

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR FAIRFIELD FARMS PHASE 2

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, hereinafter called "Declaration" is made and executed in Kaysville, Davis County, State of Utah, this ~~17~~ day of Dec, 1993, by Build Tech, Inc., a Utah Corporation, hereinafter called "Declarant", pursuant to the provisions of the Utah Condominium Ownership Act.

WITNESSETH:

WHEREAS, Build Tech, Inc., hereinafter referred to as "Declarant", is the owner of certain real property located in Davis County, Utah, and more particularly described in Article II of this Declaration, said property being hereinafter referred to as the property; and

WHEREAS, the Declarant is desirous of improving the property by constructing thereon certain buildings and units, and to create thereby a residential community with open spaces and other common facilities for the benefit of the community, and

WHEREAS, the Declarant desires to establish, by this Declaration, a plan for the individual ownership of the property consisting of the lot, the structure thereon and the co-ownership as tenants in common of all common walls, foundations and areas common to more than one unit and of the remainder of the property and improvements thereon which are hereinafter defined and referred to as "the Common Elements" or "Common Area". Such plan is hereby declared to be for the benefit of the property and the owners thereof, their heirs, successors, administrators, grantees and assigns, and is for the purpose of designating the property as condominium property under the provisions of the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah code Annotated 1953), and it is the desire and

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attention of the Declarant to divide the project into lots and to sell and convey to the same to various purchasers, subject to the covenants, conditions and restrictions hereinafter set forth; and

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WHEREAS, on the 16 day of Dec, 1993, the Build Tech, Inc., a Utah Corporation, filed for record in the office of the County Recorder of Davis County, State of Utah, a certain instrument entitled "Phase II Fairfield Farm- A Planned Unit Development", hereinafter referred to as "Map", which Map is filed of record herewith; and

WHEREAS, Declarant desires to provide for the preservations of the values and amenities in said condominium project and for maintenance of the open spaces and other common facilities, and to this end desires to subject the real property described in Article II together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said condominium project to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created, and for the purpose of exercising said functions has been incorporated under the laws of the State of Utah as a non-profit corporation, Fairfield Farm Property Owners Association No. 2.

NOW, THEREFORE, Build Tech, Inc. declares that the real property described in Article II and such additions thereto as may hereinafter be made pursuant to Article II hereof is and shall be held, transferred, sold, conveyed, encumbered, leased, improved, used and occupied subject to the declaration, covenants.

restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth, all of which covenants, conditions, restrictions, uses, limitations and obligations are declared and agreed to be in furtherance of a plan for the improvement of the property and the division thereof into lots and units and shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees, and assigns.

ARTICLE I

DEFINITIONS

Section 1. All applicable portions of definitions as contained in the Utah Condominium Ownership Act, Title 57, Chapter 8, Utah Code Annotated, 1953, shall apply to this Declaration and the Property except as particularly modified or changed by individual definitions or provisions hereinafter contained.

Section 2. Association shall mean and refer to the Fairfield Farm Property Owners Association No. 1, said Association being a Utah non-profit corporation formed for the purpose of managing, maintaining, repairing and administering the condominium project, the property and all the buildings and improvements and common elements on the Property; of assessing, collecting and applying common expenses, for enforcing this Declaration, for acting as attorney-in-fact or trustee for Unit Owners as hereinafter set forth, and generally for administering the property. Each owner of a Unit shall be a member of the Association and its only members shall be owners of Units. A person who for any reason, ceases to be such Owner shall cease to be such member, which membership provision shall be included in the Association's By-Laws. The Association shall constitute and embody the management committee as contemplated by the Utah Condominium Ownership Act.

Section 3. Board of Directors shall mean the Board of Directors of the Association.

Section 4. Common Area or Common Element shall mean and refer to those areas of land shown on any recorded subdivision plat of the properties and intended to be devoted to the common use and enjoyment of the owners and shall mean all portions of the property not located within any Unit, and shall also include, but not by way of limitation, portions of the roofs, foundations, walls, pipes, ducts, flues, shoots, conduits, wires and other utility installations which are common to more than one Unit and serve a common function, and including regardless of location, greens, gardens, storage sheds, and areas, service streets and parking areas, recreational greens and facilities, all installations of power, lights, gas, hot and cold water, and heating existing for common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

Section 5. Common Expenses shall mean the expenses of repair and maintenance of Common Elements and Area, including but not limited to, mowing grass, snow removal, caring for the grounds, sprinkler system, recreational facilities, roofs, walls and supports of buildings, garages and carports, reserve for repair, maintenance, taxes and other charges including fire and other hazard insurance premiums, and liability insurance, which in addition to public liability, shall cover repair and construction work for all of the assets of property owned or to be maintained by the Association. Such Common Expenses shall be paid in amounts and at times determined reasonable and necessary by the Association for the best good and convenience of all Owners, as herein provided.

Section 6. Condominium Plat or Map shall mean the recorded survey map of Fairfield Farm Planned Unit Development (Condominium Project), filed for record herewith by Declarant, and shall also include all subsequent amendments to the plat as originally recorded, which amendments may provide for more or fewer Units or difference size Units than those indicated on the first plat, or difference location of structures than those shown on the first plat.

Section 7. Declarant shall mean Build Tech, Inc., a Utah Corporation, which has made and executed this Declaration. # 1084852 # 1704 P 115

Section 8. Declaration shall mean this instrument by which the Fairfield Farm Property Owners Association (Condominium Project) is established as provided for under the Utah Condominium Ownership Act.

Section 9. Lot shall mean and refer to any plot of land shown upon any recorded subdivision Map of the property with the exception of the Common Area of Elements as herein defined.

Section 10. Manager shall mean the person or firm designated by the Association to manage the affairs of the Project.

Section 11. Mortgage shall be defined to include a Deed of Trust as well as a Mortgage.

Section 12. Mortgagee shall be defined to include a beneficiary under or holder of a Deed of Trust as well as a Mortgage.

Section 13. Owner shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Unit situated upon the property, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 14. Project shall mean the entire parcel of real property referred to in this Declaration be divided into Lots, Units, and Common Areas, including all structures thereon.

Section 15. Property shall mean and refer to all existing property, and additions thereto, as are subject to this Declaration or any supplemental Declaration under the provisions of Article II, hereof.

Section 16. Unit shall mean the elements and property which are not owned in common with the Owners of other Units in the project as shown on the Map. Each Unit shall include the portions of real property (lot) as designated on the Map as belonging to each identified Unit and shall include all portions of the structure

thereon including but not limited to the exterior surfaces, walls, foundations, windows, window frames, doors and door frames and wiring, plumbing, conduits and utilities appurtenant thereto, and shall include joint ownership as tenant in common of all common walls, areas and utilities common to more than one Unit, and shall also mean and include an undivided one twentyfirst (21st) interest in and to the Common Area.

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ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO

Section 1. Property. The real property which is, and shall be held, transferred, sold, conveyed, encumbered, leased, improved, used and occupied subject to this Declaration is located in Kaysville, Davis County, State of Utah, and is more particularly described as follows:

A part of the N.W. 1/4 sec. 34, T4N, RIW, SLB&M more particularly described as follows, beginning on the northerly line of a street at a point south 399.100 ft and west 960.49 ft and S 70'00' W 278.00 ft. to a point of a 1219.50 foot radius curve to the right and westerly along the arc of said curve 198.65 feet and N 10'40' W 39.0 feet from the Northeast corner of Sec 34, T4N, RIW, SLB&M and running northwesterly 197.81 feet along the arc of a 140.50 foot radius curve, thence N 20'00' W 105.17 feet, thence N 70'00' E 142.05' feet, thence southeasterly along the arc of 687.0 foot radius curve 234.88 feet to the point of a 14.74 foot radius curve to the right, thence 23.32 feet along the arc of said curve to the point of a 1180.50 foot radius curve, thence 15.04 feet along said curve to the right to the point of beginning.

CONTAINS 33,140 SQ FT
0.761 ACRE

Section 2. Additions to Property. Additional lands may become subject to this Declaration in the following manner:

a. Upon approval in writing of the Association pursuant to a vote of its members by majority vote as herein provided, (or the consent of a majority of its members granted at the time of the acquisition of a unit) the owner of any property who is desirous of adding it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of covenants and restrictions which shall extend the scope of the covenants and restrictions of this Declaration to such property.

Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scope and intent of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify, or add to the covenants established by this Declaration within the existing property.

b. The Association may be merged into or consolidated with another property owners association by majority vote of the owners, as herein provided. Upon a merger or consolidation of the Association with another Association, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association, or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a consolidation or merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the existing property together with the covenants and restrictions established upon any other properties as one association. No such merger or consolidation, however shall effect any revocation, change or addition to the covenants established by this Declaration within the existing property except as hereinafter provided.

ARTICLE III

OWNERSHIP AND CONVEYANCE OF UNITS

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Section 1. Ownership. Each Owner shall be entitled to exclusive ownership and possession of his Lot and Unit. Each Owner shall be entitled to an undivided one twentyfirst (21st) interest in the Common Area the percentage of the undivided one twentyfirst interest of each Owner in the Common Area shall have a permanent character and shall not be altered without the consent of all Owners expressed in an Amended Declaration duly recorded (except in those cases governed by Article II Section 2 above). Each Owner will also own a membership in and be a member of the recreational facilities used by the Association.

An Owner shall not be deemed to own the utilities running through his Unit which are utilized for, or serve more than one Unit, except as a tenant in common with the other Owners. An Owner will own and shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces and walls, basement, floors, ceilings, windows and doors of his Unit.

Section 2. Conveyance. Any Deed, Lease, Mortgage, Deed of Trust of similar instrument, hereinafter referred to as "Deed" may legally describe a Unit by its identifying Lot and Unit number or letter as shown on the map. The initial Deed shall also describe the Unit and Ownership; thereafter any Deed need only describe a Unit by Unit and Lot designation as shown on the map, and every such description shall be deemed to include the entire Unit and interest in the Common Area. The Owner shall pay the property taxes on the Lot identified and described in said conveyance and owned by the Owner.

The initial Deed may contain whatever reservations, exceptions, and exclusions that are deemed by Declarant to be for the best interests of all Owners and the Association. All such reservations, exceptions and exclusions shall be deemed for the ultimate benefit of the Association after Declarant shall have conveyed all its interest in the property to Owners of Units.

Anything in deeds of conveyance, restrictions or this Declaration to the contrary or apparent contrary notwithstanding, the Owners of Units shall be entitled to the use of his Unit and the Common Area subject to this Declaration.

Section 3. Owner's Obligation to Repair. Except for those portions which the Association is required to maintain and repair hereunder (if any), each Owner shall, at the Owner's expense, keep the interior of his Unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition to decorating and keeping the interior of the Unit in good repair, the Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, furnaces, lighting fixtures, refrigerators, air conditioning equipment, dishwashers, disposals or ranges that may be in, or connected with the Unit. An easement is hereby reserved in favor of each such Unit for the purpose of maintenance, repair or replacement of common elements appurtenant to the Owner's Unit.

The Owner shall also, at the Owner's own expense, keep any balcony, patio, storage shed or area and carports or garages which are appurtenant to his Unit in a clean and sanitary condition. The Association and Manager shall not be responsible to the Owner for loss or damage by theft or otherwise of articles which may be stored by the Owner in the balcony, patio, storage shed area, carports, garages or Unit.

The Owner shall promptly discharge any lien which may hereafter be filed against his Unit and shall otherwise abide by the provisions of Section 57-8-19 of The Condominium Act.

Section 4. Prohibition Against Structural Changes by Owner.

The Owner shall not, without first obtaining written consent of the Association, make or permit to be made any structural alteration, improvement or addition in or to his Unit or in or to the exterior of the buildings or Common Area. The Owner shall do no act nor any work that will impair the structural soundness or integrity of the buildings or safety of the property or impair any easement or hereditament without the written consent of all Owners. The Owner shall not paint or decorate any portion of the exterior of the buildings or the Common Area or any portion of the patio fences, storage sheds or carports or garages, without first obtaining written consent of the Association.

Section 5. Limitation on Use of Units and Common Area. The Units and Common Area shall be occupied and used as follows:

(a) No Owner shall occupy or use his Unit, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the Owner and the Owner's family or the Owner's Lessees or guests.

(b) There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Association. No recreational vehicles shall be parked, stored or retained in Units or the Common Area. All vehicles shall be parked in driveways or garages and no vehicles shall be parked on the street.

(c) Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Management Committee. No Owner shall permit anything to be done or kept in his Unit or in the Common Area which will result in the cancellation of insurance on any Unit or any part of the Common Area, or which would be in violation of any law. No waste will be committed in the Common Area.

(d) No sign of any kind shall be displayed to the public view on or from any Unit or the Common Area, without the prior consent of the Association.

(e) No animals, livestock or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Area, except that dogs, cats or other household pets may be kept in Units, subject to rules and regulations adopted by the Association.

(f) No noxious or offensive activity shall be carried on
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in any Unit or in the Common Area, nor shall anything be done therein
which may be or become an annoyance or nuisance to the other Owners.

(g) Nothing shall be altered or constructed in or removed
from the Common Area, except upon the written consent of the Association.

(h) There shall be no violation of rules for the use of
the Common Area adopted by the Association and furnished in writing
to the Owners, and the Board of Directors is authorized to adopt such
rules.

(i) None of the rights and obligations of the Owners
created herein, or by the Deed creating the Units shall be altered in
any way by encroachments due to settlement or shifting of structures
or any other cause. There shall be valid easements for the maintenance
of said encroachments so long as they shall exist; provided, however,
that in no event shall a valid easement for encroachment be created in
favor of an Owner or Owners if said encroachment occurred due to the
wilful conduct of said Owner or Owners.

ARTICLE IV

MANAGEMENT ASSOCIATION

Section 1. The Association. The Association, Fairfield Farm
Property Owners Association, has been organized for the efficient
preservation of the values and amenities in the project, and to create
an agency which shall have the powers of managing, maintaining, repairing
and administering the project and property and all buildings and improve-
ments and enforcing the covenants and restrictions and collecting and
disbursing and applying the assessments and common expenses set forth
in this Declaration; and to act as Attorney in Fact or Trustee for Unit
Owners. The Association shall operate according to the provisions of
this Declaration, as hereinafter set forth. The Association shall have
the authority, powers and duties as set forth in this Declaration. The
Association shall also constitute and embody the management committee
as contemplated by the Utah Condominium Act. The Declarant shall deed

to the Association and the Association shall own all of the Common Area and all portions of the property which is not owned by the Unit Owners. The property shall be owned and held strictly for the purposes herein set forth, and shall be subject to the interest of the Owners as set forth in Exhibit A, hereof.

Section 2. Duties of Association. The Association, for the benefit of the Owners and the property, shall enforce the provisions hereof and shall acquire, collect and shall pay out of the Common Expense Fund, herein provided for, the following:

(a) Water, sewer, garbage collection, electrical, telephone and gas and other necessary utility service for the Common Area (and to the extent not separately metered or charged, for the Units);

(b) A policy or policies of fire insurance as the same are more fully set forth in this Declaration, with extended coverage endorsement, for the full insurable replacement value of the Units and Common Area, or such other fire and casualty insurance as the Association shall determine gives substantially equal or greater protection to the Owners, and their mortgagees, as their respective interests may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each Unit, if any;

(c) A policy or policies as the same are more fully set forth in this Declaration insuring the Association, Board of Directors, the Owners and the Manager against any liability to the public or to the Owners (of Units and of the Common Area, and their invitees, or tenants), incident to the ownership and/or use of the project, and including the personal liability exposure of the Owners. Limits of liability under such insurance shall not be less than Three Hundred Thousand Dollars (\$300,000.00) for any one person injured, for any one accident, and shall not be less than One Hundred Thousand Dollars (\$100,000.00) for property damage each occurrence (such limits and coverage to be reviewed at least annually by the Association and increased in its discretion). Said policy or policies shall be issued

on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(d) Workmen's compensation insurance to the extent necessary to comply with any applicable laws;

(e) The services of a person or firm to manage its affairs (herein called "the Manager") to the extent deemed advisable by the Association as well as such other personnel as the Association shall determine shall be necessary or proper for the operation of the Common Area, whether such personnel are employed directly by the Association or are furnished by the Manager;

(f) Legal and accounting services necessary or proper in the operation of the Common Area or the enforcement of this Declaration;

(g) A fidelity bond naming the Manager, and such other persons as may be designated by the Association as principals and the Owners as obligees, for the first year in an amount at least equal to twenty-five per cent (25%) of the estimated cash requirement for that year as determined under paragraph 10 hereof, and for each year thereafter in an amount at least equal to twenty-five per cent (25%) of the total sum collected through the common expense fund during the preceding year;

(h) Painting, maintenance, repair and all landscaping of the Common Area, and exterior surfaces, walls, roofs, etc., of each unit, and such furnishings and equipment for the Common Area as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to acquire the same for the Common Area; provided, however, that the interior surfaces such as utilities, plumbing, wiring, conduits, etc., of each Unit shall be painted, maintained and repaired by the Owners thereof, all such maintenance to be at the sole cost and expense of the particular Owner;

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(i) Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation of the Common Area or for the enforcement of this Declaration, provided that if any such materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for particular Units, the cost thereof shall be specially assessed to the Owners of such Units.

(j) Maintenance and repair of any Unit, if such maintenance or repair is reasonably necessary in the discretion of the Association to protect the Common Area or preserve the appearance and value of the project, and the Owner or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Association to said Owner or Owners, provided that the Association shall levy a special assessment against the Unit of such Owner or Owners for the cost of said maintenance or repair.

The Association's power hereinabove enumerated shall be limited in that the Association shall have no authority to acquire and pay for out of the common expense fund capital additions and improvements (other than for purposes of replacing portions of the Common Area, subject to all the provisions of this Declaration) having a cost in excess of Five Thousand Dollars (\$5,000.00) except as expressly provided herein.

There shall be no structural alterations, capital additions to, or capital improvements of the Common Area requiring an expenditure in excess of Five Thousand Dollars (\$5,000.00) without the prior approval of Owners holding a majority of the total votes.

The Association shall have the exclusive right to contract for all goods, services and insurance, payment for which is to be made from the common expense fund.

Section 3. Membership and Voting Rights in the Association.

(a) Membership. Every person or entity who is a record owner of a Unit shall be a member of the Association, provided that if any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

(b) Voting. At any meeting of the Association, each Owner, including Declarant, shall be entitled to cast one vote for each Unit owned. Any Owner may attend and vote at such meeting in person, or by an agent duly appointed by an instrument in writing signed by the Owner and filed with the Association or the Manager. Any designation of an agent to act for an Owner may be revoked at any time by written notice to the Association or Manager, and shall be deemed revoked when the Association or the Manager shall receive actual notice of the death or judicially declared incompetence of such Owner or of the conveyance by such Owner of his Unit. Where there is more than one record Owner, any or all of such persons may attend any meeting of the Owners, but it shall be necessary for those present to act unanimously in order to cast the votes to which they are entitled. Any designation of an agent to act for such persons must be signed by all such persons. Declarant shall be entitled to vote with respect to any Unit owned by Declarant.

In the event that a notice of default is recorded by any mortgagee who holds a mortgage which is a first lien on a Unit against the Owner of the condominium covered by the mortgage, then and in that event and until the default is cured, the right of the Owner of such Unit to vote shall be transferred to the mortgagee recording the notice of default.

(c) Meetings. The presence at any Association meeting of Owners having a majority of the total votes shall constitute a quorum. In the event that a quorum is not present at any such meeting, the Owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the Owners in accordance with

the provisions of paragraph 3 (d) hereof, and at that meeting the presence of Owners holding in excess of thirty per cent of the ~~total votes shall~~ ¹⁰³⁴⁸⁵² 1704 P 126 constitute a quorum for the transaction of business; but in the event a quorum is not present at that meeting, the Owners present, though less than a quorum, may give notice to all the Owners in accordance with paragraph 3 (d) of an adjourned meeting, and, at that meeting, whatever Owners are present shall constitute a quorum. Unless otherwise expressly provided in this Declaration, any action may be taken at any meeting of the Owners upon the affirmative vote of a majority of the voting power of the Owners present and voting provided that a quorum is present as provided for above.

(1) Annual Meeting. There shall be a meeting of the Association on the First Wednesday of May of each year at 8:00 P.M. upon the Common Area or at such other reasonable place or time (not more than sixty (60) days before or after such date) as may be designated by written notice of the Board of Directors delivered to the Owners not less than ten (10) days prior to the date fixed for said meeting. At the annual meeting, the Board of Directors shall present an audit of the common expenses, itemizing receipts and disbursements for the preceding calendar year, the allocation thereof to each Owner, and the estimated common expenses for the coming calendar year. Within ten (10) days after the annual meeting, said statement shall be delivered to the Owners not present at said meeting.

(2) Special Meetings. Special meetings of the Association may be called at any time for the purpose of considering matters which, by the terms of this Declaration require the approval of all or some of the Owners, or for any other reasonable purpose. Said meetings shall be called by written notice, signed by a majority of the Board of Directors, or by the Owners having one-third (1/3) of the total votes and delivered not less than fifteen (15) days prior to the date fixed for said meeting. Said notices shall specify the date, time and place of the meeting, and the matters to be considered thereat.

(d) Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed to each such person at the address given by such person to the Board of Directors or Manager for the purpose of service of such notice or to the Unit of such person if no address has been given to the Manager. Such address may be changed from time to time by notice in writing to the Association or the Manager.

(e) Elections and Proceedings of the Association.

(1) Election. At each annual meeting of the Association, subject to the provisions of sub-paragraph (e) (4) hereof, the Owners shall elect a Board of Directors for the forthcoming year, consisting of five (5) Owners; provided, however, that the first Board of Directors elected hereunder may be elected at a special meeting duly called, said Board of Directors to serve until the first annual meeting held thereafter. Every Owner entitled to vote at any election of members of the Board of Directors may cumulate his votes and give one candidate a number of votes equal to the number of members of the Board of Directors to be elected, multiplied by the number of votes to which such Owner is otherwise entitled, or distribute his votes on the same principle among as many candidates as he thinks fit. The candidates receiving the highest number of votes up to the number of members of the Board of Directors to be elected shall be deemed elected. The Board of Directors of the Association shall constitute the management committee.

(2) Term. Members of the Board of Directors shall serve for a term of two (2) years; provided that three of the five members of the first Board of Directors elected shall serve for a one-year term. The other two shall serve for a two-year term. The members of the Board of Directors shall serve until their respective successors are elected, or until their death, resignation or removal; provided that if any member ceases to be an Owner, his membership on the Board of Directors shall thereupon terminate.

(3) Resignation and Removal. Any member may resign at any time by giving written notice to the remaining members of the Board of Directors and any member may be removed from membership on the Board of Directors by majority vote of the Owners;

(4) Proceedings. Three (3) members of the Board of Directors shall constitute a quorum. If a quorum is present, a majority of those present may act for the Association. The Board of Directors shall elect a chairman, who shall preside over both its meetings and those of the Association. The Board of Directors may also elect a president and a secretary and such other official as it deems appropriate. Meetings of the Board of Directors may be called, held and conducted in accordance with such regulations as the Board of Directors may adopt. The Board of Directors may also act without a meeting by unanimous written consent of its members.

(5) Declarant Appointment of Directors. Until a date two years from the date of completion of construction of the Project or until all Units have been sold, whichever is sooner, Declarant shall have the right to appoint three members of the Board of Directors.

ARTICLE V

Common Expenses, Assessment and Maintenance

Section 1. Common Expenses: Assessments

(a) Within thirty (30) days prior to the beginning of each calendar year, the Association shall estimate the net charges to be paid during such year (including a reasonable provision for contingencies and replacements and less any expected income and any surplus from the prior year's funds, and including assessments for the use of recreational facilities used by members of the Association). Said "estimate cash requirement" shall be assessed to the Owners in the ratio of one thirty-ninth (1/39th) to each Owner. Declarant will be liable for the amount of any assessment against completed Units owned by Declarant. If said sum estimated proves inadequate for any reason, including nonpayment of any Owner's assessment, the Association may, at any time, levy a further assessment, which shall be assessed to the Owners in like proportions, unless otherwise provided herein. Each Owner shall be obligated to pay assessments made pursuant to this paragraph to the Association in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Association shall designate;

(b) The rights, duties and functions of the Association set forth in this paragraph shall be exercised by Declarant for the period ending thirty (30) days after the election of the first Board of Directors hereunder:

(c) All funds collected hereunder shall be expended for the purposes designated herein.

(d) The omission by the Association, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed. Amendments to this paragraph shall be effective only upon unanimous written consent of the Owners and their mortgagees. No Owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Unit.

(e) The Manager or Association shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by the Owner at convenient hours of week days.

Section 2. Default in Payment of Assessments. Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment, whether regular or special, assessed to the Owner of any Unit plus interest at seven per cent (7%) per annum, and costs, including reasonable attorneys' fees, shall become a lien upon such unit upon recordation of a notice of assessment as provided in Section 57-8-20 of the Condominium Act. The said lien for nonpayment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

(1) Tax and special assessment liens on the unit in favor of any assessment unit, and special district, and
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(2) Encumbrances on the Owner's Unit recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

A certificate executed and acknowledged by The Association stating the indebtedness secured by the lien upon any Unit created hereunder, shall be conclusive upon the Association and the Owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner or any encumbrancer or prospective encumbrancer of a Unit upon request at a reasonable fee, not to exceed Ten Dollars (\$10). Unless the request for a certificate of indebtedness shall be complied with within ten days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien held by the person making the request. Any encumbrancer holding a lien on a Unit may pay any unpaid common expenses payable with respect to such Unit and upon such payment such encumbrancer shall have a lien on such Unit for the amounts paid of the same rank as the lien of his encumbrance.

Upon payment of a delinquent assessment concerning which such a certificate has been so recorded, or other satisfaction thereof, the Association shall cause to be recorded in the same manner as the certificate of indebtedness a further certificate stating the satisfaction and the release of the lien thereof. Such lien for nonpayment of assessment may be enforced by sale by the Association or by a bank or trust company or title insurance company authorized by the Association, such sale to be conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the Owner shall be required to pay the costs and expenses of such proceedings and reasonable attorney's fees.

In case of foreclosure, the Owner shall be required to pay a reasonable rental for the Unit and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Association shall have the power to bid in the Unit at foreclosure or other sale and to hold, lease, mortgage and convey the Unit.

Section 3. Mortgage Protection. Notwithstanding all other provisions hereof:

(a) The Liens created hereunder upon any Unit shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Section 2 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein;

(b) No amendment to this paragraph shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof;

(c) By subordination agreement executed by the Association, the benefits of (a) and (b) above may be extended to mortgages not otherwise entitled thereto.

Section 4. Manager. The Association shall have the authority to engage a manager and may delegate any of its duties, power or functions, including, but not limited to, the authority to give the certificate provided for in Section 2 hereof, and the authority to give the subordination agreements provided for in Section 3 hereof, to any person or firm, to act as Manager of the project, provided that any such delegation shall be revocable upon notice by the Association. The Association, its officers and Directors shall not be liable for any omission or improper exercise by the Manager of any such duty, power or function so delegated by written instrument executed by The Association. In the absence of any appointment, the

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President of the Association shall act as Manager.

Any Manager named or employed by Declarant shall be employed to manage only until the first election of the Board of Directors of the Association at which time, the new Board of Directors shall have the right to retain or discharge said Manager as it determines desirable in its discretion.

ARTICLE VI

GENERAL PROVISIONS.

Section 1. Limitation of Association's Liability. The Association shall not be liable for any failure of water supply or other utility or service to be obtained and paid for by the Association hereunder, or for injury or damage to person or property caused by the elements or by another Owner or person in the project, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless caused by gross negligence of the Association. No diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Area or from any action taken to comply with any law, ordinance or orders of a governmental authority.

Section 2. Indemnification of Board of Directors. Each member of the Board of Directors of the Association shall be indemnified by the Owners against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a member of the Board of Directors, or any settlement thereof, whether or not he is a member of the Board of Directors at the time such expenses are incurred, except in such cases wherein the member of the Board of Directors is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Association approves such settlement and reimbursement as being for the best interests of the Association.

Section 3. Sale or

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any Owner of a Unit shall wish received a bona fide offer then the remaining Owners shall be an executed copy of such offer; copy shall be given to the Association through the Association have the right to purchase or

First American Title Company of Utah

LAYTON OGDEN
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and conditions as set forth in the offer therefore, provided written notice of such election to purchase or lease is given to the selling or leasing Owner, and a matching down payment or deposit is provided to the selling or leasing Owner during the twenty-one day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase or lease.

In the event any Owner shall attempt to sell or lease his Unit without affording to the other Owners the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the Owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of an Owner to subject his Unit to a trust deed, mortgage or other security instrument.

The failure of or refusal by the Association to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an Owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

Section 4. Mortgages not Affected by Right of First Refusal.

In the event of any default on the part of any Owner under any first mortgage made in good faith and for value, which entitled the holder thereof to

foreclose same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of Section 3, and the purchaser (or grantee under such deed in lieu of foreclosure) of such Unit shall be thereupon and thereafter subject to the provisions of this Declaration. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the condominium free and clear of the provisions of Section 3, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

The transfer of a deceased joint tenant's interest to the surviving joint tenant or the transfer of a deceased's interest to a devisee by will or his heirs at law under intestacy laws shall not be subject to the provisions of Section 3.

If an Owner of a Unit can establish to the satisfaction of the Association that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of Section 3.

Section 5. Certificate of Satisfaction of Right of First Refusal. Upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of any Unit, the Association shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing that:

(a) With respect to a proposed lease or sale under Section 3, that proper notice was given by the selling or leasing owner and that the remaining Owners did not elect to exercise their option to purchase or lease;

(b) With respect to a deed to a first mortgagee or its nominee in lieu of foreclosure, and a deed from such first mortgagee or its nominee, pursuant to Section 4, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Section 3.

(c) With respect to any contemplated transfer which is not in fact a sale or lease, that the transfer is not or will not be subject to

the provisions of Section 3. Such a certificate shall be conclusive evidence of the facts contained therein.

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Section 6. Insurance. The Association shall obtain and maintain at all times insurance of the type and kind and in at least the amounts provided hereinabove, and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use which insurance shall be governed by the following provisions:

- (a) All policies shall be written with a company licensed to do business in the State of Utah and holding a rating of "AAA" or better by Best's Insurance Reports;
- (b) Exclusive authority to adjust losses under policies hereafter in force in the project shall be vested in the Association or its authorized representative;
- (c) In no event shall the insurance coverage obtained and maintained by the Association hereunder, be brought into contribution with insurance purchased by individual owners or their mortgagees;
- (d) Each Owner may obtain additional insurance at his own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, in behalf of all of the Owners, may realize under any insurance policy which the Association may have in force on the project at any particular time;
- (e) Each Owner shall be required to notify the Association of all improvements made by the Owner to his Unit, the value of which is in excess of One Thousand Dollars (\$1,000.00);
- (f) Any Owner who obtains individual insurance policies covering any portion of the project other than personal property belonging to such Owner, shall be required to file a copy of such individual policy or policies with the Association within thirty (30) days after purchase of such insurance;
- (g) The Association shall be required to make every effort to secure insurance policies that will provide for the following:
 - (1) A waiver of subrogation by the insurer as to any claims against the Association, the Manager, the Owners and their respective servants, agents, and guests;

(2) That the master policy on the project cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Owners;

(3) That the master policy on the project cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Association or Manager without a prior demand in writing that the Association or Manager cure the defect;

(4) That any "no other insurance" clause in the master policy exclude individual owners' policies from consideration;

(h) The annual insurance review which the Association is required to conduct as provided elsewhere herein, shall include an appraisal of the Improvements in the project by a representative of the insurance carrier writing the master policy.

Section 7. No Partition. There shall be no judicial partition of the project or any part thereof, nor shall Declarant or any person acquiring any interest in the project or any part thereof seek any such judicial partition, until the happening of the conditions set forth in Paragraph 7 hereof in the case of damage or destruction or unless the property has been removed from the provisions of the Condominium Act as provided in Section 57-8-22 thereof; provided, however, that if any Unit shall be owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants. But such partition shall not affect any other Unit.

Section 8. Damage and Destruction. In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the buildings, shall be applied to such reconstruction. Reconstruction of the buildings, as used in this paragraph means restoring the buildings to substantially the same condition in which they existed prior to the fire, casualty or other disaster, with each Unit and the Common Area having the same vertical and horizontal boundaries as before. Such reconstruction shall be accomplished by the Manager or the Association.

If the insurance proceeds are insufficient to reconstruct the building, damage to or destruction of the building shall be promptly repaired and restored by the Manager or the Association, using proceeds of insurance, if any, on the buildings for that purpose, and the Unit owners shall be liable for assessment for any deficiency. However, if three-fourths or more of the buildings are destroyed or substantially damaged and if the Owners, by a vote of at least three-fourths of the voting power, do not voluntarily, within one hundred days after such destruction or damage, make provision for reconstruction, the Manager or the Association shall record, with the county recorder, a notice setting forth such facts, and upon the recording of such notice:

(1) the property shall be deemed to be owned in common by the Owners;

(2) the undivided interest in the property owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Area;

(3) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owner in the property; and

(4) the property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Common Area, after first paying out of the respective shares of the Owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each Owner.

Notwithstanding all other provisions hereof, the owners may, by an affirmative vote of at least three fourths of the voting power, at a meeting of Unit Owners duly called for such purpose, elect to sell or otherwise dispose of the property. Such action shall be binding upon all Unit Owners and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale.

Section 8 (a) In the event any common element, or area is 1084852 R 1704 P 138
(exclusive of any party wall), damaged or destroyed through the negligent
or culpable act of an Owner or any of his guests, agents, or members of
his family, such Owner does hereby irrevocably authorize the Association
as its attorney in fact as set forth herein, to repair said damaged
Common Area or element, and the Association shall so repair said damaged
element, or Area and the Owner shall then repay the Association in the
amount actually expended for said repairs.

Each Unit Owner further agrees that these charges for repairs,
if not paid within ten (10) days after completion of the work, shall
become a lien upon said Owner's Unit as set forth in Article IV above, and
shall continue to be such lien until fully paid.

Section 9. Party Walls. The rights and duties of the Owners of
Units within this project with respect to party walls shall be governed
by the following:

(a) Each wall, including foundations and patio walls, which is
constructed as a part of the original construction of the Unit, any part
of which is placed on the dividing line between separate residence units,
shall constitute a party wall. With respect to any such wall, each of the
adjoining owners shall assume the burdens and be entitled to the benefits
of these restrictive covenants, and, to the extent not inconsistent
herewith, the general rules of law regarding party walls shall be applied
thereto.

(b) In the event any such party wall is damaged or destroyed
through the act of one adjoining Owner, or any of his guests or agents or
members of his family (whether or not such act is negligent or otherwise
culpable) so as to deprive the other adjoining Owner of the full use and
enjoyment of such wall, then the first of such owners shall forthwith pro-
ceed to rebuild and repair the same to as good condition as formerly
without cost to the adjoining Owner.

(c) In the event any such party wall is damaged or destroyed
by some cause other than the act of one of the adjoining owners, his
agents, guests or family (including ordinary wear and tear and deterior-
ation from lapse of time), then in such event, both such adjoining Owners

shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

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(d) In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any owner proposing to modify, make additions to or rebuild his Unit in any manner which requires the extension or other alteration of any party wall, shall first obtain the written consent of the adjoining Owner.

(e) These covenants shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting any party wall except such as took place while an Owner.

Section 10. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the builder of a major portion of the Units to maintain during the period of construction and sale of said Units and, upon such portion of the premises as such builder may choose, such facilities as in the sole opinion of said builder may be reasonably required, convenient or incidental to the construction and sale of Units and interests, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 11. Enforcement and Disputes. Each Owner shall comply strictly with the provisions of this Declaration and with the administrative rules and regulations drafted pursuant thereto as the same may be lawfully amended from time to time and with decisions adopted pursuant to said Declaration and administrative rules and regulations, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association or Manager on behalf of the Owners, or in a proper case, by an aggrieved Owner. In the event that any Owner has a grievance or complaint against the Association, said Owner shall set forth said grievance or complaint in writing and shall deliver the same to the Association. In the event that the cause of said grievance or complaint is not rectified within twenty (20) days from the date of the receipt thereof by the Association, within ten (10) days from the date of expiration of said initial twenty (20) day period.

a time and place mutually acceptable to the Owner and the Association shall be established for a meeting between the Owner and the Association. At such meeting, the Owner shall be entitled to be represented by counsel and shall formally present to the Association and its counsel, the grievance or complaint. Counsel for the Owner and counsel for the Association shall attempt to reach an amicable solution to the grievance or complaint. In the event that counsel for the Owner and counsel for the Association are not able to reach such a solution within thirty (30) days from the date of the meeting between the Owner and the Association, the Owner shall then be entitled to proceed to have the matter judicially determined. All grievances and complaints of Owners shall follow the procedure outlined and set forth herein prior to the commencement of any litigation relative to said grievances and complaints.

Section 12. Personal Property. The Management Committee or Manager may acquire and hold, for the benefit of the Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such personal property shall be owned by the Owners in the same proportion as their respective interests in the Common Area, and shall not be transferable except with a transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property.

Section 13. Easements. The property shall be subject to such easements and rights-of-way as are reasonably necessary for the operation, function, use and maintenance of the Common Area and for ingress and egress in and to the property, the recreational facilities and other contiguous property by the Owners, members of their families, guests and invitees. Such easements shall also include an easement for ingress and egress in private streets for the City of Kaysville and Davis County for enforcement of ordinances and fire protection and other necessary and required services.

Section 14. Audit. Any owner may at any time at his own expense cause an audit or inspection to be made of the books and records of the Manager of Association. The Association, at the expense of the common expenses, shall obtain an audit of all books and records pertaining to the project at no greater than annual intervals and furnish copies thereof to the Owners.

Section 15. Interpretation. The Provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

Section 16. Amendment. Except as otherwise provided herein, the provisions of this Declaration may be amended by an instrument in writing signed and acknowledged by record Owners holding seventy-five percent (75%) of the total vote hereunder, which amendment shall be effective upon recordation in the Office of the Recorder of Davis County, State of Utah.

Section 17. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

Section 18. Effective Date. This Declaration shall taken effect upon recording.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 15 day of November, 1993.

BUILD TECH, INC.

By [Signature] Pres.

ATTEST:

[Signature]
Secretary

STATE OF UTAH

)

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) S.S.

COUNTY OF DAVIS

)

On this 15 day of December, 1993, personally appeared before me, a notary public in and for said County and State, Rudy Zorko known to me to be the President of the Corporation that executed the foregoing instrument and upon oath, did depose that they are acquainted with the seal of said Corporation and that the seal affixed to said instrument is the Corporate seal of said Corporation; that the signature to said instrument were made by officer of said Corporation as indicated after said signatures; and that the said Corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

Rudy Zorko

NOTARY PUBLIC



TERI E ZORKO
Notary Public
STATE OF UTAH

Residing in Davis

My Comm. Expires OCT 12, 1996
192 E 600 S KAYSVILLE UT 84037

Expiration date: Oct 12, 1996