driveways and walkways (whether exclusive or nonexclusive) immediately in front of each Unit; and

(f) Do all such other and further acts which the Management Committee deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Management Committee shall determine, in its sole discretion, the appropriate maintenance of the Common Area. If the need for maintenance or repair is caused through the willful or negligent act of an Owner, the Owner's family, guests, licensees, lessees or invitees, the

Management Committee may cause the maintenance or repair to be made. The Association shall invoice the Owner for the cost of such maintenance or repair. The Owner shall be deemed to have waived any objection to the invoice if the Owner does not, within thirty (30) days after receipt of the invoice, deliver a written objection to the Management Committee. The Owner's right to object is governed by the provisions of Section 5.14 of this Declaration. In the event the Management Committee determines that the Owner is liable for the maintenance or repair costs, the Association may enforce collection of such amounts as provided below for the collection of Assessments.

4.3 Default in Maintenance. If an Owner or Occupant fails to maintain a Unit or exclusive Limited Common Area pursuant to Section 4.1 above, or make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Management Committee to preserve and protect the attractive appearance and value of the Condominium Project, or if an Owner or Occupant fails to observe any Restrictions imposed on such Owner or Occupant by the terms of this Declaration, the Management Committee or its authorized representative shall give written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action which the Management Committee determines to be required and requesting that the same be carried out within a period of fourteen (14) days after the giving of such written notice. The Owner or Occupant shall be deemed to have waived any objection to the notice if the Owner or Occupant does not, within such fourteen (14) day period, deliver a written objection to the Management Committee. The Owner's or Occupant's right to object to the requested corrective action is governed by the provisions of Section 5.14 of this Declaration. If the Owner or Occupant fails to carry out such action within the period specified by the notice or as required following hearing before the Management Committee under Section 5.14, the Management Committee may cause corrective action to be taken and may levy a special Assessment for the cost thereof on the Owner. The special Assessment shall be due and payable within thirty (30) days after the Management Committee gives written notice thereof and shall be secured by the Assessment lien created in Section 6.1 of this Declaration.

4.4 Utilities. All utilities for individual Units (except those utility costs which are metered collectively and paid by the Association as a Common Expense item) will be metered separately to each Unit and such utility charges shall be the responsibility of the respective Owners.

## ARTICLE 5 MANAGEMENT

5.1 Organization of Association. The Association will be organized no later than the date the first Unit in the Condominium Project is conveyed to an Owner other than Declarant. The Association shall serve as the governing body for all Owners. The Association shall make provision for the maintenance, repair, replacement, administration and operation of the Common Area, assessment of expenses, payment of losses, division of profits, acquisition of hazard insurance and disposition of such hazard insurance proceeds, and other matters as provided in the Act, this Declaration and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles and Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall

be held and applied by it for the Owners in accordance with this Declaration, the Articles and the Bylaws.

5.2 Membership. Membership in the Association shall at all times consist exclusively of the Owners and each Owner shall be a member of the Association so long as such Owner owns a Unit and such membership shall automatically terminate when the Owner ceases to own a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held. The Association shall make available to the Owners, Lenders and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of this Declaration, Articles, Bylaws and other rules governing the Condominium Project and other books, records and financial statements of the Association. The term "available" as used in this Section 5.2 shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

5.3 Voting. At any meeting of the Association, each Owner of a Unit, including Declarant, either in person or by proxy, shall be entitled to one vote for each Unit owned. When more than one Person owns an interest in a Unit, such Persons shall designate to the Association, in writing, a representative who shall exercise the vote for such Unit on behalf of all co-Owners of the Unit. In no event shall fractional votes be exercised in respect to any Unit. The voting rights appurtenant to each Unit shall vest upon execution and recording of this Declaration and, except as otherwise permitted in this Declaration for expansion or otherwise, shall not be altered without the unanimous consent of all Owners expressed in a duly recorded Supplemental Declaration.

5.4 Management Committee. The governing body of the Association shall be the Management Committee elected pursuant to the Bylaws. Cumulative voting shall not apply for the purpose of electing Committee Members. The Management Committee shall consist of not less than three (3) members and not more than five (5) members. Except as otherwise provided in this Declaration, the Bylaws, or Association Rules, the Management Committee may act in all instances on behalf of the Association. The Management Committee may, as it deems appropriate, recommend amendments to the Bylaws and adopt, amend and repeal the Association Rules.

5.5 Qualification of Committee Members. Except for Committee Members elected or appointed by Declarant, each Committee Member shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership, limited liability company, or trust, a Committee Member may be an officer, partner, member, manager, trustee or beneficiary of such Owner). If a Committee Member ceases to meet such qualifications during the Committee Member's term, such person, in the discretion of the Management Committee, may continue to serve as a Committee Member until such Person's replacement has been duly qualified and approved by the remaining Committee Members. The replacement shall serve for the remainder of the departing Committee Member's term.

5.6 Action by Owners. Except as specifically provided herein, the Management Committee may not act on behalf of the Association to amend or terminate this Declaration, to elect Committee Members, except in filling vacancies in its membership for the unexpired portion of any term, or to determine the qualifications, powers and duties or terms of the Management Committee.

5.7 Annual Meeting. The Association shall conduct an annual meeting as provided in the Bylaws.

5.8 Right of Association to Enter Units. The Association acting through the Management Committee or its duly authorized agent shall have the right at all times upon reasonable notice (and at any time in case of an emergency) to enter upon or into any Unit to abate any infractions, to make repairs or correct any violation of any of the Restrictions herein set forth, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such assessment to be secured by the lien provided in Section 6.1.

5.9 Association Rules. The Management Committee may adopt and administer the Association Rules in furtherance of the Bylaws for the regulation and operation of the Condominium Project.

5.10 Working Capital Fund. Declarant shall establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services needed for the operation of the Condominium Project. The initial amount of the working capital fund shall be at least equal to two (2) months of estimated Common Expenses for each Unit. Declarant shall collect these charges from each Owner at the time the sale of each Unit is closed. Any amounts collected and paid into this fund shall not be considered advance payments of Assessments. This fund cannot be used by Declarant to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits; provided, however, to the extent Declarant has paid the Association for an unsold Unit's share of this fund, Declarant shall be entitled to a reimbursement, to be paid at the time of disbursement out of the closing proceeds, for such amounts when such Unit is sold. Once control has been transferred to the Association, pursuant to Section 5.15, this fund shall be transferred to the Association.

5.11 Reserve Fund. The Association shall maintain an adequate reserve fund for maintenance, repair and replacement of the Common Area and nonexclusive Limited Common Area that must be replaced on a periodic basis, and such reserve shall be part of the monthly Assessments. To the extent the Management Committee deems necessary, surplus monies of the Association may be retained as additional reserves rather than refunded to the Owners or credited to future Assessments.

5.12 Availability of Condominium Project Documents. The Association will maintain current copies of this Declaration, the Articles, the Bylaws and the Association Rules concerning the Condominium Project and the Association's own books, records and financial statements available for inspection, upon request, during normal business hours by any Owner or Lender (or any insurer or guarantor of a Lender).

5.13 Managing Agent. The Management Committee may contract with a professional management agent to assist the Management Committee in the management and operation of the Condominium Project and may delegate such of its powers and duties to the management agent as it deems appropriate; provided, however, that only the Management Committee shall have the right to approve Association budgets, to impose a special Assessment and to authorize foreclosure of a lien for unpaid Assessments. Any management agreement must be terminable for cause upon thirty (30) days' notice, have a term not to exceed two years, and may be renewed with the consent of the manager and the Management Committee.

5.14 Hearing before Management Committee. In the event the Management Committee, under the terms of this Declaration, proposes to take action against an Owner, Occupant or Unit for a violation of the terms of this Declaration or the Association Rules, the Management Committee shall first give the applicable Owner or Occupant written notice of the proposed action and afford the Owner or Occupant the right to file an objection in writing to the proposed action. Unless otherwise provided in this Declaration, the Owner or Occupant shall have not less than twenty (20) days to respond in writing to the notice received from the Management Committee. If the Owner or Occupant timely objects to any proposed action by the Management Committee, the Management Committee shall, within the next twenty (20) days at a regular meeting of the Management Committee or at a special meeting convened for such purpose, consider the matter. The Owner or Occupant shall have an opportunity to appear before the Management Committee and provide testimony or evidence in support of the Owner's or Occupant's position. The Management Committee shall have authority to resolve the matter.

5.15 Declarant Control of Association. There is hereby established a period of Declarant control of the Association, during which period Declarant or persons designated by Declarant shall have the authority to appoint and remove the Association officers and Committee Members. The period of Declarant control shall terminate no later than the earlier of:

- (a) One hundred twenty (120) days after the date by which seventy-five percent (75%) of the Units have been conveyed to Unit purchasers; or
- (b) Six (6) years after the first Unit is conveyed to an Owner.

## **ARTICLE 6 COVENANT FOR ASSESSMENTS**

6.1 Creation of Lien and Personal Obligation for Assessment. Each Owner, including Declarant to the extent Declarant is an Owner as defined herein, of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree with each other and with the Association to pay to the Association such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, collection charges, attorneys' fees, court costs and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment



becomes due. The personal obligation shall not pass to the successor in title of an Owner unless expressly assumed by such successor. However, a lien to secure unpaid Assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a prior recorded encumbrance is involved, in which case: (a) the foreclosure will extinguish the lien for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further Assessments; and (b) the prorated share of any extinguished Association lien may be redistributed to the other Units in the Condominium Project.

6.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Owners, the management, maintenance, care, preservation and protection of the Condominium Project, enhancing the quality of life in the Condominium Project and the value of the Condominium Project including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, or in furtherance of any other duty or power of the Association.

6.3 Regular Assessment. The Management Committee is expressly authorized to adopt and amend budgets from time to time. Not later than thirty (30) days prior to the beginning of each fiscal year, the Management Committee shall adopt a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Management Committee may, but is not required to, send a written summary of the budget to all Owners within thirty (30) days after the adoption of the proposed budget. The Management Committee shall at that time determine the amount of the regular Assessments to be paid by each Owner. Each Owner shall thereafter pay to the Association the Owner's regular Assessment in equal monthly installments on the first day of each month. In the event the Management Committee determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of the regular Assessment against each Owner, and the date or dates when due. The Owners shall have no right to ratify any budget, or amendment thereof, adopted by the Management Committee.

6.4 Capital Improvement Assessments. In addition to regular Assessments, the Management Committee may levy in any fiscal year a capital improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement upon the Common Area, including the fixtures and personal property related thereto. The Management Committee shall not impose a capital improvement Assessment exceeding ten percent (10%) of the then estimated annual Common Expenses without the approval of Owners holding a majority of the Allocated Interests in the votes of the Association. All amounts collected as capital improvement Assessments may only be used for capital improvements and shall be deposited by the Management Committee in a separate bank account or the Association's account for reserve funds, to be held in trust for such purposes and said funds shall not be commingled with any other funds (other than reserve funds) of the Association.

6.5 Percentage Assessments. Except as otherwise provided herein, all Assessments (other than special Assessments) shall be in an amount based on the percentage interest for each Unit stated in Section 3.6 of this Declaration, as the same may be amended from time to time.

6.6 Rules Regarding Billing and Collection Procedures. The Management Committee shall have the right and responsibility to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided in this Declaration and for the billing and collection of regular and special Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefor shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days' written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment.

6.7 Certificate of Payment. The Association shall, within ten (10) business days after written demand, furnish to any Owner liable for Assessments or to the Lender or a potential Lender for such Unit, a recordable written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. To the extent permitted by law, a reasonable charge not to exceed twenty dollars (\$20) may be collected by the Management Committee for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

6.8 Special Assessments. Special Assessments shall be levied by the Management Committee against a Unit and its Owner to reimburse the Association for:

- (a) Costs incurred in bringing an Owner or the Owner's Unit into compliance with the provisions of the Declaration, the Articles, the Bylaws or the Association Rules;
- (b) Costs associated with the maintenance, repair or replacement of a Limited Common Area assigned to such Unit;
- (c) Any other charge designated as a special Assessment in this Declaration, the Articles, the Bylaws or the Association Rules; and
- (d) Attorneys' fees, interest and other charges relating thereto as provided in this Declaration.

In the event the Association undertakes to provide materials or services which benefit individual Units and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be a special Assessment.

6.9 Date of Commencement of Assessments. Regular and special Assessments as to Units within the Condominium Project for which construction has been substantially completed shall commence as to all such substantially completed Units on the first day of the month following the conveyance of the first Unit by Declarant to an Owner. Thereafter, regular and

other Assessments shall commence as to newly completed Units on the first day of the month following the substantial completion of construction for each respective Unit. Until the Association makes an Assessment, the Declarant shall pay all Common Expenses of the Association. No Assessments shall be payable on Units for which construction has not been substantially completed, provided, however, that Declarant shall be obligated to pay to the Association any deficiencies in monies available to pay Common Expenses due to the Declarant not having paid an Assessment on uncompleted Units and which are necessary for the Association to be able to pay all Common Expenses in a timely manner. Notwithstanding the above, all Units, including uncompleted Units, shall be allocated full Assessments no later than sixty (60) days after the first Unit is conveyed from Declarant to an Owner.

6.10 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Management Committee in its discretion may apply the excess to reserves, credit the excess against future Assessments or pay the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Condominium Project, as the Management Committee deems appropriate. The decision of the Management Committee shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

6.11 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

## ARTICLE 7 EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES

7.1 Due Date and Delinquency. The first day of each month shall be the Assessment due date for that month. Any Assessment which is not paid within thirty (30) days after it becomes due shall be delinquent. Whenever an Assessment is delinquent, the Management Committee may at its option invoke any or all of the sanctions granted in this Article 7.

7.2 Collection Charge. If any Assessment is delinquent, the Owner shall be obligated to pay the collection charge then provided for in the Bylaws or the Association Rules. The amount of such collection charge until paid shall constitute part of the Assessment lien as provided for in Section 6.1 of this Declaration.

7.3 Interest. If any Assessment is delinquent, interest at the rate of twelve percent (12%) per annum may be assessed on the amount owing from the date due until such time as it is paid.

7.4 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or foreclose the Assessment lien; provided, however, the Owner shall have the right to object to the nature or amount of a delinquent Assessment as provided in Section 5.14 of this Declaration. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the

Association's right to exercise any other remedy. The costs of preparing and filing the complaint shall be assessed against the delinquent Owner and the Owner's Unit and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate) in the event that a judgment is obtained by the Association. Each Owner vests in the Association or its successors or assigns the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

7.5 Foreclosure Sale. Any foreclosure provided for in this Declaration is to be conducted in compliance with applicable provisions relating to the foreclosures of deeds of trust or realty mortgages in the State of Utah. In any foreclosure or sale, the Owner of the affected Unit shall pay the costs and expenses of such proceedings and reasonable attorneys' fees. The Association, upon approval by a majority of the Allocated Interests in the votes of the Association, may through its duly authorized agents have and exercise the power to bid on the Unit at the foreclosure or other sale and to acquire, hold, lease, mortgage and convey such Unit.

7.6 Suspension of Votes. The Management Committee may suspend the obligated Owner's right to vote on any matter at regular or special meetings of the Association and the Owner's right to use all or any portion of the Common Area (exclusive of the Limited Common Area appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent. Prior to suspending the Owner's right to vote, the Management Committee shall afford the Owner the right to a hearing before the Management Committee as provided in Section 5.14 of this Declaration.

## ARTICLE 8 PROPERTY RIGHTS IN COMMON AREA

### 8.1 General Easements to Common Area and Units.

(a) Subject to this Declaration and the Association Rules, each Owner shall have an equal undivided interest, right and easement of use and enjoyment in and to the Common Area. Each Owner shall have an unrestricted right of ingress or egress to and from the Owner's Unit over and across such Common Area (exclusive of the Limited Common Area), and the nonexclusive right to the use of all open parking stalls, if any, within the Common Area. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Area that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family members, household guest, tenant, lessee, contract purchaser, Occupant or other Person who resides in such Owner's Unit.

(b) The Association, acting through the Management Committee or its authorized agent, and public utility companies providing service to the Condominium Project, shall have nonexclusive easements with the right of access to each Unit to make inspections, to maintain, repair, replace or effectuate the restoration of the Common Area

accessible from such Unit. Such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access. The Association, acting through the Management Committee or its authorized agent, shall have a nonexclusive right to grant permits, licenses and easements upon, across, over, under and through the Common Area for purposes necessary for the proper operation of the Condominium Project; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times with proper notification, unless emergency situations demand immediate access.

8.2 Public Utilities. Easements and rights-of-way over the Condominium Project for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Condominium Project are hereby granted to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of all of the Owners as their attorney-in-fact, to any other person easements and rights-of-way in, on, over or under the Common Area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi public improvements or facilities, and each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or right-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no such easement can be granted if it would permanently interfere with the use, occupancy or enjoyment by any Owner or such Owner's Unit.

8.3 Easements for Encroachments. If any portion of the Common Area now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or the Common Area, or if any such encroachment shall occur hereafter as a result of the manner in which the buildings are constructed or due to settling, shifting, alteration, replacement, repair or restoration by Declarant or the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist so long as the buildings stand.

8.4 Development Easements for Declarant. Until all Units have been sold by Declarant, there are hereby reserved to Declarant, together with the right to grant and transfer the same to others, including Declarant's sales agents, representatives, successors and assigns, easements and rights upon, across, over, under and through the Condominium Project:

(a) For the purpose of completing all improvements contemplated by this Declaration and the Plat, including, but not limited to, improvements to the Additional Land;

(b) To use any Unit owned by Declarant or any other Unit, with the express permission by the Owner of such Unit, as a sales model, or as a management, maintenance or sales office (including the use of signs and other advertising devices) in connection with the erection, remodeling and sale or lease of Units within the Condominium Project, and to relocate such models and offices to other Units or Common Areas at any time; and

(c) To create and cause noise, dust, vibration and other nuisances or annoyances created by and resulting from any work connected with or incidental to the development, construction and sale of any Unit or other improvement to the Condominium Project, and each Owner or Occupant in such Owner's Unit waives any and all rights, claims or actions that might otherwise be asserted against Declarant, its agents, employees, licensees, successors and assigns, based on any such noise, dust, vibration and other nuisances or annoyances;

provided, however, that no such use by Declarant or its agents shall otherwise restrict Owners or Occupants in the reasonable use and enjoyment of their Units.

8.5 Limitation on Easement. An Owner's equal undivided interest, right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

(a) The right of the Association, subject to the provisions of Section 5.14 of this Declaration, to suspend the Owner's voting right in the Association and the Owner's right to the use of any recreational facilities included in the Common Area for any period during which (i) an assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or any Association Rule; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

(b) The right of the Association to impose reasonable limitations on the number of guests per Owner or Occupant who at any given time are permitted to use the Common Area; and

(c) The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

8.6 Party Walls. Each wall or ceiling-floor physical boundary which is built as part of the original construction (or reconstruction) of the Units and placed on the dividing line (whether horizontal or vertical) between the Units shall constitute a "Party Wall" and, to the extent not inconsistent with the provisions of this Section 8.6, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to all Party Walls within the Condominium Project. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners who make use of such Party Wall. If a Party Wall is destroyed or damaged by fire or other casualty, the provisions of Article

11 shall apply. Notwithstanding any other provision of this Section 8.6, an Owner who by negligent or willful act causes a Party Wall to be damaged shall, subject to the provisions of Section 5.14 of this Declaration, bear the entire cost of furnishing repairs to the Party Wall. The right of any Owner to contribution from any other Owner under this Section 8.6 shall be appurtenant to the land and shall pass to such Owner's successors in title.

8.7 Form for Conveyancing. Any deed, lease, mortgage, deed of trust or other instrument conveying or encumbering title to a Unit may describe the interest or estate involved substantially as follows:

Unit No. \_\_\_\_\_ of Comiskey Park Condominiums, Phase One, together with all improvements located thereon, as said Unit is identified in the Plat of said development recorded \_\_\_\_\_, 2001 as Entry Number \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_ of the official records of the Tooele County Recorder, State of Utah, and as identified and described in the Declaration of Condominium of Comiskey Park Condominiums, an Expandable Condominium Project, recorded \_\_\_\_\_, 2001, as Entry Number \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_ of the official records of the Tooele County Recorder, State of Utah. TOGETHER WITH an undivided interest, and a right and easement of use and enjoyment in and to the Common Area described, as provided for and in the percentage shown, in said Declaration. This conveyance is subject to the provisions of said Declaration, including any amendments thereto. The undivided interest in the Common Area conveyed hereby is subject to modification, from time to time, as provided in the Declaration for expansion of the Condominium Project.

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 Unit.

8.8 Transfer of Title. At the time of the first conveyance of each Unit from Declarant to a third-party purchaser, Declarant agrees to cause the conveyance of such Unit free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities), and its percentage of undivided interest in the Common Area shall have been released therefrom by partial release duly recorded.

8.9 Views. Views from a Unit and the Condominium Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Condominium Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that:

(a) Completion of the Condominium Project and the future development of land adjacent to or in the vicinity of the Condominium Project may have a detrimental effect on the views from the Unit and other parts of the Condominium Project; and

(b) There are no view easements or rights appurtenant to the Unit or the Condominium Project.

## ARTICLE 9 USE RESTRICTIONS

9.1 Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Condominium Project is maintained and used in a manner consistent with the interest of the Owners.

9.2 Signs. No signs whatsoever (including, but not limited to commercial, political, sale or rental and similar signs) shall be erected or maintained on the Property whether in a window or otherwise without the approval of the Association, except:

(a) Such signs as many be required by legal proceedings;

(b) One house number identification as originally placed by Declarant;

(c) Such signs, the nature, number and location of which have been approved by the Management Committee in advance; and

(d) Street identification and traffic directional signs erected on or adjacent to the Condominium Project by Tooele County, or any other municipal entity, which signs shall not require prior approval from the Management Committee.

Nothing included herein shall prevent Declarant and its agents and assigns from utilizing reasonable signs, flags, markers and sales devices in furtherance of sales activities until all Units have been sold by Declarant and such signs of customary and reasonable dimensions as may be displayed on a Unit advertising a Unit for sale or lease.

9.3 Nuisance. No noxious or offensive activity shall be carried on upon the Condominium Project, nor shall any activity which might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Condominium Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. In accordance with Section 8.4, nothing included herein shall be construed to prevent Declarant and its agents from engaging in all forms of construction and sales activities until all Units have been sold by Declarant.

9.4 Temporary Structures. No structure or building of a temporary character, including a tent or shack, shall be placed upon the Condominium Project or used therein unless the same and its proposed use are approved by the Management Committee. Nothing included



herein shall be construed as preventing Declarant from using temporary structures or trailers for construction or sales purposes or engaging in all forms of construction and sales activities within the Condominium Project.

9.5 Parking and Use of Open Parking/Visitor Parking. Unless otherwise permitted by the Association, and except for “customary parking” and “temporary parking,” as permitted by this Section 9.5, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles or boats) shall be parked, stored or located within any portion of the Condominium Project, including any Unit, Limited Common Area or Common Area. “Customary parking” shall mean the parking of operable automobiles, motorcycles, small trucks and vans (each of which must not be used for commercial purposes and each of which must not exceed 3/4 ton in size and seven (7) feet in height measured from ground level and eighteen (18) feet in length) within the parking spaces designated as an exclusive Limited Common Area for each respective Unit. “Temporary parking” shall mean the use of designated parking areas within the Condominium Project for parking of operable vehicles belonging to invited guests of the Owners and Occupants including the parking of delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants as well as parking of vehicles belonging to or being used by Owners, Occupants and invitees during social engagements and for loading and unloading purposes. The Association may adopt Association Rules relating to the admission and temporary parking of vehicles within the Condominium Project and the use of the visitor parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Association, the right to remove or cause to be removed any vehicles that are improperly parked, restrictions on the time visitor spaces may be used and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be special Assessments. Until all the Units are sold, nothing included herein shall be construed to prevent Declarant from using temporary structures or trailers for construction or sales purposes or from engaging in all forms of construction and sales activities within the Condominium Project.

9.6 External Fixtures. No external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, landscaping and planting, other than those provided in connection with the original construction for the Condominium Project, and any replacements thereof, and other than those approved by the Management Committee, and any replacements thereof, shall be constructed, erected or maintained on the Condominium Project. The foregoing notwithstanding, until all the Units are sold, nothing included herein shall be construed as preventing Declarant and its agents and assigns from engaging in all forms of construction and sales activities within the Condominium Project.

9.7 Window Covers. Each Unit shall have window covers. Only curtains, drapes, shades, shutters and blinds may be installed as window covers, and all such window covers shall be approved in advance by the Management Committee. No window shall be covered by paint, foil, sheets or similar items. The Management Committee may adopt Association Rules regulating the type, color and design of the external surface of window covers.

9.8 External Laundering. Unless otherwise permitted by the Management Committee, external laundering and drying of clothing and other items is prohibited.

9.9 Outside Speakers and Amplifiers. No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of, any Unit without the prior written approval of the Management Committee.

9.10 Repairs. No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles, shall be made upon the Condominium Project.

9.11 Unightly Items. All rubbish, debris or unsightly materials or objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Units, shall be prohibited upon any Unit unless obscured from view of adjoining Units and Common Area. Trash and garbage shall be properly disposed of by Owners and Occupants in refuse containers approved by Tooele County or its subcontractor for regularly scheduled pick up and removal, in accordance with the Association Rules applicable thereto adopted by the Management Committee. The Management Committee may adopt rules applicable to the provisions of this Section 9.11 and their enforcement, including, subject to the provisions of Section 5.14 of this Declaration, the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be special Assessments. The foregoing notwithstanding, nothing included herein shall be construed as preventing Declarant and its agents and assigns from engaging in all forms of construction and sales activities within the Condominium Project.

9.12 Oil and Mineral Activity. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon the surface of the Condominium Project, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be installed upon the surface of the Condominium Project or within five hundred (500) feet below the surface of the Condominium Project. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon the Condominium Project.

9.13 Animals. No animals, livestock, birds, reptiles, or poultry of any kind shall be raised, bred or kept in any Unit or upon the Condominium Project, except that two (2) dogs, two (2) domestic cats, or other household pets approved by the Management Committee may be kept by Owners within a Unit provided such pets are not raised, bred, kept or maintained for any commercial purposes. Notwithstanding the foregoing, no animal or fowl may be kept within a Unit which, in the good faith judgment of the Management Committee, results in an annoyance or is obnoxious to Owners or Occupants within the Condominium Project and the Management Committee may exercise its judgment for specific pets even though others are permitted to remain. All animals permitted to be kept by this Section 9.13 shall be kept on a leash, except within a Unit, and all fecal matter shall be immediately cleaned up on any portion of the Common Area. The Management Committee may adopt Association Rules applicable to the provisions of this Section 9.13 and to the keeping of pets within the Condominium Project, and their enforcement, including, subject to the provisions of Section 5.14 of this Declaration, the assessment of charges to Owners and Occupants who violate such rules. Any charges so assessed shall be special Assessments.

9.14 Leases. Any agreement for the leasing, rental, or occupancy of a Unit (a "Lease") shall be in writing and a copy thereof shall be delivered to the Management Committee before the term of the Lease commences. Every Lease shall provide that the terms of such Lease shall be subject in all respects to the provisions of this Declaration, the Bylaws and the Association Rules. Each Lease shall further provide that any failure by the Occupant thereunder to comply with the terms of the foregoing documents shall be a default under the Lease. If any Lease does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be a part of the Lease and binding on the Owner and Occupant by virtue of their inclusion in this Declaration. No Owner shall be permitted to lease the Owner's Unit for transient or hotel purposes, which shall be defined as rental for any period of less than thirty (30) days. No Owner may lease less than the Owner's entire Unit. Any Owner who shall lease the Owner's Unit shall be responsible for compliance by the Occupant with this Declaration, the Bylaws and the Association Rules. Failure by an Owner to take legal action, including the institution of a forcible entry and detainer proceeding against the Occupant who is in violation of this Declaration, the Bylaws or the Association Rules within ten (10) days after receipt of written demand so to do from the Management Committee, shall entitle the Association, through the Management Committee, to take any and all such action including the institution of proceedings in forcible entry and detainer on behalf of such Owner against the Occupant. Neither the Association nor any agent retained by the Association to manage the Condominium Project shall be liable to the Owner or Occupant for any eviction under this Section 9.14 that is made in good faith. Any expenses incurred by the Association, including attorneys' fees and costs of suit, shall be repaid by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Management Committee to levy a special Assessment against such Owner and the Owner's Unit for all such expenses incurred by the Association. In the event such special Assessment is not paid within thirty (30) days of its due date, the Management Committee, subject to the provisions of Section 5.14 of this Declaration, may resort to all remedies of the Association for the collection thereof. Other than as stated in this Section 9.14, there is no restriction on the right of any Owner to enter into a Lease or otherwise grant occupancy rights to a Unit.

9.15 Landscape Maintenance. Declarant and the Association shall have the right to maintain all landscaping in the Common Area and the Limited Common Area as specified in Article 4 of this Declaration. The Owner shall maintain all landscaping in exclusive Limited Common Area as specified in Article 4 of this Declaration. Declarant and the Association shall have the right of access to all Common Area of the Condominium Project which are necessary for such landscape maintenance.

9.16 Floor Load. There shall be no floor load in excess of the weight for which the Unit or balcony was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is approved in writing by the Management Committee.

9.17 Single Family Occupancy. The use of each Unit is restricted to single family occupancy. Except for those activities conducted as part of the marketing and development program for the Condominium Project by Declarant, no industry, business, trade or commercial activities (other than home professional pursuits without employees, public visits or nonresidential storage and mail), or other use of the Unit, shall be conducted, maintained or

permitted in any part of a Unit, nor shall any Unit be used or rented for transient, hotel or motel purposes. Single family occupancy is defined as a single housekeeping unit, operated on a nonprofit, noncommercial basis between its occupants, cooking and eating with a common kitchen and dining areas, where all residents are members of a family related by blood, adoption or marriage, except for not more than two (2) additional persons not so related may reside in a Unit.

9.18 No Subdivision of Units or Further Restrictions. No Unit shall be split, subdivided or separated into two or more Units, and no Owner of a Unit shall sell or lease less than all of the Unit. An Owner of two (2) or more adjacent Units may, however, combine those Units to make a single Unit and then separate the single Unit into the original Units for purposes of selling one or more of the Units; provided however, that no such combination or subsequent separation shall be allowed until the Management Committee has approved such combination or separation, in the Management Committee's sole discretion, in writing. No subdivision plat or covenants, conditions or restrictions shall be recorded by any owner or other Person with respect to any Unit unless the Management Committee has first approved the plat or the proposed covenants, conditions or restrictions, such approval to be evidenced by the Association's signature on the final recorded plat or instrument imposing the covenants, conditions or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section 9.18 shall be absolutely null and void. The Management Committee's review shall be for the purpose of assuring, in the sole and absolute discretion of the Management Committee, that the plat or covenants, conditions and restrictions are consistent and compatible with the overall plan of development of the Property. However, in no event shall the approval of the Management Committee of any plat or covenant, condition or restriction be an abandonment or waiver of any provision of this Declaration. The provisions of this Declaration shall be and remain superior to any such plat or covenants, conditions or restrictions. The foregoing shall not affect Declarant's right to expand the Condominium Project as provided in Article 16 of this Declaration.

9.19 Architectural Control. No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Management Committee or any committee established by the Management Committee for that purpose. By way of illustration, but not of limitation, the following are considered exterior changes; painting, landscaping, repairs, excavation, patio covers, screens, doors, evaporative coolers, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations or other work which in any way alters the exterior appearance of the Property. The Management Committee, or committee established by the Management Committee for that purpose, may designate the design, style, model and manufacturer of any exterior improvement or alteration which is acceptable to the Management Committee. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Management Committee, or any committee established by the Management Committee for that purpose. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like.

9.20 Lighting. Exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Management Committee.

9.21 Association Rules. The Association shall have the power to make and adopt reasonable Association Rules with respect to activities which may be conducted on any part of the Condominium Project. Subject to the provisions of Section 5.14 of this Declaration, the Management Committee's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Association Rules shall be conclusive unless, at a regular or special meeting of the Association, Owners representing a majority of the Allocated Interests in the votes of the Association vote to the contrary.

9.22 Variances. The Management Committee may, at its option and in extenuating circumstances, grant variances from the Restrictions set forth in this Article 9 if the Management Committee determines in its discretion: (a) either (i) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete; and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners or Occupants of the Condominium Project and is consistent with the high quality of life intended for residents of the Condominium Project.

9.23 Hazardous Substances.

(a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage or release of any Hazardous Substances (as defined below), on or within the Condominium Project which are not properly controlled, safeguarded and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Condominium Project that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use of storage on the Condominium Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to maintenance of a Unit or the Condominium Project.

(b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Condominium Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) whether or not the release of the Hazardous Substances was caused by an indemnifying Owner, a tenant, invitee or otherwise of an indemnifying Owner; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Condominium Project. The obligations of each Owner under this Section 9.23 shall survive any subsequent sale by an indemnifying Owner.

(c) As used in this Section 9.23, “Hazardous Substances” are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section 9.23, “Environmental Law” means federal laws and laws of the jurisdiction where the Condominium Project is located that relate to health, safety or environmental protection.

## ARTICLE 10 INSURANCE

10.1 Property Insurance. Commencing not later than the date a Unit is conveyed to a Person other than Declarant, the Association shall obtain and maintain the insurance specified in this Declaration; provided, however, the Association shall always comply with the insurance requirements of the Act.

(a) Hazard Insurance. A “master” or “blanket” type policy of property insurance shall be maintained covering the entire Condominium Project, including: the Common Area; all buildings including all Units (other than the interior content thereof); fixtures, building service equipment, personal property and supplies comprising a part of the Common Area or owned by the Association, and which are of a class typically encumbered by First Mortgages held by FNMA or other similar institutional mortgage investors; but excluding land, foundations, excavations, and other items not normally covered by such policies. References herein to a “master” or “blanket” type of policy of property insurance are intended to denote single entity insurance coverage. At a minimum, such “master” or “blanket” policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Condominium Project in construction, location and use, including, without limitation, all perils normally covered by the standard “all risk” endorsement, where such endorsement is available. Such “master” or “blanket” policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Condominium Project covered by such policy, exclusive of land, foundations, excavation and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement (which waives the requirement for coinsurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one hundred percent (100%) of the Property’s insurable replacement cost but not more) and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement (which waives the requirement for coinsurance). The maximum deductible amount for such policy covering the Common Area shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount. However, for losses related to Units that are covered by such a policy, the deductible related to each Unit shall be One Thousand Dollars (\$1,000).

Funds to cover these deductible amounts shall be included in the Association's operating reserve account.

(b) Flood Insurance. If any part of the Condominium Project is or comes to be situated in a Special Flood Hazard areas as designated on a Flood Insurance Rate Map, a "master" or "blanket" policy of flood insurance shall be maintained covering the Condominium Project, any machinery and equipment that are not part of a building and all Common Area within the Condominium Project ("Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (i) the maximum limit of coverage available under the National Flood Insurance Administration Program for the Insurable Property within any portion of the Condominium Project located within a designated flood hazard areas; or (ii) one hundred percent (100%) of the insurable value of the Insurable Property. The maximum deductible amount for any such policy shall be the lesser of Five Thousand Dollars (\$5,000) or one percent (1%) of the policy face amount.

(1) The name of the insured under each policy required to be maintained by the foregoing (a) and (b) shall be the Association for the use and benefit of the individual Owners (the Owners shall be designated by name, if required). Notwithstanding the requirement of the immediately foregoing sentence, each such policy may be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an insurance trust agreement, or any successor to such Insurance Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each Owner's Lender. Each Owner and each Owner's Lender, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Lender upon request.

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

(3) Each policy required to be maintained by the foregoing items (a) and (b), shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which

is not in the control of such Owners collectively; and the policy is primary in the event the Owner has other insurance covering the same loss.

(4) Each policy required to be maintained by the foregoing item (a) shall also contain or provide the following: (i) "Inflation Guard Endorsement," if available; (ii) "Building Ordinance or Law Endorsement," if the enforcement of any building, zoning or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs (the endorsement must provide for contingent liability from the operation of building laws, demolition costs and increased costs of reconstruction); and (iii) "Steam Boiler and Machinery Coverage Endorsement," if the project has central heating or cooling, which shall provide that the insurer's minimum liability per accident at least equals the lesser of Two Million Dollars (\$2,000,000) or the insurable value of the building containing the boiler or machinery. In lieu of obtaining this coverage as an endorsement to the commercial package property, the Association may purchase separate stand-alone boiler and machinery coverage.

10.2 Comprehensive Public Liability Insurance. To the extent available, the Association shall obtain comprehensive general liability insurance insuring the Association, Declarant, the agents and employees of the Association and Declarant, the Owners and Occupants and the respective family members, guests and invitees of the Owners and Occupants, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the Condominium Project in construction, location and use. Nevertheless, such coverage shall not be less than One Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner or Occupant. Such insurance shall also include protection against water damage liability, liability for nonowned and hired automobiles and liability for the property of others. Such insurance must provide that, despite any provisions giving the carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the approval of the Association. The Management Committee shall adjust the amount of the insurance carried under this Section 10.2 from time to time.

10.3 Workmen's Compensation Insurance. The Management Committee shall purchase and maintain in effect workmen's compensation insurance for all employees of the Association to the extent that such insurance is required by law.

10.4 Fidelity Insurance. The Management Committee shall obtain fidelity coverage against dishonest acts on the part of Committee Members, officers, employees or volunteers who handle or who are responsible for handling funds of the Association. Such fidelity bonds shall name the Association as obligee and shall be written in an amount equal to one hundred fifty percent (150%) of the estimated current annual Common Expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar terms or expressions.



10.5 Premiums. Premiums upon insurance policies purchased by the Management Committee on behalf of the Association shall be paid by the Association as part of the Common Expenses.

10.6 Policy Provisions.

(a) Any insurer that has issued an insurance policy to the Association under this Article shall also issue a certificate or memoranda of insurance to the Association and upon request, to any Owner or Lender.

(b) The named insured under any policy of insurance shall be the Association, as trustee for the Owners, or its authorized representative, including an Insurance Trustee, who shall have exclusive authority to negotiate losses under the policies. The policy shall provide that each Owner shall be an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of purchasing and maintaining insurance required by this Declaration, and adjustment of all losses related thereto, including: the collection and appropriate disposition of all insurance proceeds, the negotiation of all losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to administer such insurance. The Association shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the Owners and their Lenders, as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

(c) The Association's insurance shall contain the "Special Condominium Endorsement" or its equivalent. Insurance coverage obtained by the Association shall be primary insurance and may not be brought into contribution with insurance purchased by the Owners.

(d) Coverage must not be limited by (i) any act or neglect by Owners or Occupants which is not within control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Condominium Project over which the Association has no control.

(e) Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) and the insurer may not refuse to renew the policy without at least thirty (30) days prior written notice to the Association and all Lenders, and to any Owner to whom a certificate has been issued.

(f) All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Owners, Occupants and their respective agents and employees, and any defenses based on coinsurance or on invalidity arising from acts of the insured.

10.7 Supplemental Insurance. The Management Committee may obtain such other policies of insurance in the name of the Association as the Management Committee deems

appropriate to protect the Association and Owners. The Management Committee shall obtain Committee Member's and officer's liability insurance for officers and Committee Members of the Association in accordance with this Declaration. Notwithstanding any of the provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by FNMA, the Department of Veterans Affairs and the Government National Mortgage Association, so long as any is a mortgagee or Owner of a Unit, except to the extent such coverage is not available or has been waived in writing by FNMA, the Department of Veterans Affairs or the Government National Mortgage Association.

10.8 Annual Insurance Report. Not later than sixty (60) days prior to the beginning of each fiscal year, the Management Committee may obtain a written report by a reputable independent insurance broker or consultant setting forth the existing insurance obtained pursuant to this Declaration and stating whether, in the opinion of such broker or consultant, the insurance complies with the requirements of this Declaration and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and the Lenders in light of the insurance then available and the prevailing practice with respect to other similar condominium projects. The Management Committee shall be fully protected in relying on the written report furnished pursuant to this Section 10.8 provided reasonable care and prudence were exercised in selecting such independent insurance broker or consultant.

10.9 Insurance Obtained by Owners. Notwithstanding the above, and pursuant to Section 57-8-29 of the Act, an Owner or Occupant shall be permitted to insure the Owner's Unit for the Owner's own benefit.

10.10 Additional Insurance Obtained by Declarant. Declarant shall procure, at Declarant's own expense, a general liability insurance policy in an amount not less than One Million Dollars (\$1,000,000) for each occurrence, to cover any liability which Owners of previously sold Units are exposed to as a result of further development of the Condominium Project.

## ARTICLE 11 DESTRUCTION OF IMPROVEMENTS

11.1 Reconstruction. In the event of partial or total destruction of a building or buildings or any portion of the Common Area within the Condominium Project, the Management Committee shall promptly take the following actions:

- (a) The Management Committee shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds.
- (b) The Management Committee shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer carrying the policy covering the Condominium Project.

(c) Pursuant to Section 57-8-30 of the Act, if the insurance proceeds are sufficient to reconstruct the building, such proceeds shall be applied to such reconstruction.

(d) If the Management Committee determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more, but not all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and a Special Assessment equal to twenty-five percent (25%) or less of the then aggregate annual regular Assessments for all Units will completely cover the estimated cost of reconstruction, then the Management Committee shall cause notice to be sent to all Owners and to all Lenders encumbering Units within the Condominium Project setting forth such findings and informing the Owners and Lenders that the Management Committee intends to commence reconstruction pursuant to this Declaration. In the event that Owners representing at least twenty percent (20%) of the Allocated Interests in the votes of the Association object in writing to such reconstruction as indicated in such notice, the Management Committee shall call a special meeting of the Owners pursuant to Section 11.2. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction, the Management Committee shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Management Committee shall levy a uniform special Assessment against each Owner at such time and in such amount as the Management Committee shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

(e) If the Management Committee in good faith determines that none of the bids submitted under this Section 11.1 reasonably reflects the anticipated reconstruction costs, the Management Committee shall continue to attempt to obtain an additional bid which it determines reasonably reflects such costs. Such determination shall be made by the Management Committee as soon as possible. However, if such determination cannot be made within ninety (90) days after the date of such destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Management Committee shall immediately call a meeting of the affected Owners and all Lenders pursuant to Section 11.2.

(f) If the Management Committee determines that any Unit is uninhabitable by reason of its total or partial destruction, the Management Committee may abate Assessments against the Owner thereof until the Management Committee determines that habitability has been restored.

11.2 Reconstruction by Vote. If reconstruction is not to take place pursuant to Section 11.1, as soon as practicable after the same has been determined, the Management Committee shall call a special meeting of the Owners by mailing a notice of such meeting to each such Owner. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Area which will not be rebuilt) determine not to proceed with such reconstruction, reconstruction must take place

and the Management Committee shall levy a uniform special Assessment against each Owner at such time and in such amount as the Management Committee shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

11.3 Procedure for Minor Reconstruction. If the cost of reconstruction is equal to or less than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium Project, then the Management Committee shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Condominium Project in conformance with the original plans and specifications, or if the Management Committee determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.

11.4 Procedure for Major Reconstruction. If the cost of reconstruction is greater than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium Project, all insurance proceeds, together with such amounts from available reserves or special Assessments as are needed to complete the cost of reconstruction, shall be paid directly to an Insurance Trustee, to be designated by the Management Committee, as trustee for all Owners and Lenders. The Insurance Trustee shall be a bank or savings and loan association with an office in Tooele County, Utah, whose accounts are insured by the Federal Deposit Insurance Corporation or the successor to such agency. Such proceeds shall be received, held and administered by the Insurance Trustee subject to the provisions of an insurance trust agreement which shall be consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Management Committee. Disbursement of such funds shall be made only upon the signatures of two Committee Members and upon the terms and conditions provided in this Section 11.4. As soon as practicable after notification of the receipt of insurance proceeds by the Insurance Trustee, the Management Committee shall enter into a contract with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed Units and Common Area according to the original plan and specifications of said improvements or, if the Management Committee determines that adherence to such original plans and specifications is impracticable or not in conformity with applicable statutes, ordinances, building codes or other governmental rules and regulations then in effect, then of a quality and kind substantially equivalent to the original construction of such improvements. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors a specified sum for performance and execution of the work therein described, and shall have provisions for periodic disbursement of funds by the Insurance Trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Tooele County, Utah. Such periodic disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Management Committee shall furnish to the Management Committee before the commencement of construction a full performance and lien payment bond written by a good and responsible corporate surety. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate or other documentation containing such provisions as may be appropriate in the circumstances and deemed suitable by the Management Committee. The Management Committee may employ a licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract.

11.5 Determination not to Reconstruct Without Termination. If Owners of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Area which will not be rebuilt after a casualty) and Eligible Mortgagees on Units to which at least fifty-one percent (51%) of the Allocated Interests are attributable vote not to rebuild and the entire Condominium Project is not repaired or replaced, and the Condominium Project is not terminated in accordance with the Act, the insurance proceeds shall be distributed as provided by the Act and the Allocated Interests are automatically reallocated as provided by the Act. In such event, the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations.

11.6 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Area, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.

11.7 Repair of Units. Installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Owner of that Unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.

11.8 Priority. Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

## ARTICLE 12 EMINENT DOMAIN

12.1 Total Taking of a Unit. If a Unit is taken by eminent domain, or sold under threat thereof, or if part of a Unit is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant which may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area.

12.2 Partial Taking of a Unit. Except as provided in Section 12.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall remain the same,

but if the decree provides for a reduction of the Allocated Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.

12.3 Taking of Limited Common Area. If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated at the time of the acquisition.

12.4 Taking of Common Area. If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is not comprised of or includes any Unit or Limited Common Area, the Management Committee shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring the portion of the Condominium Project so taken, and the portion of the award not used for restoration shall be divided among the owners in proportion to their Allocated Interest in the Common Area before the taking.

12.5 Taking of Entire Condominium Project. In the event the Condominium Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Condominium Project is terminated and the provisions of the Act apply.

12.6 Priority and Power of Attorney. Nothing contained in this Article 12 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

### **ARTICLE 13 RIGHTS OF LENDERS**

13.1 Notice of Lenders. A Lender shall not be entitled to receive any notice which this Declaration requires the Association to provide Lenders for notice, approval or consent regarding a proposed action or otherwise, unless and until such Lender or its mortgage servicing contractor, has delivered to the Association a written notice stating that such Lender is the holder of a loan encumbering a Unit within the Condominium Project, in accordance with Section 13.6. Notwithstanding the foregoing, if any right of a Lender under this Declaration is conditioned on a specific written request to the Association, in addition to the above, a Lender must also make such request in writing delivered to the Association. Except as provided in this Section 13.1, a Lender's rights pursuant to this Declaration, including, without limitation, the priority of any mortgage lien over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice or request to the Association. The provisions of this

Section 13.1 shall not apply to the Department of Veterans Affairs or the Department of Housing and Urban Development.

13.2 Priority of Lenders. No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Unit, but all of such Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise.

13.3 Relationship with Assessment Liens.

(a) The lien provided for in Article 6 for the payment of Assessments shall be subordinate to the lien of any Lender which was recorded prior to the date any such Assessment becomes due.

(b) If any Unit which is subject to a monetary lien created by this Declaration is also subject to the lien of a Lender, then: (i) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Lender; and (ii) the foreclosure of the lien of a Lender or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any person who obtains an interest thereafter shall take title free of any lien created by this Declaration for any Assessments which became due after the recordation of the mortgage or deed of trust, or any personal obligation for such charges, but such Person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.

(c) Without limiting the provisions of Section 13.3(b), any Lender who obtains title to a Unit by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit which accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Condominium Project.

(d) Nothing in this Section 13.3 shall be construed as releasing any Person from the personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such Person is an Owner.

13.4 Required Lender Approval. Except upon the prior written approval of seventy-five percent (75%) of all Lenders which have provided notice to the Association as described in Section 13.1 and Section 13.6, based on one vote for each Unit encumbered by a loan, neither the Association nor the Management Committee shall be entitled by action or inaction to do any of the following:

(a) Abandon or terminate by an act or omission the legal status of the Condominium Project; or

(b) Except as specifically provided by this Declaration, amend any provisions governing the following:

- (1) Voting rights;
- (2) Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;
- (3) Reductions in reserves for maintenance, repair and replacement of the Common Area;
- (4) Reallocation of interests in the Common Area and the Limited Common Area, or rights to their use;
- (5) Redefinition of any Unit boundaries;
- (6) Convertibility of Units into Common Area or vice versa;
- (7) Expansion or contraction of the Condominium Project, or the addition, annexation or withdrawal of property to or from the Condominium Project;
- (8) Hazard or fidelity insurance requirements;
- (9) Imposition of any restrictions on the leasing of Units;
- (10) Imposition of any restrictions on an Owner's right to sell or transfer such Owner's Unit;
- (11) Restoration or repair of the Condominium Project (after damage or particular condemnation) in a manner other than that specified in this Declaration, the Articles or the Bylaws; or
- (12) Any provision that expressly benefits Lenders (including their insurers or guarantors).

Any Lender, other than the Department of Veterans Affairs, the Department of Housing and Urban Development or FNMA, who receives, by certified or registered mail, a written request, with a return receipt requested, to approve a change and who does not return a negative response within thirty (30) days shall be deemed to have approved such request.

13.5 Other Rights of Lenders. Any Lender (and such Lender's insurer or guarantor) shall, upon written request to the Association, be entitled:

- (a) To inspect current copies of this Declaration (and any amendments), the Association's Articles, Bylaws, Association Rules and other books and records of the Association during normal business hours; and



(b) To receive an annual financial statement of the Association within ninety (90) days following the end of the Association's fiscal year.

13.6 Notices of Action. Upon written request to the Association identifying the name and address of the Lender (and the name and address of the Lender's insurer or guarantor, if desired) and the Unit Number or address, any such Lender (or any such insurer or guarantor) will be entitled to timely written notice of:

(a) Any condemnation or casualty loss which affects a material portion of the Condominium Project or any Unit on which there is a First Mortgage held by such Lender;

(b) Any delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to the lien of a Lender, which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action by the Owners or the Association which would amount to a material change in the Declaration as identified in Section 13.4 of the Declaration.

#### **ARTICLE 14 TERMINATION**

14.1 Required Vote. Except as otherwise provided in Article 11 and Article 12, the Condominium Project may be terminated only by unanimous agreement of Owners of all Units.

14.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by unanimous consent of all Lenders with a loan secured by a Unit. Such approval (and any other approval related to an amendment to this Declaration) shall be deemed given when a Lender (except for the Department of Veterans Affairs, the Department of Housing and Urban Development and FNMA) fails to submit a response within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the County Recorder in Tooele County, Utah and is effective only on recordation.

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

14.4 Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Condominium Project, but the contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the Condominium Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit and the Condominium Project. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.

14.5 Proceeds of Sale. Following termination of the Condominium Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Lenders as their interests may appear. The interest of any Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds. Following termination, Lenders holding notes on the Units which were recorded before termination may enforce those liens in the same manner as any lienholder.

## ARTICLE 15 AMENDMENTS

15.1 Amendments by Declarant Prior to First Sale. Except as provided elsewhere in this Declaration, prior to the conveyance of the first Unit to an Owner other than a Declarant, this Declaration and any amendments thereto may be amended or revoked by the execution of Declarant of an instrument amending or revoking the same.

15.2 Amendments by Declarant After First Sale. Except as provided elsewhere in this Declaration, Declarant (without obtaining the approval of Owners, the Association, or existing Lenders) may unilaterally amend or modify this Declaration in the exercise of its rights set forth in this Declaration. Also, notwithstanding anything herein to the contrary, during the period in which Declarant controls the Association (as described in Section 5.15), Declarant shall have the unilateral right (without obtaining the approval of the Owners, the Association or existing Lenders) to amend this Declaration, if such amendment is required solely: (a) to comply with applicable law or to correct any error or inconsistency of this Declaration and if such amendment does not adversely affect the rights of any Owner or Lender; or (b) to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments (including, without limitation, the Department of Veterans Affairs, the Federal Housing Administration, FNMA, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or any similar agency). If such amendment bears

recitation that it is recorded based on such technical error or the requirements of any of the foregoing agencies, such amendment shall not require approval of any Owners or Lenders.

15.3 General Amendment Requirements. Except as permitted by Article 3, Section 15.1, Section 15.2, or as otherwise permitted or required by the Act, this Declaration may be amended only by vote or agreement of Owners of Units to which at least seventy-five percent (75%) of the votes in the Association are allocated. In addition, during the period in which Declarant controls the Association (as described in Section 5.15), this Declaration shall not be amended without Declarant's prior written consent.

15.4 Protection of Declarant Rights. An amendment shall not terminate or decrease any unexpired development right, special Declarant right, or period of Declarant control unless the Declarant approves or consents in writing.

15.5 Execution of Amendments. An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder of Tooele County, Utah. An amendment which requires the affirmative written assent or vote of the Owners as provided above shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment has been so approved and Declarant if Declarant's consent is also required, and when the amendment has been recorded in the office of the County Recorder of Tooele County, Utah.

15.6 Lender Approval. Subject to the foregoing, any provision of this Declaration which expressly requires the approval of a specified percentage of the Lenders for action to be taken under such provision can be amended only with the affirmative written assent or vote of not less than the same percentage of the Lenders; provided that in the event approval is requested in writing from a Lender with respect to a proposed amendment and a negative response is not returned within thirty (30) days following the Lender's receipt of the request, by certified or registered mail, with a return receipt requested, the Lender shall be deemed to have approved the proposed amendment. After the Department of Veterans Affairs has approved this Declaration and the Bylaws, the condominium regime documentation may not be amended or merged with a successor condominium regime without the prior written approval of the Department of Veterans Affairs.

## **ARTICLE 16 EXPANSION**

16.1 Option to Expand. It is anticipated that additions to the Condominium Project will be developed in a series of phases. Accordingly, Declarant hereby reserves, pursuant to Section 57-8-13.6 of the Act, the right and option to expand the Condominium Project (the "Option to Expand") upon the terms and provisions set forth in this Article 16 without the prior consent of the Owners or the Association. The Option to Expand must be exercised by Declarant within seven (7) years after recordation of this Declaration.

16.2 Additional Land. Subject to the power granted Declarant below, the land which is subject to the Option to Expand is more particularly described on Exhibit "B."

16.3 Order of Exercise. Declarant may add all or any portion of the Additional Land to the Condominium Project without any limitation whatsoever as to the size of the portion or portions of the Additional Land added to the Condominium Project. Declarant may add portions of the Additional Land to the Condominium Project at different times and from time to time as Declarant determines. No assurances are made with regard to which portion of the Additional Land, if any, will be added to the Condominium Project.

16.4 Limitations on Expansion. Declarant shall not be restricted in the location of improvements or additional Units on the Additional Land that may be developed, except as may be required by applicable zoning requirements, ordinances or regulations. The maximum number of Units that may be developed on the Additional Land is 104 (resulting in a maximum number of 112 Units in the fully-expanded Condominium Project). The maximum number of Units per acre that may be developed on any portion of the Additional Land added to the Condominium Project is 13.54. The maximum and minimum number of Units and the related maximum and minimum ownership interests in and to the Common Area are set forth in Section 3.4 of this Declaration.

16.5 Use Restrictions. The Units to be located on the Additional Land shall be subject to the same uses as provided in this Declaration. Each Owner of a Unit constructed on any phase of the Additional Land shall have an unrestricted right of ingress and egress to and from the Owner's Unit over and across all Common Area of the Condominium Property. Each Owner of a Unit constructed on any phase of the Additional Land shall have the exclusive right to use and enjoy any Limited Common Area that may be designated for exclusive use by such Owner.

16.6 Nature of Improvements. With respect to improvements on the Additional Land:

(a) The structures erected on any portion of the Additional Land will be compatible with structures on the Property originally within the Condominium Project in terms of principal materials used and architectural style;

(b) Future improvements on the Additional Land will be consistent with the initial Condominium Project improvements in terms of quality of construction;

(c) The Units created on any portion of the Additional Land added to the Condominium Project will be substantially identical to the Units on the Property originally within the Condominium Project;

(d) Declarant reserves the right to create Limited Common Area within any portion of the Additional Land added to the Condominium Project similar in terms of the types, sizes and number of the Limited Common Area within the original portion of the Condominium Project.; and

(e) Declarant reserves the right to create within the Common Area of any portion of the Additional Land added to the Condominium Project community, recreational and other facilities for the common use of all Owners and Occupants.

16.7 Substantial Completion. All Common Area improvements constructed on and made to the Additional Land shall be substantially completed prior to adding such improvements to the Condominium Project.

16.8 Documentation to Expand. In order to add all or any portion of the Additional Land to the Condominium Project, the Declarant shall:

(a) Record, with regard to the Additional Land or any portion thereof that is being added to the Condominium Project as Units, Common Area or Limited Common Area, a new or supplemental Plat (“Supplemental Plat”) containing the information necessary to comply with the Act, and showing the location and dimensions of the vertical and horizontal boundaries of each Unit, the Common Area or Limited Common Area, if any, formed out of the Additional Land or a portion thereof, and assigning any Limited Common Area which shall become appurtenant to any such Unit; and

(b) Record simultaneously with each Supplemental Plat a Supplemental Declaration, duly executed and acknowledged by the Declarant and all of the owners and lessees of the Additional Land added to the Condominium Project. Each such Supplemental Declaration and Supplemental Plat shall contain a legal description by metes and bounds of that portion of the Additional Land being added to the Condominium Project.

The ownership interest in the Common Area for all Units in the Condominium Project, the voting interests for Owners, and the apportionment of the Common Expenses shall change at the time Declarant records a Supplemental Declaration and a Supplemental Plat reflecting Declarant’s exercise of the Option to Expand. It is contemplated that there may be multiple amendments filed by Declarant and such amendments and supplements are hereby expressly authorized.

16.9 Title to Units. Each Owner, by execution of a contract for deed or the acceptance of a deed to a Unit in the Condominium Project, shall be deemed to have consented to all provisions of this Article 16, including the procedure for adjustment of Unit ownership interests. After the filing for record of any Supplemental Declaration and the Supplemental Plat reflecting Declarant’s exercise of the Option to Expand, or any part thereof, legal and equitable title to each Unit thereby created within the Additional Land including the interest in the Common Area appurtenant to each such Unit shall be vested in and held by Declarant.

16.10 Conveyance of Additional Land. Declarant shall have the right to convey or otherwise transfer its interest in the Additional Land or any portion thereof, and such conveyance or transfer shall not terminate this Option to Expand with respect to any portion of the Additional Land and the grantee of any portion of the Additional Land shall have the same option and rights as Declarant under this Declaration.

16.11 Amendment. No provision of this Article 16 shall be amended without the prior written consent of Declarant, so long as Declarant either owns or has the right to acquire or construct any Units in the Condominium Project.

16.12 Lender Approvals. If the Department of Veterans Affairs, the Department of Housing and Urban Development or FNMA holds, insures or guarantees a mortgagee or mortgages secured by a Unit or Units in the Condominium Project, no Additional Land may be added to the Project without the prior written consent of such agency or corporation.

## ARTICLE 17 GENERAL PROVISIONS

17.1 Enforcement. The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Association Rules and any respective amendments thereto.

17.2 No Waiver. Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

17.3 Cumulative Remedies. All rights, options and remedies of Declarant, the Association, the Owners or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, the Association, the Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

17.4 Severability. Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration or in the Bylaws or the Association Rules by judgment or court order shall in no way affect any other Restrictions or provisions contained herein or therein which shall remain in full force and effect.

17.5 Covenants to Run with the Land: Term. The Restrictions and other provisions of this Declaration shall run with and bind the Condominium Project as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date this Declaration is recorded, after which time the Restrictions and other provisions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed and acknowledged by Owners of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association and their Lenders, has been recorded prior to the end of any such period agreeing to change or revoke the Restrictions and other provisions of this Declaration in whole or in part. By acquiring any interest in a Unit, or in a Limited Common Area, or in the Common Area, such Owner consents to, and agrees to be bound by, each and every provision of this Declaration.

17.6 Allocation upon Termination. Unless provided otherwise herein, upon any liquidation or termination of all or part of the Condominium Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto.

Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders. Owners shall share in the proceeds of such termination or liquidation in the same proportion as their Allocated Interest in the Common Area (or as otherwise provided by the Act), but in such event, the liens and provisions of all lenders or Assessment liens encumbering Units within the Condominium Project so encumbered shall extend to each applicable Owner's Interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

17.7 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a condominium community and for the maintenance of the Condominium Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to Articles and Section numbers, unless otherwise expressly provided, are to the Articles and Sections of this Declaration.

17.8 Gender and Number. Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

17.9 Nuisance. The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or the Association Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.

17.10 Attorneys' Fees. In the event any action is instituted to enforce any of the provisions contained in this Declaration, the Bylaws or the Association Rules, the party prevailing in such action shall be entitled to recover from the other party thereto, as part of the judgment, reasonable attorneys' fees and costs of suit.

17.11 Notices. Any notice to be given to an Owner, a Lender or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:

- (a) Notice to an Owner shall be delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners.

(b) Notice to a Lender shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender in Tooele County, Utah, or if no such office is located in Tooele County, to any office of such Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.

(c) The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, or to any Lender or Lenders, to the address or addresses for the giving of notice pursuant to this Section 17.11, shall be deemed conclusive proof of such mailing.

(d) Notice to the Association shall be delivered by registered or certified United States mail, postage prepaid, addressed to the office of the statutory agent of the Association or as follows:

Patrick H. Holmes  
Holmes Homes, Inc.  
9345 South 1300 East  
Sandy, Utah 84094

The Association shall, however, have the right to designate a successor or substitute address for receipt of notices hereunder by filing a Supplemental Declaration.

17.12 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. Declarant shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws or the Association Rules are determined to be unenforceable in whole or in part or under certain circumstances.

17.13 Personal Covenant. To the extent the acceptance of a conveyance of a Unit creates a personal covenant between the Owner of such Unit and Declarant, other Owners or the Association, such personal covenant shall terminate and be of no further force or effect from and after the date when a Person ceases to be an Owner except to the extent this Declaration provides for personal liability with respect to the Assessments incurred during the period a Person is an Owner.

17.14 Nonliability of Officials. To the fullest extent permitted by law, neither the Management Committee nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence if such Committee Member or officer acted in good faith within the scope of such Person's duties.

17.15 Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if



any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

17.16 Notification of Sale and Transfer Fee. Concurrently with the consummation of the sale or other transfer of any Unit, or within fourteen (14) days after the date of such transfer, the transferee shall notify the Association in writing of such transfer and shall accompany such written notice with any nonrefundable transfer fee payable pursuant to the Association Rules, to cover Association documentation and processing. The Management Committee may establish a transfer fee, from time to time, which shall be no more than the amount of the then current regular monthly Assessment. The written notice shall set forth the name of the transferee and the transferor, the street address of the Unit purchased or acquired by the transferee, the transferee's mailing address, the date of the sale or transfer and the name and address of the transferee's Lender, if any. Prior to the receipt of such written notice, all notices required or permitted to be given by the Association to the Owner shall be deemed to be duly made or given to the transferee if duly and timely made and given to the transferee's predecessor in interest. The transfer fee shall be the personal obligation of the new Owner and shall be secured by the lien in Section 6.1. Notwithstanding the other provisions of this Declaration, this Section 17.16 shall not apply to a Lender who becomes an Owner by a foreclosure proceeding or any deed or assignment in lieu of foreclosure.

17.17 Owner Liability and Indemnification. Subject to the provisions of Section 5.14 of this Declaration, each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligence of that Owner or such Owner's family members, tenants, guests or invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association. Each Owner, by acceptance of a deed for a Unit, agrees personally and for family members, tenants, guests and invitees to indemnify each and every other Owner, and to hold such other Owners harmless from, and to defend such Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including Limited Common Area, if any, except to the extent: (a) that such injury or damage is covered by liability insurance in favor of the Association or any other Owner; or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other Person temporarily visiting such Unit.

17.18 Conflicting Provisions. In the case of any conflict between this Declaration and the Bylaws, or the Association Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified and amended only to the extent necessary to come into compliance with the Act.

17.19 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease or other conveyance of an interest in Unit, each Owner or Occupant of such Owner's Unit consents to the rights reserved to Declarant and the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of Declarant, during the period in which Declarant controls the Association (as described in Section 5.15), and the Association thereafter, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of Declarant's and the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

17.20 Security. The Association or Declarant shall in no way be considered insurers or guarantors of security within or relating to the Condominium Project, including any Common Area in which the Association may have an obligation to maintain, and the Association or Declarant shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Each Owner or Occupant acknowledges and understands that Declarant, the Association and the Management Committee are not insurers of the safety or well being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Units, the Common Area, and to the contents of improvements located thereon to the extent not insured by the Association pursuant to Article 10 above. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION AND THE MANAGEMENT COMMITTEE HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE CONDOMINIUM PROJECT.

**DATED** effective as of the date first above written.

**DECLARANT:**

HOLMES HOMES, INC., a Utah corporation

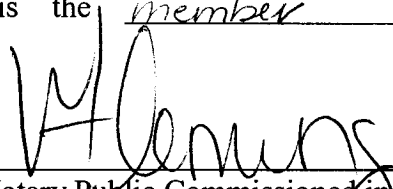
By: \_\_\_\_\_

Title: \_\_\_\_\_

*[Handwritten signature]*  
*[Handwritten title: president]*

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

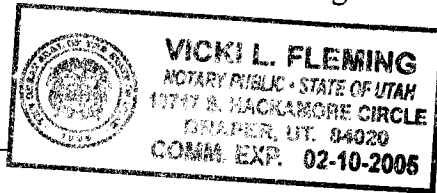
The foregoing instrument was acknowledged before me this 29 day of June, 2001, by Patrick H. Holmes, who is the member of HOLMES HOMES, INC., a Utah corporation.



Notary Public Commissioned in Utah  
Residing at Salt Lake County, Utah

My Commission Expires:

\_\_\_\_\_



## EXHIBIT "A"

LEGAL DESCRIPTION  
PARCEL

The following described real property, located in Tooele County, Utah, is the Parcel representing phase one of the Condominium Project:

PHASE I LEGAL DESCRIPTION

BEGINNING AT A POINT ON THE NORTHWESTERLY BOUNDARY OF ANSON DRIVE, SAID POINT BEING N89°42'14"E 1089.11 FEET AND SOUTH 1268.43 FEET FROM THE NORTH QUARTER CORNER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SLB & M, AND RUNNING THENCE S54°03'34"E 36.01 FEET; THENCE S17°12'40"W 9.13 FEET; THENCE S53°38'37"E 86.02 FEET; THENCE N54°06'56"E 9.82 FEET; THENCE TO A POINT ALONG THE ARC OF A 1287.00-FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 02°42'10" (LONG CHORD BEARS S36°21'23"W 60.71) A LENGTH OF 60.71 FEET; THENCE NORTHERLY ALONG THE ARC OF A 15.00-FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 91°21'05" (LONG CHORD BEARS N07°58'05"W 21.46 FEET) A LENGTH OF 23.92 FEET; THENCE N53°38'37"W 62.02 FEET; THENCE S42°14'30"W 218.39 FEET; THENCE S42°02'16"E 75.35 FEET; THENCE N60°26'39"E 8.42 FEET; THENCE TO A POINT ALONG THE ARC OF A 1287.00-FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 03°36'15" (LONG CHORD BEARS S48°53'34"W 80.94 FEET) A LENGTH OF 80.96 FEET; THENCE NORTHERLY ALONG THE ARC OF A 15.00-FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 91°27'08" (LONG CHORD BEARS N04°58'08"E 21.48 FEET) A LENGTH OF 23.94 FEET; THENCE N40°45'26"W 62.02 FEET; THENCE WESTERLY TO A POINT ALONG THE ARC OF A 15.00-FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 88°07'58" (LONG CHORD BEARS N84°49'25"W 20.86 FEET) A LENGTH OF 23.07 FEET; THENCE S51°06'36"W 13.92 FEET; THENCE N38°51'18"W 54.50 FEET; THENCE N48°52'48"E 101.48 FEET; THENCE N43°42'44"W 60.50 FEET; THENCE N41°04'27"E 200.84 FEET; THENCE S52°25'14"E 78.84 FEET; THENCE N35°21'05"E 18.31 FEET TO THE POINT OF BEGINNING.

## EXHIBIT "B"

LEGAL DESCRIPTION  
ADDITIONAL LAND

The following described real property, located in Tooele County, Utah, is the Additional Land:

ADDITIONAL LAND BOUNDARY DESCRIPTION

BEGINNING AT A POINT ON THE NORTHWESTERLY BOUNDARY OF ANSON DRIVE, SAID POINT BEING N89°42'14"E 1089.11 FEET AND SOUTH 1268.43 FEET FROM THE NORTH QUARTER CORNER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE S35°21'05"W 18.31 FEET; THENCE N52°25'14"W 78.84 FEET; THENCE S41°04'27"W 200.84 FEET; THENCE S43°42'44"E 60.50 FEET; THENCE S48°53'48"W 101.48 FEET; THENCE S38°51'18"E 54.50 FEET; THENCE N51°06'36"E 13.92 FEET THENCE EASTERLY ALONG THE ARC OF A 15.00-FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 88°07'58" (LONG CHORD BEARS S84°49'25"E 20.86 FEET) A LENGTH OF 23.07 FEET; THENCE S40°45'26"E 62.02 FEET; THENCE ALONG THE ARC OF A 15.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 91°27'07" (LONG CHORD BEARS S04°58'07"W 21.48 FEET) A LENGTH OF 23.94 FEET; THENCE TO A POINT OF COMPOUND CURVATURE ALONG THE ARC OF A 1287.00-FOOT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 15°04'23" (LONG CHORD BEARS S58°13'53"W 337.60 FEET) A LENGTH OF 338.58; THENCE TO A POINT OF CONTINUOUS COMPOUND CURVATURE ALONG THE ARC OF A 14.50-FOOT RADIUS TO THE RIGHT THROUGH A CENTRAL ANGLE OF 92°00'14" (LONG CHORD BEARS N68°13'48"W 20.86 FEET) A LENGTH OF 23.28 FEET; THENCE N22°13'41"W 8.86 FEET; THENCE ALONG THE ARC OF A 920.00-FOOT RADIUS TO THE RIGHT THROUGH A CENTRAL ANGLE OF 22°00'03" (LONG CHORD BEARS N11°13'39"W 351.10 FEET) A LENGTH OF 353.27 FEET; THENCE N00°13'38"W 356.32 FEET; THENCE TO A POINT OF TANGENCY ALONG THE ARC OF A 14.50-FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 90°00'00" (LONG CHORD BEARS N44°46'22"E 20.51 FEET) A LENGTH OF 22.78 FEET TO A LINE ALONG THE SOUTH RIGHT-OF-WAY OF 1810 NORTH STREET; THENCE N89°46'22"E 248.38 FEET; THENCE ALONG THE ARC OF A 130.00-FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 44°46'22" (LONG CHORD BEARS N67°23'11"E 99.02 FEET) A LENGTH OF 101.59 FEET; THENCE N45°00'00"E 8.13 FEET; THENCE ALONG THE ARC OF A 14.50-FOOT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 90°00'00" (LONG CHORD BEARS S90°00'00"E 20.51 FEET) A LENGTH OF 22.78 FEET; THENCE ALONG S45°00'00"E 14.34 FEET; THENCE ALONG THE ARC OF A 129.95-FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 45°14'38" (LONG CHORD BEARS S67°36'49"E 99.97 FEET) A LENGTH OF 102.62 FEET TO A POINT ALONG THE SOUTH RIGHT-OF-WAY OF APARICIO DRIVE; THENCE N89°46'22"E 248.91 FEET; THENCE TO A POINT OF TANGENCY ALONG THE ARC OF A 30.00 FOOT RADIUS TO THE RIGHT THROUGH A CENTRAL ANGLE OF 20°00'12" (LONG CHORD BEARS S80°13'32"E 10.42 FEET) A LENGTH OF 10.47 FEET; THENCE S70°13'26"E 12.39 FEET; THENCE ALONG THE ARC OF A 14.50-FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 91°37'49" (LONG CHORD BEARS S24°24'32"E 20.80 FEET) A LENGTH OF 23.19 FEET TO A POINT ALONG THE WEST RIGHT-OF-WAY OF AARON DRIVE; THENCE TO A POINT OF COMPOUND CURVATURE ALONG THE ARC OF A 1287.00-FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 13°35'55" (LONG CHORD BEARS S28°12'20"W 304.74 FEET) A LENGTH OF 305.46 FEET; THENCE S54°06'56"W 9.82 FEET; THENCE N53°38'37"W 86.02 FEET; THENCE N17°12'40"E 9.13 FEET; THENCE N54°03'34"W 36.01 FEET TO THE POINT OF BEGINNING.

CONTAINS 316,458 SQ.FT. (7.26 ACRES)

ADDITIONALLY

BEGINNING AT A POINT ON THE WEST RIGHT-OF-WAY OF AARON DRIVE, SAID POINT BEING 84°03'22"W 45.10 FEET FROM THE MONUMENT AT THE INTERSECTION OF ALEXANDER DRIVE AND AARON DRIVE, THENCE ALONG THE ARC OF A 1287.00-FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 09°22'59" (LONG CHORD BEARS S42°23'57"W 210.53 FEET) A LENGTH OF 210.77 FEET; THENCE S60°26'39"W 8.42 FEET; THENCE N42°02'16"W 75.35 FEET; THENCE N42°14'30"E 218.39 FEET; THENCE S53°38'37"E 62.02 FEET; THENCE TO A POINT OF TANGENCY ALONG THE ARC OF A 15.00-FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 91°21'04" (LONG CHORD BEARS S07°58'05"E 21.46 FEET) A LENGTH OF 23.92 FEET TO A POINT OF TANGENCY AT THE POINT OF BEGINNING.

**EXHIBIT "C"**  
**FORM BYLAWS**

## EXHIBIT "D"

## COMISKEY PARK CONDOMINIUMS

Schedule of Units, Square Footage,  
Votes and Undivided Interests in Common Areas

<b>Unit Identifying Number</b>	<b>Unit Type</b>	<b>Approx. Sq. Footage of Unit</b>	<b>Undivided Interest Per Unit</b>	<b>No. of Votes Per Unit</b>
101	3 bdrm 2 bath	1500	12.50%	1
102	3 bdrm 2 bath	1500	12.50%	1
103	3 bdrm 2 bath	1500	12.50%	1
104	3 bdrm 2 bath	1500	12.50%	1
105	3 bdrm 2 bath	1500	12.50%	1
106	3 bdrm 2 bath	1500	12.50%	1
107	3 bdrm 2 bath	1500	12.50%	1
108	3 bdrm 2 bath	1500	12.50%	1