

**MINUTES
OF THE INITIAL MEETING OF THE BOARD OF TRUSTEES
OF
COLONIAL GARDENS TOWNHOUSES OWNERS ASSOCIATION, INC.**

INITIAL MEETING:

The initial meeting of the COLONIAL GARDENS TOWNHOUSES OWNERS ASSOCIATION, INC. was held at the offices of the corporation on the 6th day of December, 2002, pursuant to personal notice to each Trustee.

TRUSTEES PRESENT:

David N. Johnson
9710 South 700 East, Suite 101
Sandy, Utah 84070

Wallace J. Morgan
9710 South 700 East, Suite 101
Sandy, Utah 84070

B. Kim Heaton
9710 South 700 East, Suite 101
Sandy, Utah 84070

WAIVER OF NOTICE:

The Chairman then stated that all Trustees must sign a Waiver of Notice of the time and place of this meeting. All persons at the meeting then stated their understanding and consent that the signature of each Trustee of the corporation of the Minutes of this meeting, acknowledges and constitutes receipt of notice of the time and place of the meeting and the Waiver of the same.

ELECTION OF OFFICERS:

On motion duly made and carried, and by the unanimous vote of all present, the following officers were elected:

President - Wallace J. Morgan
Secretary - David N. Johnson

BANK ACCOUNTS:

On motion duly made, seconded and carried, it was unanimously:

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DOUG CROFTS, WEBER COUNTY RECORDER
31-DEC-02 400 PM FEE \$167.00 DEP JPH
REC FOR: MERIDIAN.TITLE

RESOLVED, that the Treasurer be, and s/he is hereby authorized to open a bank account at such bank or banks to be selected by the officers of the corporation, from which funds are to be withdrawn only by check signed by an officer of the corporation; a copy of the printed form of Bank resolution and signature cards shall be executed and the same is hereby ordered filed with the permanent records of the corporation.

APPROVAL OF MINUTES OF THE FIRST MEETING OF INCORPORATOR:

On motion duly made, seconded and carried, the Board approved, confirmed and ratified the minutes of the First Meeting of Incorporator and Subscriber held on the ___ day of December, 2002, at the offices of the corporation.

APPROVAL OF BY-LAWS:

On motion duly made, seconded and carried, the attorney for the corporation was instructed to prepare By-laws.

PAYMENT OF INCORPORATING EXPENSES:

Upon motion duly made, seconded and carried, the following resolution was adopted:

RESOLVED, that the Treasurer be, and s/he is hereby authorized to pay all fees and expenses incident to and necessary for the organization of the corporation.

COMPENSATION OF OFFICERS:

Upon motion duly made and seconded, it was unanimously:

RESOLVED, that the officers of the corporation shall be reimbursed for their expenses incurred on behalf of the corporation, but shall not receive any other compensation for such service.

FISCAL YEAR:

Upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

RESOLVED, that the fiscal year of the corporation shall end December 31.

AUTHORIZATION TO EXECUTE INSTRUMENTS OR DOCUMENTS:

It was then deemed advisable to give general authority to the President and Secretary to execute all necessary instruments or documents on behalf of the corporation required for the conduct of its business in the State of Utah; provided, however, all documents shall be signed by

at least two officers, one of whom shall always be the President or the Secretary.

Upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

RESOLVED, the President and/or Vice-President and/or Secretary and/or Treasurer be and they are hereby authorized to execute on behalf of the corporation any and all employment agreements, deeds, leases, contracts, purchase orders, notes, mortgages, and other instruments or documents which may be necessary or desirable in connection with the conduct of the business or corporation.


REGULAR MEETING FOR BOARD OF TRUSTEES:


The Board then determined that it shall hold a regular meeting as determined by the President, but at least on a quarterly basis.

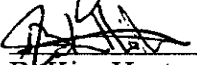
On motion duly made, seconded and carried, it was decided that the corporation would not issue any certificates of membership.

ADJOURNMENT:

There being no further business to come before the meeting, the same was declared adjourned.



David N. Johnson


Wallace J. Morgan


B. Kim Heaton

**ARTICLES OF INCORPORATION
OF
COLONIAL GARDENS TOWNHOUSES OWNERS ASSOCIATION, INC.**

In compliance with the requirements of the Utah Nonprofit Corporation and Cooperative Association Act, the undersigned resident of Salt Lake County, State of Utah, being of full age, has this day voluntarily formed a corporation not for profit, and does hereby certify:

**ARTICLE I
NAME**

The name of the corporation is the COLONIAL GARDENS TOWNHOUSES OWNERS ASSOCIATION, INC. (hereafter referred to as the "Association").

**ARTICLE II
PRINCIPAL OFFICE**

The principal office of the Association is located at 9710 South 700 East, Suite 101, Sandy, Utah 84070.

**ARTICLE III
REGISTERED AGENT**

David N. Johnson is hereby appointed the initial Registered Agent of the Association. His address is 9710 South 700 East, Suite 101, Sandy, Utah 84070.

**ARTICLE IV
PURPOSE AND POWERS OF THE ASSOCIATION**

The Association is organized as a nonprofit corporation and does not contemplate pecuniary gain or profit to its members. The specific purposes for which the Association is formed is to own, manage, operate, maintain and regulate the Common Areas and Facilities at COLONIAL GARDENS TOWNHOUSES, a planned unit development located in Riverdale, Utah; to promote the health, safety and welfare of the residents therein; and to take any other action and to enter into any other transactions which may be reasonably necessary to accomplish the foregoing.

**ARTICLE V
MEMBERSHIP AND ISSUANCE OF SHARES**

All of the lot owners at COLONIAL GARDENS TOWNHOUSES shall be members of the Association in accordance with their percentages of ownership interest as set forth in the Declaration of Covenants, Conditions and Restrictions for Colonial Gardens Townhouses (the "Decelaration). No shares of stock will be issued.

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ARTICLE VI
VOTING RIGHTS

Each member shall have one (1) vote in accordance with his or her percentage of ownership interest as set forth in the Declaration.

ARTICLE VII
BOARD OF TRUSTEES

The affairs of the Association shall be managed by the Board of Trustees which shall consist of three (3) members, who must be individual lot owners or the legal agents or representatives of institutional lot owners. The names and addresses of the persons who are to act in the capacity of members of the Board of Trustees until the selection of their successors are:

Name and Address

David N. Johnson
9710 South 700 East, Suite 101
Sandy, Utah 84070

Wallace J. Morgan
9710 South 700 East, Suite 101
Sandy, Utah 84070

B. Kim Heaton
9710 South 700 East, Suite 101
Sandy, Utah 84070

All Board Members shall be elected for a two (2) year term.

ARTICLE VIII
DISSOLUTION

The incorporated Association may be dissolved in accordance with Utah law and the Declaration. Upon dissolution, the assets of the corporation shall be transferred to a qualifying non-profit corporation.

ARTICLE IX
DURATION

The Association shall exist perpetually.

ARTICLE X
AMENDMENTS

The affirmative vote of at least two-thirds of the Members of the Association shall be required and shall be sufficient to amend these Articles. Any amendment so authorized shall be accomplished through the recordation or filing of an instrument executed by the President and Secretary of the Association. In such instrument the Committee shall certify that the vote required by this Section has occurred.

ARTICLE XI
INCORPORATOR

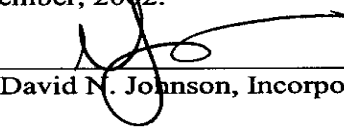
The name and address of the incorporator of the Association is:

David N. Johnson
9710 South 700 East, Suite 101
Sandy, Utah 84070

ARTICLE XII
DEFINITIONS

Except as otherwise provided herein or as may be required by context, all terms used in these Articles shall have the meanings given them by the Declaration.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Utah, we, the undersigned, as incorporators of the Association, have executed these Articles of Incorporation this 17th day of December, 2002.



David N. Johnson, Incorporator

ACKNOWLEDGMENT OF REGISTERED AGENT

The undersigned hereby acknowledges his appointment as the initial Registered Agent of the Association.



David N. Johnson

E# 1901417 BK2303 PG1570

VERIFICATION OF ACKNOWLEDGMENT

STATE OF UTAH)

ss.

COUNTY OF SALT LAKE)

On the 17th day of December, 2002, personally appeared before me David N. Johnson, who being by me first duly sworn, did say that he accepted his appointment as the initial Registered Agent of the COLONIAL GARDENS TOWNHOUSES OWNERS ASSOCIATION, INC.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

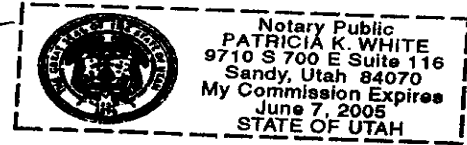
Patricia K. White

NOTARY PUBLIC

Residing at:

SANDY, UT

My Commission Expires: 6/7/05



**MINUTES OF INITIAL MEETING OF INCORPORATORS
COLONIAL GARDENS TOWNHOUSES OWNERS ASSOCIATION, INC.**

On the 6th day of December, 2002, at 9710 South 700 East, Suite 101, Sandy, Utah 84070, a meeting of the organizer and proposed incorporator of the above-named corporation was held at which the following person was present:

David N. Johnson
9710 South 700 East, Suite 101
Sandy, Utah 84070

David N. Johnson was elected Chairman of the meeting and kept the minutes.

The Chairman announced that the object of the meeting was to take the necessary steps to organize a corporation under the laws of the State of Utah, for the purpose of creating a non-profit corporation to own, manage and operate the common areas at COLONIAL GARDENS TOWNHOUSES, a planned unit development, and to do everything required thereby and allowed by law. The corporation is to be known as the COLONIAL GARDENS TOWNHOUSES OWNERS ASSOCIATION, INC. The Corporation shall not issue shares of stock. Each member shall have that percentage of ownership interest set forth in the Declaration of Covenants, Conditions and Restrictions for the Colonial Gardens Townhouses (the "Declaration").

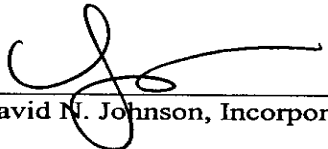
The Chairman presented a draft of the Articles of Incorporation of the Corporation to be formed, and the draft was thereupon approved in substance and in form, and was signed and duly acknowledged by the incorporator named therein in the manner required by law. A copy of the Articles of Incorporation so presented, approved, and signed is attached hereto, marked Exhibit "A."

On motion duly made, seconded, and unanimously carried, the attorney for the corporation was directed to file the Articles of Incorporation with the State of Utah.

It was unanimously agreed that additional meetings of the organizer would be held on call of the Chairman, upon not less than twenty-four (24) hours written notice to each organizer, at the place of the present meeting.

There being no further business to come before the meeting, upon a motion duly made, seconded, and carried, the same was duly adjourned.

DATED the day and year first above written.



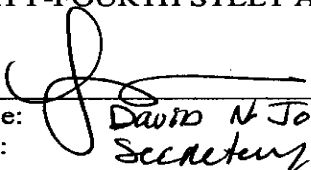
David N. Johnson, Incorporator

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CONSENT OF ALL OWNERS AND MORTGAGEES

Come now the undersigned Owner of all of the Units and all of the Mortgagees at Colonial Gardens, a Utah condominium project, and pursuant to U.C.A., Section 57-8-22 (1963) as well as Sections 20, 27 and 28 of the Declaration, and Article VIII of the Bylaws consent to concurrently remove the property from the provisions of the Utah Condominium Ownership Act and convert the property to a planned unit development.

OWNER:
FORTY-FOURTH STREET ASSOCIATES, INC.

By: 
Name: David N. Johnson
Title: Secretary

MORTGAGEE:

By: _____
Name:
Title:

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
COLONIAL GARDENS TOWNHOUSES**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR COLONIAL GARDENS TOWNHOUSES, dated for reference December 5, 2002, is made and executed by FORTY-FOURTH STREET ASSOCIATES, INC., a Utah corporation, whose principal address is 9710 South 700 East, Suite 101, Sandy, Utah 84070 (hereinafter referred to as the "Declarant").

RECITALS

A. Colonial Gardens Townhouses is currently a twenty-six unit condominium project located in Weber County, Utah (hereafter "Colonial Gardens").

B. Colonial Gardens is governed by the Utah Condominium Ownership Act, U.C.A., §§57-8-1 et seq. (1963) (the "Act").

C. Colonial Gardens is governed by a Declaration of Condominium recorded September 11, 1979 as Entry No. 789200 in Book 1322 at Page 613 of the official records of the County Recorder of Weber County, Utah (the "Original Declaration").

D. Section 57-8-22 (1963) of the Act allows all of the unit owners and lien holders to agree to remove the property from the provisions of the Act.

E. Section 27 of the Original Declaration allows the unit owners to amend the document and abandon the condominium ownership scheme with the affirmative consent of two-thirds of the undivided ownership interest, subject to the consent of the first trust deed or first mortgage holders pursuant to §20 of the Original Declaration.

F. This Amended and Restated Declaration of Covenants, Conditions, and Restrictions (the "Declaration") affects that certain real property located in Weber County, Utah described with particularity in Article II below (hereinafter referred to as the "Tract").

F. The Property is an area of unique natural beauty, featuring distinctive terrain;

G. Declarant is the owner of the Tract.

H. Declarant desires to convert the Tract from a condominium form of ownership to a townhouse planned unit development because of the financing benefits available.

I. By converting the form of ownership and subjecting the Tract to this Declaration, it is the desire, intent and purpose of Declarant to create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the utility, attractiveness, quality and value of the lands and improvements therein.

J. By this conversion Declarant will create upon the Tract a residential townhouse planned unit development which shall include certain Lots, Limited Common Area, Common Area and Facilities, and other improvements. The project will be completed in accordance with the plans contained in the Amended Record of Survey Map to be recorded concurrently herewith.

K. Declarant intends to sell to various purchasers the fee title to the individual residential Lots contained in the Tract, together with a corresponding membership interest in the Association, which shall own the Common Areas and Facilities, subject to the Amended Record of Survey Map, and the covenants, conditions and restrictions set forth herein.

L. Declarant desires, by filing this Declaration and Amended Record of Survey Map, to submit the property and all improvements now or hereafter constructed thereon to the provisions and protective covenants set forth herein.

M. The Project shall continue to be known as "Colonial Gardens Townhouses."

N. All of the voting requirements have been satisfied and consents obtained, copies of which are attached hereto, marked Exhibit "D," and incorporated herein by this reference.

COVENANTS, CONDITIONS, AND RESTRICTIONS

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Declarant hereby makes the following Declaration:

I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

1. Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorneys fees, late charges, default interest, service fees, filing and recording fees, fines, and other expenditures incurred or charged by the Association.

2. Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Colonial Gardens Townhouse Owners Association, Inc. on file or to be filed with the State of Utah.

3. Assessment shall mean and refer to any amount imposed upon, assessed or charged a Lot Owner or Resident at the Project.

4. Association shall mean and refer to all of the Lot Owners at Colonial Gardens taken as or acting as, a group in accordance with the Declaration.

5. Building shall mean and refer to any of the structures constructed in the Project.

6. Business Use and Trade shall mean and refer to any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether:

- (a) such activity is engaged in full or part-time;
- (b) such activity is intended to or does generate a profit; or
- (c) a license is required therefor.

7. By Laws shall mean and refer to the By Laws of the Association, a copy of which is attached to and incorporated in this Declaration by reference as Exhibit "C".

8. Capital Improvement shall mean and refer to a permanent addition to or the betterment of real property that enhances its capital value and improves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.

9. Committee shall mean and refer to the Management Committee of the Association as duly constituted.

10. Common Areas shall mean and refer to all real property in the Project owned by the Association for and in behalf of all of the Lot Owners including but not limited to the following items:

- a) The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Lots.
- b) All Common Areas designated as such in the Survey Map or Maps;
- c) All s designated as such in the Survey Map or Maps;
- d) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Lot

Owners, such as telephone, electricity, gas, water, cable tv and sewer;

e) The Project's outdoor grounds, landscaping, exterior lighting, perimeter fences, sidewalks, and parking;

f) All portions of the Project not specifically included within the individual Lots; and

g) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

11. Common Expense shall mean and refer to:

- (a) All sums lawfully assessed against the Owners;
- (b) Expenses of administration, maintenance, repair or replacement of the Project;
- (c) Expenses allocated by the Association among the Owners;
- (d) Expenses agreed upon as common expenses by the Association; and
- (e) Expenses declared common expenses by the Declaration.

12. Community shall mean and refer to the Project.

13. Community Standard or Community Wide Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community, as determined by the Management Committee from time to time.

14. Declaration shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Colonial Gardens.

15. Dwelling or Dwelling Unit shall mean and refer to a living unit constructed upon a Lot.

16. Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

17. Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

18. Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or the Committee. A vote which is for any reason suspended is not an "eligible vote".

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

20. Improvement shall mean and refer to any physical change or addition to the Land to make it more valuable.

21. Land shall mean and refer to all of the real property subject to this Declaration.

22. Limited Common Area shall mean and refer to that portion of the Common Area designated in this Declaration or in the Record of Survey Map, by cross hatching, as reserved for the use of a certain Lot Owner to the exclusion of the other Lot Owners. Any patios, decks, balconies, storage, parking or other improvements intended to serve only a single Lot, shall constitute a Limited Common Area appertaining to that Lot exclusively, whether or not the Record of Survey Map makes such a designation

23. Lot shall mean and refer to a separate physical part of the Property intended for independent use as shown on the Record of Survey Map as "Private Ownership" and single hatch marks, including, when the context requires, the Dwelling Unit constructed thereon, one or more rooms or spaces located in one or more floors or part or parts of floors in a Building, the ground underneath the Lot and the air above. Mechanical equipment and appurtenances located within any one Dwelling, or located without said Dwelling but designated and designed to serve only that Dwelling, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Lot; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Dwelling or serving only the Dwelling, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Dwelling, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Dwelling is located shall be deemed to be part of the Lot. Each Lot shall be assigned a separate "parcel" or "tax identification" number by the appropriate governmental agency.

24. Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot.

25. Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

26. Management Committee shall mean and refer to the committee of Owners elected to direct the affairs of the Association.

27. Manager shall mean and refer to the person or entity appointed or hired by the Association to manage and operate the Project and/or assist in the administration of the Association.

28. Map shall mean and refer to the Amended Record of Survey Map on file in the office of the County Recorder of Weber County, Utah.

29. Member, unless the context clearly requires otherwise, shall mean and refer to the Owner of a Lot, each of whom is obligated, by virtue of his ownership to be a member of the Association.

30. Mortgage shall mean and refer to both a first mortgage or first deed of trust on any Lot, but shall not mean or refer to an executory contract of sale.

31. Mortgagee shall mean and refer to a mortgagee under a first mortgage or a beneficiary under a first deed of trust on any Lot, but shall not mean or refer to a seller under an executory contract of sale.

32. Owner shall mean and refer to the person who in the office of the County Recorder of Weber County, Utah is shown as the owner of record of a fee or an undivided fee interest in a Lot, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

33. Period of Declarant's Control shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) seven (7) years from the effective date of this Declaration, (b) not less than 120 days after three-fourths of the Lots have been conveyed, or (c) the Declarant executes and records a written Waiver of his right to control.

34. Permanent Resident shall mean and refer to anyone who resides in the Project for more than four (4) consecutive weeks or for more than eight (8) weeks in any calendar year.

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

36. Project shall mean and refer to Colonial Gardens as depicted on the Map.

37. Project Documents shall mean and refer to the Declaration, By Laws, Rules and Regulations, and Articles of Incorporation.

38. Property shall mean and refer to all of the land or real estate, improvements and appurtenances submitted to this Declaration.

39. Record of Survey Map shall mean and refer to the "Amended Record of Survey Map or Maps of the Colonial Gardens on file in the office of the County Recorder of Weber County, Utah as amended or supplemented from time to time.

40. Recreational, Oversized, or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

41. Repair shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

42. 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, agents, representatives, or employees of Owners, tenants or lessees.

43. Single Family shall mean and refer to one of the following:

(a) a single person;

(b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, and an additional person or persons necessary as a caretaker or for domestic help; or

(c) a group of not more than three unrelated persons who maintain a common household, to be distinguished from a group occupying the Dwelling as a boarding house, club, fraternity or hotel.

44. Single Family Residence shall mean and refer to both the architectural style of a Dwelling and the nature of the residential use permitted.

45. Survey Map shall mean and refer to the Record of Survey Map on file in the office of the County Recorder of Weber County, Utah.

II. SUBMISSION

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The Land known as Phases I and II, described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference, is hereby submitted to the Declaration.

The Land is hereby made subject to, and shall be governed by the Declaration, and the covenants, conditions and restrictions set forth herein.

The Land is SUBJECT TO the described easements and rights of way.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Survey Maps or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

SUBJECT TO Declarant's reservation of the right to use and assign carports, regardless of whether Declarant owns a Lot.

III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

1. Description of Improvements. The significant improvements contained in the Project include two Buildings, twenty-six Lots and Dwellings, Limited Common Area, Common Area and Facilities, streets and access ways, parking, utilities, landscaping, green space and view corridors. The Buildings are constructed principally of concrete foundations with exterior walls of brick and wood, asphalt shingle roofing, interior walls of wood studs, plywood and dry wall plaster. The Project will also contain other improvements of a less significant nature. The location and configuration of the improvements referred to in the foregoing sentences are depicted on the Survey Map.

2. Description and Legal Status of the Property. The Map shows the type and location

of each Lot and its Lot Number, Limited Common Areas and Facilities which are reserved for the exclusive use of a Lot or Lot Owners, and the Common Areas and Facilities in the vicinity. The Common Area shall be deeded to and owned by the Association. Each Lot Owner shall have an equal ownership interest in the Association which shall be appurtenant to his Lot. All Lots shall be capable of being independently owned, encumbered, and conveyed, and shall have separate tax identification or parcel numbers.

3. Membership in the Association. Membership in the Association is mandatory and may not be partitioned from the ownership of a Lot. Each Lot Owner by virtue of his accepting a deed or other document of conveyance to a Lot is considered to be a member of the Association.

4. Limited Common Areas. The right to the exclusive use of a Limited Common Area (which are part of the Common Area owned by the Association) may not be partitioned from the Lot to which it is appurtenant as shown on the Record of Survey Map.

5. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows:

All of [Lot No. and/or Building No.] contained within Colonial Gardens, a planned unit development, as the same is identified in the Amended Record of Survey Map recorded in Weber County, Utah as Entry No. _____ in Book _____ at Page ___ of the official records of the County Recorder of Weber County, Utah (as said Record of Survey Map may have heretofore been amended or supplemented) and in the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Colonial Gardens, recorded in Weber County, Utah as Entry No. _____ in Book _____ at Page _____ of the official records of the County Recorder of Weber County, Utah (as said Declaration may have heretofore been supplemented), together with an undivided percentage of ownership interest in the common areas and facilities.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Neither the membership in the Association, nor percentage of ownership interest in the Common Areas, nor the right of exclusive use of a Limited Common Area shall be separated from the Lot to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Lot to which they relate.

6. Rights of Owners. Except as may be specifically set forth in the Initial Use Restrictions, neither the Management Committee nor the Members may adopt any rule in violation of the following provisions:

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- a. Similar Treatment. Similarly situated Owners and occupants shall be treated similarly.
- b. Religious and Holiday Displays. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in single family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Lot.
- c. Household Composition. No rule shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that the Declaration limits residency in a Dwelling to a single family and the Association shall have the power to limit the total number of occupants permitted in each Dwelling on the basis of the size and facilities of the Dwelling and its fair share use of the Common Area.
- d. Activities Within Lots. No rule shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible from outside the Lot, or that create an unreasonable sounds of annoyance.
- e. Allocation of Burdens and Benefits. No rule shall alter the basis for allocation of financial burdens among various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Common Area, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of Assessments.
- f. Reasonable Rights to Develop. No rule or action by the Association or Management Committee shall unreasonably impede Declarant's right to develop in accordance with the Master Plans, including, but not limited to, the rights of the Declarant as set forth herein.
- g. Abriding Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Property shall apply prospectively only and shall not require the removal of any property which was being kept on the Property prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law. The limitations in this subsection shall apply to rules only; they shall not apply to amendments to this Declaration.
- h. Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Lot. There shall be no requirements concerning who may own a Lot, it being intended that they may and shall be owned

as any other property rights by any Person. The Project shall be used only for residential purposes, except as expressly set forth below, and the Common Areas shall only be used in a manner consistent with the residential nature of the Project.

i. Mandatory Association. Each purchaser of a Lot by virtue of his acceptance of a deed or other document of conveyance shall automatically become a Member of the Association.

j. Joint or Common Utility Easements with Neighboring Subdivisions, Project or Developments. The Declarant for itself and/or its successors in interest (including but not limited to the Association), hereby reserves the irrevocable and exclusive right, without any additional consent required, to enter into easement agreements with or to convey to owners or developers of adjoining subdivisions, projects or developments any and all reasonable and necessary utility easements or rights of way for gas, water, power, sewer, storm drain systems or the like under, over, across or through the Project.

k. Easements and Rights of Way. Declarant hereby grants and conveys to the Association and each Owner and Resident, as well as their family members, tenants, guests and invitees, the non-exclusive and perpetual right to use and access to the Project for pedestrian and vehicular traffic. In addition, every Member of the Association shall as an Owner have the right and non-exclusive easement to use and enjoy the Common Area and Facilities. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following restrictions: (1) The right of the Association to limit the number of guests, occupants and residents; (2) The right of the Association to suspend the voting privilege; and (3) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of regulating transportation, maintaining the roadways or providing utilities and other similar or related purposes. During the Developer's period of development of the Project, any such dedication or transfer shall be effective only if approved in writing by the Declarant. Each Owner shall be entitled to the exclusive ownership and possession of his Lot, to an undivided percentage of ownership interest in the Common Areas, and to membership in the Association as set forth herein.

m. Rules and Regulations. The Association, acting through its Management Committee, shall have the power and authority to adopt administrative or house rules and regulations, which shall be binding upon all Owners and Residents, their guests and invitees.

n. Restrictions and Limitations of Use. The use of the Lots is subject to the following guidelines, limitations and restrictions:

1. Parties Bound. All provisions of the Project Documents, including without limitation the Declaration, By-Laws, House and Administrative Rules and Regulations shall be binding upon all Owners, Residents and Occupants, including their family members, guests, visitors, invitees and employees.

2. Nuisance. It shall be the responsibility of each Owner and Resident to prevent the creation or maintenance of a nuisance in, on or about the Project. The term "nuisance" includes but is not limited to the following:

a. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about his Lot or the Common Areas;

b. The storage of any item, property or thing that causes any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;

c. The storage of any substance, thing or material upon any Lot or in the Common Areas that emits any foul, unpleasant or noxious odors, or that causes any noise or other condition that disturbs or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

d. The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;

e. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;

f. Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents, their guests or invitees;

g. Creating or allowing an unreasonable amount of noise or traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 8:00 a.m.; and

h. Violation of the provisions of U.C.A., Section 78-38-9 (1999), regarding parties, gambling, drugs, prostitution and other related items, as it may be amended or supplemented from time to time.

3. Signs; Unsightly Work and Unkempt Conditions. No "For Sale" or "For Rent" or other signs or banners are permitted in the Common Area or so as to be visible from the street, unless approved in writing by the Committee. Activities which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Project.

4. Removing Garbage, Dust & Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon.

5. Subdivision of a Lot. No Lot shall be subdivided or partitioned.

6. Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices, or the painting or graffiti, within the Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

7. Temporary Structures. No Owner or occupant shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Committee.

8. Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections. All property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or occupant in, on or about the Common Areas without the prior written consent of the Committee. The Management Committee may alter or remove any objects planted or placed in violation of this subsection and shall not be guilty of a trespass.

9. Energy Conservation Equipment. Subject to U.C.A., § (), no solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Project without the prior written consent of the Committee.

10. Business Use. No Business Use or Trade may be conducted in or from any Lot unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (b) the business activity conforms to all zoning requirements for the Project; (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Committee. Provided, however and notwithstanding the above, the Management Committee may waive any of the foregoing requirements for good cause shown and the leasing of a residence shall not be considered a trade or business within the meaning of this subsection.

11. Storage and Parking of Vehicles. Owners and Residents shall park their motor vehicles in their assigned parking spaces. Motor vehicles shall be driven and parked in accordance with this Declaration and the Parking Rules adopted by the Management Committee

from time to time.

a. Parking rules adopted by the Committee from time to time, which may alter, amend, modify or repeal any of the following subsections as may be required for the efficient and fair operation of the parking amenities;

b. The parking areas are not designed for Recreational, Commercial or Oversized motor vehicles and the Management Committee has the right to make rules and regulations restricting or prohibiting their use within the Project. Unless otherwise determined by the Management Committee, all such vehicles shall be parked outside the Project, except for purposes of loading and unloading. Eighteen wheelers may not be parked within the Project.

c. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, Recreational, Commercial or Oversized Vehicle or any other transportation device of any kind may be parked or stationed (except for purposes of loading or unloading), in such a manner so as to create an obstacle or potentially dangerous situation, or along any street or road, or in front of any parking amenity, sidewalk, walkway, driving lane, Building or Lot, or in an unauthorized portion of the Common Area.

d. Residents may only park their motor vehicles within their carports or in other designated Common Areas.

e. No parking is allowed in "red zones," "fire lanes," or unauthorized areas.

f. Visitors or guests shall park their motor vehicles in Common Areas designated for "guest" or "visitor" parking. Owners, Residents and Occupants shall not park in "guest" or "visitor" spaces.

g. No Owners or Residents shall disassemble, assemble, repair or restore any vehicle of any kind in, on or about any Lot or the Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

h. No motor vehicle shall be parked in such a manner as to inhibit or block access to a Building, driving lane, parking space, carport, entry, exit, or parking area.

i. All parking areas shall be used solely for the parking of motor vehicles used for personal transportation. Disabled or inoperable vehicles or motor vehicles not currently licensed or registered or vehicles with more than \$1,000 damage may not be parked or stored in the Project so as to be visible by other Owners and the public.

j. No carport may be used or altered so that it parks less than the number of motor vehicles for which it was originally designed.

k. The nature of the intended use of the carports as parking spaces for motor vehicles may not be changed or altered without the express prior written consent of the Management Committee.

l. Vehicles parked in violation of this Declaration or parking Rules and Regulations adopted by the Committee may be immobilized, impounded and towed **WITHOUT ADDITIONAL NOTICE** and at the Owner's sole expense. By virtue of bringing a motor vehicle on to the Property, the driver agrees to indemnify, save and hold the Association, Management Committee and members of the Committee harmless from any loss, damage or claim caused by or arising out of the immobilization, impounding or towing of a motor vehicle pursuant hereto.

12. Bicycles. Bicycles in the Common Areas must be parked or stored in the bicycle racks or storage areas designated by the Management Committee.

13. Aerials, Antennas, and Satellite Systems. Antennas and Satellite Dishes: Antennas and satellite dishes shall be prohibited within the Property, 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 multi point 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 ("Permitted Devices") shall be permitted, provided that any such Permitted Device is located within the Lot or another location approved by the Management Committee. Permitted Devices attached to a Building or mounted on the patio, balcony, or deck must extend no higher than the eaves of that portion of the roof of the Dwelling directly in front of such antenna or dish. The Management Committee may adopt rules establishing a preferred hierarchy of alternative locations and requiring screening of all Permitted Devices, so long as such rules do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device. Anything to the contrary notwithstanding, it is the intent of this document to at all times comply with the applicable federal, state and local laws, and regulations adopted by the FCC -- as they may be amended from time to time. **DO NOT INSTALL AN ANTENNA OR SATELLITE DISH OUTSIDE YOUR LOT OR IN THE COMMON AREA WITHOUT THE PRIOR, EXPRESS WRITTEN CONSENT OF THE MANAGEMENT COMMITTEE.** Antennas or Satellite dishes installed by an Owner or resident in violation of this section may be removed by the Management Committee without further notice or warning and at the owner's sole risk and expense.

14. Window Coverings. No-aluminum foil, newspapers, reflective film coatings, sheets, bedspreads, or any other similar materials may be used to cover the exterior windows of any residential structure on a Lot. Sun shades are not allowed on the exterior of any

Building.

15. Windows. All windows and window panes in the Project shall be harmonious, and comparable in size, design and quality so as not to detract from uniformity in appearance and quality of construction.

16. Pets. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Up to two (2) domestic pets per Lot are allowed. Pets must be properly licensed and registered by the appropriate governmental agency where required. Pets may not create a nuisance. The following acts may constitute a nuisance: (1) causing damage to the property of anyone other than the pet owner; (2) causing unreasonable fouling of the air by odors; (3) causing unsanitary conditions; (4) defecating on any common area when the feces are not immediately cleaned up by the responsible party; (5) barking, howling, whining or making other disturbing noises in an excessive, continuous or untimely fashion; (6) molesting or harassing passersby by lunging at them or chasing passing vehicles; (7) attacking or threatening to attack people or other domestic animals; (8) otherwise acting so as to bother, annoy or disturb other reasonable residents or interfering with their right to the peaceful and quiet enjoyment of their property; or (9) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents. Pets in the Common Area must be in a cage or on a leash and under the control of a responsible person. Pets may not be tied or tethered in the Common Area. The Management Committee may charge a pet deposit and/or a registration fee.

17. Wildlife. Capturing, trapping or killing wildlife within the Property is prohibited, except (1) in circumstances posing an imminent threat to the safety of persons or pets using the Property; (2) when authorized and supervised by the Management Committee in accordance with a game management program and with the consent of the Declarant as long as it owns any of the Property which it owns.

18. Vegetation. Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Property or which result in unreasonable levels of sound or light pollution are prohibited.

19. Lubricants, Oil and Gas. Disposal of any oil, gas, or lubricants, and the storage or disposal of other hazardous materials (as may be determined in the Management Committee's reasonable discretion and as defined by applicable law) anywhere within the Property is prohibited.

20. Dust or Pollen. Behavior which causes erosion or unreasonable amounts of dust or pollen is prohibited.

23. Aesthetics. The Management Committee may adopt reasonable rules to regulate and control the appearance and use of the entryways and landings of Dwelling Units, carports, decks, patios, and balconies within the Project, including by way of illustration but

not limitation a regulation limiting items on the patio to "patio furniture," prohibiting clotheslines, the hanging clothes and other items over the railings, planters and plants, and the storage of personal property, furnishings, appliances and effects in public view.

24. Insurance. Nothing shall be done or kept in, on or about any Lot or in the Common Areas or Limited Common Areas which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Property, over what the Management Committee, but for such activity, would pay.

25. Laws. Nothing shall be done or kept in, on or about any Lot or 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.

26. Damage or Waste. No damage shall be caused to or waste of the Common Area and Facilities or a Limited Common Area by any Owner or Resident, or their family members, guests or invitees; and each Owner and Resident shall indemnify and hold the Management Committee and the other Owners in the Project harmless against all loss resulting from any such damage or waste caused by that Owner or Resident, or their family members, guests or invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.

27. Structural Alterations. Except in the case of an emergency repair, no structural alterations, plumbing, electrical or similar work within the Common Area and Facilities or Limited Common Area shall be done or permitted by any Owner without the prior, express written consent of the Management Committee. Structural alterations within the footprint of the Building or Roof as shown on the Survey Map may be authorized by the unanimous consent of the Management Committee (and governmental agency responsible for the issuing of all building permits, licenses, etc.) and the additional approval of the other Lot Owners shall not be required.

7. Leases. No Owner shall be permitted to lease his Dwelling for short term, transient, hotel, vacation, seasonal or corporate use purposes, which for purposes of this section shall be deemed to be any rental with an initial term of less than six (6) months. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his entire Dwelling, including by way of illustration but not limitation to domestic help or a caretaker, without written notice to and the written consent of the Management Committee. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Dwelling.

8. Easement -- Support, Maintenance and Repair. There is hereby RESERVED and the Association is hereby GRANTED a non-exclusive easement over, across, through, above and under the Lots and the Common Area for the operation, maintenance and regulation of the Common Area and Facilities.

9. Liability of Owners and Residents For Damages. Each Owner or Resident shall be liable to the Association, or other Owners or Residents for damages to person or property in the Community caused by his negligence.

10. Encroachments. If any portion of Common Area, Limited Common Area, or a Lot encroaches or comes to encroach upon other Common Area, Limited Common Area, or a Lot as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

11. Management Committee. The Association shall be managed by a Management Committee comprised of three (3) Lot Owners who shall be duly qualified and elected.

12. Status and General Authority of Committee. After the termination of the Period of Declarant's Control, 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. The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted, the following authority and powers:

a. Access. The Management Committee or manager shall have the right to have access to each Lot: (1) from time to time during reasonable hours and after reasonable notice to the occupant of the Lot being entered, as may be necessary for the maintenance, repair, or replacement of any of the Common Areas and Facilities; and (2) for making emergency repairs necessary to prevent damage to the Common Areas and Facilities or to another Lot or Lots, provided that a reasonable effort is made to provide notice to the occupant of the Lot prior to entry, and, if unable to do so, that notice be left in the Unit stating the name(s) and phone number(s) of the person(s) present, the time spent in the Unit, and what was done.

b. Grant Easements. The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

c. Execute Documents. The authority to execute and record, on behalf of all 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.

d. Standing. The power to sue and be sued.

e. Enter Into Contracts. The authority to enter into contracts which in any

way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

f. Transfer Interests in Real Property. The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Association Members.

g. To Add or Purchase Property. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Association Members.

h. Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the Act and this Declaration.

i. Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners or Residents not on the Committee, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Committee meetings.

j. Delegation of Authority. The power and authority to delegate its responsibilities over the management and control of the Common Areas and regulation of the Project to a professional manager, reserving the right, power and authority, however, to control and oversee the administration thereof.

k. Assignment of Parking Storage Spaces. The power and authority to assign parking and storage spaces to the Lots, and re-assign as the need arises from time to time. Reasonable accommodations shall be made to the handicapped.

l. All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Owners.

13. Delegation of Management Responsibilities. The Management Committee may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. The Management Committee may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities.

14. Owners Meetings. The Association shall meet at least annually at a time and place set by the Management Committee.

15. Lists of Lot Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Committee shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such person, and the Lot which is owned by him; (b) the name and address of each Resident; (c) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Lot which is encumbered by the Mortgage held by such person or entity; and (d) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Lot which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Committee with written evidence verifying that the transfer has occurred, that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Weber County, Utah, and that the transferee has received a copy of the Declaration and By-Laws then in force. The Committee may for all purposes act and rely on the information concerning Lot ownership in its records or, at its option, the records of the county recorder. The address of any Owner shall be deemed to be the address of the Lot owned by such person unless the Committee is otherwise advised in writing.

16. Assumption of Risk. The Association may, but shall not be obligated to, sponsor certain activities or provide facilities designed to promote the health, safety, and welfare of Owners and Residents; there are Common Areas and Facilities and recreational amenities in the Project; in, near, or about the Project there are utility lines or utility substations; there are also improvements of a less significant nature: Notwithstanding anything contained herein or in any of the Project Documents, neither the Association, Management Committee, Members of the Management Committee, Officers of the Association, Manager, nor the Declarant shall be liable or legally responsible for, or in any manner a guarantor or insurer of; the health, safety or welfare of any Owner or Resident of any Lot or his family members, tenants, guests, or invitees while at the Project, or for any property of any such Persons. Each such Person by accepting a deed or other document of conveyance to a Lot or coming onto the Property hereby assumes all risks associated with the use and enjoyment of the Project, including negligent acts. No provision of the Project Documents shall be interpreted as creating a duty of the Association, Management Committee, Members of the Management Committee, Officers of the Association, Manager, or the Declarant to protect or further the health, safety, or welfare of any Person(s), even if the funds of the Association are used for any such purpose. Each Owner by virtue of his acceptance of title to his Lot and each other Person having an interest in or lien upon, or making any use of, any portion of the Project (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, Management Committee, Members of the Management Committee, Officers of the Association, Manager, and the Declarant, and their employees, agents, contractors, subcontractors, successors, and assigns from or connected with the foregoing items.

17. Capital Improvements. All expenses for capital improvements shall be governed by and subject to the following conditions, limitations and restrictions:

a. Committee Discretion/Expenditure Limit. Any capital improvement to the Project which costs ten percent (10%) or less of the Total Annual Budget, and does not alter the nature of the Project, may be authorized by the Management Committee alone (the "Capital Improvement Ceiling").

b. Expenditure Limit Without Consent of Owners. Any capital improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least a majority of the percentage of undivided ownership interest in the Common Area.

c. Improvements Changing the Nature of the Project. Any capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) percent of the undivided ownership interest in the Common Areas.

18. Recycling Programs. The Management Committee may establish a recycling program and recycling center within the Project, and in such event all occupants of Lots shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

19. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Management Committee shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include snow removal, landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Management Committee shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association.

20. Change of Use of Common Area. The Management Committee may change the use of any portion of the Common Area and construct, reconstruct, or change the buildings and other improvements thereon in any manner necessary to accommodate the new use of the Common Area. Any new use shall be for the benefit of the Owners and not inconsistent with the residential nature

of the Project. Any change in use of the Common Area shall be subject to approval by the Declarant as long as it owns any of the Property described but shall not be subject to approval by any other Owner. Such change of use, or construction, or reconstruction must comply with the ordinances of Sandy City and the prior approvals granted on this project may require additional approvals by the City.

21. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across any property, including any Lot, from adjacent Building will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

22. Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Area to, or transfer portions of the Common Area to non-profit, tax-exempt organizations, including, but not limited to, organizations that provide facilities and services designed to meet the physical and social needs of older persons, for the benefit of the Project, the Association, its Members and residents. The Association may contribute money, real or personal property, or services to any such entity. Any such contribution shall be a Common Expense of the Association and shall be included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, as may be amended from time to time.

23. The Maintenance Responsibility of the Association. The Association shall maintain, keep in good repair, and replace as necessary the following items (collectively, "Area of Common Responsibility):

- a. all Common Area;
- b. all landscaping and other flora, parks, signage, structures, parking areas, and improvements, including any bike and pedestrian pathways and trails, situated upon the Common Area;
- c. all common water service and drainage facilities, including all water features;
- d. all arterial sidewalks and walkways that are not the responsibility of any local government agency;
- e. all common retaining walls and fences;
- f. all landscaping and irrigation systems, and signage within public streets and rights-of-way within or abutting the Project to the extent maintenance by any local government is

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not consistent with the Community Wide Standard, and any street or parking amenity lights that are not included in a streetlight improvement district;

g. all landscaping and other flora within any public utility easements and scenic easements within the Common Area (subject to the terms of any easement agreement relating thereto);

h. all roofs and exterior Building surfaces;

i. all foundations, columns, girders, beams, supports, and main walls;

j. all walkways, steps, stairs, landings, entries, patios, balconies, and decks;

k. all driving lanes, parking areas and storage spaces;

l. all installations of common utility services, such as power, gas, sewer and water;

and

m. any other item designated as a common responsibility or responsibility of the Association herein.

24. The Maintenance Responsibility of the Owners. Each Owner shall maintain, keep in good repair, and replace as necessary those portions of his Lot, Dwelling, and all other landscaping and physical improvements to his Lot not part of the Maintenance Responsibility of the Association. The Management Committee may upon at least thirty (30) days prior written notice change the Maintenance Responsibility of the Association or the Owners. This obligation includes by way of illustration but not limitation all glass, windows, window units, doors, and door units, subject only to the prior written consent of the Management Committee who is obligated to maintain the integrity of the original architectural design, uniformity of appearance, and quality of construction. Each Owner or Resident shall keep his entry, patio, balcony, deck, carport and storage spaces broom clean, tidy, and uncluttered. In addition to any other enforcement rights, if an Owner fails properly to perform his maintenance responsibility, the Association may (a) fine the defaulting party, (b) levy an Individual Assessment, and (c) perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with the Declaration, or any combination thereof. Except in an emergency, the Management Committee shall provide the Owner with written notice of the default and a reasonable opportunity to cure.

25. Party Wall. Anything to the contrary notwithstanding, if it becomes necessary or desirable to repair or rebuild the whole or any part of a party wall shared by two or more Dwelling Units, then the repairing or rebuilding expense shall be borne equally by the Owners of said Units and not as the Common Expense of all Owners. Any repairing or rebuilding of such a party wall shall be in the same location, and of the same size, and with the same quality of construction and materials, as the original wall or portion thereof. If there is a disagreement among the parties as to

the necessity, nature or extent of repairs to a party wall, then the dispute will be submitted to the Management Committee for resolution, and the decision of the Management Committee shall in all instances be final and conclusive. Further, if any Owner fails to make the necessary repairs or pay his share of the cost, the Management Committee may by following the procedures detailed in Section 29 below elect to make the repairs and/or pay the cost, which shall be the debt of the Owner at the time the expense is incurred and is collectible as such. In addition, any amount charged hereunder which remains unpaid for thirty (30) days after written notice becomes a lien against the Owner's interest in the property in accordance with the same standards for a lien as set forth in Section 37 (c) below.

26. Garbage Removal. The Association shall arrange for garbage pick up and removal. Lot Owners shall place their garbage in suitable plastic bags, sacks or containers and deposit them immediately into the designated dumpsters or garbage receptacles.

27. Standard of Care - Generally. The Property shall be maintained in a usable, clean, functional, safe, healthy, sanitary, attractive, and good condition, consistent with Community-wide Standards. If a dispute arises between a Lot Owner or resident as to the condition of a Lot, the decision of the Management Committee shall be final and conclusive.

28. Standard of Care - Landscaping. All landscaping in the Project shall be maintained and cared for in a manner consistent with Community-wide Standards and the quality of design and construction originally established by Declarant. Specific guidelines and restrictions on landscaping may be established by the Management Committee from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be properly pruned and trimmed. In a word, all landscaping shall be tasteful, so as not to affect adversely the value or use of any other Lot, or to detract from the uniform design and appearance of the Project.

29. Neglect. If the Committee determines that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of any Owner, his family, guests, lessees, or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense, subject to the following:

a. Notice of Intent to Repair. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Committee. The Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days.

b. Emergency Situation. If the Committee determines that an emergency exists, then notice and the opportunity to cure the default is not necessary.

c. Optional Repairs. The Association may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described above.

d. Costs and Expenses. Such costs as are incurred by the Association in the performance of an item included in the Area of Personal Responsibility shall be added to and become a part of the assessment to which such Owner and Lot is subject, and shall be secured by a lien against his Lot regardless of whether a notice of lien is filed.

30. Changes to Areas of Personal or Common Responsibility. The Management Committee may, in its sole discretion, add items to or subtract items from the Areas of Personal or Common Responsibility upon at least thirty (30) days prior written notice to the Lot Owners.

31. Alterations to the Common Area. Anything to the contrary notwithstanding and until the termination of the Period of Declarant's Control, the Declarant may make changes to the Common Area without the consent of either the Association or the Management Committee; provided, however, no Owner or resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the Common Area or Facilities, including but not limited to the construction or installation of any additions, the extension or enclosure of any existing structures (e.g., fencing, decks, patios, walkways or sheds, etc.) not shown on the approved plans and specifications, without the prior written consent of the Management Committee.

32. Declarant's Rights to Change Design and Construction. The Declarant may make changes to the design and construction of the improvements located in or on the Common Areas without the consent of the Committee or Members of the Association. Provided, however, no Owner or Resident may make any structural alterations to the Common Area (including the Limited Common Area) without the prior written consent of the Committee.

33. Common Expenses. Each Owner shall pay his share of the Common Expenses which shall be his debt at the time the Assessment is made and collectible as such.

a. Purpose of Common Area Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Committee.

b. Creation of Assessments. Since the Assessments shall pay for the common expenses of the Association, as shall be determined by the Management Committee from time to

time, each Owner, by acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed by the Committee.

c. Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the Management Committee shall prepare and deliver to the Owners a proposed Budget which:

1. Itemization. Shall set forth an itemization of the anticipated Common Expenses (including that portion earmarked for the reserve account(s)) for the twelve (12) month calendar year, commencing with the following December 1.

2. Basis. Shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and regulation of the Association, which estimate shall include but is not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Committee is required or permitted to maintain, common lighting and heating, water charges, trash collection, sewer service charges, carpeting, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Management Committee employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration.

d. Apportionment. The common profits, losses and voting rights of the Project shall be distributed among and the common expenses shall be charged to the Lot Owners equally.

e. Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the percentage of ownership interest in the Common Areas. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Management Committee fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

f. Payment of Assessments. The Management Committee has the sole authority and discretion to determine how and when the annual Assessments are paid.

g. Personal Obligation of Owner. Owners are liable to pay their share of the Common Expenses and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract,

or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (1) the Owner of both the legal and equitable interest in any Lot; (2) the owner of record in the offices of the County Recorder of Weber County, Utah; and (3) both the Buyer and Seller under any executory sales contract or other similar instrument.

h. Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments, but, without the prior approval of a majority of the percentage of ownership interest in the Common Area, not greater than fifteen (15%) percent of the Assessment in any calendar year. Owners shall be given at least thirty (30) days written notice of any changes.

i. Dates and Manner of Payments. The dates and manner of payment shall be determined by the Committee.

j. Reserve Account(s). The Management Committee shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses and capital improvements. The reserve account or accounts shall be funded out of regular Assessments, Special Assessments (if necessary) and the contributions from the Working Capital Fund. The Committee shall dedicate a portion of the monthly Assessment for the reserve account or accounts.

k. Capital Asset Table. The Management Committee shall establish and update at least annually a Capital Asset Table which shall list each major capital asset in the Project, such as roads, roofs, building exteriors, parking amenities, sidewalks, landscaping, and recreational amenities, each item's expected useful life, the present cost of replacement, the estimated cost to replace the item at the end of its useful life, the percentage and amount of the Assessment currently set aside in the reserve account to replace the item at the end of its useful life, and the amount of money currently set aside in the reserve account for the replacement of the item.

l. Acceleration. Assessments shall be paid in the manner and on dates fixed by the Committee who may, at its option and in its sole discretion, elect to accelerate the entire annual Assessment for delinquent Owners. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Committee otherwise decides acceleration is not in its best interest, the committee, at its option and in its sole discretion, may elect to decelerate the obligation.

m. Statement of Assessments Due. Upon written request, the Committee shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request is received by the Secretary, shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

n. Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled which insofar as it adversely affects the Association's lien for unpaid Assessments each Owner by accepting a deed or other document of conveyance to a Lot hereby waives.

o. Termination of Right to Use Amenities for Non-Payment. At the discretion of the Committee, the right to use any amenities in the Project, including but not limited to the clubhouse and pool may be terminated if the Owner is in arrears on his obligation to pay Assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

p. Suspension of Right to Vote for Non-Payment. At the discretion of the Committee, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

34. Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following:

a. Committee Based Assessment. So long as the special assessment does not exceed the sum of Five Hundred and 00/100ths Dollars (\$500.00) (the "Special Assessment Limit") per Lot in any one fiscal year, the Committee may impose the special assessment without any additional approval.

b. Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the members of the Association. The Committee in its discretion may allow any special assessment to be paid in installments.

35. Benefit Assessments. If an Owner has the choice to accept or reject the benefit, then the Management Committee shall have the power and authority to assess an Owner in a particular area as follows:

a. Benefit only To Specific Lot. If the expense benefits less than all of the Lots, then those Lots benefitted may be specifically assessed, and the specific assessment shall be equitably apportioned among those Lots according to the benefit received.

b. Unequal or Disproportionate Benefit. If the expense benefits all Lots, but does not provide an equal benefit to all Lots, then all Lots shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Lots according to the benefit received.

Failure of the Committee to exercise its authority under this Section shall not be grounds for any

action against the Association or the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Committee has not previously exercised its authority under this Section.

36. Individual Assessments. Individual Assessments shall be levied by the Committee against a Lot and its Owner to reimburse the Association 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 Lot Owner is responsible; (c) fines, (d) any other charge, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents or by the Management Committee; and (e) attorneys fees and collection costs.

37. Collection of Assessments. The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first of the month. Payments are late if received after the 10th day of the month in which they were due.

a. Delinquent Accounts. Any Assessment not paid when due shall be deemed delinquent and a lien securing the obligation shall automatically attach to the Lot, regardless of whether a written notice is recorded.

b. Late Fees and Default Interest. A late fee of twenty-five dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater, shall be assessed on all tardy payments. Simple interest at the rate of one and one-half percent (1.5%) per month shall accrue on all delinquent accounts. The Committee may, in its sole discretion, waive late fees and accruing interest but is not required to do so.

c. Lien. If any Lot Owner fails or refuses to make any payment of any Assessment or his portion of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Management Committee or their designee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

d. Foreclosure of Lien and/or Collection Action. If the Assessments remain unpaid, the Association may, as determined by the Committee, institute suit to collect the amounts due and/or to foreclose the lien.

e. Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

f. No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Lot.

g. Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or perform some function required to be taken or performed by the Association or committee under this Declaration or the By Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

h. Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

i. Appointment of Trustee. If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Association, provided s/he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

j. Attorney-in-Fact. Each Owner by accepting a deed to a Lot hereby irrevocably appoints the Association as his attorney-in-fact to collect rent from any person renting his Lot, if the Lot is rented and Owner is delinquent in his Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

38. Liability of Management Committee. The Association shall indemnify every officer and member of the Committee against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Committee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Committee) to which he may be a party by reason of being or

having been an officer or member of the Committee. The officers and members of the Committee shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Committee may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Committee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Committee, or former officer or member of the Committee, may be entitled. The Association shall, as a common expense, maintain a adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

39. Insurance. The Management Committee shall at all times purchase, maintain in force, and pay the premiums for, if reasonably available, insurance on the Common Areas satisfying at least the following requirements:

a) Property Insurance. Blanket property insurance using the standard "Special" or "All Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard "condominium" casualty policy. This additional coverage may be added by the Committee as it deems necessary in its best judgement and in its sole discretion.

b) Flood Insurance. If any part of the Project's improvements are in a Special Flood Hazard Area -- which is designated as A, AE, AH, AO, A1-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate Map (FIRM) -- the Association shall obtain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover any common element buildings and any other common property. The Lot Owner may also be required to purchase an individual policy. The amount of flood insurance should be at least equal to the lesser of 100% of the insurable value of the facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program.

c) Liability Insurance. A public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million (\$1,000,000) Dollar single person limit as respects bodily injury and property damage, a Two Million (\$2,000,000) Dollar limit per occurrence, if reasonably available, and a One Million (\$1,000,000) Dollar minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection.

d) Directors and Officers Insurance. A director's and officer's liability or errors and omissions policy, if reasonably available, with at least One Million (\$1,000,000) Dollars in

coverage.

e) Fidelity Bond. A separate fidelity bond in a reasonable amount to be determined by the Management Committee to cover all non-compensated officers as well as all employees for theft of Association funds, subject to the following:

(1) Agents. Furthermore, where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Committee or the Association.

(2) Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Committee's best business judgement, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Committee, the Association, or the management agent as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Lots, plus reserve funds.

(3) Quality of Coverage. The bonds required shall meet the following additional requirements: (a) they shall name the Committee, the Owners Association, and the Property Manager as obligee; (b) if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense; (c) the premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and (d) the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Committee and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee, and FNMA.

f) Earthquake Insurance shall not be required unless requested by at least Seventy five percent (75%) of the Members of the Association.

g) Miscellaneous Items. The following provisions shall apply to all insurance coverage:

(1) Quality of Carrier. A "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance reports -- International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service -- if the carrier is issuing a master policy or an insurance policy for the common elements in the Project.

(2) The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Lot Owners of Colonial Gardens, for the use and benefit of the individual Owners."

(3) Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

(4) Beneficiary. In any policy covering the entire Project, each owner and his Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided Ownership interest in the Common Areas and Facilities.

(5) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(6) Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

(7) Miscellaneous Provisions. Each insurance policy shall contain at least the following additional miscellaneous items: (a) A waiver of the right of a subrogation against Owners individually; and (b) A provision that the insurance is not prejudiced by any act or neglect of any individual Owner.

(8) Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

(9) Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Lot, and may be enforced by them.

(10) Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated first class subdivisions in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost and,; or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard

Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction; Steam Boiler and Machinery Coverage Endorsement if the Project has any central heating or cooling.

(11) Restrictions on Policies. No insurance policies shall be maintained where:

a. Individual Assessments Prohibited. Under the terms of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Management Committee, the Association, FNMA, or the designee of FNMA.

b. Payments Contingent. By the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or

c. Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Committee, the Association, an Owner, FNMA, or the borrowers) from collecting insurance proceeds.

(12) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Committee or Owners to obtain and maintain insurance coverage, in amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

(13) Deductible. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the party who would be liable for the loss, damage, claim, or repair in the absence of insurance, and in the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the Lot Owner, then the Association shall be responsible for the deductible.

h) Adjusting Claims. The Management Committee has the authority to adjust claims and, if the claim may be filed with the Lot Owner's or renter's insurance carrier, may require from the prospective claimant's insurance company a formal notice of rejection and an unconditional denial of the claim or its equivalent before submitting the claim to the Association's insurance company, particularly if (1) it risks cancellation of the Association's insurance, or (2) the problem occurred in the Lot, or (3) was caused by the claimant, or (4) the claim is legally or primarily the responsibility of the claimant, and (5) there is a substantial likelihood that the claim

will be covered by the Owner's or renter's insurance company.

40. Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

a. Definitions. Each of the following terms shall have the meaning indicated:

1. "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

2. "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

3. "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.

4. "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

5. "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

6. "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

7. "Restored Value" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

8. "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition.

9. "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

b. Determination by Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Committee shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

c. Restoration of the Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the Project's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Lots which have appurtenant at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

d. Notices of Destruction or Obsolescence. Within thirty (30) days after the Committee has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

e. Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

f. Inadequate Insurance. If the cost of Restoration exceeds Available Funds, the Management Committee may elect to make a special assessment in accordance with Article III, Section 21 above to pay for the deficiency.

g. Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Lots will not be the subject of Restoration (even though the Project will continue as a planned unit development) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Areas and

Facilities shall be immediately reallocated to the remaining Lots.

h. Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Survey map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Lot is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

i. Authority of Committee to Represent Owners in Condemnation or to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.

j. Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

k. Restoration Power. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Lot therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.

l. Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

m. Termination of Legal Status. Any action to terminate the legal status of the Project after Substantial Destruction or Condemnation occurs shall be agreed to by Lot Owners who represent at least sixty-seven (67%) percent of the total allocated votes in the Association and by Eligible Mortgage holders who represent at least fifty-one (51%) percent of the votes of the Lots that are subject to mortgages held by eligible holders.

The termination of the legal status of the Project for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage holders that represent at least sixty-seven (67%) percent of the votes of the mortgaged Lots. However, implied approval may be assumed when an Eligible Mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

41. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully

satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Lots which collectively hold the required percentages, subject to the following conditions:

a. Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained; and

b. Change In Ownership. Any change in Ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

42. Mortgagee Protection. The lien or claim against a Lot for unpaid Assessments levied by the Management Committee or by the Association pursuant to this Declaration or the Act shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, subject to the following:

a. Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot the lien of any Assessments becoming due thereafter.

b. Books and Records Available for Inspection. The Committee or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, By-Laws, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Committee and the Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

c. Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

d. Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Management Committee shall provide, or be deemed to provide hereby, that:

1. Either party may terminate the contract with cause upon at least thirty (30) days prior written notice to the other party; and

2. No contract may be for an initial term greater than one (1) year.

e. Eligible Mortgagee Designation. Upon written request to the Committee or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Lot Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

1. Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

2. Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.

3. Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Committee or the Association.

4. Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

43. Amendment. Anything to the contrary notwithstanding, while the Declarant is in control of the Association and prior to the termination of the Period of Declarant's Control, the Declarant may amend the Declaration or Survey Map without any additional consent or approval required. After transition, the affirmative vote of at least sixty seven percent (67%) of the undivided ownership interest in the Common Areas shall be required and shall be sufficient to amend the Declaration or the Record of Survey 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 Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment shall, however, be subject to the following:

a. Consent of Eligible Mortgagee. The consent of Eligible Mortgagees holding at least sixty seven percent (67%) of the undivided ownership interest in the Common Areas and shall be required to any amendment which would terminate the legal status of the Project; and the consent of Eligible Mortgagees holding at least fifty-one (51%) percent of the undivided

ownership interest in the Common Areas shall be required to add to or amend any material provision of this Declaration or the Survey Map which establishes, provides for, governs, or regulates any of the following, which are considered as "material":

1. voting rights;
2. increases in assessments that raise the previously assessed amount by more than twenty-five (25%) percent, assessment liens, or the priority of assessments liens;
3. reduction in reserves for maintenance, repair, and replacement of the Common Areas;
4. responsibility for maintenance and repairs;
5. reallocation of interests in the general or Limited Common Areas, or rights to their use;
6. redefinition of any Lot boundaries;
7. convertibility of Lots into Common Areas or vice versa;
8. expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the Project;
9. hazard or fidelity insurance requirements;
10. imposition of any restrictions on the leasing of Lots;
11. imposition of any restrictions on a Lot Owner's right to sell or transfer his Lot;
12. a decision by the Association of fifty (50) or more Lots to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgage holder;
13. restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the documents; or
14. any provisions that expressly benefit mortgage holders, insurers or guarantors.

Any addition or amendment shall not be considered material for purposes of this Paragraph

(b) if it is for the clarification only or to correct a clerical error.

Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Survey Map is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association.

Any Eligible Mortgagee who does not deliver to the Management Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal.

The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Survey Map or the termination of the legal status of the Project as a planned unit development if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

44. Declarant's Sales Program. Anything to the contrary notwithstanding, for so long as Declarant continues to own any of the Lots, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot owned by Declarant in accordance with the Declaration. Until the Declarant has sold all of its Lots or three years, whichever first occurs (the "Sale's Events Period"), neither the Owners, the Association nor the Committee shall interfere with the completion of improvements and sale of all remaining Lots, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

a. Sales Office and Model Dwellings. Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Dwellings at any one time. Such office and/or models may be one or more of the Lots owned by the Declarant, one or more separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

b. Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

c. Common Area Use. Declarant shall have the right to use the Common Areas of the Project.

d. Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the

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preceding portion of this Section. Until 120 days after the expiration of the Sale's Events Period, Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

45. Limitation on Improvements by Association. Until the expiration of the Sale's Events Period, neither the Association nor the Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

46. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Lots or Buildings in the Project title to which is vested in Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant (in its capacity as Declarant) herein.

47. Combination of Lots. An Owner of two or more adjoining Lots shall have the right upon approval of the Management Committee and the Mortgagees of said Lots, to combine one or more adjoining Lots or portions thereof and to alter or amend the Declaration and Map to reflect such combination.

a) Such amendments may be accomplished by the Lot Owner recording an amendment or amendments to this Declaration, together with an amended Map or Maps containing the same information with respect to the altered Lots as required in the initial Declaration and Map with respect to the initial Lots. All costs and expenses required in such amendments shall be borne by the Lot Owner desiring such combination.

b) All such amendments to the Declaration and Map must be approved by attorneys employed by the Management Committee to insure the continuing legality of the Declaration and the Map. The cost of such review by the attorneys shall be borne by the person wishing to combine the Lots.

c) Any amendments of the Declaration or Map pursuant hereto shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the Common Areas and Facilities which are appurtenant to the Lots involved in the alterations. The remaining combined Lot, if two or more Lots are totally combined, will acquire the total of the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Lots that are combined as set forth in Exhibit "B." If a portion of one Lot is combined with another, the resulting Lots shall acquire a proportionate percentage of the total

undivided interest in the Common Areas and Facilities of the Lots involved in the combination on the basis of area remaining in the respective, combined Lots. The percentage of undivided interest in the Common Areas and Facilities appurtenant to all other Lots shall not be changed. All such amendments must, in all instances, be consented to by the Management Committee and also all other persons holding interest in the Lots affected. The consent of other Lot Owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the Common Areas and Facilities of the other Lot Owners remain unchanged.

48. Alterations to the Common Area. Anything to the contrary notwithstanding and until the termination of the Period of Declarant's Control, the Declarant may make changes to the Common Area without the consent of either the Association or the Management Committee; provided, however, no Owner or resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the Common Area or Facilities, including but not limited to the construction or installation of any additions, the extension or enclosure of any existing structures not shown on the approved plans and specifications, without the prior written consent of the Management Committee.

49. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right (as a Class B Member) to select the Members of the Committee and may elect to transfer the management of the Project to a Committee elected by the Owners. Upon the termination of the Period of Declarant's Control, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date") at least forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the Members of the Management Committee to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Committee.

50. Working Capital Fund, Transfer and Impact Fee. A working capital fund, transfer or impact fee shall be established and commenced by the Declarant. Unless otherwise determined by the Management Committee, the amount of the working capital, transfer or impact fee shall be a sum equal to two monthly Assessments. Each Lot's share of the working capital fund, transfer or impact fee shall be collected and transferred to the Association at the time of closing of the sale of each such Lot by Declarant and subsequent sellers of the Lots. The purpose of the working capital fund is to pay the administrative costs for services related to the sale and transfer of each Lot, and its impact upon the Project, to insure that the Management Committee will have cash available to satisfy unforeseen expenses or to acquire additional equipment or services necessary for the operation, control and regulation of the residential portion of the Project, or to fund reserves. Sums paid into the working capital fund are not to be considered as advance payments or regular monthly payments of the Owner's share of the Common Expenses.

51. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which

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

52. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

53. Enforcement and Right to Recover Attorney's Fees. Should the Association, Management Committee or an aggrieved Lot Owner be required to take action to interpret, construe or enforce the Project Documents, including without limitation the Act, Declaration, By-Laws, or any Administrative or House Rules and Regulations, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise, they shall be entitled to injunctive relief and/or damages, including a reasonable attorney's fee.

54. Agent for Service of Process. The initial Registered Agent is David N. Johnson and the initial office of the Registered Agent is 9710 South 700 East, Suite 101, Sandy, Utah 84070.

55. Government Financing. Anything to the contrary notwithstanding, if any financing or the guaranty of any financing on a Lot is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Veterans Administration (VA), the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes; the termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the property; a material amendment to the Declaration; or a merger, shall not be effective, valid or enforceable as to said Agencies, without their prior express written consent.

56. Second Hand Smoke. Smoking or the use of tobacco products IS PROHIBITED

in the Clubhouse and adjoining Common Areas and Facilities. Smoking or the use of tobacco products IS NOT PROHIBITED in the Buildings, Lots or Common Area and Facilities. The right to prohibit smoking or the use of tobacco products in the Common Area and Facilities in the future is expressly reserved to the Association, although the Lot Owners and residents shall be given at least thirty (30) days prior written notice of any change in policy. A Lot Owner who is bothered by second hand smoke from another Lot may have a cause of action for nuisance against the generator or the smoke but shall not be entitled to demand that the Association abate the nuisance. Utah Code Annotated, Section 76-3-203.1 (1997) defines a "nuisance" so as to include tobacco smoke that drifts into any Lot a person rents, leases or owns from another Lot more than once in each of two (2) or more consecutive seven (7) day periods which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. The Association adopts this definition until such time as it is amended or repealed by the Utah legislature at which time this definition shall be similarly and automatically amended or repealed. By accepting a deed or other document of conveyance to a Lot, each Owner hereby expressly waives, releases and forever discharges, and further agrees to indemnify, save and hold the Association, Management Committee and members of the Management Committee harmless against any and all claims, suits, actions, debts, damages, costs, charges and expenses, including court costs and attorney's fees, and against all liability, losses and damages of any nature whatever, arising out of the smoking of tobacco products in, on or about the Project, including but not limited to any claim that the Association or Management Committee abate or attempt to abate any alleged nuisance caused by smoking tobacco products. Anything to the contrary notwithstanding, the right of action of a Lot Owner or resident created by Utah Code Annotated, Section 78-38-1 (1997), as it may be amended from time to time, against another Lot Owner or resident who creates a nuisance by generating tobacco smoke is expressly recognized and reserved, conditioned upon the existence of the statutory remedy or its equivalent, and the Association shall approve any reasonable structural alterations to the Common Areas and Facilities provided the alterations (a) do not impair the structural integrity of the buildings or improvements, (b) do not materially alter the nature of the Project, (c) do not damage another Lot, and (d) are paid for by the Lot Owner or resident.

57. Fines. In addition to other remedies set forth herein and by Utah law, to enforce the essential restrictive covenants set forth herein and Project Documents, the Management Committee may suspend voting rights, suspend the privilege of using the recreational amenities and facilities, or assess a fine. Each Owner and Resident is responsible for adhering to the Project Documents governing the Project. A breach of these restrictive covenants and rules is subject to enforcement pursuant to the declaration and may include the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his or her residents, tenants and/or guests. Fines levied against residents, tenants, and guests are the responsibility of the Owner. The Management Committee shall react to each material violation in the following manner:

a. Fines imposed are final unless appealed in writing to the Management Committee within thirty (30) days of written notification of the violation. If a request for a hearing is not submitted to the Management Committee within thirty (30) days, the right to a hearing is waived, and the fine imposed will stand. A request for a hearing to appeal should be sent in writing

to:

b. Before assessing a fine under Subsection (a), the Management Committee shall give notice to the homeowner of the violation and inform the owner that the fine will be imposed if the violation is not cured within the time provided in the declaration, bylaws, or rules, which shall be at least forty-eight (48) hours.

c. A fine assessed under Subsection (a) shall:

(1) be made only for a violation of a restrictive covenant, rule or regulation;

(2) be in the amount specifically provided for in the declaration, bylaws, or association rules for that specific type of violation, not to exceed \$500.00; and

(3) accrue interest and late fees as provided in the declaration, bylaws, or association rules.

d. Cumulative fines for a continuing violation may not exceed \$500.00 per month.

e. An Owner who is assessed a fine under Subsection (a) may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed. The hearing shall be conducted in accordance with standards of due process adopted by the Management Committee. No finance charge, default interest, or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

f. An Owner may appeal a fine issued under Subsection (a) by initiating a civil action within one hundred and eighty (180) days after:

(1) A hearing has been held and a final decision has been rendered by the management committee under Subsection (e); or

(2) The time to request an informal hearing under Subsection (e) has expired without Owner making such a request.

g. A fine assessed under Subsection (a) which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses under Section 38(c) above.

58. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Survey Map shall take effect upon its being filed for record in the office of the County Recorder of Weber County, Utah.

EXECUTED the day and year first above written.

DECLARANT:
FORTY-FOURTH STREET ASSOCIATES, INC.
a Utah corporation

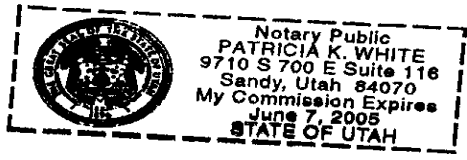
By: [Signature]
Name: Wallace J. Morgan
Title: President

By: [Signature]
Name: David N. Johnson
Title: Secretary

STATE OF UTAH)
)ss:
COUNTY OF SALT LAKE)

On the 17th day of December, 2002, personally appeared before me Wallace J. Morgan and David N. Johnson, who by me being duly sworn, did say that they are the President and Secretary of Forty-Fourth Street Associates, Inc., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a Resolution of its Board of Directors or its Articles of Incorporation, and said Wallace J. Morgan and David N. Johnson, duly acknowledged to me that said corporation executed the same.

[Signature]
NOTARY PUBLIC
Residing at: SANDY, UTAH
My Commission Expires: 6-7-05



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EXHIBIT "A"
LEGAL DESCRIPTION OF THE TRACT

The Land described in the foregoing document is located in Weber County, Utah and is described more particularly as follows:

A part of the Southeast Quarter of Section 12, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U. S. Survey: BEGINNING at a point 645 feet South 89° 04' West on the Quarter Section line and South 75.80 feet from the Northeast corner of said Quarter Section and running thence South 184 feet, more or less, to the North line of the State Road (4400 South Street); thence North 87° 10' West 125.14 feet along said North line; thence North 87° 15' West 221.315 feet to the East line of State Highway I-80 North; thence North 0° 05' East 169 feet, more or less, along said East line to a point on a 1859.86 foot radius curve to the right; thence Northeasterly along said curve 69.41 (70.81) feet, more or less, to a point 341.7 feet North 89° 04' East of the Northwest corner of Northeast Quarter of said Quarter Section; thence North 89° 04' East 208.3 feet; thence South 73.20 feet; thence South 89° 44' 30" East 124.98 feet to the BEGINNING, SUBJECT TO rights of way for ingress and egress of record.

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EXHIBIT "B"
PERCENTAGES OF UNDIVIDED OWNERSHIP INTEREST

Parcel No.	Unit No.	Tax ID No.	Percentage of Ownership
1	J		3.846%
1	K		3.846%
1	L		3.846%
1	M		3.846%
1	N		3.846%
1	O		3.846%
1	P		3.846%
1	Q		3.846%
1	R		3.846%
2	A		3.846%
2	B		3.846%
2	C		3.846%
2	D		3.846%
2	E		3.846%
2	F		3.846%
2	G		3.846%
2	H		3.846%
2	I		3.846%
3	S		3.846%
3	T		3.846%
3	U		3.846%
3	V		3.846%
4	W		3.846%
4	X		3.846%
4	Y		3.846%
4	Z		3.846%

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EXHIBIT "C"
BY-LAWS

The following are the By Laws of Colonial Gardens Townhouses Owners Association, Inc..

ARTICLE I
PLAN OF LOT OWNERSHIP AND INCORPORATION

1. Submission. These are the By-Laws referred to in the foregoing Declaration of Covenants, Conditions, and Restrictions of Colonial Gardens Townhouses (the "Declaration"), which is located in Weber County, State of Utah, and shall govern the administration of the Project and the Association.

2. Organizational Form. If the Association is incorporated under the laws of the State of Utah, then these By-Laws shall also function and operate as the by-laws of the corporation.

3. Office and Registered Agent. The initial Registered Agent shall be David N. Johnson of 9710 South 700 East, Suite 101, Sandy, Utah 84070. However, after transfer of management and control of the Association is made by the Declarant to the members of the Association, the Registered Agent shall be the President of the Association and the Registered Office shall be the home of the President or such other place as shall be designated by him.

ARTICLE II
ASSOCIATION

1. Composition. The association of lot owners is a mandatory association consisting of all Owners.

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

3. Notice of Meeting. It shall be the duty of the Secretary to hand deliver or mail to each owner at his last known address, by regular U.S. mail postage prepaid, a notice of (a) each annual meeting of the Association not less than ten (10) and not more than thirty (30) days in advance of such meeting. The notice shall state the purpose, day, date, time and place of the meetings. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

4. Qualified Voters. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid his share of the Common Expenses and all Assessments and/or Additional Charges due.

5. Proxies. The votes appertaining to any Lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Lot Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically (a) if the Owner attends the meeting in person, (b) it is revoked in writing and written notice of the revocation is given to the Secretary of the Association prior to the meeting, and (c) upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Association prior to the meeting. Only individual Owners or the legal representative of an institutional Owner may be proxies.

6. Quorum Voting. Fifty-one (51.0%) percent of the members of the Association 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 two days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an oral announcement at the meeting to be rescheduled. Those Owners present, either in person or by proxy, at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Owners representing a majority of the members of the Association in person or by proxy, shall decide any question brought before the meeting. If the Declaration requires a fixed percentage of Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.

7. 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.

8. Conduct of Meeting. The President shall, or in his absence the Vice-President, preside over all meetings of the Association; and the Secretary shall keep the minutes of the meeting as well as record of all transactions occurring thereat.

9. Open Meeting Policy. All Management Committee meetings shall be open to all voting members, but attendees other than members of the Management Committee may not participate in any discussion or deliberation unless a majority of a quorum requests that they be granted

permission to speak. In such case, the President may limit the time any such individual may speak.

10. Action May Be Taken Without A Meeting. Any action to be taken at the meeting of the Management Committee or any action that be taken at a meeting of the Management Committee may be taken without a meeting if a consent in writing, setting for the action so taken, shall be signed by all the members of the Management Committee. An explanation of the action taken shall be posted at a prominent place or places within the common areas with three (3) days after the written consents of all of the members of the Management Committee have been obtained.

11. Executive Session. The Management Committee, with approval of a majority of a quorum, may adjourn a meeting and reconvene an executive session to discuss and vote upon personnel matters, litigation or threatened litigation in which the Association is or may become involved, and orders of business of a privileged, confidential, sensitive or similar nature. The nature of any and all business to be considered in an executive session shall first be announced in open session.

ARTICLE III MANAGEMENT COMMITTEE

1. Powers and Duties. The affairs and business of the Association shall be managed by the Management Committee consisting of three (3) persons, who, after the termination of Declarant's Period of Control, shall be Lot Owners. The Management Committee 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 necessary to operate and maintain the Project. The Committee shall have the power from time to time to adopt any Rules and Regulations deemed proper for the exercise of its management powers. The Committee may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Declaration, the Committee shall be responsible for at least the following:

- a) Preparation of the Budget.
- b) Allocation of the Common Expenses.
- c) Maintain the Common Area and Facilities;
- d) Open and manage bank accounts;
- e) Enforce the Project Documents.
- f) Purchasing and maintaining insurance.
- g) Keep books and records with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Project, specifying the maintenance and repair

expenses of the Common Areas and any other expenses incurred.

h) Provide for utility services;

i) Assign parking and storage spaces; and

j) Doing such other things and acts necessary to accomplish the foregoing and not inconsistent with the Declaration or By-Laws, or to do anything required by a proper resolution of the Management Committee or Association.

2. Composition of Management Committee. The Management Committee shall be composed of three (3) members.

3. Election and Term of Office of the Committee. The term of office of membership on the Management Committee shall be two (2) years. At the expiration of the member's term, a successor shall be elected.

4. First Meeting. The first meeting of the members of the Management Committee shall be immediately following the annual meeting of the Association or at such other time and place designated by the Committee.

5. Regular Meetings. Regular meetings of the Management Committee shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Committee, but no less often than monthly.

6. Special Meetings. Special meetings of the Management Committee may be called by the President, Vice President or a majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. Mail postage prepaid, or by telephone, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Committee shall be valid for any and all purposes.

7. Waiver of Notice. Before or at any meeting of the Management Committee, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Committee shall constitute a waiver of notice. If all the members are present at any meeting of the Committee, no notice shall be required and any business may be transacted at such meeting.

8. Committee's Quorum. At all meetings of the Management Committee, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the Committee members present at a meeting at which a quorum is present shall be deemed to 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 but for no longer than two days. At any such rescheduled meeting, any business which might have been

transacted at the meeting as originally called may be transacted without further notice.

9. Vacancies. Vacancies in the Management Committee caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Committee at a special meeting of the Committee held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the committee; and each person so elected shall be a member for the remainder of the term of the member so replaced. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

10. Removal of Committee Member. A member of the Management Committee 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 of the Association is present, by an affirmative vote of a majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Committee Member who misses twenty-five percent (25%) or more of the Committee Meetings or who misses three (3) consecutive meetings, in any calendar year, shall be automatically removed from the Committee.

11. Conduct of Meetings. The President 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.

12. 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, a full and clear statement of the business and condition of the Association.

ARTICLE IV OFFICERS

1. Designation. The principal officers of the Association shall be a President, a Vice-President, 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. All officers shall also be members of the Committee. Two or more offices may be held by the same person, except that the President shall not hold any other office.

2. Election of Officers. The officers of the Association shall be elected annually by the Committee at the first meeting of each Committee immediately following the annual meeting of the Association 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 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 purposes.

4. President. The President shall be the chief executive officer; he shall preside at meetings of the Association and the Committee shall be an ex officio member of all committees; he shall have general and active management of the business of the Committee 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 use of president of a corporation organized under the laws of the State of Utah.

5. Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Committee or the President shall prescribe. If neither the President nor the Vice President 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 meetings 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, notices for all meetings of the Association and the Committee 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 Association, 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 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 monies 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 President and members, at the regular meetings of the Committee, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Project.

ARTICLE V FISCAL YEAR

The fiscal year of the Association shall be the calendar year consisting of the twelve (12)

month period commencing on December 1 of each year terminating on December 31 of the same year. 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
INVESTMENT OF COMMON FUNDS

Common funds may only be deposited into institutions which are federally insured. Common funds shall be deposited into in savings or money market accounts, or to purchase certificates of deposit. Other higher-risk investments, with a potential higher-rate-of-return, such as stocks, bonds, mutual funds and U.S. treasuries and the like, may only be used with the prior express written and affirmative consent of at least 75% of the Owners, all eligible mortgagees, and if any financing or the guaranty of any financing on a Lot or Dwelling Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA).

ARTICLE VII
AMENDMENT TO BY-LAWS

1. Amendments. These By-Laws may be modified or amended either (a) by the affirmative vote of a majority of the members of the Association or (b) pursuant to a written instrument of consent duly executed by a majority of the members of the Association provided all of the written consents are obtained within a ninety day period.

2. Recording. An amendment to these By-Laws shall become effective immediately upon recordation in the Office of the County Recorder of Weber County, Sate of Utah.

ARTICLE VIII
NOTICE

1. Manner of Notice. All notices, demands, bills, statements, or other communications provided for or required under these By-Laws (except as to notices of Association meetings which were previously addressed in Article II of these By-Laws) shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage pre-paid, a) if to an Owner, at the address of his Lot and at such other address as the Owner may have designated by notice in writing to the Secretary; or b) 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 Declaration.

ARTICLE IX
COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. Conflict. These By-Laws are subordinate and subject to all provisions of the Declaration. 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. In the event of any conflict between these By-Laws and the Declaration, the provision of the Declaration shall control.

2. 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.


3. 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.


4. Interpretation. Whenever in these By-Laws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine; and the term "shall" is mandatory while the term "may" is permissive.

5. Severability. The invalidity of any one or more phrases, sentences, subparagraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this document should be invalid or should operate to render this document invalid, this document shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections, or section or sections had not been inserted.

EXECUTED the day and year first above written.

DECLARANT:
FORTY-FOURTH STREET ASSOCIATES, INC.
a Utah corporation

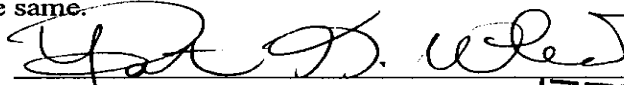
By: 
Name: Wallace J. Morgan
Title: President

By: 
Name: David N. Johnson
Title: Secretary

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STATE OF UTAH)
)ss:
COUNTY OF SALT LAKE)

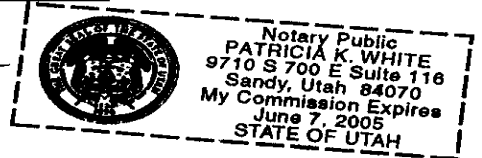
On the 17th day of December, 2002, personally appeared before me Wallace J. Morgan and David N. Johnson, who by me being duly sworn, did say that they are the President and Secretary of Forty-Fourth Street Associates, Inc., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a Resolution of its Board of Directors or its Articles of Incorporation, and said Wallace J. Morgan and David N. Johnson, duly acknowledged to me that said corporation executed the same.



NOTARY PUBLIC

Residing at: SANDY, UT

My Commission Expires: 6/7/05



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