

SUPPLEMENTAL CHANGES TO THE DECLARATION OF CONDOMINIUM OF THE BERKLEY MANOR CONDOMINIUMS made and executed to be effective as of October 16 2008, by A - D Apartment Company, L.L.C., a Utah limited liability company ("Declarant"), pursuant to the provisions of the Utah Condominium Ownership Act and pursuant to the Declaration of Condominium of the Berkley Manor Condominiums, executed and effective on August 15, 2008, recorded in Salt Lake County, State of Utah, as entry 10501031 in book 9635 at pages 4593 - 4628, as said Declaration is hereby supplemented.

**DECLARATION OF CONDOMINIUM
OF THE
BERKLEY MANOR CONDOMINIUMS**

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10/16/2008 04:13 PM \$40.00
Book - 9651 Pg - 8387-8393
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
BILL JEFFRIES
4578 RUSSEL ST
HOLLADAY UT 84117
BY: ZJM, DEPUTY - WI 7 P.

The following paragraphs are changed as follows:

1. Section 6.2(n) of the Declaration is hereby amended to read as follows:

(n) maintain the books and financial records of the Association, and cause the financial statements of the Association for the preceding fiscal year to be audited and made available to the Owners and to any agency or corporation that has an interest or prospective interest in the Project upon written request;

2. Section 6.2 of the Declaration is hereby amended by adding a new subsection (o) as follows:

(o) make available to Owners, lenders, and the holders and insurers of the first mortgage on any Unit, current copies of the Declaration, Bylaws, and other rules governing the Project, and other books, records, and financial statements of the Association;

3. Section 6.2 of the Declaration is hereby amended by adding a new subsection (p) as follows:

(p) make available to prospective purchasers current copies of the Declaration, Bylaws, other rules governing the Project, and the most recent annual audited financial statement, if such is prepared;

4. Section 6.2 of the Declaration is hereby amended by adding a new subsection (q) as follows:

(q) establish an adequate reserve fund for the periodic maintenance, repair, and replacement of the common elements, which fund shall be maintained out of regular assessments; and

5. Section 6.2 of the Declaration is hereby amended by adding a new subsection (r) as follows:

(r) establish a working capital fund for the initial months of the Project operations equal to at least two months' estimated common area charge for each unit.

6. Section 6.4 is hereby added as follows:

6.4 **Rights of Action.** The Association and any aggrieved Owner shall be granted a right of action against Owners for failure to comply with the provisions of this Declaration, the Bylaws, or equivalent documents, or with decisions of the Association that are made pursuant to authority granted to the Association in such documents. Owners shall have similar rights of action against the Association.

7. Subsection 8.5(a) is amended to read as follows:

(a) All sums assessed to any Unit pursuant to this Article, together with interest thereon as provided herein, costs, and reasonable attorney's fees shall be secured by a lien against such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances against such Unit, except only: (i) valid tax and special assessment liens in favor of any governmental assessing authority; and (ii) encumbrances recorded in the Official Records prior to the date a notice (as provided herein) is recorded which by law would be a lien prior to subsequently recorded encumbrances, including all unpaid obligatory advances to be made pursuant to such encumbrances and all amounts advanced pursuant to such encumbrances and secured by the lien thereof in accordance with the terms of such instrument. All other Mortgagees and lienors shall be deemed to consent that such liens shall be inferior to future liens for Assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

8. Section 8.6 is amended by adding the following sentence at the end of Section 8.6:

The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them, or required by applicable law.

9. Section 9.1(b) is amended by adding the following at the end of Section 9.1(b):

The scope of coverage 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 elements, and legal liability arising out of lawsuits related to employment contracts of the Association. Such policies shall provide that they may not be cancelled or substantially modified, by any party, without at least 10 days' prior written notice

to the Association and to each holder of a first mortgage on any Unit which is listed as a scheduled holder of a first mortgage in the policy.

10. Section 9.1(c) is hereby added as follows:

(c) The name of the insured under all relevant policies shall be as follows: Association of Owners of the Berkley Manor Condominiums for use and benefit of the individual owners.

11. Section 9.1(d) is hereby added as follows:

(d) Each Owner and each Owner's mortgagee, if any, shall be beneficiaries of all such policies in the percentage of common ownership. Certificates of insurance shall be issued to each unit owner and mortgagee upon request. Such policies shall provide that they may not be cancelled or substantially modified, without at least 10 days' prior written notice to the Association and to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policies.

12. Section 9.2(a) is amended by adding the following sentence at the end of Section 9.2(a):

This includes, but is not limited to, insurance covering any fixtures, equipment, or other property within the Units that are to be financed by a mortgage to be purchased by FNMA or FHLMC.

13. Section 9.2(l) is hereby added as follows:

(l) Notwithstanding any of the foregoing provisions and requirements relating to property and liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom such 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 and to perform such other functions as are necessary to accomplish this purpose.

14. Section 10.3 is hereby added as follows:

10.3 Reorganization. In the event a partial destruction results in the destruction of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association. Thereafter, the Association shall reallocate the ownership, voting rights, and Assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at the creation of the condominium and as required by the Act and shall submit such reallocation to the Owners of remaining Units for amendment of this Declaration as provided herein.

15. Section 11.1 of the Declaration is hereby amended as follows:

11.1 Adoption of a Plan. The Owners representing an aggregate voting interest of 87.5% of the Project may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction. Compliance with all applicable County, State, and Federal regulations is required for amended site plans to become effective. Written notice of adoption of such a plan shall be given to all Owners. Such plan shall be recorded in the Official Records. The consent of Owners to which at least 67% of the votes in the Association are allocated and the approval of the eligible holders of first mortgages on Units to which at least 67% of the votes of Units subject to a mortgage appertain, shall be required to terminate the condominium regime.

16. Section 13.1 of the Declaration is hereby amended by adding a new subsection F. as follows:

F. All leases should be in writing. Owners are prohibited from leasing their units for an initial term of less than 30 days.

17. Article XIV is hereby amended to read as follows:

14.1 General Amendment. Except as otherwise specified herein: (a) Until Declarant has sold 87.5% of the Units, the Declarant shall have the unilateral right to amend this Declaration, the Map, and all documents related thereto; and (b) once Declarant has sold 87.5% of the Units, the vote of Owners holding at least 87.5% of the votes of the Members shall be required to amend this Declaration or the Map. Any amendment so authorized shall be accomplished through the recordation in the Official Records of an instrument executed by the Association. In such instrument, an officer of the Association shall certify that the vote required by this Article for amendment has occurred.

14.2 Specific Amendments. The consent of Owners to which at least 67% of the votes in the Association are allocated and the approval of eligible holders of first mortgages on Units to which at least 51% of the votes of Units subject to a mortgage appertain, shall be required to materially amend any provisions of this Declaration, the Bylaws, or equivalent documents of the condominium, or to add any material provisions thereto, which are for the express benefit of holders or insurers of first mortgages on Units or which establish, provide for, govern, or regulate any of the following:

- (1) Voting;
- (2) Assessments, assessment liens, or subordination of such liens;
- (3) Reserves for maintenance, repair, and replacement of the Common Elements;

- (4) Insurance or fidelity bonds;
- (5) Rights to use of the Common Elements;
- (6) Responsibility for the maintenance and repair of the several portions of the condominium;
- (7) Expansion or contraction of the condominium regime or the additions, annexation, or withdrawal of property to or from the regime;
- (8) Boundaries of any Unit;
- (9) The interests in the Common Areas or the Limited Common Areas;
- (10) Convertibility of Units into Common Elements or of Common Elements into Units;
- (11) Leasing of Units;
- (12) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Unit;
- (13) Establishment of self-management by the Association where professional management has previously been required.

18. The Declaration is hereby amended by adding a new Article XVIII as follows:

XVIII – FIRST LIEN HOLDERS' RIGHTS

18.1 Notices of Action. A holder, insurer, or guarantor of a first mortgage, upon written request to the Association (such request to state the name and address of such holder, insurer, or guarantor, and the unit number), will be entitled to timely written notice of:

- (1) Any proposed amendment effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interests in the Common Areas or Limited Common Areas or the liability for common expenses appertaining thereto, (iii) the number of votes in the Association appertaining to any Unit, or (iv) the purposes to which any Unit or the Common Elements are restricted;
- (2) Any proposed termination of the condominium regime;
- (3) Any condemnation loss or any casualty loss that affects a material portion of the Project or that affects any Unit on which there is a first mortgage held, insured, or guaranteed by such eligible holder;

(4) Any delinquency in the payment of assessments or charges owed by an Owner subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days; and

(5) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

18.2 Other Provisions for First Lien Holders. To the extent possible under applicable law:

(1) Any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by such eligible holders are allocated, is obtained.

(2) Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the Property must require the approval of the eligible holders of first mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by such eligible holders are allocated.

(3) Unless the formula for reallocation of interests in the Common Elements after

19. This instrument shall be considered supplemental to the Declaration. Except as expressly amended by the foregoing, the Declaration shall remain in full force and effect and shall not be cancelled, suspended or otherwise abrogated by the recording of this instrument.

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EXECUTED BY DECLARANT this 16 day of October 2008, to be effective as of the date of recording.

DECLARANT:

A - D APARTMENT COMPANY, L.L.C.,
a Utah limited liability company

Don A. Berg
By : Don Berg
Its: Managing Partner

WITNESSED:

William L. Jefferies
By: [Signature]

Personally appeared before me this 16th Day of October, 2008, William Jefferies, the witness of this Supplemental Changes of the Declaration of Condominium of The Berkley Manor Condominiums hereby attached who duly acknowledged to me that he executed the foregoing instrument in the capacity indicated.

[Signature]
Notary Public.

