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**DECLARATION OF CONDOMINIUM  
AND COVENANTS, CONDITIONS, AND  
RESTRICTIONS OF AND FOR  
ALLEN COVE CONDOMINIUMS**

8754 PG 1960

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**THIS DECLARATION OF CONDOMINIUM AND COVENANTS, CONDITIONS, AND RESTRICTIONS IS EXECUTED THIS 5<sup>th</sup> DAY OF MARCH 2003 BY JOHN CLAYTON CONSTRUCTION, INC., A UTAH CORPORATION.**

**RECITALS**

- A. Capitalized terms in this Declaration are defined in Article I. Any terms not defined in Article I shall be defined according to their ordinary and common usage.
- B. The Declarant holds legal title to the Property located in Salt Lake County, Utah, and described in Article II. The Declarant intends that all units described herein shall be conveyed to Owners in fee simple.
- C. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property and the interests therein conveyed and to establish thereon a condominium project in accordance with the terms of this Declaration.

NOW THEREFORE, it is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered, and used, in accordance with and subject to this Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Declarant, its successors and assigns and all Owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

**ARTICLE I  
DEFINITIONS**

When used in any part of this Declaration, the following terms shall have the meaning indicated:

- 1. "Articles" or "Articles of Incorporation" shall be defined as and refer to the Articles of Organization of the Association, which shall be filed with the Utah Department of Commerce, Division of Corporations and Commercial Code at or about the time this Declaration is filed for record in the Recorder's Office for Salt Lake County, State of Utah.
- 2. "Association" shall be defined as and refer to Allen Street Owners Association, Inc., a Utah nonprofit corporation.
- 3. "Board" or "Board of Trustees" shall be defined as and refer to the governing board of the

Association which shall be appointed or elected in accordance with this Declaration and the Articles of Incorporation and Bylaws of the Association.

4. "Bylaws" shall be defined as and refer to the bylaws of the Association, as may be amended from time to time.

5. "Common Areas" shall be defined as and refer to any part of the Property which is not included with the Units, including but not limited to roadways, the grounds, and any non-assigned parking areas. The "Common Areas" to be owned by the Association (excluding the Units) prior to the time of the conveyance of the first Unit are described as follows:

SEE EXHIBIT 'A'

6. "Common Expense Fund" shall be defined as and refer to the fund which is created pursuant to Article V of this Declaration and into which all monies of the Association shall be deposited.

7. "Common Expenses" shall be defined as and refer to those costs and expenses arising out of or connected with the maintenance and operation of the Project and Association as described in Article V hereof and which determine the assessments made to Owners.

8. "Condominium" shall be defined as and refer to a structure or portion of a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Unit concerned which are used in conjunction with such residence.

9. "Condominium Building" shall be defined as and refer to a structure containing Units.

10. "Condominium Building Exteriors" shall be defined as and refer to those portions of the Condominium Buildings which are exposed to the elements, including but not limited to roofs, outside walls, outside doors, footings, and foundations, basement walls, and window wells.

11. "Declaration" shall be defined as and refer to this Declaration of Condominium for Hidden Spring Condominiums, and shall include any amendments, modifications, or supplements.

12. "Declarant" shall be defined as and refer to John Clayton Construction, Inc., or any successor thereof who assumes the same role as John Clayton Construction, Inc., with respect to the Property or a portion thereof.

13. "Eligible Mortgagees" shall be defined as and refer to a First Mortgagee who has requested notice of certain matters from the Association in accordance with Article XII, Section 1 of this Declaration.

14. "FNMA" shall be defined as and refer to the Federal National Mortgage Association.
15. "First Mortgage" shall be defined as and refer to any mortgage which is not secondary or subject to any other mortgage, lien, or encumbrance with the exception of tax liens or other liens given priority by statute.
16. "First Mortgagee" shall be defined as and refer to any person or entity named as a mortgagee under a First Mortgage, or a successor or assignee of such a person or entity.
17. "Limited Common Areas" shall be defined as and refer to any Common Areas which are reserved for the use of any particular Owner or Member, to the exclusion of all other Owners or Members. Limited Common Areas shall include parking areas and storage areas which are permanently assigned to a particular unit.
18. "Manager" shall be defined as and refer to any person or entity designated by the Association to manage any portion of the Project or the Association's business.
19. "Member" shall be defined as and refer to as every person who holds membership in the Association.
20. "Mortgage" shall be defined as and refer to any deed of trust, mortgage, or other document which pledges any portion of a unit or the interest therein as security for any obligation or payment of a debt.
21. "Owner" shall be defined as and refer to a person or persons, including the Declarant, holding a fee simple interest in any Unit, as shown by the Recorder's Office for Salt Lake County, State of Utah. "Owner" shall not refer to any Mortgagee (unless the Mortgagee has obtained fee simple title to a Unit as a result of a judicial or non-judicial foreclosure action, trustee sale, or any other arraignment in lieu of foreclosure) or to any persons purchasing a Unit under contract until legal title is conveyed and recorded in the Recorder's Office for Salt Lake County, State of Utah.
22. "Plat" shall be defined as and refer to the condominium map for Allen Cove Condominiums, as recorded in the Recorder's Office for Salt Lake County, State of Utah., and all amendments thereto.
23. "Project" shall be defined as and refer to the Property and the plan of development and ownership of the Property created and governed by this Declaration, the Articles, and the Bylaws.
24. "Property" shall be defined as and refer to the entire parcel of real property now or hereafter covered by the Plat. A description of the real property covered by the Plat on the effective date of this Declaration is set forth in Article II of this Declaration.

25. "Unit" shall be defined as and refer to any of the separately numbered and individually described units now or hereafter shown on the Plat.

**ARTICLE II  
PROPERTY DESCRIPTION**

The Property initially associated with this Project consists of the following described real property which is situated in Salt Lake County, Utah:

SEE EXHIBIT 'A'

Said Property is and shall be held, transferred, sold, conveyed, and occupied in accordance with and subject to the provisions of this Declaration. The Property shall be marked for sale by the Declarant in one (1) phase.

**ARTICLE III  
THE ASSOCIATION**

1. *Membership.* Each owner shall be entitled and required to be a Member of the Association. Membership shall begin immediately and automatically upon becoming an Owner, and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the membership for that Unit shall be shared by all Owners of the Unit in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one Membership for each Unit owned by him. Each Membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically upon a conveyance of that Unit. A Membership may not be separated or severed from the Unit to which it relates, and any devise, encumbrance, conveyance or other disposition of a Unit shall automatically constitute a devise, encumbrance, conveyance or other disposition of the Owner's Membership and the rights appurtenant thereto. No person or entity other than an Owner may be a Member of the Association or hold a Membership, and a Membership may only be transferred in connection with the transfer of a Unit.

2. *Records.* The Association shall make available for inspection to the Owners, Mortgagees, and holders, insurers and guarantors of the First Mortgage on any Unit current copies of the following; the Declaration, Articles, Bylaws, any other rules governing the Project, and other books and financial records of the Association. As used in this paragraph, 'available' shall mean available for inspection during normal business hours at the office of the Association, or under other reasonable circumstances.

3. *Association Meeting.* The Association Members shall meet in accordance with the provisions of the Articles of Incorporation of the Association. If the Articles of Incorporation do

not exist or do not contain a provision detailing the time and place of the Owner's Meeting, the following provisions shall apply:

- A. Association Members shall meet four times per year during the first calendar year after nine units of the Project have been conveyed to third-party purchasers by the Declarant or one year from the date the first Unit of the Project is conveyed, whichever occurs first. The Association Members shall meet on the first Monday of March, the first Monday of June, the first Monday of September, and the first Monday of December at such time and place as the Board may determine.
- B. After the first calendar year after nine units of the Project have been conveyed to third-party purchasers by the Declarant or one year from the date the first Unit of the Project is conveyed, whichever occurs first, the Association Members shall meet twice per year, on the first Monday of March and the first Monday of September at such time and place as the Board may determine.
- C. If any day designated above for a meeting of the Association Members is a legal holiday, the Association Members shall meet on the next business day following the holiday.

4. *Board of Trustees.* The Board of Trustees shall consist of a President, a Secretary, and a Treasurer, all of whom must be members of the Association in good standing and separate individuals. The Board of Trustees shall have the authority to act in behalf of the Association in circumstances in which the Association has authority to act, under this Declaration or the Articles of Incorporation for the Association. The authority of the Board of Trustees to act on behalf of the Association shall be limited to situations in which a vote of the members of the Association is not required prior to action by the Association. Additional duties and responsibilities of the Board of Trustees and the procedures for electing and removing members of the Board of Trustees shall be set forth in the Articles of Incorporation of the Association. If the Articles of Incorporation do not exist or do not contain a provision detailing the time and place of the Owner's Meeting, the following provisions shall apply:

- A. The members of the Board of Trustees shall be elected by a majority vote of the Members present at the first meeting of the Association Members after responsibility for electing the Board of Trustees is turned over to the Association. The members of the Board of Trustees shall serve for a period of two years. The Association shall elect members of the Board of Trustees two years after the date of the last election. There shall be no limit to the number of terms any member may serve, if duly elected.
- B. If any member of the Board of Trustees resigns, is removed, or is unable or unwilling to serve, the Association shall conduct a special election at its next scheduled meeting. The special election shall only be for the vacant position, and the member elected shall serve until the next regularly scheduled election.
- C. Any member may be removed from the Board of Trustees for any reason upon a vote of at least seventy-five percent (75%) of the members present at any Association meeting. If any member of the Board of Trustees ceases to be a member of the Association in good standing, the member shall immediately be removed from office without a vote.

D. Written notice of any meeting called for the purpose of electing members of the Board of Trustees under this Section shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of the Members or of proxies entitled to cast fifty percent (50%) of all the votes (exclusive of suspended voting rights) of Members shall constitute a quorum. If the required quorum is not present, the election shall not take place and another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Until such time as the responsibility for electing the Board of Trustees is turned over to the Association, the Declarant shall have the exclusive right to appoint and remove all such member of the Board of Trustees. The exclusive right of the Declarant to appoint and remove members of the Board of Trustees shall terminate at the first occurrence of the following:

- A. One year from the date the first Unit of the Project is conveyed, or
- B. One month after eleven Units of the Project have been conveyed.

5. *Voting Rights.* Each Unit shall be entitled to and accorded one (1) vote, regardless of the number of Owners of a Unit. In the event that there is more than one Owner of a Unit, the vote for that Unit shall be cast as the Owners for that Unit determine among themselves. If an Owner of a particular Unit immediately objects to the casting of a vote by other Owners of the Unit, the vote for that Unit shall not be counted or used for any purpose other than to determine if a quorum exists. In order to cast a vote for a Unit, at least one Owner from that Unit must be present at the Association meeting or a representative of at least one Owner of the Unit must be present at the Association meeting. A representative of an Owner is any person who is authorized by the Owner to cast a vote in the Owner's behalf at an Association meeting. In order to act as a representative of an Owner at an Association meeting, the Owner must provide a written statement to the Association at least two business days prior to the Association meeting. The written statement must include a statement naming the representative and authorizing the representative to vote in behalf of the Owner at the Association meeting, and must be signed by the Owner. A person may act as representative for any number of Owners. If the Owner fails to comply with this paragraph, the vote cast by the representative will not be counted or used for any purpose. Any vote cast by an Owner or representative is final immediately upon being counted, and can not be changed thereafter for any reason, including the failure of a representative to act in accordance with the Owner's instructions.

6. *Maintenance of Condominium Building Exteriors.* The Association shall maintain all Condominium Building Exteriors as follows: paint, repair, replacement and care of roofs, gutters, down spouts, foundations, window wells, sump pumps, fences, exterior building surfaces, exterior door and other exterior improvements, as well as all trees, shrubs, grass, walks and steps located on or around a Unit. Such exterior maintenance shall not include glass surfaces and window screens or patios, decks, or balconies on any Unit. The Association shall have the right



to enter any Unit to perform routine repairs or maintenance related to the exterior or common areas provided the Association notify the resident of the Unit at least 24 hours prior to the time of entry. The Association shall have the right to enter any Unit, with or without notice, to perform emergency repairs or to prevent imminent damage to any Unit or Common Area.

7. *Management.* The Association shall have the authority to delegate any managerial functions associated with the operation of the Condominium Project to the Manager, provided the functions delegated are properly the subject of delegation. The Manager shall be an independent contractor and shall not be an agent or employee of the Association. The Manager shall be responsible for managing the project for the benefit of the Association and Owners, and shall, to the extent permitted by applicable laws and the terms of the agreement with the Association, be authorized to perform any functions which are permitted to be performed by the Association itself. Any management agreement which is entered into by the Declarant may be terminated without cause by the Association at any time. The above term and termination provisions shall not apply to any other types of service contracts.

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

#### **ARTICLE IV PROPERTY RIGHTS IN COMMON AREAS AND UNITS**

1. *Easement of Enjoyment.* Each Owner shall have a right and easement of use and enjoyment in and to the Common Areas. Each Owner shall have an unrestricted right of ingress or egress to and from its Unit over and across such Common Areas. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Areas that may be designated for the 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 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, or other person who resides in such Owner's Unit.

2. *Easement for Encroachments.* In the event the construction, reconstruction, repair, shifting, settlement or any other movement of any portion of the improvements causes any part of a Condominium built in substantial accord with the boundaries for such Condominium as depicted on the Plat to encroach upon the Common Areas, or upon an adjoining Unit, or if any part of the Common Areas encroaches or shall encroach upon a Unit or Condominium for any such reasons, and easement for such encroachment and for the maintenance of the same shall and does exist. There is also hereby created an easement for any encroachment by any roof overhang upon an adjoining Unit or any part of the Common Areas.

3. *Limitation on Easement.* An Owner's right as easement of use and enjoyment concerning the Common Areas shall be subject to the following:

A. The right of the Association to suspend an Owner's voting right in the Association and an Owner's right to the use of any recreational facilities included in the Common Areas for any period during which (1) an assessment on such Owner's Unit remain unpaid, or (2) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Association and (3) 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 place reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas;

C. The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for the purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal services related to the health, safety, and welfare of the community.

4. *Party Walls* Each wall or ceiling-floor physical boundary which is built as part of the original construction or reconstruction or the Condominiums upon the Units and placed on the dividing line (whether horizontal or vertical) between the units shall constitute a 'Party Wall.' To the extent not inconsistent with the provisions of this section, 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 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 VII of this Declaration shall apply. Notwithstanding any other provision of this Section, and Owner who by his negligent or willful act causes a Party Wall to be damaged shall bear the entire cost of the necessary repairs to the Party Wall. The right or obligation of any Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

5. *Form for Conveyance.* 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 Condominium Building \_\_\_\_\_ of Allen Cove Condominiums, together with all improvements located thereon, as said Unit is identified in the Plat of said development recorded in the Recorder's Office of Salt Lake County, State of Utah, and in the Declaration of Condominium of Allen Cove Condominiums, also recorded in the Recorder's Office of Salt Lake County, State of Utah, as Entry No. \_\_\_\_\_, TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Condominium

Regardless of whether the above description is employed in any instrument conveying or encumbering title to a Unit, all provisions and terms of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

6. *Transfer of Title.* The Declarant agrees to cause the conveyance to the Association of title to the Common Areas 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 other than easements of public record including any easements set forth in this Declaration), before the first conveyance of a Unit from Declarant to a third-party purchaser.

## ARTICLE V ASSESSMENTS

1. *Agreement to Pay Assessments.* The Declarant, for each Unit owned by it within the Project, and each Owner of any Unit, by the acceptance of instruments of conveyance and transfer therefor, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration, whether or not it be so expressed in said instruments. Such assessments shall be fixed, established and collected from time to time as provided in this Article. In any event, all Units shall be allocated the then applicable assessments upon conveyance of the first Unit. Notwithstanding anything contained herein to the contrary, until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be nine-hundred dollars (\$900.00) for each Unit, payable at the rate of seventy-five dollars (\$75.00) per month. Said assessment shall be payable monthly, due on or before the first day of each month (the monthly payment shall be a proration of the total annual assessment).

A. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year by up to fifteen percent (15%) above the maximum assessment of the previous year with a vote of at least fifty-one percent (50%) of the votes (determined in accordance with Section 3 of Article III of this Declaration) of Owner's who are voting in person or by a representative, at a meeting duly called for this purpose.

B. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above fifteen percent (15%) above the maximum assessment of the previous year only with a vote of at least sixty-seven percent (67%) of the votes (determined in accordance with Section 3 of Article III of this Declaration) of Owner's who are voting in person or by a representative, at a meeting duly called for this purpose.

C. The Association may fix the amount of the annual assessment in any amount not

to exceed the maximum, and in accordance with this Section.

2. *Annual Assessments.* Annual assessments shall be computed and assessed against all Units in the Project as follows:

A. *Common-Expense.* Annual assessments shall be based upon advanced estimates of the Associations cash requirements to provide for payments for all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas, the Condominium Building Exteriors, and furnishing common utility services and other common items to the Condominiums. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and special assessments on the Common Areas (and the Units until the Units are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance of the Common Areas and Condominium Building Exteriors; landscaping; wages of Association employees, including fees for a Manager; maintenance, utility charges, including charges for utility services to the Condominiums to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance repair and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas and Condominium Building Exteriors that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. The aggregate of all such items shall constitute the Common Expenses, and all funds received from assessments under the Section 2.A shall be part of the Common Expense Fund.

B. *Apportionment.* Common Expenses shall be apportioned among and assessed to all Units and their Owners equally. The Declarant shall be liable for the amount of any assessments against Units owned by it.

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

D. *Notice and Payment.* Except with respect to the first fiscal year, the Association shall notify each Owner in writing as to the amount of the annual assessment against his or her Unit on or before December 1 each year for the fiscal year beginning on January 1

next following. Except as otherwise provided by the Association, each annual assessment shall be payable in twelve equal monthly installments, each installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year shall be based upon such portion of the first fiscal year. All unpaid installments of any annual assessment shall bear interest at the rate established by the Association not to exceed eighteen percent (18%) per annum from fifteen (15) days after the date each such installment became due until paid. The Association shall have the right to assess a late fee not to exceed five percent (5%) of any assessment installment not paid within fifteen (15) days following the date thereof. In addition, in the event that any installment of the annual assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the annual assessment for the remainder of the fiscal year and all accrued but unpaid interest and late fees thereon. Payment of the annual assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate established by the Association not to exceed eighteen percent (18%) per annum from such date until paid in full. The failure of the Association to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment.

E. *Inadequate Funds.* In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Article V Section 3 below, except that the vote therein specified shall be unnecessary.

3. *Special Assessments.* In addition to the annual assessments authorized by this Article, the Association may levy, at any time and from time to time, upon the affirmative vote of at least sixty-seven percent (67%) of the voting power of the Association in person or by proxy at a meeting called for such purpose, special assessments, payable over such periods as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to the Owners equally. Notice in writing of the amount of each such special assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special assessment shall bear interest at the rate established by the Association not to exceed eighteen percent (18%) per annum from the

date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund. In connection with any such special assessment, if the Declarant is only obligated to pay twenty-five (25%) of the annual assessment attributable to Units it owns pursuant to Section 4 below, it shall only be required to pay twenty-five percent (25%) of the special assessment otherwise attributable to each such Unit. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of annual assessments for the aforesaid purposes.

4. *Uniform Rate of Assessment.* The amount of any annual or special assessment against each Unit shall be equal, except that Declarant shall pay only twenty-five percent (25%) of the annual assessment attributable to each Unit which it owns until the conveyance by Declarant of such Unit to a third-party purchaser. If the Declarant ceases to qualify for the reduced twenty-five percent (25%) rate during the period to which an annual assessment is attributable, the assessment attributable to the membership shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate. Annual assessments may be collected on a monthly basis and special assessments may be collected as specified by the Association unless otherwise determined by the resolution of the Members of the Association approving the special assessment. So long as the Declarant qualifies for the reduced assessment rate with respect to the Units which it owns, if the assessments for any fiscal year of the Association shall fail to equal or exceed the actual expenses incurred by the Association during any such fiscal year because of the Declarant's right to pay reduced assessments, the Declarant shall pay to the Association a sufficient amount, up to the amount for that fiscal year of the full assessment for each Unit owned by Declarant to meet any such deficit, so long as written notice of such deficit is given by the Association to the Declarant within sixty (60) days following the termination of the fiscal year for which the assessment is made.

5. *Notice and Quorum for Any Action Authorized Under Article V, Sections 1 and 3.* Written notice of any meeting called for the purpose of taking any action authorized under Sections 1 or 3 of this Article shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of the Members or of proxies entitled to cast fifty percent (50%) of all the votes (exclusive of suspended voting rights) of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6. *Lien for Assessments.* All sums assessed to the Owners of any Unit within the Project pursuant to the provisions of this Article, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the outstanding balance, the name of the Owner of the Unit and a description of the Unit. Such notice shall be signed and acknowledged

by a duly authorized officer of the Association and may be recorded in the recorder's office for Salt Lake County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of an assessment which is at least thirty (30) days overdue. Such lien may be enforced by the sale or foreclosure conducted in accordance with the provisions of Utah law applicable to the exercise or powers of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including reasonable attorney's fees and court costs, and such costs and expenses shall be secured by the lien which is being foreclosed. The Owner shall also be required to pay to the Association any assessment against the Unit which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Association shall have the right and power to bid at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association.

7. *Personal Obligation of Owner.* The amount of any annual or special assessment against any Unit shall also be the personal obligation of the Owner of such Unit to the Association and the Association shall be able to maintain a suit against the Owner for the obligation without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his or her Unit or by waiving any services or amenities provided for in this Declaration. In the event the Association prevails in any suit to recover a money judgment of unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorney's fees and court costs.

8. *Personal Liability of Purchaser.* The personal obligation of an Owner to pay unpaid assessments against his or her Unit as described in Section 7 of this Article shall not pass to successors in title unless assumed by them. However, a lien to secure unpaid assessments shall not be affected by the sale or transfer of the Unit and the grantee of such sale or transfer shall take title to the Unit subject to the lien unless foreclosure of a lien superior to the lien securing unpaid assessments is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

9. *Reserves and Working Capital.* In addition to its day-to-day operating funds, the Association shall establish the following funds:

A. *Reserve Fund.* The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and Condominium Building Exteriors the Association is obligated to maintain, repair or replace. The amount of money held in the reserve fund shall be determined by the Association based upon projections of future maintenance expenses.

10. *Evidence of Payment of Annual and Special Assessments.* Upon receipt of a written

request by a Member or any other person, the Association shall, within a reasonable amount of time, issue to such Member or other person a written certificate stating; (1) that all annual and special assessments have been paid, or (2) that all annual and special assessments have not been paid, and the balance of any annual or special assessment which remains outstanding as of the date of the request for said statement (balance outstanding shall include interest, costs, and attorney's fees associated with the collection of the assessment). The Association may charge a reasonable amount for the issuance of such a written certificate, which charge shall be paid at the time the request for the written certificate is made. Any such written certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Unit in question.

## **ARTICLE VI OPERATION AND MAINTENANCE**

1. *Maintenance of Condominiums.* Each Condominium and Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to adversely affect the value or use of any other Condominium or Unit. The Association shall have no obligation regarding the maintenance or care of Condominiums or Units except as set forth in Article VI, Section 2 or elsewhere in this Declaration.

2. *Operation and Maintenance by Association.* The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive and generally in good condition and repair. The Association shall also provide for the maintenance of all Condominium Building Exteriors. The expenses incurred by the Association for such purposes shall be paid for with funds from the Common Expense Fund.

3. *Utilities.* The Owner shall pay for all utility services furnished to each Unit except utility services which are not separately billed or metered to individual Units by the utility or other party furnishing such service. The Association shall pay such bills which are not separately metered and charge an appropriate share to each Unit and Owner as part of the Common Expenses. Utilities which the Owner shall pay include but are not limited to gas, electrical service, phone service, cable service, water, and garbage collection.

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

A. *Hazard Insurance.* A 'master' or 'blanket' type policy of property insurance shall be maintained covering the entire Project, including: Common Areas; all Condominium Buildings including all Condominiums (other than the interior content thereof); fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or owned by the Association, and which are of a class typically encumbered by Mortgages held by FNMA or other similar instituted Mortgage



investors; but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a 'master' or 'blanket' type policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such 'master' or 'blanket' policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard 'all risk' endorsement, where such endorsement is available. Such 'master' or 'blanket' policy shall be in an amount not less than one-hundred percent (100%) of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance; or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent (100%) of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). The maximum deductible amount for such policy covering the Common Areas shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount. However, for losses related to individual Condominiums that are covered by such a policy, the deductible related to each individual Condominium shall be no more than One Thousand Dollars (\$1,000.00). Funds to cover these deductible amounts shall be included in the Association's operating reserve account. If there is not enough money in the Association's operating reserve account to cover a deductible, or if the Association otherwise lacks sufficient funds to pay a deductible, each Unit shall be assessed an equal share of the difference between the deductible and the funds which the Association is able to pay towards the deductible.

B. *Flood Insurance.* If any part of the 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 Buildings, any machinery and equipment that are not part of a Condominium Building and all Common Areas within the Project (hereafter referred to as 'Insurable Property') in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for all Condominium Buildings and Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one-hundred percent (100%) of the insurable value of all such facilities. The maximum deductible amount for any such policy shall be the lessor of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount.

(i) The name of the insured under each insurance policy required by the foregoing items A and B shall be the Association for the use and benefit of the Individual Owners (Said Owners shall be designated by name, if required). Notwithstanding the requirements of the two immediately foregoing sentences, each such policy may be issued in the name of an authorized representative of the Association, including and Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request, in a reasonable amount of time.

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

C. *Fidelity Bonds.* The Association shall not be required to maintain a fidelity bond. However, two members of the Board must sign any checks written against any account maintained or operated by the Association.

D. *Liability Insurance.* The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas, Condominium Building Exteriors, public ways in the Project, including any dedicated trail system(s), all other areas of the Project that are under the Association's supervision, and commercial spaces owned by the Association, if any, whether or not such spaces are leased to a third party. The coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas, and/or Constitution

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

E. *Insurance Trustees and General Requirements Concerning Insurance.*

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

Each insurance policy maintained pursuant to the foregoing Sections A, B, C, and D shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carriers charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Board, the Association, FNMA, or the designee of FNMA; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Association, and Owner, or FNMA) from collecting insurance proceeds. The provisions of this Section E and of the foregoing Sections A, B, C, and D shall not be construed to limit the power or authority of the

Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

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

## **ARTICLE VII. DAMAGE OR DESTRUCTION**

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

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

3. *Procedure in the Case of Damage.* In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows:

A. *Notice to First Mortgagees.* The Association shall give timely written notice to any holder of any First Mortgage on a Unit or who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or a Condominium subject to such First Mortgage.

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

C. *Sufficient Insurance.* If the proceeds of the insurance maintained by the

Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

D. *Insufficient Insurance - Less than Seventy-Five Percent (75%) Destruction.* If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a special assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such special assessment shall be allocated and collected as provided in Article V Section 3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

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

- (i) the Project shall be deemed to be owned in common by the Owners;
- (ii) each Owner shall own an undivided interest in the Project. The percentage of each Owner's interest in relation to the entire Project is set forth in Exhibit 'B.'
- (iii) any liens affecting any particular Unit shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and
- (iv) the Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be

considered as one fund and shall be divided among all Owners after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner. The division of funds shall be based on the fair market values of the Units and Condominiums immediately prior to the damage or destruction, and the Owners shall divide said funds based upon the relative value of the Units and Condominiums prior to the damage or destruction.

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

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

5. *Disbursement of Funds for Repair and Reconstruction.* If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to Section 3(D) of this Article shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners equally.

6. *Amendment of Article.* This Article VII shall not be amended unless Owners entitled to vote at least seventy-five percent (75%) of the votes of the Members consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Association and recorded in accordance with the provisions of this Declaration.

## ARTICLE VIII CONDEMNATION

1. *Condemnation.* If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this

Article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof of the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Association shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee who has requested in writing notice thereof. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

2. *Proceeds.* All compensation, damages and other proceeds from any such taking by power of eminent domain (hereafter "Condemnation Award") shall be made payable to the Association and shall be distributed by the Association as herein provided.

3. *Complete Taking.* In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners and the Owners shall divide the Condemnation Award based upon the relative values of the Units and Condominiums immediately prior to the condemnation. Such distribution shall be made by check payable joint to the respective Owners and their respective Mortgagees, as appropriate.

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

A. *Allocation of Award.* As soon as practicable, the Association shall, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages or other proceeds and shall allocate such apportioned amounts and pay the same to the Owners as follows:

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

(ii) The total amount apportioned to severance damages shall be allocated among and distributed equally to the Owners of those Units that have not been taken;

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

(iv) The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association determine to be

equitable under the circumstances;

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

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

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

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

(i) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a member of the Association and all voting rights shall terminate;

(ii) If any partial taking results in the taking of a portion of a Unit, the voting rights appertaining to such Unit shall continue;

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Association, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such unit, then all voting rights terminate and the remaining portion of such Unit shall thenceforth be part of the Common Areas;

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

C. *Repair and Reconstruction.* Any repair and reconstruction necessitated by



condemnation shall be governed by the provisions specified in Article VII hereof for cases of Damage or destruction; provided, however, that the provisions of said Article dealing with sufficiency or insurance proceeds shall not be applicable.

## **ARTICLE IX TERMINATION**

1. *Required Vote.* Except as otherwise provided in Article VII and Article VIII, the Project may be terminated only by agreement of Owners entitled to vote at least sixty-seven percent (67%) of the votes attributed to all Units.
  
2. *Termination Agreement.* An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by eligible Mortgagees who represent at least sixty-seven percent (67%) of the votes of Units subject to First Mortgages held by Eligible Mortgagees. Such approval (and any other approval related to an amendment to this Declaration) shall be deemed given when an Eligible Mortgagee fails to submit a response within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a 'return receipt' requested. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the Salt Lake County Recorder's Office, State of Utah, and is effective only on recordation.
  
3. *Sale of Project.* A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
  
4. *Association Duties.* The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Section 1 and Section 2 of this Article. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the relative value of each unit and Condominium. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their 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.

5. *Proceeds of Sale.* Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, Mortgagees holding Mortgages on the Units which were recorded before termination may enforce those liens in the same manner as any lien holder.

## ARTICLE X GENERAL USE RESTRICTIONS

1. *Rules and Regulations.* The Association shall have the 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 Property is maintained and used in a manner consistent with the interest of the Owners.

2. *Use of Common Areas.* The Common Areas shall be used only in a manner consistent with their community nature and with the rules, regulations and use restrictions applicable to Units and Condominiums. No admission fees, charges for use, leases, or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas. Provided, however, vending machines and similar devices approved by the Association may be made available within the Common Areas.

3. *Use of Units and Condominiums.* All Units are improved with Condominiums and are restricted to such use. Each Condominium shall be used only as a single-family residence. No Unit or Condominium shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Condominium, so as to create a nuisance or interfere with the rights of any Owners, or in any way which would result in an increase in the cost of any insurance covering the Common Areas or Condominiums.

4. *Exception for Declarant.* Notwithstanding the restrictions contained in this Article, for the five (5) year period following the date on which this Declaration is filed for record in the Salt Lake County Recorder's Office, State of Utah, Declarant shall have the right to use any Unit or Condominium owned by it, and any part of the Common Areas reasonable necessary or appropriate, in furtherance of any activities designed to accomplish or facilitate improvement and sale of all Units owned by Declarant. Declarant shall have the right to maintain one or more sales offices and model Condominiums. Such offices and model Condominiums may be located in any Condominium owned or leased by Declarant, or in one or more separate structures or facilities placed upon the Property for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. Declarant shall also have the right to maintain a reasonable number of promotional, advertising, or directional signs, banners or similar devices at any place or places on the Property. Declarant shall have the right from time to time to locate or relocate any of its sales offices, model Condominiums, signs, banners or similar devices.

5. *Leases.* Any lease agreement between an Owner and a lessee respecting a Unit or

Condominium shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such lease agreements shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his Unit or Condominium. An Owner shall be responsible and liable for any damage to the Project caused by its tenant.

6. *Easements.* Easements for installation and maintenance of utilities are reserved as shown on the Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. Easements for the installation and maintenance of utilities are also reserved within each Condominium. It is contemplated that telephone, gas, electricity, cable television, and other utilities may originate in one Condominium and terminate in another Condominium. A right of access to all such utilities is reserved to the Association and to all utility suppliers.

7. *Nuisances.* No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render any part of the Property unsanitary or unsightly or which would be offensive or detrimental to any other part of the Property or to the occupants thereof. No noise or other nuisance shall be permitted to exist or operate upon any part of the Property so as to be offensive or detrimental to any other part of the Property, or to the occupants thereof. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on the Property without the prior written approval of the Association.

8. *Temporary and Other Structures.* No structures of a temporary nature, trailer, basement house, tent, shack, shed, garage, barn or other outbuildings shall be used at any time as a residence either temporarily or permanently, nor shall sold structures be permitted on the Property at any time. No old or secondhand structures shall be moved onto any Unit, it being the intention hereof that all Condominiums erected and maintained on Units or within the Property shall be new construction of good quality, workmanship and material.

9. *Unsightly Articles.* No unsightly articles shall be permitted to remain on or near a Unit so as to be visible from any other Unit or the Common Areas. Without limiting the generality of the foregoing, trailers, mobile homes, trucks other than pickups, boats, tractors, vehicles other than automobiles, campers not on a truck, snowmobiles, snow removal equipment and garden or maintenance equipment shall be kept at all times, except when in actual use, in an enclosed structure or screened from view. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Unit except within an

enclosed structure or when appropriately screened from view.

10. *No Further Subdividing.* No Unit or Common Areas may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Association; provided, however, that nothing herein shall be deemed to prevent or require the approval of the Association for the transfer or sale of any unit or Condominium to more than one person to be held by them as tenants in common, joint tenants, or otherwise.

11. *Signs.* No sign of any kind shall be displayed to the public view without the approval of the Association, except such signs as may be used by Declarant in connection with the development of the Project and the sale of Condominiums and/or Units and except such signs of customary and reasonable dimensions as may be displayed on a Unit advertising a Unit or Condominium for sale or lease. Display of any 'for sale' or 'for lease' sign more than three (3) feet by two (2) feet shall require the prior written approval of the Association. A residential identification sign is permitted but should not exceed one (1) square foot in surface area. Numbers on residences shall be located in a position clearly legible from the street, but not more than six (6) feet above main floor level.

12. *No Hazardous Activities.* No activities shall be conducted on the Property and no improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires nor incinerators shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

13. *Repair of Buildings.* No improvement upon the Property shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof or the Association as applicable.

14. *Improvements and Alterations.* There shall be no excavation, construction or alteration which in any way alters the exterior appearance of any improvement within the Property nor removal of any Condominium or other improvement within the Property (other than repairs or rebuilding) without the prior written approval of the Association.

15. *Rooftop Antennas.* With the exception of satellite receiving dishes which are no greater than two (2) feet in diameter, no television, ham radio, citizens band or radio antenna, satellite receiving or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any unit or elsewhere if exposed to view from any other Unit. Such antennas, if used, must be of the type that are installed within the natural building structure. In no case will any such receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of any neighboring Unit Owner's premises or home entertainment facilities or equipment. Provided, however, Declarant and the Association reserve the right and option to

install cable service lines and antennas as needed throughout the Project in connection with its development.

16. *Architectural Control.* No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made unless and until the plans and specifications showing the color, nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Association.

17. *General Obligations.* Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Units, the Declarant shall enjoy the same rights and assume the same duties with respect to each unsold Unit.

## ARTICLE XI MORTGAGEE PROTECTION

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

A. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;

B. Any delinquency in the payment of assessments or charges owed by an Owner, whose Unit is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

D. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 2 of this Article or elsewhere herein.

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

of the Units subject to First Mortgages held by Eligible Mortgagees shall be required to:

A. Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs;

B. Add or amend any material provision of the Declaration, Articles, Bylaws or Plat, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only);

- (i) voting rights;
- (ii) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas;
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of s in the Common Areas, or rights to their use;
- (vi) redefinition of any Unit boundaries;
- (vii) convertibility of Units into Common Areas or vice versa;
- (viii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;
- (ix) hazard or fidelity insurance requirements;
- (x) imposition of any restrictions on the leasing of Units and Condominiums;
- (xi) imposition of any restrictions on Owner's right to sell or transfer his or her Unit or Condominium;
- (xii) a decision by the Association to establish self-management if professional management had been required previously by the Declaration or by an Eligible Mortgagee.;
- (xiii) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or

- (xiv) any provisions that expressly benefit Mortgagees, insurers, or guarantors.

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

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

The Association shall prepare a financial statement, in accordance with generally recognized accounting procedures, for the preceding fiscal year (if the Project has been established for a full fiscal year), and shall make said financial statement available to the holder, insurer, or guarantor of any First Mortgage on submission of a written request for it. The financial statement shall be made available within 120 days of the Association's fiscal year-end.

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

5. *Payment of Taxes.* In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in Paragraph A of Section 4 of Article VI lapses, is not maintained, or the premiums therefore are not paid when due, and Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

6. *Priority.* No provision of this Declaration or the articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or

taking of all or any part of the Units or the Common Areas.

## ARTICLE XII MISCELLANEOUS

1. *Notices.* Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as an Owner, at the latest address for such person, appearing in the records of the Association at the time of mailing.

2. *Term.* This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of forty (40) years from the date of this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by seventy-five percent (75%) of the votes of the Members cast at an election held for such purpose or otherwise approved in writing by such Members within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.

3. *Amendment.* Except as provided elsewhere in this Declaration, a vote or written approval of at least sixty-seven percent (67%) of the total votes of the Association shall be required to amend this Declaration. Any amendment authorized pursuant to this Section shall be effective upon the recording of an instrument describing said amendment in the Salt Lake County Recorder's Office, State of Utah. Said instrument shall contain a certification by an officer or trustee of the Association which states that the vote required by this Section for amendment has occurred. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of the Declaration, or by and federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit(s) or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an amendment duly signed by or on behalf of the authorized officers of Declaration with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Project and all persons having an therein. It is the desire and intent of Declaration to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control. Within ten (10) years from the date of recording of the Declaration, and so long as the Declaration is the



Owner of any Unit in the Project, this Declaration may be amended or terminated only with the written approval of the Declarant. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of any Unit.

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

5. *Declarant's Rights Assignable.* The rights and obligations of Declarant under this Declaration or in any way relating to the Project may be assigned or delegated, whereupon the assignee of Declarant shall have all the rights and obligations of Declarant hereunder.

6. *Interpretation.* The captions which precede the Articles and Sections of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof. This Declaration shall be liberally construed to effect all of its purposes.

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

8. *Lists of Owners and Eligible Mortgagees.* The Association shall maintain up-to-date records showing; (i) the name and address of each person who is an Owner, and the Unit which is owned by him; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Unit which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an insurer or governmental guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee in a Unit, either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the Salt Lake County Recorder's Office, State of Utah. The Association may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Association may act and rely on current ownership information

State of Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless and until the Association is otherwise advised in writing by the Owner.

9. *Effective Date.* This Declaration and any amendment or supplement hereto shall take effect upon its being duly recorded in the Salt Lake County Recorder's Office, State of Utah.

10. *Service of Process.* The president of the Board shall be the registered agent for service of process for the Association, and may be served at the address of the Association.

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BY SIGNING BELOW, DECLARANT HEREBY ACCEPTS AND ADOPTS THIS DECLARATION OF CONDOMINIUM AND COVENANTS, CONDITIONS, AND RESTRICTIONS OF AND FOR ALLEN COVE CONDOMINIUMS.

DATED this 2nd day of December, 2002.

John Clayton Construction, Inc. a Utah Corporation

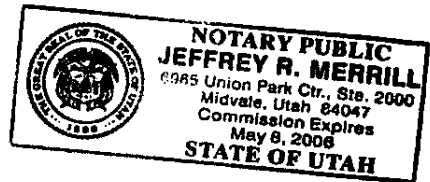
By: [Signature]

Its: pres.

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

On the 2nd day of december, 2002, personally appeared before me the signer of the within instrument, who duly acknowledged to me that he signed the same with authority from, and under the direction of, John Clayton Construction, Inc.

[Signature]  
Notary Public  
Residing at Salt Lake County, Utah.



BK8754PG1993

# EXHIBIT 'A'

## Boundary Description

Beginning at a point which is South 1316.65 feet and East 418.85 feet and N 01'14'00" W 204.00 feet from the Northwest Corner of Sec. 36, Township 2 South, Range 1 West, Salt Lake Base and Meridian, running thence N 01'14'00" W 147.12 feet; thence S 89'59'00" E 147.48 feet; thence S 00'54'00" W 2.00 feet; thence S 89'59'00" E 32.00 feet; thence S 00'54'00" W 41.07 feet; thence S 89'27'00" E 158.57 feet; thence S 00'07'00" \*feet; thence N 89'27'00" W 159.88 feet; thence S 00'54'00" W 46.73 feet; thence N 89'59'00" W 174.00 feet to the point of beginning.

Contains; 35,032 sq. ft. or .8042 acres

\* East, 57.30

21-36-102-051, 065, 066

# EXHIBIT 'B'

Each Unit shall have the following percentage of ownership interest in the Common Areas:

<u>Unit</u>	<u>Percentage of Ownership</u>
101	7.143%
102	7.143%
103	7.143%
104	7.143%
105	7.143%
106	7.143%
107	7.143%
201	7.143%
202	7.143%
203	7.143%
204	7.143%
205	7.143%
206	7.143%
207	7.143%