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SEP 19 1978

DECLARATION AND BYLAWS

of

THE BELVEDERE

Recorded SEP 29 1978 at 3:40 m.  
 Request of Thompson Michie Assoc  
 KATIE L. DIXON, Recorder  
 Salt Lake County, Utah  
 \$ 116.00 By Katie L. Dixon Deputy  
 REC. Evelyn Thompson

A

Condominium Project Created  
 Pursuant to the Utah Condominium  
 Ownership Act

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*29 So State  
 Suite 403.  
 84111*

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DECLARATION

THE BELVEDERE

THIS DECLARATION is made and executed by Thompson Michie Associates, Inc. ("declarant"), pursuant to the provisions of the Utah Condominium Ownership Act, as amended, Utah Code Ann. §§ 57-8-1 through 57-8-36 (Repl. vol. 1963), hereinafter referred to as the "act."

1. Recitals.

1.1. Declarant, and the persons joining in this declaration, are the sole owners of the real property and improvements ("property") located at 29 South State Street, Salt Lake City, Salt Lake County, Utah, hereinafter more particularly described.

1.2. Declarant, by recording this declaration, intends that the provisions of the act shall apply to the property.

1.3. The covenants, conditions and restrictions contained in this declaration and in the appendices hereto shall be enforceable equitable servitudes and shall run with the land.

1.4. Declarant has filed simultaneously herewith a record of survey map ("map"), as required by section 57-8-13(1) of the act.

1.5. The administration of the property shall be governed by by-laws which are embodied in a separate instrument, a true copy of which are appended to and recorded with this declaration as appendix B.

1.6. All terms used in this declaration and the appended by-laws shall have the same definition as the terms defined in the act, unless the act allows for a variation of the terms and such variation is contained herein.

1.7. The property shall be known as The Belvedere. The mailing address of the property is 29 South State Street, Salt Lake City, Utah 84111.

2. Description of the Land.

The land on which the building and improvements are located is particularly described as follows:

Commencing 36 feet North of the Southwest corner of Lot 5, Block 74, Plat "A", Salt Lake City Survey, running thence North 95.5 feet, thence East 165 feet, thence South 105.5 feet to the North line of Social Hall Avenue, thence North 81°15'14" West 65.76 feet, thence West 100 feet to the point of Beginning.

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Together with a right of way for ingress and egress over the following described property: Commencing 131.5 feet North and 165 feet East of the Southwest corner of Lot 5, Block 74, Plat "A", Salt Lake City Survey, running thence South 105.5 feet, thence East 18 feet, thence North 105.5 feet, thence West 18 feet, to the point of Beginning.

3. Description of the Building.

3.1. The building has a lobby floor and eight full floors above the lobby floor. The main entrance is located on State Street and leads to a lobby, a club and recreational room, an office and elevators. There is a rear entrance located at the rear of the building leading to a right-of-way which exists on Social Hall Avenue.

3.2. There are 149 units in the building.

3.3. The building is constructed of concrete and brick. The interior unit and hallway floors are concrete over which is laid a subfloor and oak hardwood flooring, with the exceptions of bathrooms, kitchens, and lobby which are tile or stone, respectively. The ceilings are approximately nine feet high. The interior partitions are adobe brick with a plaster overlay. The building is supplied with electricity, water, sewage service and a central T.V. antenna. Steam heat is purchased from a heating plant on Social Hall Avenue and is supplied to the units through connectors or radiators, which, for the most part, are thermostatically controlled in each unit. There is one fully automatic passenger elevator and one manually controlled freight elevator. The building is more fully depicted on the map.

4. Description of Units.

4.1. Appendix A hereto contains a table setting forth the number designation of each unit. The units are more particularly described in the map.

4.2. The boundary lines of each unit are the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, all window panes, interior surfaces of doors, window frames and door frames and trim. Each unit shall include both the portions of the building that are not common areas and facilities within such boundary lines and the space so encompassed. Without limitation, a unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors, and ceilings, non-supporting interior walls and all utility pipes, lines, systems, fixtures, or appliances found within the boundary lines of the unit and servicing only that unit.

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5. Description of Common Areas and Facilities.

The common areas and facilities shall mean and include: the land on which the building is located, including the right-of-way to the east of the building, and all portions of the property not contained within any unit, including, but not by way of limitation: the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, and entrances and exits of the building; club and recreation room, manager's apartment, and the areas used for storage of janitorial supplies, maintenance equipment and materials; installations of all central services, including power, light, water, heating, and garbage collection; the elevators, pumps, motors, fans, ducts, and in general all apparatus and installations existing for common use; any utility pipes, lines or systems servicing more than a single unit and all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used therewith; all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally common in use, or which have been designated as common areas and facilities in the map; and all repairs and replacements of any of the foregoing.

6. Percentages of Undivided Interest in Common Areas and Facilities.

The percentage of undivided interest in the common areas and facilities appurtenant to each unit and its owner for all purposes, including voting, is set forth in appendix A. Such percentages have been computed by taking as a basis the square footage of floor area of the individual units.

7. Purpose of the Property.

7.1. The purpose of the property is to provide residential housing for the unit owners, their respective families, guests and servants.

7.2. The units and common areas and facilities shall be occupied and used as follows:

7.2.1. A unit shall not be occupied as a permanent residence by children under the age of sixteen years.

7.2.2. With the exception of the units located on the lobby floor, a unit owner shall not permit his unit to be occupied or used other than as a private residence for a single family, without the express approval of the management committee or its designee.

7.2.3. A unit owner shall not obstruct the common areas and facilities. A unit owner shall not place or store anything within the common areas and facilities without the prior written consent of the management committee or its designee.

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7.2.4. Without the prior written consent of the management committee or its designee, a unit owner shall not permit anything to be done or kept in his unit or in the limited common areas and facilities appurtenant to his unit that would result in an increase in the cost of insurance on the property, or that would result in the cancellation of insurance with respect to all or any part of the property, or that would be in violation of any governmental law, ordinance, or regulation.

7.2.5. The management committee or its designee, shall approve all signs of any kind that will be displayed to the public view from a unit.

7.2.6. A unit owner shall not permit any animals of any kind to be raised, bred, or kept in his unit or in the limited common areas and facilities appurtenant to his unit, except that the management committee may provide in its rules and regulations that dogs, cats, and other household pets may be kept in units subject to the rules and regulations adopted by the management committee.

7.2.7. A unit owner shall not permit any obnoxious, illegal, or offensive activity or nuisance to be carried on in his unit or in the common areas and facilities appurtenant to his unit.

7.2.8. A unit owner shall not alter, construct in, or remove anything from the common areas and facilities, except with the prior written consent of the management committee or its designee.

7.2.9. A unit owner shall not violate any of the rules and regulations for the use of units, common areas and facilities, or limited common areas and facilities adopted by the management committee and furnished in writing to the unit owners.

8. Agent for Service of Process.

8.1. The name and address of the person in Salt Lake County, State of Utah, appointed as first agent to receive service of process in matters pertaining to the property is: James R. Michie, 4430 Mathews Way, Salt Lake City, Utah 84117.

8.2. The agent for service of process may be changed from time to time by the management committee by recording an appropriate affidavit.

9. Association of Unit Owners: Management Committee.

9.1. The persons or entities who are at the time of reference the unit owners constitute an unincorporated association and not a legal entity, the characteristics and nature of which are determined by the act, the declaration, and the bylaws. The name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and

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disposed of, bank accounts shall be opened and suits shall be brought and defended by the management committee or officers thereof on behalf of and agents for the unit owners in the manner specified by the act, this declaration, or the bylaws, is: "The Belvedere Association, an association of unit owners under the Utah Condominium Ownership Act."

9.2. The management and maintenance of the property and the business, property and affairs of the Belvedere Association ("association") shall be managed by a management committee, consisting of five (5) members, who need not be unit owners. The management committee shall be elected as provided in the bylaws. All agreements and determinations with respect to the property lawfully made or entered into by the management committee shall be binding upon all of the unit owners and their successors and assigns.

9.3. The management committee shall have all the powers, duties, and responsibilities as are now or may hereafter be provided by the act, this declaration and bylaws, including but not limited to the following:

9.3.1. To make and enforce all house rules and administrative rules and regulations covering the operation and maintenance of the property.

9.3.2. To engage the services of a manager or managing company, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefor; provided, however, that any management agreement may be terminable by the management committee for cause upon thirty (30) days written notice and that the term of any said management agreement may not exceed one year, renewable by agreement for successive one-year periods.

9.3.3. To operate, maintain, repair, improve and replace the common areas and facilities.

9.3.4. To determine and pay the common expenses.

9.3.5. To assess and collect the proportionate share of common expenses from the unit owners.

9.3.6. To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

9.3.7. To open bank accounts on behalf of the association and to designate the signatures therefor.

9.3.8. To purchase, hold, sell, convey, mortgage or lease any one or more units in the name of the association or its designee.

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9.3.9. To bring, prosecute and settle litigation for itself, the association and the property, provided that it shall make no settlement which results in a liability against the management committee, the association, or the property in excess of \$5,000 without prior approval of a majority of unit owners.

9.3.10. To obtain insurance for the association with respect to the units and the common areas and facilities, as well as workmen's compensation insurance.

9.3.11. To repair or restore the property following damage or destruction, or a permanent taking by the power or power in the nature of eminent domain or by an action or deed in lieu of condemnation, not resulting in the removal of the property from the provisions of the act.

9.3.12. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the unit owners, items of personal property necessary to or convenient in the management of the business and affairs of the association and the management committee and in the operation of the property, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances, and office supplies.

9.3.13. To keep adequate books and records.

9.3.14. To record amendments to appendix A to reflect the combination of units that do not affect the interests of any owners other than the owners of the combined units.

9.3.15. To do all other acts necessary for the operation and maintenance of the property, including the maintenance and repair of any unit if the same is necessary to protect or preserve the property.

9.4. The management committee shall at all times employ professional management to manage the project. In the event the management committee decides to terminate professional management and assume self-management of the project, the prior written approval of each mortgagee must be obtained.

9.5. The management committee may delegate to a manager or managing company all of its foregoing powers, duties and responsibilities referred to in paragraph 9.3. above except: the final determination of common expenses, budgets and assessments based thereon; the promulgation of house rules and administrative rules and regulations; the power to enter into any contract involving more than \$5,000 in any one fiscal year; the opening of bank accounts; the power to purchase, hold, sell, convey, mortgage or lease any units in the name of the association or to bring, prosecute and settle litigation.

9.6. Members of the management committee, the officers and any assistant officer, agents and employees of the association (i) shall not

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be liable to the unit owners as a result of their activities as such for any mistake of judgement, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to a unit owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the association in their capacity as such; (iii) shall have no personal liability in tort to any unit owner or any person or entity direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, or acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the property, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

9.7. The unit owners shall indemnify and hold harmless, any person, his heirs and personal representatives, from and against all personal liability and all expenses including counsel fees, incurred or imposed, or arising out or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by any one or more unit owners, or any other persons or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was a member of the management committee or an officer or assistant officer, agent or employee of the association, other than to the extent, if any, that such liability or expense shall be attributable to his willful misconduct or bad faith, provided, in the case of any settlement, that the management committee shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or vote of unit owners or of the management committee, or otherwise. The indemnification by the unit owners as contained herein shall be paid by the management committee on behalf of the unit owners and shall constitute a common expense and shall be assessed and collectible as such.

10. Maintenance, Alteration and Improvement.

10.1. The maintenance, alteration, replacement and repair of the common areas and facilities shall be the responsibility of the management committee and the cost thereof shall be a common expense. The management committee shall also maintain, alter, replace and repair all conduits, ducts, plumbing and wiring and other facilities for the furnishing of heat, light, power, water and sewer contained in the portions of the units that service part or parts of the property other than the unit in which they are contained. All incidental damages caused to a unit by the maintenance, alteration, replacement and repair of the common areas and facilities or utility services shall be repaired promptly at the expense of the management committee.

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10.2. The unit owners shall have the responsibility to maintain, repair, replace and keep in a clean and sanitary condition, at the unit owner's expense, all portions of the owner's unit, except those portions to be maintained, altered, repaired and replaced by the management committee. The management committee shall be responsible for cleaning and general maintenance of all parking areas.

10.3. The management committee or manager shall have the irrevocable right to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities or for making emergency repairs necessary to prevent damage to the common areas and facilities or to another unit or units. Each unit occupant shall deposit a key to the unit with the management committee or manager to be used for emergency access to the unit.

#### 11. Insurance.

11.1. The management committee shall obtain and maintain at all times insurance of the type and kind as provided herein and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other properties similar to the property in construction, design and use. The management committee shall make every reasonable effort to obtain insurance with the following provisions or endorsements:

11.1.1. Exclusive authority to adjust losses shall be vested in the management committee as insurance trustee or any successor trustee as designated by the management committee;

11.1.2. The insurance coverage shall not be brought into contribution with insurance purchased by individual unit owners or their respective mortgagees;

11.1.3. Each unit owner may obtain additional insurance covering his real property interest at his own expense;

11.1.4. The insurer waives its right of subrogation as to any and all claims against the association, each unit owner, and/or their respective agents, employees or tenants, and of all defenses based upon co-insurance or upon invalidity arising from the acts of the insured;

11.1.5. The insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of any one or more individual unit owners or their respective lessees, employees, agents, contractors, and guests;

11.1.6. The insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of any officer or employee of

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the association or management committee or their employees, agents, or contractors, without prior demand in writing that the management committee cure the defect and then only if the defect is not cured within fifteen (15) days;

11.1.7. Such policies shall provide that coverage shall not be prejudiced by (a) any act or neglect of the owners of condominium units when such act or neglect is not within the control of the owners association or (b) by failure of the owners association to comply with any warranty or condition with regard to any portion of the premises over which the owners association has no control; and

11.1.8. The insurance coverage shall provide that coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to any and all insureds named thereon, including all mortgagees of the units.

11.2. The management committee, for the benefit of the property and the unit owners, shall maintain a "master" or "blanket" policy of property insurance in an amount equal to the full replacement value (i.e., 100% of current "replacement cost" exclusive of land, foundation, excavations, and other items normally excluded from coverage) of the entire condominium project (including all units, all common areas and facilities, all building service equipment and the like and any fixtures or equipment within the units) with an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and, if necessary, an "Increased Cost of Construction Endorsement" or "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, payable to the insurance trustee to be disbursed in accordance with the terms of this declaration. Such insurance will afford protection against at least the loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage. The limits and coverage of said insurance shall be reviewed at least annually by the management committee and shall include an appraisal of the property. Said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees, if any, of each unit.

11.3. The management committee shall obtain a policy or policies of insurance insuring the management committee, the unit owners and their respective lessees, servants, agents or guests against any liability to the public or to the owners of units, members of the households of unit owners and their respective invitees or tenants, incident to the ownership and/or use of the property, and including the personal liability exposure to the unit owners, incident to the ownership and/or use of the property. Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) for any one person injured in any one occurrence, and shall not be less than One Hundred Thousand Dollars (\$100,000) for property damage in each occurrence. The limits in coverage of said liability policy or policies shall be reviewed at

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least annually by the management committee and increased at its discretion. Said policy or policies shall be issued on a comprehensive liability basis and, if possible, shall provide cross-liability endorsements for possible claims of any one or more or group of insureds against any one or more or group of insureds, without prejudice to the right of a named insured under the policies to maintain an action against another named insured. Such coverage will include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and elevator collision, garage-keeper's liability, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.

11.4. All policies of property insurance shall provide that, notwithstanding any provisions thereof which give the insurer the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the management committee (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the association may be a party, or any requirement of law.

11.5. Each unit owner shall be required to notify the management committee of, and shall be liable for any increased insurance premium for insurance maintained by the management committee occasioned by, all improvements made by the unit owner to his unit, the value of which is in excess of One Thousand Dollars (\$1,000). Each unit owner shall bear the risk of loss for all improvements made to his unit that were not the subject of notice to the management committee.

11.6. Any unit owner who obtains individual insurance coverage covering any portion of the property, other than personal property belonging to such unit owner, shall be required to file a copy of such individual policy or policies with the management committee within thirty (30) days after obtaining such insurance coverage.

11.7. No unit owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount that the management committee, on behalf of all of the unit owners, may realize under any insurance policy that the management committee may have in force covering the property or any part thereof at any time.

11.8. The management committee shall maintain adequate fidelity coverage to protect against dishonest acts on the part of members of the management committee, officers, and employees of the association, and all others who handle or are responsible for handling funds of the association, including professional managers and their employees. Such fidelity bonds shall meet the following requirements:

11.8.1. All such fidelity bonds shall name the association as an obligee;

11.8.2. Such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the association, including reserves;

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11.8.3. Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve with compensation from any definitions of "employee" or similar expression; and

11.8.4. Such bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the mortgagees of the units.

12. Destruction or Damage.

12.1. In case of fire or any other disaster which causes damage or destruction to all or part of the property, the management committee, with the help of an independent appraisal, shall determine the percentage of the building that was destroyed or substantially damaged. If less than seventy-five percent (75%) of the building was destroyed or substantially damaged, the management committee shall arrange for the prompt repair and restoration of the building using the proceeds of insurance on the building for that purpose, and the unit owners shall be liable for assessment for any deficiency, if any, in proportion to their respective percentages of undivided interest in the common areas and facilities. Reconstruction of the building shall mean the restoring of the building to substantially the same condition in which it existed prior to the damage or destruction, with each unit and the common areas and facilities having the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of paragraph 14 hereof shall apply.

12.2. If seventy-five percent (75%) or more of the building is destroyed or substantially damaged, the management committee shall, within one hundred (100) days after such destruction or damage, call a special meeting of the unit owners for the purpose of deciding whether or not the building shall be repair and restored. If at least three-fourths (3/4) of the unit owners, in person or by proxy, vote to repair or restore the building, the management committee shall promptly arrange for the reconstruction of the building, using the proceeds of insurance on the building for that purpose, and the unit owners shall be liable for assessment for any deficiency, if any, in proportion to their respective percentage of undivided interest in the common areas and facilities. If the destruction or damage is by reason of eminent domain, the provisions of paragraph 14 hereof shall apply. However, if at least three-fourths (3/4) of the unit owners vote not to make provision for reconstruction, the management committee shall record, with the County Recorder, a notice setting forth such facts, and upon the recording of such notice: (i) the property shall be deemed to be owned in common by the unit owners; (ii) the undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities; (iii) any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to

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the undivided interest of the unit owner in the property; and (iv) the property shall be subject to an action for partition at the suit of any unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, shall be considered as one fund and shall be divided among all unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the unit owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the property owned by each unit owner.

12.3. For purposes of this paragraph 12, the terms "disaster," "destruction" or "substantial damage" shall also include a temporary or permanent taking, injury or destruction of all or part of the common areas and facilities or one or more units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation.

12.4. The management committee shall timely notify in writing each mortgagee of a unit whenever damage to a unit exceeds \$1,000 and damage to the common areas and facilities exceeds \$10,000.

### 13. Termination.

13.1. In the event three-fourths (3/4) of the building is destroyed or substantially damaged and if the unit owners vote not to reconstruct the building, the property shall be removed from the provisions of the act without further agreement one hundred and one (101) days after such destruction or damage.

13.2. All of the unit owners may remove the property from the provisions of the act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the units consent or agree by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owners in the property.

13.3. After removal of the property from the act, the unit owners shall own the property and all assets of the association as tenants in common and the respective mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the unit owners. Such undivided interests of the unit owners shall be the same as the percentage of undivided interest in the common areas and facilities appurtenant to the owners' units prior to removal from the act.

13.4. Any change in the status of the property which would result in the removal of the land or any part thereof from the act or would alter the use of the property must receive the prior approval of Salt Lake City after the change is submitted to the City Planning and Zoning Commission.

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13.5. This paragraph 13 cannot be amended without consent of all unit owners and all record owners of mortgages on units.

14. Eminent Domain.

14.1. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the common areas and facilities or one or more units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation (all of which shall be defined as "eminent domain"), the management committee, each unit owner, and every holder of all liens affecting the units, shall be entitled to timely written notice thereof and the management committee shall and the unit owners at their respective expense may participate in the proceedings incident thereto.

14.2. The procedures governing the allocation of awards by reason of eminent domain shall be determined in accordance with Section 57-8-32.5 of the act; provided, that the priority of any mortgagees lien shall remain undisturbed.

15. Mortgage Protection.

15.1. The term "mortgage" as used in this declaration and bylaws shall mean any recorded mortgage having priority over other mortgages and shall include a recorded deed of trust. The term "mortgagee" shall mean the owner and holder of a mortgage and shall include a beneficiary under a deed of trust.

15.2. The management committee shall maintain a roster of unit owners from the evidence of change of ownership furnished to the management committee, which roster shall include the mailing addresses of unit owners. If the management committee has been given notice in the necessary information, the management committee shall maintain another roster which shall contain the name and address of each mortgagee of a unit. Each notice shall consist of a certified copy of the recorded instrument evidencing the title of the mortgagee. The mortgagee shall be stricken from the roster upon receipt by the management committee of a request from the mortgagee or of a certified copy of a recorded release or satisfaction of the mortgage. Notice of such removal shall be given to the mortgagee unless the removal is requested by the mortgagee.

15.3. Any mortgagee on any unit is entitled to written notification from the management committee of any default by the mortgagor of such unit in the performance of such mortgagor's obligation under the declaration which is not cured within thirty (30) days.

15.4. Any mortgagee shall have the right to examine the books and records of the association during normal business hours and shall be entitled to receive copies of annual reports and other financial data

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within ninety (90) days following the end of any fiscal year and shall be entitled to receive notice of all meetings of the association and may designate a representative to attend all such meetings.

15.5. A mortgagee of any unit who comes into possession of the unit pursuant to the remedies provided in the mortgage, foreclosure of mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims or unpaid assessments or charges against the mortgage unit which accrued prior to the time such mortgagee comes into the possession of the unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessment or charges to all units, including the mortgaged unit).

15.6. The liens created under the act or pursuant to this declaration or bylaws upon any unit shall be subject and subordinate to, and shall not affect the rights of a mortgagee upon such interest made in good faith and for value, provided that after the foreclosure sale, any such liens thereafter arising, shall have the same effect and be enforced in the same manner as provided herein.

15.7. No unit may be partitioned or subdivided without the prior written approval of the mortgagee of the affected unit.

15.8. No amendment to this paragraph shall affect the rights of a mortgagee recorded prior to the recordation of any such amendment not otherwise entitled thereto.

#### 16. Leasing of Units.

16.1. All leases of units shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the declaration and bylaws and that failure of the lessee to comply with the terms of said documents shall be a default under the lease.

16.2. Each lessee shall, at the lessee's option, have the right to vote at the meetings of the owner in place of the owner, except with respect to votes for capital expenditures.

16.3. No unit owner shall lease less than the entire unit.

16.4. The provisions of this paragraph shall not apply to a lender in possession of a unit following a default in a first mortgage.

#### 17. Encroachments.

17.1. None of the rights and obligations of any unit owners created by this declaration, bylaws or by any deed conveying a unit shall be affected in any way by an encroachment: (i) by any portion of the common areas and facilities upon any unit; (ii) by any unit upon any portion of the common areas and facilities, or (iii) by any unit upon another unit due to settling or shifting of the building or other

structure, including the rebuilding of the building and other structure after fire or other casualty or an eminent domain taking or delivery of a deed in lieu of condemnation, unless there occurs an encroachment that results from the willful or negligent act or omission of the unit owner of the encroaching unit, or of the owners of the units to which the use of the encroaching limited common areas and facilities is appurtenant, or of the management committee in the event of an encroachment by any portion of the common areas and facilities other than the limited common areas and facilities.

17.2. There are hereby created valid easements for the maintenance of any encroachments permitted by this paragraph 17 of this declaration so long as such encroachments exist.

18. Conveyances, Easements.

18.1. Every deed, lease, mortgage or other instrument may describe a unit by its identify number and letter designation set forth in appendix A and in the map. Every such description shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber or otherwise affect the unit owner's corresponding percentage of undivided ownership in the common areas and facilities, as a tenant-in-common, as set forth in appendix A even though the same is not exactly mentioned or described.

18.2. Every deed, lease, mortgage or other similar instrument shall be deemed to:

18.2.1. Except and reserve with respect to a unit: (i) any portion of the common areas and facilities lying within said unit; (ii) easements through said unit, appurtenant to the common areas and facilities and all other units, for support and repair of the common areas and facilities and all other units; and (iii) easements, appurtenant to the common areas and facilities, for encroachment upon the air space of said unit by those portions of the common areas and facilities located within said unit.

18.2.2. Include with respect to a unit nonexclusive easements for ingress and support of said unit through the common areas and facilities, for the repair of said unit through all other units and through the common areas and facilities, and for the use of the parking spaces as indicated in appendix A and the map.

18.2.3. Except and reserve, with respect to the undivided percentage interest in the common areas and facilities, nonexclusive easements appurtenant to all units for ingress, egress, support and repair and exclusive easements appurtenant to each unit for the use of the parking spaces as set forth in appendix A and the map.

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18.2.4. Include with respect to the undivided percentage interest in the common areas and facilities, nonexclusive easements through each unit for support and repair of the common areas and facilities and nonexclusive easements for encroachments upon the air space of all of the units by and for the portions of the common areas and facilities lying within the units.

19. Combination of Units.

19.1. An owner of two or more adjoining units shall have the right upon approval of the management committee and the mortgagees of said units, to combine one or more adjoining units or portions thereof and to alter or amend the declaration and map to reflect such combination.

19.2. Such amendments may be accomplished by the unit owner recording an amendment or amendments to this declaration, together with an amended map or maps containing the same information with respect to the altered units as required in the initial declaration and map with respect to the initial units. All costs and expenses required in such amendments shall be borne by the unit owner desiring such combination.

19.3. All such amendments to the declaration and map must be approved by attorneys employed by the management committee to insure the continuing legality of the declaration and the map. The cost of such review by the attorneys shall be borne by the person wishing to combine the units.

19.4. Any amendment of the declaration or map pursuant to this paragraph 19 shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the common areas and facilities which are appurtenant to the units involved in the alterations. The remaining combined unit, if two or more units are totally combined, will acquire the total of the percentage of undivided interest in the common areas and facilities appurtenant to the units that are combined as set forth in appendix A. If a portion of one unit is combined with another, the resulting units shall acquire a proportionate percentage of the total undivided interest in the common areas and facilities of the units involved in the combination on the basis of area remaining in the respective, combined units. The percentage of undivided interest in the common areas and facilities appurtenant to all other units shall not be changed. All such amendments must, in all instances, be consented to by the management committee and also all other persons holding interest in the units affected. The consent of other unit owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the common areas and facilities of the other unit owners remain unchanged.

19.5. A unit which had previously consisted of two or more smaller units, may be divided back to two or more smaller units by using the same procedure as set forth herein for the combining of units.

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20. Amendment.

20.1. Except as otherwise provided in this declaration and except as prohibited by the act, the provisions of this declaration may be amended by an instrument in writing signed and acknowledged by unit owners who own three-fourths (3/4) in the aggregate of ownership interest in the common areas and facilities, which amendment shall be effective upon recording.

21. Assessments.

The making and collection of assessments from unit owners for their share of common expenses shall be pursuant to the bylaws and subject to the following provisions:

21.1. Each owner shall be liable for a proportionate share of the common expenses and shall share in the common profits, such shares being the same as the percentage of undivided interest in the common areas and facilities appurtenant to the unit owned by the unit owner as set forth in appendix A.

21.2. Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of ten percent (10%) per annum, or at such rate of interest as may be set by the management committee, from the date when due until paid. All payments on account shall be first applied to interest and then to the assessment payment first due.

21.3. A lien for unpaid assessments shall also secure reasonable attorneys' fees and all costs and expenses including taxes, if any, incurred by the management committee incident to the collection of such assessment or enforcement of such a lien.

21.4. In any foreclosure of a lien for assessments, the unit owner subject to the lien shall be required to pay a reasonable rental for the unit, and the management committee shall be entitled to the appointment of a receiver to collect the same.

21.5. The management committee may include in the monthly assessments amounts representing contributions to the capital of the association to be used for the replacement of or additions to capital items or improvements in the property. Said amounts shall be set up as capital accounts for each unit. In the event of transfer of a unit, the capital account shall be deemed transferred to the unit transferee.

21.6. In assessing the unit owners for capital improvements to the common areas and facilities, for which there are not sufficient amounts in the respective capital accounts, there shall be no single improvement exceeding the sum of Fifteen Thousand Dollars (\$15,000) made by the management committee without the same having been first voted on and approved by two-thirds (2/3) majority of those present in person or by proxy of the association at a meeting duly called for that purpose. The

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foregoing shall not apply in connection with damage or destruction referred to in paragraph 12 hereof or to such structural alterations, capital additions to or capital improvements of the common areas and facilities as are necessary in the management committee's reasonable judgment to preserve or maintain the integrity of the common areas and facilities of the property.

21.7. If the unit owner shall, at any time, let or sublet his unit and shall default for a period of one month in the payment of assessments, the management committee may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the owner the rent due or becoming due and the payment of such rent to the management committee shall be sufficient payment and discharge of such tenant or subtenant and the owner to the extent of the amount so paid.

22. Voting.

At any meeting of the Association of Unit Owners, each unit owner, including declarant, either in person or by proxy, shall be entitled to the same number of votes as the percentage of undivided interest of the common areas and facilities assigned to his unit in appendix A to this declaration. If there is more than one unit owner with respect to a particular unit, any or all of such unit owners may attend any meeting of the association, but it shall be necessary for all such unit owners present to act unanimously in order to cast the votes pertaining to their unit.

23. Notices.

Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to be delivered twenty-four (24) hours after a copy of the same has been deposited in the U.S. postal service, postage prepaid, return receipt requested. Notice to unit owners shall be addressed to each unit owner at the address given by such unit owner to the management committee for the purpose of service of such notice or to the unit of such unit owner if no such address has been given to the management committee. Such address may be changed from time to time by notice in writing to the management committee. Notice to the management committee shall be addressed to: Management Committee, Belvedere Association, 29 South State Street, Salt Lake City, Utah 84111.

24. No Waiver.

The failure of the management committee or its contractors to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this declaration or the bylaws, or to exercise any right or option herein contained, or to

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serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the management committee or its contractor of the payment of any assessment from a unit owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the management committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the management committee.

25. Enforcement.

Each unit owner shall strictly comply with the provisions of the declaration, the bylaws, the house rules and administrative rules and regulations and decisions issued pursuant thereto. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the management committee or its designee on behalf of the unit owners, or in an appropriate case, by an aggrieved unit owner.

26. Declarant's Use.

Declarant and persons it may select from time to time shall have the right of ingress and egress over, upon and across the common areas and facilities and limited common areas and facilities and the right to store materials therein and to make such other use thereof as may be reasonably necessary incident to the refurbishing, development and sale of all of the units.

27. Severability.

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

28. Captions.

The captions in this declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this declaration or the intent of any provision hereof.

29. Law Controlling.

This declaration, the map and the bylaws shall be construed and controlled by and under the laws of the State of Utah.

30. Effective Date.

This declaration shall take effect when recorded.

IN WITNESS WHEREOF, the undersigned has executed this instrument  
this 21<sup>st</sup> day of AUGUST, 1978.

THOMPSON MICHIE ASSOCIATES, INC.

By *James M. Michie*  
Its *President*

(Seal)

ATTEST:

*Ray A. Thompson*  
Its *Secretary*

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STATE OF UTAH )  
 ) SS.  
COUNTY OF SALT LAKE )

On the 21 day of August 1978, A.D. James B. Michie and Roger H. Thompson personally appeared before me James B. Michie and Roger H. Thompson who, being by me duly sworn, did say, that they were the President and Secretary, respectively of Thompson Michie Associates, Inc., and that said instrument was signed in behalf of said corporation by resolution of its board of directors and said James B. Michie and Roger H. Thompson acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Neta C. Thompson  
Notary Public

My Commission Expires:

Nov. 1, 1980



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FINAL APPROVAL OF SALT LAKE CITY CORPORATION:

On this 19<sup>th</sup> day of Sept., 1978, Salt Lake City Corporation, a body politic and corporate of the State of Utah, and a municipality in which The Belvedere Condominium is located, hereby gives final approval to said project, to the foregoing Declaration, to the record of survey map recorded concurrently herewith, and to the attributes of said project which are set forth in Section 57-8-35(3) of the Utah Condominium Ownership Act as amended and expanded by the laws of Utah 1975, Chapter 173, Sec. 18.

SALT LAKE CITY CORPORATION

By

*J. H. Miller*

ATTEST:

*Mildred H. Highman* Recorder



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APPENDIX A

<u>UNIT DESIGNATION</u>	<u>SIZE IN SQUARE FEET</u>	<u>PERCENTAGE OF UNDIVIDED INTEREST IN THE COMMON AREAS AND FACILITIES</u>
101	491	.5794
102	371	.4378
103	1570	1.8526
105	553	.6526
106	552	.6514
107	618	.7293
108	618	.7293
109	336	.3965
110	401	.4732
111	571	.6738
112	735	.8673
113	395	.4661
114	368	.4343
115	544	.6419
116	556	.6561
117	618	.7293
118	441	.5204
201	491	.5794
202	371	.4378
203	702	.8284
204	765	.9027
205	553	.6526
206	552	.6514
207	618	.7293
208	618	.7293
209	336	.3965
210	401	.4732
211	460	.5428
212	839	.9900
213	395	.4661
214	368	.4343
215	544	.6419
216	556	.6561
217	618	.7293
218	441	.5204
301	491	.5794
302	371	.4378
303	702	.8284
304	765	.9027
305	553	.6526
306	552	.6514
307	618	.7293
308	618	.7293
309	336	.3965
310	401	.4732

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<u>UNIT DESIGNATION</u>	<u>SIZE IN SQUARE FEET</u>	<u>PERCENTAGE OF UNDIVIDED INTEREST IN THE COMMON AREAS AND FACILITIES</u>
311	571	.6738
312	735	.8673
313	395	.4661
314	368	.4343
315	544	.6419
316	556	.6561
317	618	.7293
318	441	.5204
401	491	.5794
402	371	.4378
403	702	.8284
404	851	1.0042
405	291	.3433
406	552	.6514
407	618	.7293
408	618	.7293
409	336	.3965
410	401	.4732
411	460	.5428
412	735	.8673
413	395	.4661
414	368	.4343
415	544	.6419
416	556	.6561
417	618	.7293
418	441	.5204
501	491	.5794
502	371	.4378
503	702	.8284
504	765	.9027
505	553	.6526
506	552	.6514
507	618	.7293
508	618	.7293
509	336	.3965
510	401	.4732
511	460	.5428
512	839	.9900
513	395	.4661
514	368	.4343
515	544	.6419
516	556	.6561
517	618	.7293
518	441	.5204

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<u>UNIT DESIGNATION</u>	<u>SIZE IN SQUARE FEET</u>	<u>PERCENTAGE OF UNDIVIDED INTEREST IN THE COMMON AREAS AND FACILITIES</u>
601	491	.5794
602	371	.4378
603	702	.8284
604	604	.7127
605	553	.6526
606	552	.6514
607	618	.7293
608	618	.7293
609	336	.3965
610	401	.4732
611	460	.5428
612	819	.9664
613	395	.4661
614	368	.4343
615	544	.6419
616	556	.6561
617	618	.7293
618	441	.5204
701	491	.5794
702	371	.4378
703	702	.8284
704	744	.8779
705	553	.6526
706	552	.6514
707	618	.7293
708	618	.7293
709	336	.3965
710	401	.4732
711	460	.5428
712	839	.9900
713	395	.4661
714	368	.4343
715	544	.6419
716	556	.6561
717	618	.7293
718	441	.5204
801	491	.5794
802	371	.4378
803	702	.8284
804	991	1.1694
806	848	1.0006
807	727	.8578
808	618	.7293
809	336	.3965
810	401	.4732

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<u>UNIT DESIGNATION</u>	<u>SIZE IN SQUARE FEET</u>	<u>PERCENTAGE OF UNDIVIDED INTEREST IN THE COMMON AREAS AND FACILITIES</u>
811	544	.6419
812	735	.8673
813	395	.4661
814	368	.4343
815	544	.6419
816	556	.6561
817	618	.7293
818	441	.5204
001	2171	2.5618
002	831	.9806
003	1775	2.0945
004	361	.4259
005	741	.8744
006	873	1.0301
007	1021	1.2048
008	253	.2985
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APPENDIX B

BYLAWS

THE BELVEDERE ASSOCIATION

An Association of Unit Owners Under  
the Utah Condominium Ownership Act

The administration of The Belvedere Condominium (the "property") and the Belvedere Association ("association") shall be governed by these bylaws, by the Utah Condominium Ownership Act, Utah Code Ann. §§ 57-8-1 through 57-8-36 (Repl. vol. 1963), as amended, (the "act") and by the declaration.

1. Application of Bylaws.

All present and future unit owners, mortgagees, lessees and occupants of units and their employees, and any other persons who may use the facilities of the property in any manner are subject to the declaration, these bylaws and all rules made pursuant hereto and any amendment thereof. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a unit shall constitute an agreement that the provisions of the declaration and these bylaws (and any rules and regulations made pursuant thereto), as they may be amended from time to time, are accepted, ratified and will be complied with.

2. Management Committee.

2.1. The administration of the property on behalf of the association shall be conducted by a management committee of five natural individuals.

2.2. Beginning with the first annual meeting and at every annual meeting thereafter, the association shall elect the members of the management committee for the forthcoming year. At least thirty (30) days prior to any annual meeting of the association, the management committee shall elect from the unit owners a nominating committee of not less than three (3) members (none of whom shall be members of the then management committee) who shall recommend to the annual meeting one nominee for each position on the management committee to be filled at that particular annual meeting. Nominations for positions on the management committee may also be made by petition filed with the secretary of the association at least seven (7) days prior to the annual meeting of the association, which petition shall be signed by ten (10) or more unit owners and signed by the nominee named therein indicating his willingness to serve as a member of the management committee, if elected. Members of the management committee shall be unit owners,

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2.3. Members of the management committee shall serve for a term of two (2) years; provided, however, that two members of the management committee elected at the first annual meeting shall serve for an initial term of one (1) year and the three other members shall serve for initial terms of two (2) years. Thereafter, all management committee members elected shall serve for a two-year term. The terms of no more than three members will end each year. The members of the management committee shall serve until their respective successors are elected, or until their death, resignation or removal. Any member of the management committee who fails to attend three consecutive management committee meetings or fails to attend at least 25% of the management committee meetings held during any calendar year shall forfeit his membership on the management committee.

2.4. Any member of the management committee may resign at any time by giving written notice to the president of the association, or the remaining management committee members. Any member of the management committee may be removed from membership on the management committee by a two-thirds majority vote of the association. Whenever there shall occur a vacancy on the management committee due to death, resignation, removal or any other cause, the remaining members shall elect a successor member to serve until the next annual meeting of the association, at which time said vacancy shall be filled by the association for the unexpired term, if any.

2.5. The members of the management committee shall receive no compensation for their services unless expressly approved by a majority of the association; provided, however, that any member of the management committee may be employed by the association in another capacity and receive compensation for such employment.

2.6. The management committee, for the benefit of the property and the association, shall manage the business, property and affairs of the property and the association and enforce the provisions of the declaration, these bylaws, the house rules and the administrative rules and regulations governing the property. The management committee shall have the powers, duties and responsibilities with respect to the property as contained in the act, the declaration and these bylaws.

2.7. The meetings of the management committee shall be held at such places within the State of Utah as the management committee shall determine. Three (3) members of the management committee shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the management committee. The management committee shall annually elect all of the officers of the association. The meeting for the election of officers shall be held at the first meeting of the management committee immediately following the annual meeting of the association.

2.8. Special meetings of the management committee may be called by the president or by any two management committee members.

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2.9. Regular meetings of the management committee may be held without call or notice. The person or persons calling a special meeting of the management committee shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called; if an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

2.10. Any member of the management committee may, at any time, waive notice of any meeting of the management committee in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the management committee at a meeting shall constitute a waiver of notice of such meeting except if a management committee member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the management committee are present at any meeting of the management committee, no notice shall be required and any business may be transacted at such meeting.

2.11. Until a date three (3) years from the recording of the declaration, or until units to which three-fourths (3/4) of the undivided interest in the common areas and facilities appertain have been conveyed, whichever occurs first, the declarant, or some other person or persons selected or to be selected by declarant, may appoint and remove four (4) members of the management committee and all officers of the association, or at declarant's option, may exercise the powers and responsibilities otherwise assigned by the declaration, these bylaws, and the act to the association. The first annual meeting of the association shall be held within 120 days of the happening of the first event described in the preceding sentence, at which time the association shall elect the members of the management committee.

2.12. After the election of the members of the management committee at the first annual meeting of the association, declarant shall execute, acknowledge and record an affidavit stating the names of the members of the newly elected management committee. Thereafter, any two (2) persons who are designated of record as being members of the most recent management committee (regardless of whether or not they shall still be members) may execute, acknowledge and record an affidavit stating the names of all of the members of the then current management committee. The most recently recorded of such affidavits shall be prima facie evidence that the persons named therein are all of the incumbent members of the management committee and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

2.13. The fiscal year shall be determined by the management committee.

### 3. Meetings of the Association.

3.1. The presence in person or by proxy at any meeting of the association of fifty percent (50%) of the unit owners in response to



notice of all unit owners of record properly given shall constitute a quorum. In the event that fifty percent (50%) of the unit owners are not present in person or by proxy, the meeting shall be adjourned for twenty-four (24) hours, at which time it shall reconvene and any number of unit owners present at such subsequent meeting shall constitute a quorum. Unless otherwise expressly provided in the declaration, any action may be taken at any meeting of the unit owners upon a majority vote of the unit owners who are present in person or by proxy and who are voting.

3.2. There shall be an annual meeting of the association on the second Thursday of October at 7:00 p.m. at the property or at such other reasonable place or time (not more than sixty (60) days before or after such date) as may be designated by written notice by the management committee delivered to the unit owners not less than fifteen (15) days prior to the date fixed for said meeting. At or prior to an annual meeting, the management committee shall furnish to the unit owners: (i) a budget for the coming fiscal year that shall itemize the estimated common expenses of the coming fiscal year with the estimated allocation thereof to each unit owner; and (ii) an audited statement of the common expenses itemizing receipts and disbursements for the previous and current fiscal year, together with the allocation thereof to each unit owner. Within ten (10) days after the annual meeting, that budget statement shall be delivered to the unit owners who were not present at the annual meeting.

3.3. Special meetings of the association may be held at any time at the property or at such other reasonable place to consider matters which, by the terms of the declaration, require the approval of all or some of the unit owners, or for any other reasonable purpose. Special meetings shall be called by written notice, signed by a majority of the management committee, or by unit owners representing at least one-third (1/3) in interest of the undivided ownership of the common areas and facilities and delivered to all unit owners not less than fifteen (15) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting, and the matters to be considered.

3.4. Robert's Rules of Order (latest edition) shall govern the conduct of the association's meeting when not in conflict with the declaration or these bylaws.

#### 4. Officers.

4.1. All officers and employees of the association shall serve at the will of the management committee. The officers shall be a president, secretary and treasurer. The management committee may appoint such other assistant officers as the management committee may deem necessary. No officer shall be required to be a unit owner, but the president must be a member of the management committee. No officer shall receive compensation for serving as such. Officers shall be annually elected by the management committee and may be removed and replaced by the management committee.

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4.2. The president shall be the chief executive of the management committee and shall preside at all meetings of the unit owners and of the management committee and may exercise the powers ordinarily allocable to the presiding officer of an association, including the appointment of committees. The president shall exercise general supervision over the property and its affairs. He shall sign on behalf of the association all conveyances, mortgages and contracts of material importance to its business. He shall do and perform all acts which the management committee may require.

4.3. The secretary shall keep minutes of all proceedings of the management committee and of the meetings of the association and shall keep such books and records as may be necessary and appropriate for the records of the unit owners and the management committee. In the absence or inability of the president, the secretary shall perform the functions of the president.

4.4. The treasurer shall be responsible for the fiscal affairs of the association, but may delegate the daily handling of funds and the keeping of records to a manager or managing company.

5. Common Expenses; Assessments.

5.1. All assessments shall be made in accordance with the general provisions of paragraph 22 of the declaration.

5.2. Within thirty (30) days prior to the annual meeting of the association, the management committee shall estimate the common expenses and capital contributions for the following year. The estimated capital contributions may include such amounts as the management committee may deem proper for general working capital, for the general operating reserve, for a reserve fund for replacements and major maintenance and shall take into account any expected income, surplus or deficit in the common expenses for any prior year. These estimated capital contributions and common expenses shall be presented at the annual meeting and thereafter shall be assessed on a monthly basis to the unit owners in proportion to their percentage of undivided interest in the common areas and facilities as set forth in the declaration. If the estimated common expenses prove inadequate for any reason, including nonpayment of any unit owner's assessments, the management committee may, by resolution duly adopted, make additional assessments, which shall be assessed to the unit owners in the same manner as the estimated common expenses. Each unit owner shall be obligated to pay to the management committee assessments made pursuant to this paragraph on or before the first day of each month, or in such other reasonable manner as the management committee shall designate. The funds received by the management committee from assessments shall be kept in either capital accounts or in the common expense fund and shall be expended by the management committee only in accordance with the provisions of the act, the declaration and these bylaws.

5.3. Every determination, by the management committee with respect to common expenses and common expenditures necessary to maintain the property, that is made within the bounds of the act, the declaration, and these bylaws, shall be final and conclusive as to the unit owners and shall be deemed necessary and properly made for such purposes.

5.4. The rights, duties and functions of the management committee set forth in this paragraph shall be exercised by declarant until thirty (30) days after the first annual meeting of the association.

5.5. The failure by the management committee before the expiration of any year, to estimate the common expenses as required herein, shall not be deemed a waiver or modification in any respect of the provisions of the declaration or these bylaws or a release of the unit owner from the obligation to pay any past or future assessments, and the estimated common expenses fixed for the previous and current year shall continue until a new estimate is fixed.

5.6. Amendments to this paragraph 5 shall be effective only upon unanimous written consent of the unit owners and their mortgagees.

5.7. No unit owner may exempt himself from liability for common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his unit.

5.8. The treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the common areas and facilities, specifying and itemizing the maintenance, repair and replacement expenses of the common areas and facilities and any other expenses incurred. Such record shall be available for examination by the unit owners during regular business hours. In accordance with the actions of the management committee assessing common expenses against the units and unit owners, the treasurer shall keep an accurate record of such assessments and of the payments thereof by each unit owner.

5.9. All common expense assessments shall be a separate, distinct and personal liability of the owner of the unit at the time each assessment is made. The management committee shall have the rights and remedies contained in the act and in the declaration to enforce the collection of assessments for common expenses.

5.10. Any person who shall have entered into a written agreement to purchase a unit shall be entitled to obtain a written statement from the treasurer setting forth the amount of unpaid assessments charged against the unit and its owners, and if such statement does not reveal the full amount of the unpaid assessments as of the date it is rendered, neither the purchaser nor the unit shall be liable for the payment of an amount in excess of the unpaid assessments shown thereon, provided that the former unit owner grantor shall remain so liable. Any such excess which cannot be promptly collected from the former unit owner grantor shall be reassessed by the management committee as a common expense to be collected

from all unit owners, including without limitation the purchaser of the unit, his successors and assigns. The new unit owner shall and the former unit owner shall not be liable for any assessments made after the date of transfer of title to a unit, even though the common expenses for the expenses incurred or the advances made by the management committee for which the assessment is made relate in whole or in part of any period prior to that date.

5.11. In the event that title to a unit is transferred at sheriff's sale pursuant to execution upon any lien against the unit, the management committee shall give notice in writing to the sheriff of any unpaid assessments for common expenses which are a lien against the unit, and for any expenses of or advances by the management committee which have not theretofore been reduced to a lien, which shall be paid out of the proceeds of the sale prior to the distribution of any balance to the former unit owner against whom the execution was issued. The purchaser at such sheriff's sale and the unit involved shall not be liable for unpaid assessments for common expenses and for any expenses of or advances by the management committee which became due prior to the sheriff's sale of the unit. Any such unpaid assessments which cannot be promptly collected from the former unit owner shall be reassessed by the management committee as a common expense to be collected from all of the unit owners, including the purchaser who acquired title at the sheriff's sale, his successors and assigns. To protect its rights to collect unpaid assessments for common expenses which are a lien against a unit, and for any expenses of and advances by the management committee, the management committee may on behalf of all the unit owners, purchase the unit at sheriff's sale, provided such action is authorized by the affirmative vote of a majority of the members of the management committee.

5.12. In addition to the statements issuable to purchasers of units, the management committee shall provide a current statement of unpaid assessments for common expenses and for any expenses of and advances by the management committee in respect of the unit, to the unit owner, to any person who shall have entered into a binding agreement to purchase the unit and to any mortgagee on request at reasonable intervals.

5.13. In all cases where, all or part of any assessments for common expenses and for any expenses of and advances by the management committee cannot be promptly collected from the persons or entities liable therefor under the act, declaration or bylaws, the management committee shall reassess the same as a common expense, without prejudice to its rights of collection against such persons or entities.

#### 6. Litigation.

6.1. If any action is brought by one or more but less than all unit owners on behalf of the association and recovery is had, the plaintiff's expenses, including reasonable counsel's fees, shall be a common expense; provided, however, that if such action is brought against the unit owners or against the management committee, the officers, employees, or

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agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the unit owners, the plaintiff's expenses, including counsel fees, shall not be charged to or borne by the other unit owners, as a common expense or otherwise.

6.2. Complaints brought against the association, the management committee or the officers, employees or agents thereof, in their respective capacities as such, or the property as a whole, shall be directed to the management committee, which shall promptly give written notice thereof to the unit owners and any mortgagees and shall be defended by the management committee, and the unit owners and mortgagees shall have no right to participate other than through the management committee in such defense. Complaints against one or more, but less than all unit owners shall be directed to such unit owners, who shall promptly give written notice thereof to the management committee and to the mortgagees affecting such units, and shall be defended by such unit owners.

7. Abatement and Enjoinment of Violations by Unit Owners.

The violation of any house rules or administrative rules or regulations adopted by the management committee or the breach of any provision contained herein, or the breach of any provision of the declaration, shall give the management committee the right, in addition to any other rights set forth in these bylaws:

7.1. To enter the unit in which or as to which such violation or breach exists and to similarly abate and remove, at the expense of the defaulting unit owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the management committee shall not thereby be deemed guilty in any manner of trespass; or

7.2. To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

8. Accounting.

8.1. The books and accounts of the association shall be kept in accordance with generally accepted accounting procedures under the direction of the treasurer.

8.2. At the close of each fiscal year, the books and records of the management committee shall be audited by a certified public accountant approved by the association.

8.3. The books and accounts of the association shall be available for inspection at the office of the association by any unit owner or his authorized representative during regular business hours.

9. Special Committees.

The management committee by resolution may designate one or more special committees, each committee to consist of two (2) or more unit owners, which to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the management committee. Such special committees shall keep regular minutes of their proceedings and report the same to the management committee when required. The members of such special committee or committees designated shall be appointed by the management committee or the president. The management committee or the president may appoint unit owners to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

10. Amendment of Bylaws.

These bylaws may be amended by a two-thirds (2/3) affirmative vote of the association at a meeting duly called for such purpose. Upon such an affirmative vote, the management committee shall acknowledge the amended bylaws, setting forth the fact of the required affirmative vote of the unit owners and the amendment shall be effective upon recording.

11. Severability.

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

12. Captions.

The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these bylaws nor the intent of any provision hereof.

13. Effective Date.

These bylaws shall take effect upon recording of the declaration of which they are a part.