

After Recording Return To:
Essex Court Home Owners Association
c/o Edward P. Kimball
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Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To EDWARD P KIMBALL
985 ESSEX COURT WAY UNIT 5 MIDVALE, UT 84047



**THE SECOND AMENDED AND RESTATED DECLARATION
OF
CONDOMINIUM
FOR
ESSEX COURT**

THIS SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR ESSEX COURT was adopted by the Essex Court Home Owners Association, a Utah nonprofit corporation ("Association"). Upon execution and recordation, this Declaration amends, restates, and replaces in its entirety the "Original Declaration" and the "Amended Declaration" as hereinafter defined. Except as otherwise expressly provided herein, capitalized terms used in this Declaration shall have the same meanings given them in the body of this Declaration.

RECITALS:

- A. The Property was made subject, by its owner, developer, and declarant (Warranty Construction Company, Inc., a Utah corporation) ("Declarant") to the Utah Condominium Ownership Act ("Act") and the covenants, conditions, easements, and restrictions set forth in the "Declaration of Condominium of Essex Court Condominium Project" as recorded on May 3, 1979, as Entry No. 3274083 of the official records of Salt Lake County, Utah ("Original Declaration").
- B. The Property is more particularly described in Exhibit A attached hereto and made a part hereof.
- C. The Declarant constructed, upon the Property a Condominium Project, including certain Units and other improvements. All of such construction has been performed in accordance with the plans contained in the Record of Survey Map that was recorded concurrently herewith.
- D. The Declarant desired, by filing the Original Declaration and the Record of Survey Map, to submit the Tract and all improvements constructed thereon to the provisions of the Act as a Condominium Project to be known as the "Essex Court."
- E. The Declarant sold and conveyed to various purchasers the fee title to the individual Units contained in the Project, together with the undivided ownership interests in the Common Areas and Facilities appurtenant to such Units, subject to the covenants, conditions, restrictions,

easements, and limitations which are hereby declared to be for the benefit of the Property and the Owners thereof, their successors and assigns. These covenants, conditions, restrictions, easements, and limitations shall run with the said real property and shall be binding on all parties having or acquiring any right, title or interest in the described real property or any part thereof and shall inure to the benefit of each Owner thereof and are imposed upon said real property and every part thereof as a servitude in favor of each and every parcel thereof as the dominant tenement or tenements.

F. First Amendment. The Original Declaration was amended by a written instrument recorded on May 24, 1979, as Entry No. 3284555, of the official records of Salt Lake County, Utah.

G. Second Amendment. The Original Declaration was next amended by a written instrument recorded on September 14, 1979, as Entry No. 3337709, of the official records of Salt Lake County, Utah.

H. Third Amendment. The Original Declaration was next amended by a written instrument recorded on July 25, 1980, as Entry No. 3457139, of the official records of Salt Lake County, Utah.

I. Fourth Amendment. The Original Declaration was next amended by a written instrument recorded on August 23, 1993, as Entry No. 5586005, of the official records of Salt Lake County, Utah.

J. Fifth Amendment. The Original Declaration was next amended by a written instrument recorded on December 7, 1995, as Entry No. 6230599, of the official records of Salt Lake County, Utah.

K. Sixth Amendment. The Original Declaration, as amended, was again modified by a written instrument recorded on January 29, 1996, as Entry No. 6266313, of the official records of Salt Lake County, Utah.

L. Seventh Amendment. The Original Declaration was next amended by a written instrument recorded on June 2, 1998, as Entry No. 6981966, of the official records of Salt Lake County, Utah.

M. Eighth Amendment. The Original Declaration was next amended by a written instrument recorded on November 12, 1999, as Entry No. 7510663, of the official records of Salt Lake County, Utah.

N. Ninth Amendment and Restatement. The Original Declaration as amended and restated by and through the "Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Essex Court Condominiums Homeowners Association" by a written instrument as recorded on November 4, 2003, as Entry No. 8879487 of the official records of Salt Lake County, Utah ("Amended Declaration").

O. Tenth Amendment. The Amended Declaration was first amended by a written instrument recorded on October 15, 2007, as Entry No.10249591 of the official records of Salt Lake County, Utah.

P. Eleventh Amendment. The Amended Declaration was next amended by a written instrument recorded on February 17, 2010, as Entry No.10898949 of the official records of Salt Lake County, Utah.

Q. The Association desires to amend and restate the Amended Declaration as further outlined below.

R. Article III, Section 22 of the Amended Declaration provides that it may be amended with the approval of at least 51% of the Percentage Interest.

S. At least 51% of the Percent Interests has approved this Declaration, which shall supersede and replace the Original Declaration, Amended Declaration and any and all amendments thereto.

T. Twelfth Amendment. This Declaration (the Twelfth Amendment since the Original Declaration) modified the following:

(1) Article I, Definitions to include five new definitions that define Assessments, Building, Fair and Reasonable Notice, Independent Third Party, and Nonjudicial Foreclosure. Also, the definition for Common Expenses was modified to incorporate provisions defined in the Act.

(2) Article III to renumber each specific section as a "Section" and reorganize sections into more cohesive groupings.

(3) Article III, new Section 2 (old section 2.) by modifying and adding additional new content contained in the Act pertaining to Status of the Units and Recognized Tenacy Relationship.

(4) Article III, by modifying some sections and by adding the following new sections:

(a) New Section 11, Management Committee Action to Enforce Project Documents,

(b) New Section 12, Management Committee Meetings,

(c) New Section 13, Administration of Funds,

(d) New Section 15, Fines,

(e) Modifying Section 18, Collection of Delinquent Assessments to include new provisions contained in the Act.

(f) Modifying Section 20, Enforcement of a Lien to include new provisions contained in the Act.

(g) New Section 21, Action to Recover Unpaid Assessments,

(h) Modifying Section 23, Statement of Account to include new provisions contained in the Act.

(i) Modifying Section 27, Common and Limited Common Areas, Sub-section (2) to include new provisions contained in the Act.

(j) Modifying Section 35, Insurance to include new provisions contained in the Act.

(k) Modifying Section 40, Leasehold Restrictions to include new provisions contained in the Act.

(l) New Section 41, Requiring tenant leasing unit to pay rent to Association if Unit Owner fails to pay assessment,

(m) New Section 46, Reserve Analysis and Reserve Funds,

(n) New Section 47, Records – Availability for Examination,

(o) Modifying Section 48, Mortgage Protection to include a new Sub-section (13) containing new provisions in the Act.

NOW, THEREFORE, for the foregoing purposes, The Essex Court Home Owners Association hereby makes the following Declaration:

I. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals" and in the By-Laws attached hereto as Exhibit "C") the following terms shall have the meaning indicated.

(1) **Act** shall mean and refer to the Utah Condominium Ownership Act (Section 57-8-38, et. seq., Utah Code Annotated, 1953), as amended from time to time.

(2) **Assessment** means any charge imposed by the Association, including:
(a) Common Expenses on or against a Unit Owner pursuant to the provisions of this declaration and the Amended and Restated Bylaws; and
(b) an amount that the Association assesses to a Unit Owner in accordance with Article III, Section 16.

(3) **Association** shall mean and refer to the Association of Unit Owners of Essex Court Condominium Project. Every Unit Owner shall automatically be a member of the Association. Membership in the Association shall be appurtenant to the Unit in which the Owner has the necessary interest and shall not be separated from the Unit to which it appertains. The property, business and affairs of the Association shall be governed by the Management Committee.

(4) **Building** shall mean and refer a building, containing units, and comprising a part of the property.

(5) **Bylaws** shall mean and refer to the bylaws of the Association in effect at any given time, as amended. The Bylaws currently governing the affairs of the Association are located as Exhibit "C" to this Declaration.

(6) **Common Areas and Facilities or Common Areas** shall mean, refer to, and include:

(a) The real property and interests in real property which this declaration submits to the terms of the Act.

(b) All Common Areas and Facilities designated as such in the Survey Maps.

(c) All Limited Common Areas and Facilities.

(d) All foundations, roofs, columns, girders, beams, supports, and perimeter walls constituting a portion of or included in the improvements which comprise a part of the Project.

(e) All installations for and all equipment connected with the furnishing of Project utility services, such as electricity, gas, water, and sewer.

(f) In general, all apparatus, installations, and facilities included within the Project and existing for common use.

(g) The Project outdoor lighting, fences, landscape, sidewalks, parking spaces, and roads.

(h) All portions of the Project not specifically included within the individual Units.

(i) All other parts of the project normally in common use or necessary or convenient to its use, existence, maintenance, safety, or management.

(j) All common areas as defined in the Act, whether or not enumerated herein.

(7) **Common Expenses** shall mean and refer to all sums which are expended on behalf of all the Unit Owners and all sums which are required by the Management Committee to perform or exercise its functions, duties, or rights under the Act, this Declaration, the Management Agreement for operation of the Project, and such Rules and Regulations as the Management Committee may from time to time make and adopt. Common Expenses shall include:

(a) all sums lawfully assessed against Unit Owners;

(b) expenses of administration, maintenance, repair, or replacement of Common Areas and Facilities;

(c) expenses agreed upon as common expenses by the Association; and

(d) expenses declared common expenses by the Act, or by this declaration or the Bylaws.

(8) **Condominium Project or Project** shall mean and refer to the Essex Court Condominium Project.

(9) **Condominium Unit and Unit** means and refers to a separate physical part of the Property intended for independent use, consisting of rooms or spaces located in a building. Units are shown in the appropriate Record of Survey Map by single cross-hatching. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows, and window frames, doors and door frames, and trim, consisting of, inter alia and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural members or any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit.

(10) **Corporate Use** shall mean and refer to the use or occupancy of a Unit by persons for temporary housing or for Vacation, Transient, Hotel or Seasonal purposes.

(11) **Criminal Activity** shall mean and refer to persons convicted of illegal drug activity, Restricted Sex Offenders, and/or persons convicted of Crimes of Violence.

(12) **Crimes of Violence** shall mean and refer to any offense that has as an element the use, attempted use, or threatened use of physical force against another person or property of another, or any other offense that is a felony and that, by its nature, involves substantial risk that physical force against the person or property of another may be used in the course of committing the offense. Crimes of violence include voluntary manslaughter, murder, rape, mayhem, kidnapping, robbery, burglary or housebreaking, extortion accompanied by threats of violence, assault with a dangerous weapon or assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable as a felony, or an attempt or conspiracy to commit any of the foregoing offenses.

(13) **Declaration** shall mean and refer to this Second Amended and Restated Declaration of Condominium for Essex Court.

(14) **Fair and Reasonable Notice**

(a) is the method provided by the Association in accordance with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, that constitutes fair and reasonable notice.

(b) Notice that the Association provides a method not referred to in Subsection (a), including a method described in Subsection (c), constitutes fair and reasonable notice if: (i) the method is authorized by this Declaration, Bylaws, or Rules and Regulations; and (ii) considering all the circumstances, the notice is fair and reasonable.

(c) (i) The Association may provide notice by electronic means, including text message, email, or the website of the Association.

(ii) Notwithstanding Subsection (c)(i), a Unit Owner may, by written demand, require the Association to provide notice to the Unit Owner by mail.

(15) **Governing Documents:**

(a) means the written instruments by which the Association may:
(i) exercise powers, or
(ii) manage, maintain, or otherwise affect the property under the jurisdiction of the Association; and

(b) includes:
(i) articles of incorporation;
(ii) Bylaws;
(iii) the Record of Survey Map;
(iv) the Declaration; and
(v) Rules and Regulations of the Association.

(16) **Guest** shall mean and refer to an invitee, visitor, or any person whose temporary presence within the Project is approved by or is at the request of a particular Resident.

(17) **Hotel Use** shall mean and refer to the temporary use of a Unit as a resort hotel, as that term is generally defined in its ordinary commercial meaning as a house which is held out

and made available to members of the vacationing, traveling or transient public as temporary accommodations for a reasonable rate.

(18) **Hot Tubs** shall be defined as but not limited to a large tub that is designed to warm the water contained within to temperatures above 50 degrees Fahrenheit and which is generally used for the purpose of soaking by bathers.

(19) **Independent Third Party** means a person that:
(a) is not related to the Unit Owner;
(b) shares no pecuniary interests with the Unit Owner, and
(c) purchases the unit in good faith and without the intent to defraud a current or future lienholder.

(20) **Limited Common Areas and Facilities and Limited Common Area** shall mean and refer to those Common Areas and Facilities designated herein or on the appropriate Record of Survey Map as reserved for the use of a certain Unit or Units to the exclusion of the other Units. Limited Common Areas consist of the Yard Area provided adjacent to the Units indicated on the appropriate Record of Survey Map as Limited Common Areas, as are the entrances, exits, patios and porches of each Unit although not indicated on the appropriate Record of Survey Map.

(21) **Management Committee or Committee** shall mean and refer to the Management Committee of the Association elected pursuant to the Bylaws and serving as the managing body of the Association. The Committee shall represent the Association on all matters except those specifically reserved herein to the Owners.

(22) **Mortgage** shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered.

(23) **Motor Vehicles** shall mean and refer to motor vehicles or trailers, including but not limited to any automobile, commercial vehicle, truck tractor, mobile home, or trailer (either with or without wheels), camper trailer, boat or other watercraft or any other transportation device of any kind as defined in Utah Code Title 41, Motor Vehicles; Chapter 1a, Motor Vehicle Act; Section 102, Definitions, as amended from time to time.

(24) **Nonjudicial Foreclosure** means the sale of a unit:
(a) for the nonpayment of an Assessment;
(b) in the same manner as the sale of a trust property under Utah Code Sections 57-1-19 through 57-1-34; and
(c) as provided in the Act.

(25) **Owner-Occupied** shall mean and refer to units occupied by the vested Owner of record or his spouse, son, daughter, mother, or father.

(26) **Par Value** shall mean and refer to a number of points assigned to each Unit by the Declaration. The Par Value is shown on Exhibit B.

(27) **Percentage Interest** shall mean and refer to the undivided interest (expressed as a percentage in this Declaration) in the Common Areas, the Common Expense liability, and the votes in the Association appurtenant to each Unit. The Percentage Interest is shown on Exhibit B and has been determined based on the Par Value that was originally assigned to each Unit.

(28) **Person** shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

(29) **Project Documents (Project Documents)** shall mean and refer to the Declaration, Record of Survey Map, articles of incorporation, By-Laws and the Rules and Regulations.

(30) **Property** shall mean and refer to the land, described in Exhibit "A" and the Buildings, all improvements, and the structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

(31) **Record of Survey Map or Maps** shall mean and refer to the Record of Survey Maps filed herewith, consisting of three sheets and prepared and certified to by Ralph E. Watson, a duly registered Utah Land Surveyor having Certificate No. 3557. The Record of Survey Map for Phase 1 was filed with the Recorder's Office of Salt Lake County, Utah on May 3, 1979, Entry No. 3274010, Book 79-5, Page 173. The Record of Survey Map for Phase 2 was filed on May 24, 1979, Entry No. 3284554, Book 79-5, Page 201. The Record of Survey Map for Phase 3 was filed on July 25, 1980, Entry No. 3457138, Book 80-7, Page 108. The Record of Survey Map shall include any duly adopted amendment to the foregoing.

(32) **Resident** shall mean and refer to any person living or staying at the Project. This includes but is not limited to all lessees, tenants, and the family members of Owners, tenants, or lessees.

(33) **Resort** shall mean and refer to a Unit used by persons temporarily as accommodations primarily for recreation and pleasure, Vacation, Transient or Seasonal Use.

(34) **"Restricted Sex Offender"** means a Sex Offender or Kidnap Offender, as those terms are defined by Utah Code Ann. §77-27-21.5, as amended from time to time.

(35) **Seasonal Use** shall mean and refer to the temporary use of a Unit during the winter, spring, summer or fall, or, for example, the ski season.

(36) **Single Family** shall mean and refer to a collective body of two (2) or more persons living together in one Unit as their common home.

(37) **Time Share** shall mean and refer to an annually recurring part or parts of a year, less than six (6) months, when the Resident has the legal right to occupy the Unit.

(38) **Temporary** shall mean and refer to a period of less than six (6) months.

(39) **Tract** shall mean, and refer to, and consist of the real property which Article II of this Declaration submits to the terms of the Act in accordance with law and the provisions of this Declaration.

(40) **Transient Use** shall mean and refer to the temporary use of a Unit which is not permanent or lasting and which is of passing or short duration, fleeting, or momentary.

(41) **Unit Number** shall mean and refer to the number, letter, or combination thereof which designates a Unit in the attached Exhibit "B" and on the Map.

(42) **Unit Owner or Owner** shall mean and refer to the owner of the fee in a Unit and the percentage of undivided interest in the Common Areas and Facilities which is appurtenant thereto. In the event a Unit is the subject of an executory Contract of sale, the contract purchaser shall, unless the seller and the purchaser have otherwise agreed and have informed the Committee in writing of such agreement, be considered the Unit Owner for purposes of voting and Committee membership.

(43) **Vacation Use** shall mean and refer to the temporary use of a Unit for a rest, recess, leave of absence, respite or time of rest, recess, leave of absence or respite from one's primary residence, work, or employment.

(44) **Yard Area** shall mean and refer to any of the separate plots of land included within Common Areas and shown on the appropriate Record of Survey Map as a Limited Common Area.

II. SUBMISSION

The Association hereby confirms that the Project (as described on Exhibit A) is a Condominium Project pursuant to the Act and the Association hereby declares that the Project and all of the Units shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the covenants, conditions, easements, and restrictions, which shall all constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors, and assigns.

III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The submission of the Tract to the provisions of the Act is made upon and under the following covenants, conditions, and restrictions:

Section 1. Description of Improvements. The improvements included in the Project are now located on the property described in said Exhibit A, and all such improvements are described on the appropriate Record of Survey Map. The significant improvements contained in the Project include eighteen Buildings, asphalt roadways, seventy-two (72) fully enclosed two-car garages, concrete sidewalks, or walkways. The Project also contains other improvements of a less significant nature such as outdoor lighting and landscaping. The appropriate Record of Survey

Map indicates the basements, the number of stories, the number of Units which are contained in the eighteen Buildings included in the Project. There are 72 Units contained in eighteen buildings, with each building containing four Units as shown on the appropriate Record of Survey Map. The buildings are composed of the following materials: wood frame with load and non-load bearing walls studded with wood; basement floor of concrete; first floor of wooden joists; second floor of wooden joists; roof of trusses and rafter combination; roofs surfaced with asphalt shingles; interior walls surfaced with gypsum board; and exterior surfaced with brick veneer and aluminum siding.

Section 2. Description and Legal Status of Units. The Map shows the Unit and Building designation, its location, dimensions from which its area may be determined, those Limited Common areas which are reserved for its use, and the Common Areas to which it has immediate access. All Units are residential Units. Each unit, together with its Percentage Interest in the Common Areas and Facilities, shall, for all purposes, constitute real property and may be individually conveyed, leased and encumbered and may be inherited or devised by will and be subject to all types of juridic acts inter vivos or mortis causa as if it were sole and entirely independent of all other Units, and the separate Units shall have the same incidents as real property, and the corresponding individual titles and interests therein shall be recordable. Any Unit may be held and owned by more than one person as joint tenants, or as tenants in common, or in any other real property tenancy relationship recognized under the laws of the state of Utah.

Section 3. Contents of Exhibit "B". Exhibit "B" to this Declaration furnishes the following information with respect to each Unit: (a) The Building and Unit Designation; (b) Par Value; (c) The Percentage Interest, the Building Phase of construction, and the Parcel Number which is appurtenant to the Unit. With respect to Percentage Interest, to avoid a perpetual series of digits and to obtain a total of one hundred, percent (100%), the last digit has been adjusted, and rounded up or down to a value that is most nearly correct. Percentage Interest is used for a Unit's voting weight and the liability of each Unit for the Common Expenses.

Section 4. Computation of Percentage Interests. The proportionate share of the Unit Owners in the Common Areas of the Project is based on the Par Value that each of the Units bears to the total Par Value of all Units. The proportionate ownership in the Common Areas shall be for all purposes including, but not limited to, voting, participation in common profits, and assessments for Common Expenses. The maximum interest for each of the Unit Owners in the Common Areas shall be as set forth in aforesaid Exhibit "B". Such maximum interest shall be set for each 2-bedroom Unit Owner, at 1.328%, and for each 3-bedroom Unit Owner, at 1.572%.

Section 5. Covenants to Run With Lands; Compliance. This Declaration and all the provisions hereof shall constitute covenants which run with the land and constitute equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of The Association, all parties who hereafter acquire any interest in or occupy a Unit or any part of in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, assigns, guests and invitees. Each Owner, resident, or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of the Act, the terms of this Declaration, the By-Laws, and the provisions of any Rules and Regulations, adopted pursuant thereto, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Committee on behalf of the Association, or, in a proper case, by an aggrieved Unit Owner. By acquiring any interest in a Unit each Unit Owner or

occupant consents and agrees to be bound by and subject to each and every provision of the Declaration and other Project Documents. Should the Association be required to take action hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise, the Association may recover all costs and expenses, including a reasonable attorney's fee, which may arise or accrue.

Section 6. Effect of Recorded Instruments. At any point in time, the Declaration and the Record of Survey Map concerning each phase which is then a part of the Project shall constitute but constituent parts of a single Declaration and Record of Survey Map affecting the Project. Accordingly, in the event the provisions of the separate instruments conflict irreconcilably, the terms of that instrument which is last recorded shall control.

Section 7. Association Membership. Membership in the Association shall at all times consist exclusively of the Owners, be automatic, shall be appurtenant to the Unit in which the Owner has the necessary ownership interest and shall not be separated from the Unit to which it appertains. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.

Section 8. Composition of Committee. The Management Committee shall be composed of five persons, all of whom shall be Unit Owners.

Section 9. Indemnification of Management Committee. Each member of the Management Committee shall be indemnified and held harmless by the Unit Owners against all costs, expenses, and fees, reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Committee except for the willful or intentional misconduct of a Committee Member.

Section 10. Status and General Authority of Committee. Notwithstanding anything herein contained to the contrary, the Condominium Project shall be managed, operated, and maintained by the Management Committee exclusively as agent of, and in the name of, the Association and any act performed by the Management Committee pursuant to this Declaration or the Bylaws, as the same may be amended from time to time, shall be deemed to be performed by the Committee for and on behalf of the Association as its agent. The Management Committee shall have, and is hereby granted, the following authority and powers:

(1) The authority, without the vote or consent of the Unit Owners or of any other person(s) to grant or create, on such terms as it deems advisable, utility, and similar easements over, under, across and through the Common Areas and Facilities.

(2) The authority to execute and record, on behalf of all the Unit Owners, any amendment to the Declaration or Record of Survey Map which has been approved by the vote or consent necessary to authorize such amendment.

(3) The power to sue and be sued.

(4) The authority to enter into contracts which in any way concern the Project, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the agreement has been obtained.

(5) The power and authority to convey or transfer any interest in real property authorized by the Owners having an interest therein.

(6) The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action has been authorized by any vote or consent which is necessary under the circumstances.

(7) The authority to license persons not otherwise entitled to use any of the recreational areas and facilities to use the same from time to time as the Committee deems appropriate upon payment of fees prescribed by it to help defray the cost of maintenance thereof.

(8) The power and authority to borrow money, provided that no indebtedness for borrowed funds shall exceed at any given time the sum of \$5,000 without the prior approval of the of a least a majority of the Owners present in person or by proxy at a meeting duly called for such purpose.

(9) The authority to promulgate such reasonable Rules and Regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to ensure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners.

(10) The powers and authority to perform any other acts, and to enter into any other transactions which may be, reasonably necessary, for the Management Committee to perform its functions as agent of the Association.

(11) Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

Section 11. Management Committee Action to Enforce Project Documents

(1) (a) The Management Committee shall use the Management Committee's reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Project Documents, including:

(i) whether to compromise a claim made by or against the Management Committee or the Association; and

(ii) whether to pursue a claim for an unpaid assessment.

(b) The Association may not be required to take enforcement action if the Management Committee determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances:

(i) the Association's legal position does not justify taking any or further enforcement action;

(ii) the covenant, restriction, or rule in the Association's Project Documents is likely to be construed as inconsistent with current law;

(iii) (A) a technical violation has or may have occurred; and
(B) the violation is not material as to a reasonable person or does not justify expending the Association's resources; or
(iv) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

(2) Subject to Subsection (3), if the Management Committee decides under Subsection (1)(b) to forego enforcement, the Association is not prevented from later taking enforcement action.

(3) The Management Committee may not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

(4) This section does not govern whether the Association's action in enforcing a provision of the Project Documents constitutes a waiver or modification of that provision.

Section 12. Management Committee Meetings

(1) Except for an action taken without a meeting in accordance with U.C.A. §16-6a-813, the Management Committee may take action only at a Management Committee meeting.

(2) (a) At least 48 hours before a Management Committee meeting, the Association shall give written notice of the Management Committee meeting via email to each Unit Owner who requests notice of a Management Committee meeting, unless:

(i) notice of the Management Committee meeting is included in a meeting schedule that was previously provided to the Unit Owner; or

(ii) (A) the Management Committee meeting is to address an emergency;
and

(B) each Management Committee member receives notice of the Management Committee meeting less than 48 hours before the Management Committee meeting.

(b) A notice described in Subsection (2)(a) shall:

(i) be delivered to the Unit Owner by email, to the email address that the Unit Owner provides to the Management Committee or the Association;

(ii) state the time and date of the Management Committee meeting;

(iii) state the location of the Management Committee meeting; and

(iv) if a Management Committee member may participate by means of electronic communication, provide the information necessary to allow the Unit Owner to participate by the available means of electronic communication.

(3) (a) Except as provided in Subsection (3)(b), a Management Committee meeting shall be open to each Unit Owner or the Unit Owner's representative if the representative is designated in writing.

(b) A Management Committee may close a Management Committee meeting to:

(i) consult with an attorney for the purpose of obtaining legal advice;
(ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings;

(iii) discuss a personnel matter;

- (iv) discuss a matter relating to contract negotiations, including review of a bid or proposal;
- (v) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or
- (vi) discuss a delinquent assessment or fine.

(4) (a) At each Management Committee meeting, the Management Committee shall provide each Unit Owner a reasonable opportunity to offer comments.

(b) The Management Committee may limit the comments described in Subsection (4)(a) to one specific time period during the meeting.

(5) A Management Committee member may not avoid or obstruct the requirements of this section.

(6) Nothing in this section shall affect the validity or enforceability of an action of a Management Committee.

Section 13. Administration of Funds.

- (1) The Association shall:
- (a) keep all of the Association's funds in an account in the name of the Association; and
 - (b) may not commingle the Association's funds with the funds of any other person.

Section 14. Manager. The Management Committee may carry out any of its functions which are capable of delegation through a Project Manager. Any Manager retained for such purposes must be an individual or entity experienced and qualified in the field of property management. The Manager so engaged shall be responsible for managing the Project for the benefit of the Unit Owners and shall, to the extent permitted by law and the terms of the agreement with the Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself.

Section 15. Fines.

(1) The Management Committee may assess a fine against a Unit Owner for a violation of the Association's Project Documents in accordance with the provisions of this section.

(2) (a) Before assessing a fine under Subsection (1), the Management Committee shall give the Unit Owner a written warning that:

- (i) describes the violation;
- (ii) states the rule or provision of the Association's Project Documents that the Unit Owner's conduct violates;
- (iii) states that the Management Committee may, in accordance with the provisions of this section, assess fines against the Unit Owner if a continuing violation is not cured or if the Unit Owner commits similar violations within one year after the day on which the Management Committee gives the Unit Owner the written warning or assesses a fine against the Unit Owner under this section; and

(iv) if the violation is a continuing violation, states a time that is not less than 48 hours after the day on which the Management Committee gives the Unit Owner the written warning by which the Unit Owner shall cure the violation.

(b) The Management Committee may assess a fine against a Unit Owner if:

(i) within one year after the day on which the Management Committee gives the Unit Owner a written warning described in Subsection (2), the Unit Owner commits another violation of the same rule or provision identified in the written warning; or

(ii) for a continuing violation, the Unit Owner does not cure the violation within the time period that is stated in the written warning described in Subsection (2).

(c) After the Management Committee assesses a fine against a Unit Owner under this section, the Management Committee may, without further warning under this Subsection (2), assess an additional fine against the Unit Owner each time the Unit Owner:

(i) commits a violation of the same rule or provision within one year after the day on which the Management Committee assesses a fine for a violation of the same rule or provision; or

(ii) allows a violation to continue for 10 days or longer after the day on which the Management Committee assesses the fine.

(d) The aggregate amount of fines assessed against a Unit Owner for violations of the same rule or provision of the Project Documents may not exceed \$500 in any one calendar month.

(3) A fine assessed under Subsection (1) shall:

(a) be made only for a violation of a rule, covenant, condition, or restriction that is in the Association's Project Documents;

(b) be in the amount provided for in the Association's Project Documents and in accordance with Subsection (2)(d) and

(c) accrue interest and late fees as provided in the Association's Project Documents.

(4) (a) A Unit Owner who is assessed a fine under Subsection (1) may request an informal hearing before the Management Committee to dispute the fine within 30 days after the day on which the Unit Owner receives notice that the fine is assessed.

(b) At a hearing described in Subsection (4)(a), the Management Committee shall:

(i) provide the Unit Owner a reasonable opportunity to present the Unit Owner's position to the Management Committee; and

(ii) allow the Unit Owner, a committee member, or any other person involved in the hearing to participate in the hearing by means of electronic communication.

(iii) If a Unit Owner timely requests an informal hearing under Subsection (4)(a), no interest or late fees may accrue until after the Management Committee conducts the hearing and the Unit Owner receives a final decision.

(5) A Unit Owner may appeal a fine assessed under Subsection (1) by initiating a civil action within 180 days after:

(a) if the Unit Owner timely requests an informal hearing under Subsection (4), the day on which the Unit Owner receives a final decision from the Management Committee; or

(b) if the Unit Owner does not timely request an informal hearing under Subsection (4), the day on which the time to request an informal hearing under Subsection (4) expires.

(6) (a) Subject to Subsection (6)(b), the Management Committee may delegate the Management Committee's rights and responsibilities under this section to a managing agent.

(b) The Management Committee may not delegate the Management Committee's rights or responsibilities described in Subsection (4)(b).

Section 16. Agreement to Pay Assessment. Each Owner of any Unit by the acceptance of a deed therefore, whether or not it be so expressed in the deed, or by entering into a sale and purchase contract, shall be deemed, to covenant and agree with each other and with the Association to pay to the Association all Assessments required by the Declaration, including annual assessments made by the Association for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time in the manner provided in this Article. The monthly assessments herein provided shall commence as to all Units on the date deed is delivered to the first purchaser of a Unit, with the first monthly assessment being adjusted according to the number of days remaining in the month of conveyance.

(1) Amount of Total Annual Assessments. Amount of Total Annual Assessments. The total annual assessments against all Units shall be based upon advance estimates of cash requirements by the Committee to provide for the payment of all estimated Common Expenses, which estimates may include, among other things expenses of management, grounds maintenance, taxes and special assessments, (until the Units are separately assessed as provided herein), premiums for all insurance which the Committee is required or permitted to maintain pursuant hereto, common lighting and heating, water charges, trash collection, repairs and maintenance of the Common Areas that must be replaced on a periodic basis, wages for Committee employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; 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.

(2) Apportionment of Annual Assessments. Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among all Owners in proportion to their respective Percentage Interests in the Common Areas.

(3) Notice of Annual Assessments and Time for Payment Thereof. Annual assessments shall be made on a calendar year basis. The Committee shall give written notice to each Owner as to the amount of the annual assessment with respect to his Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. Such assessments shall be due and payable in monthly installments on the first day of each and every month of each year. Such assessment shall be due and payable within ten (10) days after written notice of the amount thereof shall have been given to the respective Owner of a Unit. The Committee may impose a late payment service charge of \$25.00 per month for each

delinquent monthly assessment. Failure of the Committee to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of a Unit for such assessment, but the date when payment shall become due in such case shall be deferred to a date ten (10) days after such notice shall have been given.

Pursuant to U.C.A. §57-1-46, each time a legal title to a Unit passes from one person to another, unless the transfer is made to a Qualified Successor Owner, which shall mean such owner's spouse, son, daughter, father or mother or a legal entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent (50%) (the "Qualified Successor Owner(s)") for estate planning purposes, within thirty (30) days after the effective date of such title transaction the new Unit Owner shall pay to the Committee, in addition to any other required amounts, the sum of \$250.00, unless otherwise determined by the Committee. If in the Committee's sole discretion, this sum is too large or too small as a result of unanticipated income or expenses, the Committee may at the annual meeting of the Association effect an equitable change in the amount of said payment, but, without the prior approval of a majority of the percentage of ownership interest in the Common Area, not greater than fifteen percent (15%) of the sum in any calendar year and the Owners shall be given at least thirty (30) days prior written notice of any change. The provisions for payment of assessments shall apply to the collections of such sum. The sums received by the Committee pursuant to this paragraph shall be held by it as a contingency reserve and shall be used at such times and for such purposes as the Committee may determine.

(4) Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Committee may levy in any assessment year a special assessment, payable over such a period as the Committee 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 expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Committee to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective Percentage Interests in the Common Areas. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Notwithstanding anything to the contrary herein contained, additions or capital improvements to the Project which cost no more than \$4,000.00 may be authorized by the Management Committee alone. Additions or capital improvements the cost of which will exceed such amount must, prior to being constructed, be authorized by at least a majority of the Percentage Interests. Any addition or capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed, be authorized by a vote of Unit Owners in person or by proxy of not less than 67% of the Percentage Interest at a meeting of the Association, special or annual, at which a quorum is present. The maintenance, repair, or replacement of existing Common Areas shall not be considered a capital improvement under this Section and can thus be approved, and the costs assessed by the Committee alone.

Section 17. Personal Obligation of Owner. The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Association. Suit to

recover a money judgment for such personal obligation shall be maintainable by the Committee without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit.

Section 18. Collection of Delinquent Assessments. Upon approval of the Management Committee, legal action will be taken if a Unit Owner has not made a payment toward their assessment for three consecutive months or the total amount of the payments due exceed \$400. A Manager or Management Committee shall issue a written statement indicating any unpaid assessment with respect to a Unit Owner's unit upon a written request by the Unit Owner, and payment of a \$25.00 fee. Written statements provided shall be conclusive in favor of a person who relies on the written statement in good faith. The Manager or Management Committee will notify the Unit Owner prior to the commencement of any legal action regarding the collection of past due assessments. All reasonable attorney's fees, interest, and other charges relating to the costs incurred to collect past due assessments will become a liability of the respective Unit Owner.

Section 19. Lien for Assessments. All sums assessed to any Unit pursuant to this Declaration, together with interest thereon as provided hereon, shall be secured by a lien on such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Unit, except only for: (a) valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; and (b) a lien for all sums unpaid on a first Mortgage. All other lienors acquiring liens on any Unit after this Declaration shall have been recorded in said records shall be deemed to consent that such lien 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.

Section 20. Enforcement of a Lien. To evidence a lien for sums assessed hereunder, the Committee may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by the Committee and may be recorded in the Office of the County Recorder of Salt Lake County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Committee in the same manner in which mortgages on real property may be foreclosed in Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs, and expenses of filing the notice of lien and all court costs, and reasonable attorneys' fees, late charges, fines, and any other amount the Association is entitled to recover under this Declaration, or an administrative or judicial decision. A fine the Association imposed against a Unit Owner in accordance with Section 15 is collectible if the time for appeal described in Section 15 has expired and the Unit Owner did not file an appeal, or the Unit Owner timely filed an appeal, and the district court issued a final order upholding the fine imposed by the Association. All such costs, expenses, fees, and fines shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Committee any assessments against the Unit which shall become due during the period of foreclosure. If an assessment is payable in installments, a lien filed by the Association will be for the full amount of the assessment from the time the first date of installment is due, unless the Association otherwise provides in a notice of assessment. In the event of foreclosure, after the institution of the action the Unit Owner shall pay a reasonable rental for his use of the Unit and the Committee shall, without regard to the value of the Unit, be entitled

to the appointment of a receiver to collect any rentals due from the Owner or any other person. The Committee shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the same as the Owner thereof.

A release of notice of lien shall be executed by the Committee and recorded in the Office of the County Recorder of Salt Lake County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded note of lien.

Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created hereunder, and upon such payment such encumbrancer shall be subrogated to all rights of the Committee with respect to such lien, including priority.

The Committee shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for thirty days after the same shall have become due; provided, however, that such encumbrancer first shall have furnished to the Committee written notice of such encumbrance.

Section 21. Action to Recover Unpaid Assessment The Association need not pursue a judicial foreclosure or nonjudicial foreclosure to collect an unpaid assessment but may file an action to recover a money judgment for the unpaid assessment without waiving a lien secured under Section 19.

Section 22. Duty of Owner to Pay Taxes on Unit Owned It is understood that under the Act each Unit (and its Percentage Interest in the Common Areas) in the Project is subject to separate assessment and taxation of each taxing authority and the special district (s) for all types of taxes and assessments authorized by law, and that as a result thereof, no taxes will be assessed or levied against the Project as such, except for certain personal properties thereof. Accordingly, each Unit Owner will pay and discharge any and all taxes and assessments which may be assessed against him on his Unit.

Section 23. Statement of Account Upon payment of a reasonable fee not to exceed twenty-five dollars (\$25.00), or such other amount as may in the future be allowed by the Act, and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Committee shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit; amount of the current yearly assessment and the date that such assessment becomes or became due; credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums; and such statement shall be conclusive upon the Committee in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within five (5) business days, all unpaid Assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid Assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the five (5) business day period provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) business days, and the purchaser subsequently acquires the Unit. A written statement provided in

accordance with this Section is conclusive in favor of a person who relies on the written statement in good faith.

Section 24. Personal Liability of Purchaser for Assessments.

(1) Subject to the provisions of Section 16 a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

(2) Individual Assessments. Individual assessments may be levied by the Committee against a Unit and its Owner for:

(a) administrative costs and expenses incurred by the Committee in enforcing the Project Documents;

(b) costs associated with the maintenance, repair, or replacement of Common Area for which the Unit Owner is responsible;

(c) any other charge, fee, fine, due, expense, or cost designated as an Individual Assessment in the Project Documents or by the Management Committee; and

(d) reasonable attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

Section 25. Use of Units and Common Areas.

(1) Each of the Units in the Project is intended to be used for single family, owner-occupied residential housing, subject to the leasing restrictions, and is restricted to such use.

(2) There shall be no obstructions of the Common Areas by the Owners, their tenants, guests, or invitees without the prior written consent of the Committee. The Committee may by Rules and Regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas. Nothing shall be kept or stored, on any part of the Common Areas without the prior written consent of the Committee, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas except upon the prior written consent of the Committee.

(3) Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Committee, but for such activity, would pay, without the prior written consent of the Committee. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Committee and the Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees. No noxious, destructive, or offensive activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

(4) No Owner shall violate the Rules and Regulations for the use of the Units and of the Common Areas as adopted from time to time by the Management Committee.

(5) No Unit Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the property, reduce its value, or impair any easement or hereditament, without in every such case the unanimous written consent of all the other Unit Owners being first obtained.

(6) Window coverings of any and all Units shall consist of wood shutters, mini-blinds, drapes, woven wood coverings, curtains, or other customary coverings. Under no circumstances shall any cardboard or tinfoil be used as window coverings in the Project.

(7) No signs whatsoever shall be erected or maintained in the Common Areas without the prior written consent of the Committee, except such signs as may be required by legal proceeding.

Section 26. Unit Maintenance. Each Owner shall at his own cost and expense maintain, repair, paint, re-paint, tile, wax, paper or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, windows, and doors forming the boundaries of his Unit and all walls, ceiling, floors, windows, and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in, or connected with, his Unit. Each Unit shall be maintained so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Unit.

Section 27. Common and Limited Common Areas.

(1) The Common Areas contained in the Project are described and identified in Article II of this Declaration. Neither the Percentage Interest nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in the Instrument of Transfer, the Percentage Interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate. Each Unit Owner shall at its own cost keep the Limited Common Areas designed for exclusive use in connection with his Unit in a clean, sanitary, and attractive condition at all times. Yard Area of each Unit is a Limited Common Area. Also, the driveway of each Unit although not crosshatched on the Map is a Limited Common Area.

(2) The use of the Common Areas shall be limited to the Owners in residence and to their tenants in residence, and to their guests, invitees, and licensees. The use of each of the Limited Common Areas shall be restricted to the Owner of the Unit to which it is appurtenant, to his tenants in residence, and to his guests, invitees, and licensees. The use of the Common Areas and Limited Common Areas shall be governed by the Declaration and the Rules and Regulations as established by the Association and as adopted and amended from time to time by the Management Committee. Subject to reasonable compliance therewith by the manager and the

Management Committee, each Unit Owner shall reasonably comply with the covenants, conditions, and restrictions as set forth in this Declaration or in the deed to his unit, and with the Bylaws, and/or Rules and Regulations, as either of the same may be lawfully amended from time to time, and failure to comply shall be ground for an action to recover sums due for damages or injunctive relief or both, maintainable by the manager or Management Committee on behalf of the Unit Owners, or in a proper case, by an aggrieved Unit Owner.

Section 28. Easement for Encroachment. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance for the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either to the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building(s) on the tract, by error in the appropriate Record of Survey Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

Section 29. Access for Repair of Common Areas. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable right, to be exercised by the Committee, as its agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units. The Committee shall also have such rights independent of the agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the instance of the Committee or of Unit Owners shall be the responsibility of the Association; provided, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all such damage. Such damage shall be repaired, and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Committee by assessment.

Section 30. Right of Ingress, Egress. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and to the Limited Common Areas designated for use in connection with his Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

Section 31. Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines, and Other Common Facilities Located Inside of Units, Support. Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Facilities located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Facilities serving such other Units and located in such Unit. The Management Committee shall have a right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the

Common Areas contained therein or elsewhere in the buildings. Every portion of a Unit which contributed to the structural support of the building shall be burdened with an easement structural support for the benefit of all other Units and the Common Areas.

Section 32. Easement to Management Committee. The Management Committee shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

Section 33. Easement for Utility Services. There is hereby created a blanket easement upon, across, over and under the property described in Exhibit A for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to, water, sewers, gas, telephones, electricity, and other utility services.

Section 34. Easement for Use of Recreational Areas and Facilities.

(1) All Owners of Units contained within the Tract described in Exhibit "A" of this Declaration, are hereby granted a non-exclusive right and easement of enjoyment in common with others of the amenities and recreational facilities constituting a portion of the Common Areas of the Project.

(2) The right and easements of enjoyment created hereby shall be subject to the right of the Management Committee to adopt Rules and Regulations governing the use by the Owners of the Common Areas.

Section 35. Insurance. The Management Committee shall secure and at all times maintain the following insurance coverage:

(1) A master or blanket policy of property insurance, with extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the value (based upon replacement cost). The blanket policy of property insurance shall provide guaranteed coverage on the physical structures of the Condominium Project, including Common Areas and Facilities, Limited Common Areas and Facilities, and Units, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. Each such policy shall contain the standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear. The assured shall be the Association as a trustee for the Unit Owners, or their authorized representative. Each Unit Owner is an insured person under the Association's property insurance policy.

(2) Property insurance shall include coverage for any fixture, improvement, or betterment installed at any time to a unit or to a Limited Common Area associated with a Unit, whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a Unit or to a Limited Common element associated with a Unit.

(3) If a loss occurs that is covered by the property insurance policy in the name of Association and another property insurance policy in the name of the Unit Owner:

- (a) the Association's policy provides primary insurance coverage;
- (b) the Unit Owner is responsible for the deductible of the Association's

policy;

(c) and building property coverage, often referred to as coverage A, of the Unit Owner's policy applies to that portion of the loss attributable to the policy deductible of the Association's policy.

(4) As used in this Section 35:

(a) "Covered loss" means a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy.

(b) "Unit damage" means damage to a Unit or to a Limited Common Area or Facility appurtenant to that Unit, or both.

(c) "Unit damage percentage" means the percentage of total damage resulting in a covered loss that attributable to Unit damage.

(i) A Unit Owner who owns a Unit that has suffered Unit damage as part of a covered loss is responsible for an amount calculated by applying the Unit damage percentage for that Unit to the amount of the deductible under the Association's property insurance policy.

(ii) If a Unit Owner does not pay the amount required in Subsection 35(4)(c)(i) within 30 days after substantial completion of the repairs to the Unit or the Limited Common Areas and Facilities appurtenant to that Unit, the Association may levy an assessment against the Unit Owner for that amount.

(5) If, in the exercise of the business judgment rule, the Management Committee determines that a covered loss is likely not to exceed the Association's property insurance policy deductible and until it becomes apparent the covered loss exceeds the deductible of the Association's property insurance and a claim is submitted to the Association's property insurance insurer:

(i) a Unit Owner's policy is considered the policy for primary coverage for a loss occurring to the Unit Owner's unit or to a Limited Common Area or Facility appurtenant to the Unit;

(ii) the Association is responsible for any covered loss to any Common Areas and Facilities;

(iii) a Unit Owner who does not have a policy to cover the damage to that Unit Owner's Unit and appurtenant Limited Common Areas and Facilities is responsible for that damage, and the Association may, as provided in Subsection (4)(c)(i), recover any payments the Association makes to remediate that Unit and appurtenant Limited Common Areas and Facilities;

(iv) and the Association need not tender the claim to the association's insurer.

(6) (a) An insurer under a property insurance policy issued to the Association shall adjust with the Association a loss covered under the Association's policy.

(b) Notwithstanding Subsection (6)(a), the insurance proceeds for a loss under a property insurance policy of an Association: are payable to an insurance trustee that

the Association designates or, if no trustee is designated, to the Association and may not be payable to a holder of a security interest.

(c) An insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Unit Owners, and lien holders.

(d) If damaged property is to be repaired or restored, insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, then, after the disbursements are made and the damaged property has been completely repaired or restored or the project terminated, any surplus proceeds are payable to the Association, Unit Owners, and lien holders, as provided in the Declaration.

(7) The Association shall set aside an amount equal to the amount of the Association's property insurance deductible, or if the policy deductible exceeds \$10,000, an amount equal to \$10,000.

(8) If the Association becomes aware that property insurance under Subsection (1) or liability insurance under Subsection (10) is not reasonably available, the Association shall, within seven calendar days after becoming aware, give all Unit Owners notice that the insurance is not reasonably available.

(9) The Association shall provide notice to each Unit Owner of the Unit Owner's obligation under Subsection (3)(b) for the association's policy deductible and of any change in the amount of the deductible.

(a) If the Association fails to provide notice as provided in Subsection (9) the Association is responsible for the portion of the Association's property insurance deductible that the Association could have assessed to a Unit Owner under Subsection (4), but only to the extent that the Unit Owner does not have insurance coverage that would otherwise apply under this Subsection.

(b) Notwithstanding Subsection (9)(a), if the Association provides notice of the association's policy deductible, as required, but fails to provide notice of a later increase in the amount of the deductible the Association is responsible only for the amount of the increase for which notice was not provided.

(c) The failure of the Association to provide notice as provided in Subsection 35(9) may not be construed to invalidate any other provision of this section.

(10) A comprehensive policy of public liability insurance covering all of the Common Areas insuring the Association, the Committee, the Manager, and the Unit Owners against any liability incident to the ownership, use, or operation of the Common Areas and public ways of the Project or of any Unit which may arise among themselves, to the public, or to any invitees, or tenants of the Project, or of the Unit Owners. Limits of liability under such insurance shall be not less than One Million Dollars (\$1,000,000.00) and shall cover all claims commonly insured for against for death, bodily injury, for personal property injury and for property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas and Facilities, including protection against water damage liability, liability for non-owned and hired automobile and liability for property of others. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association or other Unit Owners. The scope of coverage must

include all other coverage in the kinds and amounts required by private institutional mortgage investors for similar projects in location, construction, and use.

(11) The Association shall maintain fidelity coverage to protect against dishonest acts on the part of Committee Members, Manager (including, but not limited to, employees of professional managers) employees, or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the obligee and shall be written in an amount sufficient to provide protection which in no event shall be less than one-half of the insured's estimated annual operating expenses and reserves unless a greater amount is required by majority of the Mortgagees, or their designees. In connection with such coverage any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. All fidelity bond coverage shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without a least 30 days' prior written notice to the service on behalf of Mortgagees.

(12) The following additional provisions shall apply with respect to insurance:

(a) In addition to the insurance and bond coverage described above, the Committee shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with all condominium projects similar to the Project in construction, nature, and use.

(b) Each hazard insurance policy shall be written by a company holding a financial rating of Class VI or better as designated in Best's Key Rating Guide. Each insurer must be specifically licensed to transact business within the State of Utah. Policies are unacceptable where (i) under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against the Borrower or the Mortgagee, or its designee; or (ii) by the terms of the carrier's charter, by-laws or policy, loss, payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Mortgagee or the borrower from collecting insurance proceeds.

(c) The Committee shall have the authority to adjust losses.

(d) Insurance secured and maintained by the Committee shall not be brought into contribution with insurance held by the individual Unit Owners or their mortgagees.

(e) Each policy of insurance obtained by the Committee shall provide: a standard mortgagee clause commonly accepted by private institutional mortgage investors in the Area in which the Project is located; a waiver (if available) of the insurer's subrogation rights with respect to the Committee, the Manager, the Unit Owners, their respective servants, agents, and guests; that it cannot be canceled, suspended or Invalidated due to the conduct of any member, officer or employee of the Committee or of the Manager without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners; and that a mortgagee clause endorsement which must provide that the insurance carrier shall notify in writing any and all insureds, including the servicers on behalf of Mortgagees or designees thereof at least thirty (30) days in advance of the effective date of any substantial modification or cancellation of the coverage.

(f) Any Unit Owner may obtain additional insurance at his own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Committee. Any Unit Owner who

individually obtains insurance covering any portion of the Project shall supply the Committee with a copy of his policy within 30 days after he acquires such insurance.

(g) Insurance coverage required by this Section (36) must not be prejudiced by (A) any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association, or (B) any failure of the Association to comply with any warranty or condition regarding any portion of the Project over which the Association has no control.

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

(14) Unless a Unit Owner is acting within the scope of the Unit Owner's authority on behalf of the Association, a Unit Owner's act or omission may not: (A) void a property insurance policy under Subsection (1) or a liability insurance policy under Subsection (10); (B) be a condition to recovery under a policy.

(15) The Management Committee shall not be liable to Unit Owners if the insurance proceeds from the property insurance acquired from an insurer required in this Section 35 are not sufficient to cover 100% of the full replacement cost of the insured property at the time of loss.

Section 36. Damage to Project. In the event of damage to or destruction of all of the improvements in the Condominium Project, the following Procedures shall apply:

(1) If proceeds of the insurance maintained by the Management Committee are alone sufficient to repair or reconstruct the damage or destroyed improvement, such repair or reconstruction shall be carried out.

(2) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if the proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all the Unit Owners shall be assessed for any deficiency on the basis of their respective Percentage Interest.

(3) If 75% or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if the Unit Owners within 100 days after the destruction or damage by a vote of at least 75% elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subparagraph (2) above.

(4) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage and by a vote of at least 75%, elect to repair or reconstruct the affected improvements, the Management Committee shall promptly record with the Salt Lake County Recorder a notice setting forth such

facts. Upon the recording of such notice the provisions of subsections (1) through (4) of Section 57-8-31, Utah Code Annotated (1953), shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

Any reconstruction or repair which is required to be carried out by this Section 36 regarding the extent of damage to or destruction of Project improvements shall be made by three MAI appraisers selected by the Management Committee. The decision of any two such appraisers shall be conclusive.

Section 37. Hot Tubs. The placement of a hot tub or any other type of water container used for the purpose of soaking, bathing, or for any other use within the Limited Common Areas of individual Units is allowed by Unit Owners as long as the following terms and conditions are met:

(1) No hot tub can be installed within the confines of the Essex Court Condominium complex without prior written approval from the Management Committee. Management Committee approval shall not be granted for the installation of a hot tub until and unless the Management Committee can ensure that the provisions of this Section 35 have been satisfied.

(2) The Management Committee must be notified in writing prior to the installation of any new hot tub. Upon reasonable notice, the Management Committee may inspect the hot tub and surrounding Limited Common Area to ensure that the installation has been completed in accordance with local codes and ordinances and the terms and conditions of this Section 35 have been correctly followed. All hot tub installations must be permanent with "hard wiring and plumbing." The use and installation of portable hot tubs is prohibited.

(3) Hot tub installation must be performed by State of Utah licensed and bonded electrical and plumbing contractors. Verification of each contractor's credentials must be provided to the Management Committee prior to the start of the hot tub installation and is a condition of final Management Committee approval.

(4) Only Unit Owners may request permission to install hot tubs. Residents that are leasing or renting their units are prohibited from installing hot tubs even if they obtain authorization to do so from the Unit Owner.

(5) Hot tubs must be installed/located within the confines of the Unit's Limited Common Area as this area is delineated by the fence surrounding this area.

(6) A gate must be installed with a locking type of latch device that can be only operated from the inside. The latch must be locked during all times of the day when the Unit Owner/resident is not at home to prevent unintended use by persons other than the Unit Owner, his or her family and guests. Under no circumstances can a Unit Owner install a hot tub for commercial purposes.

(7) Unit Owners must have an operable key locked cover for their hot tubs. When the hot tub is not in use this cover must be properly fitted/installed over the hot tub and locked to the hot tub.

(8) Unit Owners with hot tubs must sign an indemnification and hold harmless agreement indicating that they assume all liability and responsibility for any claims of harm, loss, injury to person, property damage, or otherwise that might be made against the Association, incident to ownership, use or operation of their hot tub that may occur and releases the Association from any responsibility for damages that may result incident to ownership, use or operation of their hot tub.

(9) Unit Owners must provide the Management Committee annual proof they have obtained and are maintaining a comprehensive policy of public liability insurance in the amount of \$1,000,000.00 that protects and holds the Association harmless against any liability incident to the ownership, use, or operation of their individual hot tub that may occur. In the event the Unit Owner does not obtain and maintain this level comprehensive public liability insurance, the Management Committee will have the hot tub removed at the Unit Owner's expense.

(10) Failure to follow any of the provisions of this Section 37 shall be deemed in violation of the policies of the Association and shall subject the Owner to potential fines and removal of the hot tub with all such costs assessed to the Unit Owner.

Section 38. Pets. Pets shall be allowed at the Condominium Project if:

(1) Ownership of the pet does not violate Midvale City Municipal Code, Title 6: Animals; Chapter 6.36: Wild, Dangerous and Exotic Animals as well as any other local, state and/or federal laws.

(2) Unit Owners only have one (1) dog and one (1) cat or two (2) cats per Unit.

(3) The Owner or occupant accepts full liability for his or her pet and signs a release, waiver, and indemnity agreement, which restricts pet ownership to one (1) dog and one (1) cat or two (2) cats per Unit.

(4) Pets allowed outside of fenced Limited Common Areas must be accompanied by the Owner and controlled by a leash.

(5) The pet owner promptly cleans up all his or her pet's droppings.

(6) The pet(s) is licensed and vaccinated in accordance with Salt Lake County ordinances.

(7) Upon request, the Committee is given a copy of the pet's license and proof of vaccination, along with a description sufficient to describe the pet.

(8) The pet owner complies with the administrative Rules and Regulations as they may be adopted or modified by the Committee from time to time.

Anything to the contrary notwithstanding, no pet shall be allowed to create or maintain a nuisance. At the discretion of the Committee, after notice and a hearing, any pet that is considered to be a nuisance shall not be allowed to remain within the confines of the Project. For the purposes of this paragraph a nuisance is defined as any behavior which annoys or disturbs other Owners or occupants, including but not limited to any abnormal, unreasonable, or excessive barking, whining,

or scratching; any behavior which creates an unacceptable odor, an unhygienic environment, or a dangerous condition; or any behavior which establishes a propensity for harm.

If a pet owner violates any of these covenants, conditions, or restrictions, including any administrative pet Rules and Regulations, the Committee shall have the express authority to issue citations or levy assessments/fines, and collect these by judgment, lien, or foreclosure.

Section 39. Storage and Parking of Vehicles. No motor vehicle or trailer, including but not limited to any automobile, commercial vehicle, truck tractor, mobile home, or trailer (either with or without wheels), camper trailers, boat or other water craft, boat trailer, all-terrain vehicle (ATV), or any other transportation device of any kind may be parked or stationed in such a manner that it blocks the entrance to any garage or Unit, or upon any walkway, driveway, or the Common Area, except as provided herein. The exception to the provisions of this paragraph are commercial vehicles that are used for "on-call" emergency services that are owned by essential public utility companies/entities, i.e., police, fire, electricity, gas, water, and sewer and that have a Gross Vehicle Weight (GVW) of less than 9,000 pounds, a length of less than 18 feet, and a height of less than seven feet. Commercial vehicles that fall within these requirements may be parked in a Common Area parking space provided the Unit Owner or unit resident assigned to operate the vehicle provides the Management Committee a letter of explanation regarding the express use of the commercial vehicle for "on-call" emergency service. The Unit Owner or unit resident may be charged a fee to park in a Common Area parking space at the sole discretion of the Management Committee.

(1) Owners or occupants must park two vehicles in their garage before parking in other designated areas. All additional vehicles must be parked in designated areas.

(2) No Owners or occupants shall repair or restore any motor vehicle of any kind upon any Unit or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

(3) Motor Vehicles parked in unauthorized areas, or in violation of the Parking Rules and Regulations established by the Management Committee, may, at Owner's expense, be towed away.

(4) No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been parked in the garage as originally constructed.

(5) All garages shall be used for the purpose of parking motor vehicles and shall not be used as storage facilities.

Section 40. Leasehold Restrictions. In order to assure a community of congenial owners and thus protect the value of the units, the leasing of a unit by any Owner shall be subject to the following restrictions so long as the property shall be owned in accordance with the terms:

(1) Entirety. Units may be rented only in their entirety and no fractions of portions thereof may be rented.

(2) Hotel. No transient leases may be accommodated therein, all rentals or leases must be for an initial term of no less than six (6) months, and no Resort, Hotel, Corporate, Executive, Seasonal, or Time Share uses are permitted.

(3) Subject to the Act and Project Documents. All leases and lessees shall be subject to the provisions of the Act and the Project Documents. Any Owner who leases his Unit shall be responsible for assuring the Residents' compliance with the Act and the Project Documents.

(4) Failure to Take Legal Action. Failure by an Owner to take legal action against his Resident who is in violation of the Act or Project Documents within ten (10) days after delivery of written demand to so do from the Committee, shall entitle the Association to take any and all such action for and in behalf of said Owner and as his agent, including but not limited to the institution of legal proceedings on behalf of such Owner against his Resident for eviction, injunctive relief or damages. Neither the Association nor any agent retained by the Association to manage the Project shall be liable to the Owner or Resident for any legal action commenced under this Section that is made in good faith. Any expenses incurred by the Association, including reasonable attorneys' fees and costs of suit, shall be repaid to it by such Owner as an individual assessment. The amount of the costs and expenses is a debt of the Owner at the time the assessment is made and is collectible as such. If any Owner fails or refuses to make payment that amount constitutes a lien on the interest of the Owner in the property. Delivery of the notice of default shall be deemed effective the date it is hand delivered or three (3) days after it is deposited with U.S. Postal Service, regular mail, postage prepaid, addressed to the Unit Owner at his last known mailing address. If notice in writing of the Unit Owner's change of address has not been received by the Secretary of the Association the address of the Unit shall be deemed to be the Owner's mailing address.

(5) Fixed Percentage Limitation. No Units may be leased or rented without the prior written consent of the Management Committee. The Management Committee shall be empowered to allow up to but no more than twenty-five (25%) percent of the Units in the Project (including the Grandfathered Units) to be leased, rented, or occupied by non-Owner residents ("Rental Cap"). Any Owner who intends to lease or rent his or her Unit shall submit a written application to the Committee requesting permission to do so, which consent shall not be unreasonably withheld so long as at least seventy-five (75%) percent of the Units in the Project are owner occupied.

(6) Hardship Rental Cap Exception. The Management Committee, in its sole discretion, shall be empowered to allow reasonable leasing or renting of Units beyond the percentage limitation set forth above upon written application to avoid undue hardship on an Owner provided the total number of non-Owner occupied Units does not exceed thirty percent (30%) including the Grandfathered Units. By way of illustration and not by limitations, examples of circumstances which would constitute undue hardship are those in which:

- (a) an Owner must relocate his residence and cannot, within ninety (90) days from the date the Unit was placed on the market, sell the Unit while offering it for sale at a reasonable price no greater than its current appraised market value.
- (b) the Owner dies, and the Unit is being administered by his or her estate.
- (c) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Unit within a one-year period.

Those Owners who have demonstrated that the inability to lease their Unit would result in undue hardship and have obtained the requisite approval of the Committee may lease their Units

for such duration as the Committee reasonably determines is necessary to prevent undue hardship.

(7) Application for Hardship Exception. Any Owner who believes that he must lease his Unit to avoid undue hardship shall submit a written application to the Committee setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Committee may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Committee's written approval of the Owner's application.

8) Mandatory Rental Cap Exemptions. The following Units may be non-Owner occupied and are exempted from the Rental Cap pursuant to the Act.

(a) A Unit occupied by the Owner's children, grandchildren, grandparents, siblings, parents, and spouse.

(b) A Unit whose Owner is relocated by the Owner's employer for a period of two years or less.

(c) A Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of:

(i) a current Resident of the Unit; or

(ii) the parent, child, or sibling of the current Resident of the Unit.

(d) A Unit owned by a person in the military for the period of the Owner's military deployment.

(e) a Unit owned by an entity that is occupied by an individual who:

(i) has voting rights under the entity's organizing document; and

(ii) has a 25% or greater share of ownership, control, and right to profits and losses of the entity.

(9) Copy of Lease, Crime Free Lease Addendum and Background Check. When the leasing of a Unit is approved the Management Committee requires:

(a) a copy of the lease (and each replacement lease), signed by the lessee and the lessor.

(b) along with a copy of the Crime Free Lease Addendum, signed by the lessee.

(c) verified written documentation from the Unit Owner that the Unit Owner has completed a background check on the lessee shall be submitted to the Committee within ten (10) days after they have been signed and/or completed by the Unit Owner and the lessee. The Management Committee DOES NOT want a copy of the lessee's background check. Only written verification from the Unit Owner that the background check has been completed.

All lessees are required to sign the Association's "Crime Free Lease Addendum" prior to moving into a Unit within the Project. The Association's Crime Free Lease Addendum shall become part of the Unit Owner's lease documents. Violation of the provisions of the Crime Free

Lease Addendum shall be a material and irreparable violation of the lease and cause for the immediate termination of tenancy. All Unit Owners are required to complete a background check on lessees prior to the lessee moving into a unit in Essex Court. Under no circumstances shall a person convicted of a Criminal Activity be allowed to lease a Unit within the Project. The Committee may recover from the Unit Owner its attorney fees and costs incurred in obtaining a copy of the lease, the Crime Free Lease Addendum, and the written verification that a background check was completed if this documentation is not provided in a timely manner or within ten (10) days of its request in writing.

(10) Fines, Citations and Sanctions. The Management Committee shall have the power to enforce the Project Documents and to issue fines, citations, and sanctions in order to maintain and operate the Project and to institute these leasing restrictions.

(11) Voidable Transactions. Any transaction which does not comply with this Section shall be voidable at the option of the Committee;

(12) Grandfathered Units. Anything to the contrary notwithstanding, the Rental Cap described in subsection five (5) above shall not apply to the Units noted below (the "Grandfathered Units"). The Grandfathered Units may continue to be leased without complying to the restrictions stated in Subsection five (5) for so long as the record of title to said Unit remains vested in the name of the respective Owner(s) thereof (the "Grandfathered Owner(s)"). The Term "Grandfathered Owner" shall include a succeeding "Trust" or other "Person" (as defined in Article I of the Declaration) (the "Qualified Successor Owner(s)") in which the Grandfathered Owner or such Owner's spouse, son, daughter, father, or mother holds a beneficial interest in such Grandfathered Unit by the Grandfathered Owner of at least fifty percent (50%). Upon conveyance of the Grandfathered Unit by the Grandfathered Owner or Qualified Successor Owner, the said Unit shall immediately become subject to all restrictions set forth above.

Grandfathered Units:

<u>Unit No.</u>	<u>Homeowner</u>
994 Essex Court Way #2	Hans Beck

(13) Leasing to Persons Convicted of Criminal Activity. Under no circumstances shall a non-resident Unit Owner lease or allow occupancy of his or her unit to any person or persons convicted of Criminal Activity including but not limited to any illegal drug related activity, Restricted Sex Offenders and convicted perpetrators of Crimes of Violence. Violation of the provisions of this sub-paragraph shall be a material and irreparable violation of the lease and cause for the immediate termination of tenancy.

If a Restricted Sex Offender, a person convicted of any illegal drug activity or a convicted perpetrator of a Crime of Violence occupies any rented or leased Unit, the Owner must immediately cause the person to vacate the Unit.

Each Owner hereby appoints the Association as the Owner's attorney-in-fact for the purpose of commencing eviction or other legal proceedings involving a Restricted Sex Offender, a person convicted of any illegal drug activity or a convicted perpetrator of a Crime of Violence. This includes but is not limited to the power to execute any documents pertaining to the proceedings or performing any necessary actions. This power of attorney is expressly declared and

acknowledged to run with the land and title of all Units in the Association and will bind heirs, personal representatives, successors and assigns of each Owner in the Association.

If the Association believes that a Restricted Sex Offender, a person convicted of any illegal drug activity, or a convicted perpetrator of a Crime of Violence is present on any Unit, it shall provide written notice to the Owner. If the Owner has not diligently pursued legal action or the Restricted Sex Offender, a person convicted of any illegal drug activity, or a convicted perpetrator of a Crime of Violence is present on the Unit 21 days after the Association sent notice to the Owner, then the Association may, as attorney-in-fact for the Owner, pursue an eviction or other legal means against the Restricted Sex Offender, a person convicted of any illegal drug activity, or a convicted perpetrator of a Crime of Violence on behalf of the Owner and the other Owners.

If it is necessary for the Association to pursue any form of legal action to enforce this Covenant, the Owner of the Unit specified in the legal action must reimburse the Association for all of its legal expenses, including, but not limited to, its reasonable attorney fees and court costs. If the action is unsuccessful in removing the Restricted Sex Offender, a person convicted of any illegal drug activity, or a convicted perpetrator of a Crime of Violence, then the Association may appeal the court's decision. If successful, the Owner must also reimburse the Association for the costs associated with the appeal.

The Association shall not be responsible for informing residents of the presence of a sex offender, a person convicted of any illegal drug activity, or a convicted perpetrator of a Crime of Violence in the Association and the Association shall not be liable to any Owner or occupant for failing to notify him or her of the presence of a sex offender, Restricted Sex Offender or any other person convicted of a crime, whether such failure was negligent or intentional. The Association shall have the right but not the duty to enforce the restrictions in Sub-paragraphs (9) and (13). Sub-paragraphs (9) and (13) may be enforced by any Member of the Association.

(14) Adherence to State and Local Laws Pertaining to Rental and Lease Properties. All Unit Owners that lease their units shall ensure they are in compliance with all state, and local laws that pertain to rental/lease properties.

Section 41. Requiring tenant leasing Unit to pay rent to Association if Unit Owner fails to pay assessment.

(1) (a) As used in this section:

(i) "Amount owing" meant the total of"

(A) any assessment or obligation under Section 16 that is due and owing; and

(B) applicable interest, late fee, and cost of collection that accrues after the Association gives notice under Subsection 16(3).

(ii) "Lease" means an arrangement under which a tenant occupies a Unit Owner's residential condominium unit in exchange for the Unit Owner receiving a consideration or benefit, including a fee, service, gratuity, or emolument.

(iii) "Tenant" means a person, other than the Unit Owner, who has regular, exclusive occupancy of the Unit Owner's residential condominium unit.

(2) If the Owner of a Unit who is leasing the Unit fails to pay any assessment for a period of more than 60 days after it is due and payable, the Management Committee, upon compliance with the provisions of this section, may demand the tenant of the Unit to pay the Association all future lease payments due the Owner, commencing with the next monthly payment, until the amount due the Association is paid provided the manager or the Management Committee has given the Unit Owner written notice, either by regular mail or in person, of its intent to demand full payment from the tenant. This notice shall state:

(a) the amount of the assessment due, including any late fee(s), collections cost, and attorney fees;

(b) that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and to be paid through the collection of lease payments; and

(c) that the Association intends to demand payment of future lease payments from the Unit Owner's tenant if the Unit Owner does not pay the amount owing within 15 days.

(3) If a Unit Owner fails to pay the amount owing within 15 days after the manager or Management Committee give the Unit Owner notice, the manager or Management Committee may exercise the rights of the Association to deliver a written notice to the tenant. This notice shall state that:

(a) due to the Unit Owner's failure to pay an assessment within the required time, the manager or Management Committee has notified the Unit Owner of the manager's or Management Committee's intent to collect all lease payments until the amount owing is paid;

(b) the law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the Association, until the amount owing is paid; and

(c) the tenant's payment of lease payments to the Association does not constitute a default under the terms of the lease with the Unit Owner.

(4) A Unit Owner:

(a) shall credit each payment that the tenant makes to the Association of Unit Owners under this section against any obligation that the tenant owes to the Owner as though the tenant made the payment to the Owner; and

(b) may not initiate a suit or other action against a tenant for failure to make a lease payment that the tenant pays to the Association under the Act.

(5) (a) Within five business days after the amount owing is paid, the manager or Management Committee shall notify the tenant in writing that the tenant is no longer required to pay future lease payments to the Association.

(b) The manager or Management Committee shall mail a copy of the notification described in Subsection (2) to the Unit Owner.

(6) The Association shall deposit money paid to the Association under this section in a separate account and disburse that money to the Association until: the amount owing is paid; and any cost of administration, not to exceed \$25, is paid.

(7) The Association shall, within five business days after the amount owing is paid, pay to the Unit Owner any remaining balance.

Section 42. Aerials, Antennas and Satellite Dishes. It is the intent that this policy not be inconsistent, incongruent or in conflict with applicable local, state and federal legislation.

Aerials, antennas and satellite dishes shall be prohibited within the Project, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) antennas or satellite dishes designed to receive video programming services via multipoint distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennas or satellite dishes designed to receive television broadcast signals (hereafter referred to as "Permitted Devices") shall be permitted, provided that any such Permitted Device is:

- (1) located in the attic, garage, or other interior spaces of the residential unit, so as not to be visible from outside the Unit;
- (2) located in the appurtenant Limited Common Area patio (i.e., the area between the plane formed by the front facade of the building containing the residential unit and the rear line of the Limited Common Area as shown on the record of survey map) and setback from all property lines at least eight (8) feet;
- (3) attached to or mounted behind the Limited Common Area appurtenant to the residential Unit on the rear wall of the building containing the residential Unit so as to extend no higher than the plane commencing the next story of the building or, the eaves of the building at a point directly above the position where attached or mounted to the wall.

Notwithstanding the foregoing, should an Owner determine that a Permitted Device cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, then the Owner may install the device in the least conspicuous alternative location in the residential Unit or appurtenant Limited Common Area where an acceptable quality signal can be obtained. The Management Committee may adopt rules establishing a preferred hierarchy of alternative locations and require screening of all Permitted Devices, so long as such rules to not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device. The technology covered by these regulations includes but is not limited to TVBS, MMDS, DBS, the medium power Ku-band DTH services (e.g., Primestar) because their dishes are less than one meter in diameter. Closely related services such as MDS, IFTS and LMDS are also included. The lower power C-Band satellite systems are excluded because they require larger dishes. The VSAT commercial satellite service is not included either because the service is not used to provide video programming over the air. In general, medium power satellite services or antennas receiving earth bound transmissions with dishes or antennas one meter or less in size used to over the air video programming is covered by these regulations. Any mast(s) used to support a satellite dish may be no taller than 12 feet, measured from the roof line.

Anything to the contrary notwithstanding, no Permitted Device may be located in the Common Area without the express prior written consent of the Management Committee. Permitted Devices may only be installed in, on or within property which a party owns or is subject to his exclusive use.

Section 43. Amendment. Except as provided below, the vote of at least 51% of the Percentage Interest of the Unit Owners in person or represented by proxy at a meeting of the Association at which a quorum is present shall be required to amend this Declaration or the Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Paragraph for amendment has occurred.

Section 44. Consent Equivalent to Vote. In those cases, in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for the authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the necessary percentage of undivided ownership interest.

Section 45. Service of Process. The person authorized to receive service of process on behalf of the Association shall be that individual indicated on the record of incorporation established by the Association with the Department of Corporations and Commercial Codes for the State of Utah. The Management Committee shall, however, have the right to appoint a successor substitute process agent. Such successor or substitute agent and his address shall be specified by an appropriate instrument filed in the office of the County Recorder of Salt Lake County, State of Utah.

Section 46. RESERVE ANALYSIS AND RESERVE FUNDS

- (1) As used in this section:
- (a) "Reserve analysis" means an analysis to determine: the need for a reserve fund to accumulate reserve funds; and the appropriate amount of any reserve fund.
 - (b) "Reserve fund line item" means the line item in the Association's annual budget that identifies the amount to be placed into a reserve fund.
 - (c) "Reserve funds" means money to cover:
 - (i) the cost of repairing, replacing, or restoring Common Areas and Facilities that have a useful life of three years or more and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from the general budget or other funds of the Association; or
 - (ii) a shortfall in the general budget, if:
 - (A) the shortfall occurs while a state of emergency declared in accordance with Section 53-2a-206 of the Utah State Code is in effect;
 - (B) the geographic area for which the state of emergency declared extends to the entire state; and
 - (C) at the time the money is spent, more than 10% of Unit Owners that are not members of the Management Committee in the Association are delinquent in the payment of assessments as a result of events giving rise to the state of emergency described in Subsection (1)(c)(ii)(A).

- (2) Except as otherwise provided in the declaration, the Management Committee shall:
 - (a) cause a reserve analysis to be conducted no less frequently than every six years; and
 - (b) review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years.
- (3) The Management Committee may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Management Committee, to conduct the reserve analysis.
- (4) A reserve fund analysis shall include:
 - (a) a list of the components identified in the reserve analysis that will reasonably require reserve funds;
 - (b) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis;
 - (c) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis;
 - (d) an estimate of the total annual contribution to a reserve fund necessary:
 - (i) to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and
 - (ii) to prepare for a shortfall in the general budget that the Association or Management Committee may use reserve funds to cover; and
 - (e) a reserve funding plan that recommends how the Association may fund the annual contribution described in Subsection (4)(d).
- (5) The Association shall:
 - (a) annually provide Unit Owners a summary of the most recent reserve analysis or update; and
 - (b) provide a copy of the complete reserve analysis or update to a Unit Owner who requests a copy.
- (6) In formulating the Association's budget each year, the Association shall include a reserve fund line item in an amount the Management Committee determines, based on the reserve analysis, to be prudent.
- (7) (a) Within 45 days after the day on which the Association adopts the Association's annual budget, the Unit Owners may veto the reserve fund line item by a 51% vote of the allocated voting interests in the association of Unit Owners at a special meeting called by the Unit Owners for the purpose of voting whether to veto a reserve fund line item.
 - (b) If the Unit Owners veto a reserve fund line item under Subsection (7)(a) and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association

shall fund the reserve account in accordance with that prior reserve fund line item.

- (8) (a) The Management Committee may not use money in a reserve fund for any purpose other than the purpose for which the reserve fund was established, unless a majority of the members of the Association vote to approve the use of reserve fund money for that purpose.
- (b) (i) the Management Committee may not use money in a reserve fund for daily maintenance expenses, unless:
- (A) a majority of the members of the Association vote to approve the use of reserve fund money for daily maintenance expenses; or
 - (B) there exists in the general budget a shortfall that the Management Committee may use reserve funds to cover.
- (ii) Members of the Association may prohibit the use of reserve fund money for daily maintenance expenses under the circumstances described in Subsection (8)(b)(i)(B) by a 51% vote of the allocated voting interest in the Association at a special meeting:
- (A) for which each Unit Owner receives at least 48 hours' notice; and
 - (B) the Unit Owners call for the purpose of voting whether to prohibit the use of reserve fund money for daily maintenance expenses under the circumstances described in Subsection (8)(b)(i)(B).
- (c) The Management Committee shall maintain a reserve fund separate from other funds of the Association.
- (d) This Subsection (8) may not be construed to:
- (A) limit a Management Committee from prudently investing money in a reserve fund, subject to any investment constraints imposed by the declaration.
 - (B) excuse the Association from the requirements described in Section 57-8-58 of the Utah State Code; or
 - (C) permit the use of money in a reserve fund for a legal action described in Section 57-8-58 of the Utah State Code.

Section 47. Records – Availability for Examination

(1) (a) Subject to Subsection (1)(a)(ii) the Association shall keep and make available to Unit Owners:

(i) each record identified in Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, Subsections 16-6a-1601(1) through (5), in accordance with Sections 16-6a-1601, 16-6a-1602, 16-6a-1603, 16-6a-1605, 16-6a-1606, and 16-6a-1610; and

(ii) a copy of the association's:

- (A) Project Documents;
- (B) most recent approved minutes;
- (C) most recent budget and financial statement;
- (D) most recent reserve analysis; and

(E) certificate of insurance for each insurance policy the Association holds.

(b) The Association may redact the following information from any document the Association produces for inspection or copying:

- (i) a Social Security number;
- (ii) a bank account number; or
- (iii) any communication subject to attorney-client privilege.

(2) (a) In addition to the requirements described in Subsection (1), the Association shall:

- (i) make documents available to Unit Owners in accordance with the Association's Project Documents; and
- (ii) the Association will make the documents described in Subsection (1)(a)(ii) (A) through (C) available through the website established by the Association's property management company.

(3) (a) Written requests to inspect or copy documents shall include: the Association's name; the Unit Owner's name; the Unit Owner's property address; the Unit Owner's email address; a description of the documents requested; and any election or request described in Subsection (3)(b); and

- (b) a Unit Owner may:
 - (i) elect whether to inspect or copy the documents;
 - (ii) if the Unit Owner elects to copy the documents, request hard copies or electronic scans of the documents; or
 - (iii) subject to Subsection (4), request that:
 - (A) the Association make the copies or electronic scans of the requested documents;
 - (B) a recognized third party duplicating service make the copies or electronic scans of the requested documents;
 - (C) the Unit Owner be allowed to bring any necessary imaging equipment to the place of inspection and make copies or electronic scans of the documents while inspecting the documents; or
 - (D) the Association email the requested documents to an email address provided in the request.

(4) (a) The Association shall comply with a request described in Subsection (3).

(b) If the Association produces the copies or electronic scans:

- (i) the copies or electronic scans shall be legible and accurate; and
- (ii) the Unit Owner shall pay the association of Unit Owners the reasonable cost of the copies or electronic scans and for time spent meeting with the Unit Owner, which may not exceed:

- (A) the actual cost that the association of Unit Owners paid to a recognized third party duplicating service to make the copies or electronic scans; or
- (B) 10 cents per page and \$15 per hour for the employee's, manager's, or other agent's time making the copies or electronic scans.

(5) A Unit Owner's agent may, on the Unit Owner's behalf, exercise or assert any right that the Unit Owner has under this section.

(6) The Association is not liable for identifying or providing a document in error, if the Association identified or provided the erroneous document in good faith.

Section 48. Mortgagee Protection. Notwithstanding anything to the contrary contained in the Declaration:

(1) An adequate reserve fund for repair, maintenance, and replacement of those elements of the Common Areas that must be replaced on a periodic basis must be established and shall be funded by regular monthly payments rather than by special assessments.

(2) Any mortgage holder which comes into possession of the Unit pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage or deed (or assignment in lieu of foreclosure) shall be exempt from any "right of first refusal", or other provisions which may exist relating to sale or lease of the Units in the Project, and no right of first refusal shall impair the rights of any first mortgage to: (i) foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage, or (ii) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or (iii) interfere with a subsequent sale or lease of the Unit so acquired by the Mortgagee.

(3) Any agreement for professional management of the Project must provide for termination by either party without cause or payment of a termination fee on 30 days or less written notice and a maximum contract term of one year, renewable by agreement of the parties for successive one-year periods.

(4) In the event of damage to or destruction of any Unit, which loss exceeds \$1,000.00, or any part of the Common Areas, which loss exceeds \$10,000.00, the institutional holder of any first mortgage on a Unit shall be entitled to timely written notice to any such damage or destruction. No Unit Owner or other party shall be entitled to priority over such institutional holder with respect to the distribution to such Unit Owner of any insurance proceeds regardless of the amount of loss. Upon request of any first mortgagee of the Association must provide a letter to said first Mortgagee wherein the Association agrees to notify the first Mortgagee or any organization it designates at the address indicated by the Mortgagee whenever (i) damage to a Unit covered by the first Mortgagee's Mortgage exceeds \$1,000.00, or (ii) damage to the Common Areas and related Facilities exceeds \$10,000.00.

(5) If any Unit or portion thereof or 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 institutional holder of any first mortgage of a Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition. No Unit Owner or other party shall have priority over such institutional holder regardless of the amount of the condemnation award with respect to the distribution to such Unit Owner of the proceeds of any award or settlement.

(6) With the exception of a lender in possession of a Unit following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure,

no Unit Owner shall be permitted to lease his Unit for transient or hotel purposes. No Unit Owner may lease less than the entire unit. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and By-Laws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing.

(7) Each holder of a first mortgage lien on a Unit who obtains title to a Unit by virtue of remedies provided in the Mortgage, including but not limited to, foreclosure of the mortgage, or by deed of assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of unpaid charges and shall not be liable for any unpaid claims or assessments and charges against the Unit which accrue prior to the acquisition of title of such Unit by Mortgagee, except for claims for a pro-rata share of such assessments or charges to all Project Units including the mortgaged Unit.

(8) The Association shall give the institutional holders of first Mortgages prompt notice of any default in the Unit Mortgagor's obligations under the Declaration not cured within 30 days of default.

(9) Any lien which the Management Committee may have on any Unit in the Project for the payment of Common Expenses assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any first mortgage on the Unit recorded prior to the date any such Common Expense Assessments become due.

(10) Unless at least 75% of the institutional holders of first Mortgages (based on one vote for each Mortgage owned) of Units have given their prior written approval neither the Management Committee, Owners nor the Association shall:

(a) By act or omission, seek to abandon or terminate the Project, except in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

(b) Change the Percentage Interests or obligations of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for (ii) determining the pro-rata share of ownership of each Unit in the appurtenant Common Areas, except as necessary to allow the expansion of the Project as provided in the Declaration.

(c) Partition or subdivide any Unit or of the Common Areas.

(d) Make any material amendment to the Declaration or to the By-Laws of the Association, including, but not limited to, any amendment which would change the percentage interests of the Unit Owners in the Common Areas.

(e) By act or omission, seek to amend, partition, subdivide, encumber, sell, abandon, or transfer the Common Areas. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this subparagraph).

(f) Use hazard insurance proceeds for losses to any condominium property (whether to Units or to the Common Areas) for other than the repair, replacement, or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or the Common Areas of the Project.

(g) Terminate professional management and assume self-management of the Project.

(11) Any institutional holder of a first mortgage (or trust deed) of a Unit in the Project will, upon request, be entitled to (i) examine the books and records of the Project during normal business hours; (ii) receive an audited financial statement of the Project within 90 days following the end of any fiscal year of the Project; and (iii) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

(12) Whenever there is a change of ownership of a Unit, the Committee shall require that the new Unit Owner furnish the Committee with the name of the holder of any first mortgage (or trust deed) affecting such Unit. The Management Committee or Manager shall maintain a current roster of Unit Owners and of the holders of first mortgages (or trust deed) affecting Units in the Project.

(13) In the event any person shall acquire, through foreclosure, exercise of power of sale, or other enforcement of any lien, or by tax deed, the interest of any Unit Owner, the interest acquired shall be subject to all the provisions of the Act, and to the covenants, conditions and restrictions contained in the Declaration, the Record of Survey Map, the Bylaws, the Rules and Regulations, or any deed affecting the interest then in force.

Section 49. Outdoor Lighting: Connection and Reimbursement. The Project includes outdoor lighting (Lighting) for the health, safety, and welfare of the Unit Owners therein. Each set of Lighting, except as hereinafter mentioned, is connected to each of the 3-bedroom Units (the D Units with the exception of the D Units in Building 2 (944 #4) and Building 5 (975 #4)). It is hereby declared that all costs and expenses, including, but not by way of limitation, power bill incident to Lighting are and shall be Common Expenses, and that notwithstanding anything to the contrary contained in this Declaration, power bill for Lighting shall be shared equally by each Unit Owner and not on the basis of Percentage Interest. However, since each set of Lighting is connected to the D Units, as aforesaid, every other Unit Owner shall pay his ratable cost for Lighting, and the Owners of the D Units shall be reimbursed for all power bills advanced by him attributable to such other Owners. It is anticipated that one of the Buildings, to-wit: The Building on Lot I will have a separate meter (the Meter) to measure the power usage of Lighting connected thereto. The power usage for Lighting as shown by the Meter shall be conclusively deemed to be the power usage of each set of Lighting connected to D Units, it being understood that all Lighting will be turned on and off simultaneously in the Project. The procedure for reimbursing each D Unit Owner for Lighting connected to his Unit and the power bill paid by him shall be as follows:

(1) The Management Committee shall prepare and maintain a separate annual budget for Lighting (Lighting Budget);

(2) Each Owner of a D Unit (with the exception of the D Units in Building 2 (944 #4) and Building 5 (975 #4)) shall be credited on his monthly Common Expense assessment (monthly assessment) an amount equal to the periodic Lighting power bill in the Lighting Budget chargeable to the other three Unit Owners in the Building in which his D Unit is located;

(3) At the end of each calendar year, the Management Committee shall determine the total power bill for Lighting based on the Meter, and shall thus determine whether each Owner of D Unit has been fully credited, under-credited, or over-credited on his monthly assessment, as the case may be;

(4) If it is found that each Owner of D Unit has been under-credited, the Management Committee shall either (i) pay each such Owner the amount of deficiency before the end of February of the succeeding year, or (ii) make an adjustment before the end of February of the succeeding calendar year by crediting each Owner of D Unit on his monthly assessment account amount equal to entire deficiency; and

(5) If the Management Committee shall determine that the Owners of D Units have been over-credited, then the following provisions shall apply:

(a) The total power bill for Lighting, determined as provided in (c) above shall be divided by the number of Units in the Project and the result shall be the power cost for Lighting chargeable to each Unit; and

(b) Thereafter, the amount by which each D Unit Owners has been over-credited shall be fully charged to the monthly assessment account of each D Unit Owner before the end of February of the following year.

Notwithstanding any provision for amendment of this Declaration contained herein, no amendment may be made of this Section 50 without the consent of 2/3 of the number of Owners of D Units in the Project.

Section 50. Information Regarding Transferee of Unit. Any Unit Owner who sells, leases, or otherwise disposes of his Unit shall submit to the Committee pertinent information concerning the transferee or new occupant within one week of any transfer of title or possession on a form furnished by the Committee.

Section 51. Invalidity. The invalidity of any provisions of this Declaration, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

Section 52. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 53. Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

Section 54. Topical Headings. The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define, limit, extend, or otherwise affect the content, meaning or intent of this Declaration or any paragraph or provision hereof.

Section 55. Conflicts. This Declaration is set forth to comply with the requirements of the Act. In the event of any conflict between this Declaration and the provisions of the Act, the provisions of the latter shall control.

Section 56. Effective Date. This Declaration shall take effect upon recording in the office of the County Recorder of Salt Lake County, Utah.

This Second Amended and Restated Declaration of Condominium for Essex Court was voted on and approved by at least 51% of the Percentage Interest of the Unit Owners pursuant to the provisions of Article III, Sections 43 and 44 contained in this Declaration.

ESSEX COURT HOME OWNERS ASSOCIATION, a Utah nonprofit corporation.

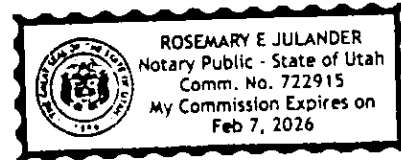
By: Timothy R. Matson
Timothy R. Matson, Chairperson
Essex Court Home Owners Association Management Committee

STATE OF UTAH)
 : ss.
County of Salt Lake)

On this 28 day of April, 2023, personally appeared before me TIMOTHY R. MATSON, who being by me duly sworn did say, that he, the said TIMOTHY R. MATSON is the Chairperson of Essex Court Home Owners Association Management Committee and that the within and foregoing instrument was signed on behalf of Essex Court Home Owners Association on by authority of a resolution of its Management Committee and said TIMOTHY R. MATSON duly acknowledged to me that said Corporation executed the same.

Rosemary E Julander, NOTARY PUBLIC

My Commission Expires: 2/7/2026



By: Edward P. Kimball
Edward P. Kimball, Secretary
Essex Court Home Owners Association Management Committee

STATE OF UTAH)
 : ss.
County of Salt Lake)

On this 28 day of April, 2023, personally appeared before me EDWARD P. KIMBALL, who being by me duly sworn did say, that he, the said EDWARD P. KIMBALL is the Secretary of Essex Court Home Owners Association Management Committee and that the within and foregoing instrument was signed on behalf of Essex Court Home Owners Association on by authority of a resolution of its Management Committee and said EDWARD P. KIMBALL duly acknowledged to me that said Corporation executed the same.

Rosemary E Julander, NOTARY PUBLIC

My Commission Expires: 2/27/2026

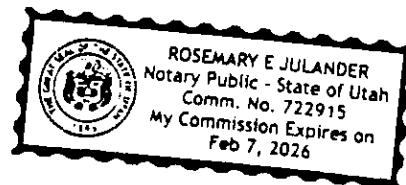


EXHIBIT "A"

LEGAL DESCRIPTION¹

The LAND described in the foregoing Amendment to the Declaration of Condominium is located in SALT LAKE County, UTAH and is described more particularly as follows:

PHASE 1²

Beginning at a point that is South 131.514 feet and East 2344.864 feet from the NW corner of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence North 149.598 feet, thence S87°27'22" seconds W 126.125 feet; thence South 8.732 feet, thence S 87°06'49" W 187.265 feet, thence N4°07'07" E 102.257 feet, thence N87°47'04" E 1542.962 feet; thence N0°02" W 61.000 feet thence S89°58" W 181.000 feet, thence N0°02" W 45.000 feet, thence S89°52'20" W 17.000 feet, thence N0°01'40" W 84.051 feet, thence N89°52'20" E 38.752 feet, to a point of 140.00 feet radius curve to the right (bearing to center curve bears S0°07'40" E), thence Southeasterly 44.295 feet, along the arc of said curve, thence S72° E 75.004 feet, thence N18° E 42.298 feet, thence N11°10'05" E 94.372 feet, thence S72° E 110.000 feet, thence S18° W 136.000 feet, thence S72° E 55.000 feet, thence N18° E 12.563 feet, thence S54°18' E 59.441 feet, thence N35°42' E 138.00 feet, thence S66° E 53.940 feet, thence S53° E 40.00 feet, thence S30° E 21.802 feet, thence East 13.644 feet, thence S52°35'18" E 140.341 feet, thence S35°42' W 12.067 feet, thence S46°36'03" E 29.762 feet, thence S24°33' E 31.000 feet, thence N65°27' E 133.000 feet, thence S18° E 37.474 feet, thence S33° E 75.000 feet, thence S77°09'16" W 110.488 feet, thence S65°27' W 26.284 feet, thence S24°33' E 47.073 feet, thence South 8.76 feet, thence S30°36'37" E 34.857 feet, thence S18° E 70.000 feet, thence West 204.11 feet, to the point of beginning. Contains 3.5125 acres.

PHASE 2³

PARCEL ONE:

Beginning at a point that is North 292.132 feet and East 1993.927 feet from the NW corner of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence N0°01'40" W 163.000 feet, thence S72° E 194.586 feet, thence S11° 10'05" W 94.312 feet, thence S18° W 42.298 feet; thence N72° W 75.004 feet to a point of a 140.00 feet radius curve to the left (bearing to center curve bears S18°07'40" W), thence Northwesterly 44.295 feet along the arm of said curve, thence S89°52'20" W 38.725 feet, to the point of beginning. Contains 0.772 acres.

PARCEL TWO:

Beginning at a point that is North 231.673 feet and East 2241.500 feet from the NW corner of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence N18° E 136.000 feet, thence S72° E 58.050 feet, thence S66° E 96.060 feet, thence S35° 42' W 138.000 feet, thence N54°18' W 59.441 feet, thence S18° W 12.563 feet, thence N72° W 55.000 feet, to the point of beginning. Contains 0.4059 acres.

¹Exhibit A was amended on August 17, 1993, and recorded in the Office of the Recorder Salt Lake County, Utah, Entry No. 5586005, Book 6737, Page 0933.

²The described real property associated with Phase 1 of the Project was originally recorded in the office of the County Recorder of Salt Lake County, Utah, on May 3, 1979, Entry No. 3274083, Book 4856, Page 488.

³The described real property associated with Phase Two of the Project was originally recorded in the office of the County Recorder of Salt Lake County, Utah, on May 24, 1979, Entry No. 3284555, Book No. 4868, Page 548.

PARCEL THREE:

Beginning at a point that is North 144.054 feet and East 2413.759 feet from the NW corner of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence N35°42' E 12.067 feet, thence N52°35'18" E 140.341 feet, thence East 8.230 feet, thence S18° E 93.000 feet, thence S65°27' W 133.000 feet, thence N24°33' W 31.000 feet, thence N46°36'03" W 29.762 feet, to the point of beginning. Contains 0.2601 acres.

PARCEL FOUR:

Beginning at a point that is North 96.317 feet and East 2039.182 feet from the NW corner of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence N4°07'07" E 67.000 feet, thence N89°58' E 148.000 feet, thence S0°02' E 61.000 feet, thence S87°47'04" W 152.962 feet, to the point of beginning. Contains 0.2205 acres.

PHASE 3⁴

PARCEL ONE:

Beginning at a point that is South 131.514 feet and East 2022.776 feet from the Northwest Corner of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence N4°07'07" E 126.164 feet, thence N87°06'49" E 187.265 feet, thence North 8.732 feet; thence N87°27'22" E 126.125 feet; thence South 149.598 feet; thence West 322.098 feet to the point of beginning. Contains 0.9983 Acres.

PARCEL TWO:

Beginning at a point that is South 131.514 feet and East 2548.976 feet from the Northwest Corner of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence N18° W 70.00 feet; thence N30°36'37" W 34.857 feet; thence North 8.76 feet; thence N24°33' W 47.073 feet; thence N65°27" E 26.284 feet; thence N77°09'16" E 110.488 feet; thence S33° E. 94.220 feet; thence S18° E. 110.00 feet; thence West 158.00 feet to the point of beginning. Contains 0.612 Acres.

PARCEL NUMBERS

⁴The described real property associated with Phase Three of the Project was originally recorded in the office of the Recorder of Salt Lake County, Utah, on July 25, 1980, Entry No. 3457139, Book No. 5127, Page 351.

EXHIBIT "B"

UNIT PAR VALUE, PERCENTAGE INTEREST, BUILDING PHASE, AND PARCEL NUMBER

<u>Building</u>	<u>Unit</u>	<u>Par Value (based on points)</u>	<u>Percentage Interest</u>	<u>Phase</u>	<u>Parcel Numbers</u>
1	(937 #1) a	398.4	1.328%	II	22-20-378-002-0000
1	(937 #2) b	398.4	1.328%	II	22-20-378-003-0000
1	(937 #3) c	398.4	1.328%	II	22-20-378-004-0000
1	(937 #4) d	471.6	1.572%	II	22-20-378-005-0000
2	(944 #1) a	398.4	1.328%	I	22-20-379-022-0000
2	(944 #2) b	398.4	1.328%	I	22-20-379-023-0000
2	(944 #3) c	398.4	1.328%	I	22-20-379-024-0000
2	(944 #4) d	471.6	1.572%	I	22-20-379-025-0000
3	(955 #1) a	398.4	1.328%	I	22-20-378-006-0000
3	(955 #2) b	398.4	1.328%	I	22-20-378-007-0000
3	(955 #3) c	398.4	1.328%	I	22-20-378-008-0000
3	(955 #4) d	471.6	1.572%	I	22-20-378-009-0000
4	(955 #8) a	398.4	1.328%	II	22-20-379-002-0000
4	(955 #7) b	398.4	1.328%	II	22-20-379-003-0000
4	(955 #6) c	398.4	1.328%	II	22-20-379-004-0000
4	(955 #5) d	471.6	1.572%	II	22-20-379-005-0000
5	(975 #1) a	398.4	1.328%	I	22-20-378-010-0000
5	(975 #2) b	398.4	1.328%	I	22-20-378-011-0000
5	(975 #3) c	398.4	1.328%	I	22-20-378-012-0000
5	(975 #4) d	471.6	1.572%	I	22-20-378-013-0000
6	(975 #8) a	398.4	1.328%	II	22-20-378-014-0000
6	(975 #7) b	398.4	1.328%	II	22-20-378-015-0000
6	(975 #6) c	398.4	1.328%	II	22-20-378-016-0000
6	(975 #5) d	471.6	1.572%	II	22-20-378-017-0000
7	(985 #4) a	398.4	1.328%	I	22-20-379-006-0000
7	(985 #3) b	398.4	1.328%	I	22-20-379-007-0000
7	(985 #2) c	398.4	1.328%	I	22-20-379-008-0000
7	(985 #1) d	471.6	1.572%	I	22-20-379-009-0000
8	(985 #8) a	398.4	1.328%	II	22-20-378-018-0000
8	(985 #7) b	398.4	1.328%	II	22-20-378-019-0000
8	(985 #6) c	398.4	1.328%	II	22-20-378-020-0000
8	(985 #5) d	471.6	1.572%	II	22-20-378-021-0000
9	(991 #1) a	398.4	1.328%	I	22-20-379-010-0000
9	(991 #2) b	398.4	1.328%	I	22-20-379-011-0000
9	(991 #3) c	398.4	1.328%	I	22-20-379-012-0000
9	(991 #4) d	471.6	1.572%	I	22-20-379-013-0000
10	(991 #8) a	398.4	1.328%	III	22-29-127-002-0000
10	(991 #7) b	398.4	1.328%	III	22-29-127-003-0000
10	(991 #6) c	398.4	1.328%	III	22-29-127-004-0000
10	(991 #5) d	471.6	1.572%	III	22-29-127-005-0000
11	(994 #1) a	398.4	1.328%	I	22-20-379-014-0000
11	(994 #2) b	398.4	1.328%	I	22-20-379-015-0000
11	(994 #3) c	398.4	1.328%	I	22-20-379-016-0000
11	(994 #4) d	471.6	1.572%	I	22-20-379-017-0000
12	(995 #1) a	398.4	1.328%	III	22-29-127-006-0000
12	(995 #2) b	398.4	1.328%	III	22-29-127-007-0000
12	(995 #3) c	398.4	1.328%	III	22-29-127-008-0000
12	(995 #4) d	471.6	1.572%	III	22-29-127-009-0000

<u>Building</u>	<u>Unit</u>	<u>Par Value (based on points)</u>	<u>Percentage Interest</u>	<u>Phase</u>	<u>Parcel Number</u>
13	(6980 #1) a	398.4	1.328%	II	22-20-379-018-0000
13	(6980 #2) b	398.4	1.328%	II	22-20-379-019-0000
13	(6980 #3) c	398.4	1.328%	II	22-20-379-020-0000
13	(6980 #4) d	471.6	1.572%	II	22-20-379-021-0000
14	(6980 #5) a	398.4	1.328%	I	22-20-378-022-0000
14	(6980 #6) b	398.4	1.328%	I	22-20-378-023-0000
14	(6980 #7) c	398.4	1.328%	I	22-20-378-024-0000
14	(6980 #8) d	471.6	1.572%	I	22-20-378-025-0000
15	(7000 #1) a	398.4	1.328%	III	22-29-127-018-0000
15	(7000 #2) b	398.4	1.328%	III	22-29-127-019-0000
15	(7000 #3) c	398.4	1.328%	III	22-29-127-020-0000
15	(7000 #4) d	471.6	1.572%	III	22-29-127-021-0000
16	(7000 #8) a	398.4	1.328%	III	22-29-127-022-0000
16	(7000 #7) b	398.4	1.328%	III	22-29-127-023-0000
16	(7000 #6) c	398.4	1.328%	III	22-29-127-024-0000
16	(7000 #5) d	471.6	1.572%	III	22-29-127-025-0000
17	(7005 #4) a	398.4	1.328%	III	22-29-127-010-0000
17	(7005 #3) b	398.4	1.328%	III	22-29-127-011-0000
17	(7005 #2) c	398.4	1.328%	III	22-29-127-012-0000
17	(7005 #1) d	471.6	1.572%	III	22-29-127-013-0000
18	(7005 #5) a	398.4	1.328%	III	22-29-127-014-0000
18	(7005 #6) b	398.4	1.328%	III	22-29-127-015-0000
18	(7005 #7) c	398.4	1.328%	III	22-29-127-016-0000
18	(7005 #8) d	471.6	1.572%	III	22-29-127-017-0000

EXHIBIT "C"

AMENDED AND RESTATED BY-LAWS

OF

THE ESSEX COURT CONDOMINIUM HOMEOWNERS ASSOCIATION

ARTICLE I

PLAN OF UNIT OWNERSHIP

1. **Condominium Submission.** The Property located in Salt Lake County, Utah, has been submitted to the provisions of the Act by the Declaration recorded in the Office of the County Recorder of Salt Lake County, Utah, simultaneously herewith, and shall hereafter be referred to as the "Condominium".

2. **By-Laws Applicability.** The Provisions of these By-Laws are applicable to the members of the Essex Court Condominium Homeowners Association as the same is provided in the Declaration and the use, occupancy, sale, lease or other transfer thereof. All Owners of any fee or leasehold interest, all occupants or users of the Condominium, and the agents and servants of any of them are subject to the provisions of the Declaration, these By-Laws, and the Rules and Regulations.

3. **Personal Application.** All present and future Owners, tenants, future tenants, their guests, licensees, servants, agents, employees and any other person or persons who shall be permitted to use the facilities of the Condominium, shall be subject to these By-Laws and to the Rules and Regulations of the Condominium. Acquisition, rental or occupancy of any of the Condominium Units in the Condominium shall constitute an acknowledgment that such Owner, tenant or occupant has accepted and ratified these By-Laws, the provisions of the Declaration and the Rules and Regulations and will comply with them.

4. **Office.** The office of the Condominium and of the Management Committee shall be located at the Condominium or at such other place as may be designated from time to time by the Management Committee (hereinafter sometimes called the "Committee").

ARTICLE II

ASSOCIATION

1. **Composition.** All of the Unit Owners, acting as a group in accordance with the Act, the Declaration, and these By-Laws, shall constitute the Association. Except as to those matters

which the Act specifically requires to be performed by the vote of the Unit Owners, the administration of the Condominium shall be performed by the Committee.

2. Voting. The total number of votes in the Association shall be one hundred (100), and each Unit shall be entitled to the number, fraction, or percentage of votes proportionate, to the Percentage Interest assigned to such Unit in the Declaration. Since a Unit Owner may be more than one person, if only one of such persons is present at a meeting of the Association that person shall be entitled to cast the votes appertaining to that Unit. But if more than one of such persons is present, the vote appertaining to that Unit shall be cast only in accordance with the agreement of a majority of them, and such consent, shall be conclusively presumed if any one of them purports to cast the vote appertaining to that Unit without protest being made forthwith by any of the others to the person presiding over the meeting. Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this Section to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a Unit Owner. Except where a greater number is required by the Act, the Declaration, or these By-Laws, a majority of the votes of Unit Owners present in person or represented by proxy in good standing and entitled to vote is required to adopt decisions at any meeting of the Association.

3. Place of Meeting. Meetings of the Association shall be held at the principal office of the Condominium or at such other suitable place as may be designated by the Committee and stated in the notice of the meeting.

4. Annual Meeting. Annual meetings for any other purpose than the election of the Management Committee may be held at any time on call of the President of the Committee, by a majority of the Committee or by Unit Owners representing 20% of the Percentage Interest. Notice of such meeting shall be given in accordance with the provisions of Section 6 of this Article II. The annual meetings of the Association shall be held on the same date of each succeeding year, unless such date shall occur on a Sunday or holiday, in which event the meeting shall be held on the next succeeding Monday which is not a holiday. At such annual meetings the Committee shall be elected by ballot of the Owners in accordance with the requirements of Section 4 of Article III. The Association may transact such other business as may properly come before them at such meetings.

5. Special Meetings. It shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Committee or upon a petition signed and presented to the Secretary by Owners having not less than 20% of the votes of all Owners. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

6. Notice of Meeting. It shall be the duty of the Secretary to mail, by United States mail, postage prepaid, a notice of (a) each annual meeting of the Owners, as least twenty (20) days in advance of such meeting and (b) each special meeting of the Owners at least ten (10) days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of their respective Units and at such other address as

each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

7. Voting Requirements. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall have fully paid all due installments of assessments made or levied against him and his Unit by the Committee as hereinafter provided, together with all interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him and against his Unit, at least three (3) days prior to the date fixed for such annual or special meeting.

8. Proxies. The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Unit Owner, or, in cases where the Unit Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the Unit Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice as aforesaid. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy, and must be filed with the Secretary not less than three (3) days before the meeting.

9. Quorum. Except as may otherwise be provided herein or by statute, more than fifty percent (50%) of the Owners shall constitute a quorum for the adoption of decisions. If, however, such quorum shall not be present or represented at any meeting; the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than 48 hours, and no later than thirty, (30) days after the time set for the original meeting. No notice of such rescheduled meeting shall be required except an announcement thereof at the original meeting. A quorum for the transaction of business at the rescheduled meeting shall be thirty percent (30%) of the Percentage Interest.

10. Order of Business. The order of business at all meetings of the Association shall be as follows: (a) roll call; (b) proof of notice of meeting; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) report of special committees, if any; (f) election of inspectors of election, if applicable; (g) election of Committee Members, if applicable; (h) unfinished business; and (i) new business.

11. Title to Unit. Title to Units may be taken in the name of natural person or in the names of two or more natural persons, or in the name of a corporation, partnership, association or other entity capable of holding title to real property, or any combination thereof.

12. Conduct of Meeting. The Chairman shall, or in his absence the Vice-Chairman preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a Minute Book all resolutions adopted by the meeting as well as a record of all transactions occurring thereat.

ARTICLE III

MANAGEMENT COMMITTEE

1. **Powers and Duties.** The affairs and business of the Association shall be managed by the Committee which shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things as are not by the Act or by these By-Laws directed to be exercised and done by the Association. The Committee shall have the power from time to time to adopt any Rules and Regulations deemed necessary for the enjoyment of the Condominium provided such Rules and Regulations shall not be in conflict with the Act, the Declaration or these By-Laws. The Committee shall delegate to one of its members the authority to act on behalf of the Committee on all matters relating to the duties of the Managing Agent, if any, which might arise between meetings of the Committee. Subject to any limitations or provisions contained in the Declaration, the Committee shall be responsible for the following:

(a) Preparation of an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses;

(b) Making assessments against Owners to defray the cost and expenses of the Condominium, establishing the means and methods of collecting such assessments from the Owners, and establishing the period of the installment payment of the annual assessment for Common Expenses. Unless otherwise determined by the Committee, the annual assessment against each Owner for his proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month.

(c) Providing for the operation, care, upkeep, replacement, maintenance and surveillance of all of the Common Areas and services of the Condominium.

(d) Designating, hiring and dismissing the personnel necessary for the maintenance, operation, repair and replacement of the Common Area, and providing services for the Property, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed the common property of the Owners.

(e) Collecting the assessments against the Owners, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to carry out the administration of the Property.

(f) Making and amending Rules and Regulations respecting the use of the Property.

(g) Opening of bank accounts on behalf of the Condominium and designating the signatories required therefore.

(h) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Declaration and other provisions of these By-Laws, after damage or destruction by fire or other casualty.

(i) Enforcing by legal means the provisions of the Declaration, these By-Laws and the Rules and Regulations for the use of the Property adopted by it, and bringing any proceedings which may be instituted on behalf of the Owners.

(j) Obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof.

(k) Paying the cost of all services rendered to the condominium and not billed to Owners of individual Units.

(l) Keeping books with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Condominium, specifying and maintenance and repair expenses of the common Areas and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents, or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Committee for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices, and the same, upon resolution of the Association shall be audited at least once a year by an outside auditor employed by the Committee who shall not be a resident of the Condominium, or an Owner therein. The cost of such audit shall be a Common Expense. A copy of the annual audit report shall be supplied to any first mortgagee of any Unit in the Condominium who requests the same in writing from the Secretary.

(m) To do such other things and acts not inconsistent with the Act, the Declaration, or the By-Laws or by a resolution of the Association.

2. Manager. The Committee may employ for the Condominium a Manager at a compensation established by the Committee, to perform such duties and services as the Committee shall authorize, including, but not limited to, the duties listed in Section 1 of this Article III. The Committee may delegate to the Manager all of the powers granted to the Committee by these By-Laws; provided that any actions by the Manager with respect to the powers set forth in paragraphs (b), (f), (g) and (i), of Section 1 of this Article III shall require the written consent of the Committee. The term of any contract for a Manager may not exceed one (1) year, and any such contract shall provide, inter alia, that such agreement may be terminated by either party without cause or a termination fee on thirty (30) days or less written notice.

3. Number of Committee Members and Initial Selection of Committee. The Committee shall be composed of five (5) persons, all of whom shall be Unit Owners.

4. Selection and Term of Office of the Committee. Subject to the provisions of Section 3 of this Article III, the term of office for each Committee member shall be fixed at three (3) years. Unless elected under the provisions of Section 11 (a) of this Article III, Committee members shall be elected in a three year cycle with three (3) members elected at the annual meeting the first year, two (2) members elected at the annual meeting the second year and no election held at the annual meeting the third year. Members of the Management Committee shall serve and hold office until their respective successors are elected, or until their death, resignation, or removal; provided that if any member ceases to be a Unit Owner, his membership on the Management Committee shall thereupon terminate.

5. Organization Meeting. The first meeting of the members of the Committee following the annual meeting of the Association shall be held within ten (10) days after the annual meeting at such place as shall be fixed by the Committee at the meeting at which such Committeemen were elected, and no notice shall be necessary to the newly elected Committee Members in order legally to constitute such meeting provided that majority of the whole Committee shall be present thereat.

6. Regular Meetings. Regular meetings of the Committee may be held at such time and place as shall be determined, from time to time, by a majority of the Committee, but at least Six (6) such meetings shall be held during each fiscal year after the first annual meeting of the Association. Notice of regular meetings of the Committee shall be given to each member, personally, by mail or by telephone, at least three (3) business days prior to the day named for such meeting.

7. Special Meetings. Special meetings of the Committee may be called by the Chairman on three (3) business days' notice to each member. Such notice shall be given personally, by mail or by telephone, and such notice shall state the time, place and purpose of the meeting. Special meetings of the Committee shall be called by the Chairman or Secretary in like manner and on like notice on the written request of at least two (2) Committeemen.

8. Waiver of Notice. Before or at any meeting of the Committee, any Committeeman may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Committeeman at any meeting of the Committee shall be a waiver of notice by him of the time and place thereof. If all the Committeemen are present at any meeting of the Committee, no notice shall be required and any business may be transacted at such meeting.

9. Committee's Quorum. At all meetings of the Committee, a majority of the Committeemen shall constitute a quorum for the transaction of business, and the acts of the majority of the Committeemen present at a meeting at which a quorum is present shall be the acts of the Committee. If, at any meeting of the Committee, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

10. Vacancies. Vacancies in the Committee caused by any reason other than removal of a Committeeman by a vote of the Association shall be filled by vote of the majority of the remaining Committeemen, at a special meeting of the Committee held for that purpose promptly after the occurrence of any such vacancy, even though the Committeemen present at such meeting may constitute less than a quorum of the Committee; and each person so elected shall be a Committeeman for the remainder of the term of the Committeeman so replaced and until a successor is elected at the next annual meeting of the Association.

11. Removal of Committee Member.

(a) A Committee Member may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum is present, by an affirmative vote of the majority of the votes represented and voting. Any Committee Member whose removal has been proposed by the Owners shall be given at least thirty (30) days' written notice of the calling of the meeting and the purpose thereof and shall be given a reasonable opportunity to be heard at the meeting.

(b) Any Committee Member who fails on three successive occasions to attend Committee meetings (whether regular or special) or who has failed to attend at least 25% of all Committee meetings (whether regular or special) held during any twelve month period shall automatically forfeit his membership on the Committee.

(c) Any Committee Member who allows his installments of assessments made or levied against him and his Unit by the Committee to exceed four hundred dollars (\$400.00), including default interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him and against his unit, and fails to cure the default within ten (10) days after written notice shall automatically forfeit his membership on the Committee.

12. Compensation. No Committeeman shall receive any compensation from the Condominium for acting as such.

13. Conduct of Meetings. The Chairman shall preside over all meetings of the committee and the secretary shall keep a Minute Book of the Committee recording therein all resolutions adopted by the Committee and a record of all transactions and proceedings occurring at such meetings.

14. Report of Committee. The Committee shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, full and clear statement of the business and condition of the Condominium.

15. Fidelity Bonds. The Committee shall require that all officers, agents (including professional Manager and its employees) and employees of the Association handling or responsible for funds furnish adequate fidelity bonds. The premiums on such bonds shall constitute a Common Expense. The Committee shall provide a fidelity insurance coverage as required by the Declaration.

16. Dispensing with Vote. Any action by the Committee required or permitted to be taken at any meeting may be taken without a meeting if all the members of the Committee shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Committee.

17. Liability of the Committee. The members of the Committee shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the Committeemen from and against all contractual liability to others arising out of contracts made by the Committee on behalf of the Owners unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these By-Laws. It is intended that the member of the Committee shall have no personal liability with respect to any contract made by them on behalf of the Owners. It is also intended that the liability of any Owner arising out of any contract made by the Committee or out of the aforesaid indemnity in favor of the members of the Committee shall be limited to such proportion of the total liability thereunder as his Percentage Interest bears to the Percentage Interests of all of the Owners. Every Agreement made by the Committee or by the Managing Agent, on behalf of the Owners shall, if obtainable, provide that the members of the Committee or the Managing Agent, as the case may be, are acting only as agents for the Owners and shall have no personal liability thereunder (except as Owners), and that each Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his Percentage Interest bears to the Percentage Interests of all Owners. The Owners shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he is or was a Committeeman or officer, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to the best interests of the Owners. Notwithstanding anything contained herein to the contrary, the provisions of this paragraph 17 shall be deemed void to the extent that it is absolutely necessary in order to obtain fidelity insurance coverage as provided in the Declaration.

ARTICLE IV

OFFICERS

1. Designation. The principal officers of the Condominium shall be a Chairman, Vice Chairmen, a Secretary, and a Treasurer, all of whom shall be elected by the Committee. The Committee may appoint assistant secretaries and such other officers as in its judgment may be necessary. With the exception of the Chairman, no officer need be a member of the Committee. Two or more offices may be held by the same person, except that the Chairman shall not hold any other office.

2. Election of Officers. The officers of the Condominium shall be elected annually by the Committee at the organization meeting of each Committee and shall hold office at the pleasure

of the Committee. Any vacancy in an office shall be filled by the Committee at a regular meeting or special meeting called for such purpose.

3. Removal of Officers. The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Committee may be removed at any time by the affirmative vote of a majority of the whole committee, and his successor may be elected at any regular meeting of the Committee, or at any special meeting of the Committee called for such purpose.

4. Chairman. The Chairman shall be the chief executive officer; he shall preside at meetings of the Association and the Committee and shall be an ex officio member of all committees; he shall have general and active management of the business of the Condominium and shall see that all orders and resolutions of the Committee are carried into effect. He shall have all of the general powers and duties which are usually vested in or incident to the office of president of a stock corporation organized under the laws of the State of Utah.

5. Vice Chairman. The Vice Chairman shall, in the absence or disability of the Chairman, perform the duties and exercise the powers of the Chairman, and shall perform such other duties as the Committee or the Chairman shall prescribe. If neither the Chairman nor the Vice Chairman is able to act, the Committee shall appoint a member of the Committee to do so on an interim basis.

6. Secretary. The Secretary shall attend all sessions of the Committee and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him for that purpose and shall perform like duties for committees when required. He shall give, or cause to be given, notice of all meetings of the Association, the Committee and committees and shall perform such other duties as may be prescribed by the Committee. The Secretary shall compile and keep current at the principal office of the Condominium, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Committee including resolutions.

7. Treasurer. The Treasurer shall have the custody of all funds and securities that are not under the control of the Managing Agent, and, with the assistance of the Managing Agent, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all moneys and other valuable effects in such depositories as may be designated by the Committee. He shall disburse funds as ordered by the Committee taking proper vouchers for such disbursements, and shall render to the Chairman and committeemen, at the regular meetings of the Committee, or whenever they may require it, an account of all of his transactions as Treasurer and of the financial condition of the Condominium.

He shall give a bond, the premium therefore to be considered a Common Expense, in such sum, and with such surety or sureties as shall be satisfactory to the Committee for the faithful

performance of the duties of his office and for the restoration, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control.

8. Agreement, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks and other instruments of the Condominium for expenditures or obligations of over \$500.00 shall be executed by any two officers of the Committee or by such other person or persons as may be designated by the Committee. All such instruments for expenditures or obligations of less than \$500.00 may be executed by any one officer of the Committee or by such other person as may be designated by the Committee.

9. Compensation of Officers. No officer shall receive any compensation from the Committee for acting as such.

ARTICLE V

FISCAL YEAR

The fiscal year of the Association shall consist of the twelve month period commencing on January 1 of each year and terminating on December 31 of the same year, except that the first fiscal year shall begin at the date of organization and terminate on December 31. The fiscal year herein established shall be subject to change by the Committee should it be deemed advisable or in the best interests of the Association.

ARTICLE VI

AMENDMENT TO BY-LAWS

1. Amendments. Except as otherwise provided in this Section, these By-Laws may be modified or amended either (i) by a vote of at least fifty-one percent (51%) of the Percentage Interest at any regular or special meeting at which a quorum is present, provided that Notice of the proposed amendment shall have been given to each Owner simultaneously with the notice of such meeting, or (ii) pursuant to a written instrument duly executed by at least fifty one percent (51%) of the Percentage Interest.

2. Recording. A modification or amendment of these By-Laws shall become effective only if such modification or amendment is recorded in the office of the County Recorder of Salt Lake County, Utah.

3. Conflicts. No modification or amendment of these By-Laws may be adopted which shall be inconsistent with the provisions of the Act or with the provisions of the Declaration. A modification or amendment once adopted and recorded as provided for herein shall then constitute part of the official By-Laws of the Condominium and all Owners shall be bound to abide by such modification or amendment.

4. Approval of Mortgagees. The Declaration contains provisions concerning various rights, priorities, remedies and interests of the Mortgagees of Units. Such provisions in the Declarations are to be construed as covenants for the protection of the Mortgagees on which they may rely in making loans secured by mortgages on the Units. Accordingly, all Mortgagees shall be given thirty (30) days notice of all proposed amendments, and no amendment or modification of these By-Laws impairing or affecting the rights, priorities, remedies or interests of a Mortgagee (including the Mortgagee's use of a secondary mortgage market, i.e., the salability of Mortgages to Federal Home Loan Mortgage Corporation, etc.) shall be adopted without the prior written consent of such Mortgagee. If there is more than one Mortgagee holding Mortgages on the Units, it shall be sufficient for this purpose to obtain the written consent of the Mortgagee or Mortgagees holding mortgages on 75% or more of the Units encumbered by Mortgages.

ARTICLE VII

NOTICE

1. Manner of Notice. All notices, demands, bills, statements or other communications provided for or required under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, first class postage prepaid, (i) if to an Owner, at the address of his Unit and at such other address as the Owner may have designated by notice in writing to the Secretary, or (ii) if to the Committee or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Act.

ARTICLE VIII

COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

I. Compliance. These By-Laws are set forth in compliance with the requirements of the Act.

2. Conflict. These By-Laws are subordinate and subject to all provisions of the Declaration and to the provisions of the Act. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration or the Act. In the event of any conflict between these By-Laws and the Declaration, the provisions of the Declaration shall control; and in the event of any conflict between the Declaration and the Act, the provisions of the Act shall control.

3. Severability. These By-Laws are set forth to comply with the requirements of the State of Utah. In case any of the By-Laws are in conflict with the provisions of any of its statutes, the provisions of the states will apply. If any provisions of these By-Laws or any section, sentence, clause, phrase, or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of these By-Laws, shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

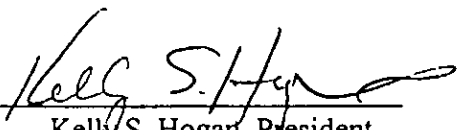
4. Waiver. No restriction, condition, obligation or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

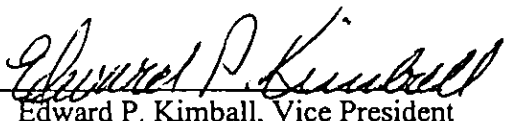
5. Captions. The captions contained in these By-Laws are for convenience only, and are not part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

6. Gender, etc. Whenever in these By-Laws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

IN WITNESS WHEREOF, these Amended and Restated By-Laws of the Essex Court Condominium Homeowners Association were voted on and approved by at least 51% of the percentage interest of the Unit Owners pursuant to the provisions of Article II, Sections 7 and 8 and Article VI Section 1 contained in this document.

ESSEX COURT HOMEOWNERS ASSOCIATION.

By: 
Kelly S. Hogan, President
Essex Court Condominiums Homeowner Association

By: 
Edward P. Kimball, Vice President
Essex Court Condominiums Homeowner Association

STATE OF UTAH)
 : ss.
County of Salt Lake)

On the 3 day of November, 2003, personally appeared before me KELLY S. HOGAN and EDWARD P. KIMBALL, who being by me duly sworn did say, each for himself, that he, the said KELLY S. HOGAN is the President and he, the said EDWARD P. KIMBALL is the Vice President of Essex Court Condominium Homeowners Association and that the within and foregoing instrument was signed on behalf of Essex Court Condominium Homeowners Association on by authority of a resolution of the its Management Committee and said KELLY S. HOGAN and EDWARD P. KIMBALL each duly acknowledged to me that said Corporation executed the same and that the seal affixed is the seal of said Corporation.

Marilyn Cordova
NOTARY PUBLIC

My Commission Expires: Feb. 7, 2005



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11:59 AM
SALT LAKE CITY, UT

RECORDED AS RECEIVED
- CO RECORDER -