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BOOK 2655 PAGE 605

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Request of SECURITY TITLE COMPANY  
See Paid, MAZE, MARGARET CHASE  
Recorder, Salt Lake County, Utah  
2600 by Ramsey Deputy  
Book Page

ORDER NUMBER  
126018

*Eq. of Realty & Construction  
4291 Cassie Jones Blvd.  
Salt Lake City Utah*

DECLARATION ESTABLISHING A CONDOMINIUM PROJECT KNOWN AS:

"The Cottonwoods"

Equity Realty & Const. Inc., a Utah corporation, hereinafter referred to as "Declarant," does hereby declare:

I. SUBMISSION OF PROPERTY

Declarant is the sole owner of the land hereinafter described, together with certain buildings and other improvements heretofore erected or hereafter to be erected upon the land (all of which is hereinafter called the "Property"); Declarant submits the Property together with all appurtenances thereto, to the provisions of the Utah "Condominium Ownership Act" (Title 57, Chapter 8, Utah Code Annotated 1953):

Beginning at a point on the West line of Highland Drive, said point being North 1741.63 feet and West 187.29 feet from the Southeast corner of Section 9, Township 2 South Range 1 East, Salt Lake Base and Meridian and running thence South 1°32'20" West along said West line 234.14 feet; thence North 83°36' West 102.91 feet; thence North 89°29'10" West 45.51 feet; thence South 6°38' West 69.73 feet; thence South 1°32'20" West 106.46 feet to an old fence line; thence North 89°49'30" West 647.51 feet along said old fence line to a fence corner; thence South 1°41' West 240.97 feet along an old fence line to a point on the North line of Spring Lane; thence North 89°00'50" West along said North line 485.42 feet to the Southeast corner of Lot 18, Cottonwood Meadows, Plat "C" Subdivision; thence North 1°00' East along the East boundary of said subdivision 206.75 feet to a point on an old fence line; thence North 1°06'30" East along said old fence line 432.19 feet to an old fence corner; thence South 89°32'15" East along an old fence line 1292.99 feet to the point of beginning. Contains 13.959 Acres.

The Property will have the street number 5150 Highland Drive, Salt Lake City, Utah and will have the name "The Cottonwoods."

II. MAP

On May 6, 1968, Declarant filed for record in the office of the Salt Lake County Recorder, State of Utah, a "Record of Survey Map of The Cottonwoods" in accordance with the Condominium Ownership Act, which map is part of this Declaration.

III. DEFINITIONS

- A. "Act" means Utah Condominium Ownership Act.
- B. "Owner" means unit owner as defined by the Act and shall include a purchaser under a real estate contract.
- C. "Mortgage" means a deed of trust as well as a mortgage.
- D. "Mortgagee" means a beneficiary under or holder of a deed of trust as well as a mortgagee.
- E. "Home" means unit as defined by the Act and as shown on the Map including garage, storage space and patio. The boundary lines of each Home are the interior surfaces of its perimeter walls, bearing walls, floors, fireplaces, ceilings, windows and window frames, doors and door frames and trim; and includes both the portions of the building so described and the air space so encompassed.

IV. HOMES, COMMON AREAS & FACILITIES

Declarant covenants that it hereby divides said Property into the following separate freehold estates:

- A. Ninety-two separate Homes as designated on the survey map recorded herewith.
- B. The remaining portion of the Property known as Common Areas and Facilities as defined by the Act.

The Owner shall be deemed to own the walls and partitions which are contained in his Home and also shall be deemed to own (and shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate) the inner decorated and/or finished surfaces of the perimeter walls, floors, ceilings, windows and doors bounding his Home.

An Owner, however, shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors bounding his Home, nor shall the Owner be deemed to own the exterior finished surfaces of the four outside walls and surfaces which bound the patio belonging to his Home, nor the utilities running through his Home which are utilized for or serve more than one Home, except as tenant in common with the other Owners.

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Each Owner shall be entitled to an undivided interest in the Common Areas and Facilities in the percentage expressed in section V hereof.

V. CONDOMINIUM

The Homes which shall be individually conveyed and the undivided interest in the Common Areas and Facilities which shall be conveyed with each Home are as follows:

HOME NO.	BUILDING PLAN	PERCENTAGE OF OWNERSHIP IN COMMON AREAS & FACILITIES (Also determinative of (1) Voting rights and (2) Pro-rata shares of common expenses - See Section VI)
1 through 40	A	each 1.0671%
41 through 76	B	each 1.1205%
77 through 92	A	each 1.0671%

The percentage of each Home in the Common Areas and Facilities has been determined upon the basis of the proportion which the fair value of each Home bears to the fair value of the Property.

VI. COMMON EXPENSES, PROFITS AND VOTING RIGHTS

Each Owner's share in the profits and common expenses as well as his proportionate representation for voting purposes in the association of Home owners shall be the same as his percentage of undivided interest in the Common Areas and Facilities expressed in section V.

VII. USE OF HOMES

Homes shall be occupied and used only as a private dwelling for the owner, his family, social guests and lessees -- for leases of at least 30 days, and for no other purpose.

VIII. ENCROACHMENTS

If any portion of the Common Areas and Facilities encroaches upon any Home, or if any Home encroaches upon any other Home or upon any portion of the Common Areas and Facilities, as a result of the construction of any building, or if any such encroachment shall occur hereafter as a result of settling or shifting of any building, a valid easement for the encroachment and for the main-

tenance of the same so long as such building stands, shall exist.

In the event any building, Home, any adjoining Home, or any adjoining Common Areas and Facilities, shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Areas and Facilities upon any Home or of any Home upon any other Home or upon any portion of the Common Areas and Facilities, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such building shall stand; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of said Owner.

IX. MANAGEMENT COMMITTEE

A Management Committee shall be established, charged with and having the responsibility and the authority to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the Property for the benefit of the Owners.

Until a date one year from the date all Homes have been sold, the rights, duties and functions of the Management Committee shall, at Declarant's option, be exercised by Declarant.

X. PERSON TO RECEIVE SERVICE

The law firm of BURTON, BLONQUIST, CAHOON, MATHESON & SHAFFER, a partnership, having a place of business at 10 East South Temple Street, Salt Lake City, Utah is hereby designated to receive notice of process in any action which may be brought relating to the Common Area Facilities or more than one Home.

XI. AMENDMENT

Except as otherwise provided herein or in the Act, the provisions of this Declaration may be amended by the vote of at least 66 2/3% of the total vote hereunder of all Owners cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws; or, this Declaration may be amended by an in-

strument in writing signed and acknowledged by record Owners holding 75% of the total vote hereunder. No such amendment shall be effective until recorded in the office of the Recorder of Salt Lake County, State of Utah.

XII. SEVERABILITY

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

XIII. EFFECTIVE DATE

This declaration shall take effect upon recording.

XIV. BYLAWS

The bylaws recorded with this declaration shall be considered embodied in and part of the declaration.

Declaration: Part II

BYLAWS

1. IDENTITY

1.1 These are the bylaws of the association of Home Owners (hereinafter referred to as the "Association,") of "The Cottonwoods" Condominium. The bylaws are part of the Declaration.

2. APPLICATION

2.1 All persons who use the facilities of the Property in any manner are subject to this Declaration and to the rules and regulations.

3. GOVERNING FUNCTION BY MANAGEMENT COMMITTEE

3.1 The affairs of the Association shall be governed by a Management Committee, the nature, powers and responsibilities of which are hereinafter defined.

3.2 The Declarant shall exercise the functions of the Management Committee until a Management Committee has been duly established.

4. MEETINGS OF THE ASSOCIATION

4.1 The first annual meeting of the Owners shall be held 20 days after Declarant gives notice thereof to all Home Owners. Declarant may give such notice at any time; but Declarant shall give such notice as soon as 30 homes have been sold.

4.2 Annual meetings of the Owners, after the first meeting, shall be held at 8 o'clock p.m. on the third Thursday of June of each year at such reasonable place and at such other reasonable time (not more than 60 days before or after such date) as may be designated by the Management Committee.

4.3 Special meetings shall be held whenever called by notice of the Management Committee, and signed by a majority thereof; and the Management Committee shall call by notice a special meeting upon receipt of a written request from Owners having one-third of the total vote, which request shall specify the matters to be

considered. No matters shall be considered at a special meeting except as stated in the notice.

4.4 Notices of all meetings may be served personally or by mail at least 10 days but not more than 20 days prior to such meeting. Any notice of meeting permitted or required shall be in writing, stating the purpose thereof and the time and place, and shall be served on each Owner of record at his Home or at such address as the Owner shall have designated by notice in writing to the Management Committee or Manager. Mailing of a notice shall be considered service of notice.

4.5 A quorum at Association meetings shall consist of persons entitled to cast a majority of the total votes. In the event that a quorum is not present at any meeting, the Owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the Owners, and at that meeting the presence of Owners holding in excess of 30% of the total votes shall constitute a quorum for the transaction of business; but in the event a quorum is not present at that meeting, the Owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the Owners, and, at that meeting, whatever Owners are present shall constitute a quorum.

Except where a greater percentage is required by this Declaration, the acts approved by a majority vote of the voting power present at a meeting at which a quorum is present shall be the acts of the Owners.

4.6 Voting. Votes may be cast in person only.

Where there is more than one record Owner of a Home, all record Owners of the same Home must attend the meeting and must act unanimously in order to cast the votes to which they are entitled. However, any record Owner may designate another joint Owner of the same Home as proxy or agent in a writing signed by such record Owner and filed with the Management Committee or Manager before the time appointed for each meeting.

Declarant shall be entitled to vote with respect to any completed Home owned by Declarant.

In the event that a notice of default is recorded by any mortgagee who holds a mortgage which is a first lien on a condominium against the Owner of the condominium covered by the mortgage, then and in that event and until the default is cured, the right of the Owner of such condominium to vote shall be deemed transferred to the mortgagee recording the notice of default. The seller under a Real Estate Contract may record the contract and any notice of default; and thereafter and until the default is cured the Owner's right to vote shall be deemed transferred to such seller.

4.7 The order of business at each annual meeting of the Association shall include:

(a) The presentation by the Management Committee of an accounting of the common expenses, itemizing receipts and disbursements for the preceding fiscal year, the allocation thereof to each Owner, and the estimated common expenses for the coming calendar year. Within 10 days after the annual meeting, said statement shall be delivered to the Owners not present at said meeting.

(b) The election of Management Committee members for the forthcoming year as hereinafter provided.

The order of business at all annual association meetings as far as practicable shall be:

- (1) Calling of the roll
- (2) Proof of notice of meeting or waiver of notice
- (3) Reading of minutes
- (4) Reports of Management Committee, etc.
- (5) Election of Management Committee members
- (6) Unfinished business
- (7) New business

4.8 The fiscal year shall be June 1st to May 31st.



5. MANAGEMENT COMMITTEE

- 5.1 The first Management Committee shall be established after 30 Homes have been sold, and shall consist of five members.
- 5.2 Three of the members of the first Management Committee need not be Owners and shall be designated by the Declarant to serve, one for a one-year term and two for two-year terms. Each shall serve until his successor has been chosen, or until his death, resignation or removal by Declarant. Any vacancy of these three members may be filled by Declarant. As their terms expire Declarant may designate successor members for two-year terms. Provided, however, after one year from the date all Homes have been sold, Declarant shall no longer have power to designate or remove.
- 5.3 The two remaining members of the first Management Committee shall be selected at the first annual meeting of the Association as follows:
- (a) The Owners shall nominate up to six Owners to serve on the Management Committee.
  - (b) From the slate so nominated Declarant shall designate two Owners, one to serve for two years and the other to serve for one year.
  - (c) Until one year from the date all Homes are sold, selection of members to fill the expiring terms shall proceed in like manner unless Declarant in writing waives its right to so designate.
- 5.4 Notice. Within ten days after the first annual meeting, Declarant shall designate the members of the first Management Committee pursuant to this section, and shall serve written notice upon all Owners informing them of the names and addresses of all persons so designated together with their respective terms of office.
- 5.5 Election. The members of the Management Committee shall consist of five Owners elected for a two-year term at annual meetings of the Association as their terms expire, subject to the

provisions for designation of the first Management Committee in paragraphs 5.1 to 5.4 hereof.

5.6 Voting for Management Committee shall be non-cumulative.

5.7 The term of each member's service shall be for a period of two years (subject to the provisions herein relating to the first Management Committee), and each member shall serve until his successor is elected, or until his death, resignation or removal; provided that if any member ceases to be an Owner, his membership on the Management Committee shall thereupon terminate.

5.8 Vacancies, resignation and removal.

(a) Except as to vacancies provided by the removal of members by Owners (5.8 (c) ) and subject to the provisions for removal by Declarant (5.2), vacancies in the Management Committee occurring between annual meetings of the Association shall be filled by the remaining members.

(b) Any member may resign by giving written notice to the Manager or Management Committee.

(c) Any member may be removed by the Owners by concurrence of two-thirds of the voting power present at a special meeting of the Association called for that purpose. The vacancy so created shall be filled by the Association at the same meeting. However, the provisions of this sub-paragraph (5.8 (c) ) shall not be effective so long as Declarant has the right to designate and remove members.

5.9 A quorum at Management Committee meetings shall consist of three members. The acts approved by a majority of those present at a meeting at which a quorum is present shall be the acts of the Management Committee, except where approval of a greater number of members is required by this Declaration.

5.10 Meetings of the Management Committee may be called, held and conducted in accordance with such regulations as the Management Committee may adopt.

5.11 Compensation for members of the first Management Committee shall be reasonable and shall be determined by the Management

Committee. After Declarant no longer has power to designate or remove, Management Committee members shall serve without compensation.

5.12 A chairman shall be elected by the Management Committee, which chairman shall preside over both its meetings and those of the Owners. In the absence of any appointment of a Manager as hereinafter provided, this chairman shall act as Manager to perform any functions which are delegated by the Management Committee to the Manager.

#### 6. MANAGER

6.1 The Management Committee may delegate any of its duties, power or functions, including, but not limited to, the authority to give the subordination agreements provided for in section 18 hereof, to any person or firm to act as Manager of the project, provided that any such delegation shall be revocable upon written notice by the Management Committee.

6.2 In Writing. The members of the Management Committee shall not be liable for any omission or improper exercise by the Manager of any such duty, power or function so delegated by written instrument executed by a majority of the Management Committee.

6.3 "The Cottonwoods Management, Inc.", a Utah Corporation is hereby appointed by Declarant to be Manager and Declarant delegates thereto all of Declarant's duties and functions as Management Committee which by this Declaration may be delegated. This delegation if not otherwise revoked in writing, shall automatically be revoked one year after the date all Homes have been sold.

#### 7. POWERS AND RESPONSIBILITIES OF THE MANAGEMENT COMMITTEE

The Management Committee shall have all powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things except as by law or by this Declaration may not be delegated to or performed by the Management Committee. Such powers and responsibilities shall

include, but not be limited to the following, subject to the provisions of this Declaration:

7.1 To make and collect assessments against the Owners and use the proceeds in the exercise of its powers and duties.

(a) Budget. Adopt an annual budget, determine the amount of common expenses payable by Owners, and allocate and assess the charges against the Owners pursuant to the percentages set forth in this Declaration. Declarant shall be liable for the amount of any assessment against occupied Homes owned by the Declarant.

If said budget proves inadequate for any reason, including nonpayment of any Owner's assessment, the Management Committee may at any time levy a further assessment, which shall be assessed to the Owners in like proportions, unless otherwise provided herein.

Each Owner shall be obligated to pay assessments made pursuant to this paragraph to the Management Committee in equal monthly installments on or before the first day of each month during the fiscal year, or in such other reasonable manner as the Management Committee shall designate.

(b) Assessments against Owners pursuant to the annual budget shall be made for the fiscal year annually on or before May 15 preceding the year for which the assessments are made.

(c) Audits of books and records shall be made as provided in these bylaws.

7.2 All maintenance, repair, replacement, structural alterations, reconstruction and the operation of the Common Areas and Facilities, whether located inside or outside of the Homes, (unless necessitated by the negligence, misuse or neglect of an Owner in which case such expense shall be charged to such Owner). The interior surfaces of each Home shall be maintained and repaired by and at the sole cost of the particular Owner.

7.3 Maintenance and repair of any Home, if such maintenance or repair is reasonably necessary in the discretion of the Manage-

ment Committee to protect the Property or preserve the appearance and value of the project, and the Owner of such Home has failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of maintenance or repair has been delivered by the Management Committee to such Owner; provided that the Management Committee shall levy a special assessment against the condominium of such Owner for the cost of such maintenance or repair.

However, the Management Committee shall have no authority to acquire and pay for out of the common expense fund, any capital additions and improvements having a cost in excess of \$2,500.00 except as expressly provided herein.

- 7.4 The acquiring of all materials, supplies, personal property, labor, services, insurance, bonds, taxes or assessments which the Management Committee is required to secure or pay for pursuant to the terms of this Declaration or by law, or which in its opinion shall be necessary or proper for the operation of the Common Areas and Facilities or for the enforcement of this Declaration, provided that if any such are provided for particular Homes and not for the Common Areas and Facilities, the cost thereof shall be specially assessed to the Owners of such Homes.
- 7.5 To employ personnel including a manager.
- 7.6 To make reasonable rules and regulations respecting the use, operation and maintenance of the Property.
- 7.7 To enforce by legal means the Act, Declaration, and the reasonable rules and regulations covering the use, operation and maintenance of the Property.
- 7.8 To engage legal and accounting services which are necessary or proper.
- 7.9 To acquire, hold and sell for the benefit of the Owners, tangible and intangible personal property; the beneficial interest therein shall be owned by the Owners and the transfer of a condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such property.

7.10 To purchase, hold, lease as lessee, mortgage and convey any condominium for the benefit of the Owners provided that no offer of purchase of a condominium shall be made without prior approval of 75% of the total vote of all remaining condominiums in "The Cottonwoods" obtained in writing or at a meeting of the Association.

8. LIMITATION OF MANAGEMENT COMMITTEE'S LIABILITY;  
INDEMNIFICATION

8.1 Limitation. The Management Committee shall not be liable for any failure of water supply or other service to be obtained and paid for by the Management Committee, hereunder, or for injury or damage to person or property caused by the elements or by another Owner or person on the Property, or resulting from electricity, water, rain, dust, sand or mud which may leak or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless caused by gross negligence of the Management Committee.

No diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Areas and Facilities or from any action taken to comply with any law, ordinance or orders of a governmental authority.

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

agement Committee approves such settlement and reimbursement as being for the best interest of the Management Committee.

9. OWNER OBLIGATIONS AND DEFAULTS

Each Owner shall be obligated for annual and special assessments levied by the Management Committee for the common expenses, payable in such reasonable manner as the Management Committee shall designate.

If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior annual assessment.

- 9.1 Separate defaults. Each monthly or other periodic installment of any assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed at the time the assessment is made and shall be collectible as such together with any reasonable late charges which have been provided for by the Management Committee and reasonable attorneys' fees.
- 9.2 Lien for non-payment. The amount of any assessment, whether regular or special, assessed to an Owner plus interest at 7%, and costs, including reasonable attorneys' fees, shall become a lien upon such condominium upon recordation of a notice of assessment as provided in Section 57-8-20 of the Act.
- 9.3 In case of foreclosure the Owner shall be required to pay a reasonable rental for the Home and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the mortgage security.

10. OWNER'S OBLIGATION TO REPAIR

- 10.1 Except for those portions which the Management Committee is required to maintain and repair hereunder (if any), each Owner shall at the Owner's expense keep the interior of his Home and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all

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redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his Home. The Owner shall likewise, be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, furnaces, lighting fixtures, refrigerators, air conditioning equipment, dishwashers, disposals or ranges that may be in or connected with the Home.

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

11. PROHIBITION AGAINST STRUCTURAL CHANGES BY OWNER

11.1 The Owner shall not, without first obtaining written consent of the Management Committee, make or permit to be made any structural alteration, improvement or addition in or to his Home or the Common Areas and Facilities. The Owner shall do no act nor any work that will impair the structural soundness or integrity of the buildings or safety of the property or impair any easement or hereditament without the written consent of all owners. The Owner shall not paint or decorate any portion of the exterior of the buildings or other Common Areas and Facilities.

12. LIMITATION ON USE OF UNITS AND COMMON AREA

The Property shall be occupied and used as follows:

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

12.2 No children under 10 years of age shall be permitted as permanent residents of a Home. The Owner shall be permitted to have guests under 10 years of age visit the Owner on a temporary basis.

12.3 Nothing shall be done or kept in any Home or in the Common Areas and Facilities which will increase the rate of insurance on the Common Areas and Facilities without the prior written consent of the Management Committee. No Owner shall permit any-



thing to be done or kept in his Home or in the Common Areas and Facilities which will result in the cancellation of insurance on any Home or any part of the Common Areas and Facilities or which would be in violation of any law. No waste will be committed in the Common Areas and Facilities.

### 13. RIGHT OF ACCESS

- 13.1 The Management Committee and its agents shall have right of access to any Home for the purpose of making inspections or performing maintenance or other work pertinent to lawful duties of the Management Committee or for the purpose of correcting any conditions originating in a Home and threatening another Home or the Common Areas and Facilities, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner.
- 13.2 In case of emergency, such right of entry shall be immediate, whether the Owner is present or not.

### 14. MAINTENANCE OF COMMUNITY INTEREST

In order to maintain a community of congenial residents and thus protect the value of the Homes, the transfer of any condominium by any Owner other than the Declarant shall be subject to the following provisions:

- 14.1 Sale or Lease Right of First Refusal. In the event any Owner of a condominium shall wish to re-sell or lease the same, and shall have received a bona fide offer therefor from a prospective purchaser or tenant, written notice thereof together with an executed copy of such offer and the terms thereof together with such other information as the Management Committee may reasonably require, shall be given to the Management Committee. The Management Committee, shall have the right to purchase or lease the subject condominium or provide a purchaser or lessee upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing Owner, and a matching down payment or deposit is provided to the selling

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or leasing Owner during the 20 day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase or lease.

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

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

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

14.2 Gifts, inheritance and other transfers. An Owner who acquires title by gift, inheritance or in any other manner (excepting as provided in paragraph 14.1 hereof) shall give the Owners a notice thereof in writing delivered to the Manager or Management Committee, together with such information as the Management Committee may reasonably require. Within 30 days after receipt of notice and required information, or if no notice has been given then at any time after receiving knowledge of a transfer, the remaining Owners through the Management Committee may deliver or mail by registered mail to the Owner an agreement to purchase by the Owners or by a purchaser named by the Management Committee to whom the Owner must sell upon the following terms:

(1) The sale price shall be the fair market value determined by the average of two independent appraisals. The cost of appraisals to be paid by the purchaser.

(2) The purchase price shall be cash.

(3) The sale shall be closed within 30 days following the determination of sale price.

14.3 Exceptions. The foregoing provisions of this section entitled "Maintenance of Community Interest" shall not apply to:

(a) Any transfer to or purchase by a bank, life insurance company or federally insured savings and loan association, which acquired its title as the result of owning a mortgage made in good faith and for value upon the condominium concerned, and this shall be so whether the title is acquired by deed from the mortgagor or his successor in title or through foreclosure proceedings; but such provisions shall apply to a transfer, sale or lease by a bank, life insurance company or federally insured savings and loan association which so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to a Home at a duly advertised public sale with open bidding which is provided by law, such as, but not limited to, execution sale, foreclosure sale, judicial sale or tax sale. The grantee of a transfer, sale or lease by a bank, life insurance company or savings and loan association and the purchaser at public sale shall thereupon and thereafter be subject to all the provisions of this section.

(b) The right of an Owner to subject his condominium to a trust deed, mortgage or other security instrument.

(c) Any sale or lease by Declarant.

14.4 Certificate of Satisfaction. Upon written request of any Owner, purchaser, tenant or an existing or prospective mortgagee of any condominium, the Management Committee shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing that:

(a) With respect to a proposed lease or sale pursuant to paragraph 14.1, that proper notice was given by the selling or leasing Owner and that the remaining Owners did not elect to exercise their option to purchase or lease;

(b) With respect to an Owner who acquired title pursuant

to 14.2 that the remaining Owners did not elect to exercise their option to purchase;

(c) With respect to a deed to a bank, life insurance company or federally insured savings and loan association or its nominee, pursuant to paragraph 14.3, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of section 14.

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

#### 15. INSURANCE AND BONDS

The Management Committee shall obtain and maintain at all times insurance and bonds of the type and kind and in at least the amounts provided herein and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use.

15.1 Replacement Coverage. A policy or policies of fire insurance with extended coverage endorsement, for the full insurable replacement value of the Homes and Common Areas and Facilities, or such other fire and casualty insurance as the Management Committee shall determine gives substantially equal or greater protection to the Owners, and their mortgagees, as their respective interests may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each condominium, if any.

15.2 Liability. A policy or policies insuring the Management Committee, the manager and the Owners against any liability to the public or to the Owners (of Homes and of the Common Areas and Facilities and their invitees, or tenants), incident to the ownership and/or use of the project, and including the personal liability exposure of the Owners. Limits of liability under such insurance shall not be less than \$300,000.00 for any one person injured, for any one accident, and shall not be less

than \$100,000.00 for property damage each occurrence (such limits and coverage to be reviewed at least annually by the Management Committee and increased in its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of named insureds under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

15.3 Workmen's Compensation insurance to the extent necessary to comply with applicable laws;

15.4 A fidelity bond naming the Manager, if any, and such other persons as may be designated by the Management Committee as principals, and the Owners as obligees, for the first year in an amount at least equal to the estimated cash requirement for that year, and for each year thereafter in an amount at least equal to the total sum collected through the common expense fund during the preceding year.

15.5 The foregoing insurance shall be governed by the following provisions:

(a) All policies shall be written with a company licensed to do business in the State of Utah and holding a rating of "AAA" or better by Best's Insurance Reports;

(b) Exclusive authority to adjust losses under policies hereafter in force in the Property shall be vested in the Management Committee or its authorized representative;

(c) In no event shall the insurance coverage obtained and maintained by the Management Committee hereunder, be brought into contribution with insurance purchased by individual owners of their mortgages;

(d) Each Owner may obtain additional insurance at his own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Management Committee, in behalf of all of the Owners, may realize under any insurance

policy which the Management Committee may have in force on the project at any particular time;

(e) Each Owner shall be required to notify the Management Committee of all improvements made by the Owner to his Home, the value of which is in excess of \$1,000.00;

(f) Any Owner who obtains individual insurance policies covering any portion of the Property other than personal property belonging to such Owner, shall file a copy of such individual policy or policies of such insurance with the Management Committee within 30 days after purchase of such insurance;

15.6 The Management Committee shall be required to make every effort to secure insurance policies that will provide for the following:

(a) A waiver of subrogation by the insurer as to any claims against the Management Committee, the Manager, the Owners and their respective servants, agents, and guests;

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

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

(d) That any "no other insurance" clause in the master policy exclude individual Owners' policies from consideration.

15.7 The annual insurance review which the Management Committee is required to conduct as provided in 15.2 above shall include an appraisal of the improvements in the project by a representative of the insurance carrier writing the master policy.

#### 16. NO PARTITION

16.1 There shall be no judicial partition of the project or any part thereof, nor shall Declarant or any person acquiring any interest in the project or any part thereof seek any such

judicial partition, until the happening of the conditions set forth in Sections 57-8-31 of the Act in the case of damage or destruction, or unless the property has been removed from the provisions of the Act as provided in Section 57-8-22 thereof; provided, however, that if any condominium shall be owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants. But such partition shall not affect any other condominium.

17. ALTERATIONS, ADDITIONS AND IMPROVEMENTS OF COMMON AREAS AND FACILITIES

17.1 There shall be no structural alterations, capital additions to, or capital improvements of the Common Areas and Facilities requiring an expenditure in excess of \$2,500.00 without the prior approval of Owners holding 75% of the total votes.

18. MORTGAGE PROTECTION

Notwithstanding all other provisions hereof:

18.1 The liens created hereunder upon any condominium shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to paragraph 9.2 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein;

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

18.3 By subordination agreement executed by a majority of the Management Committee, the benefits of paragraphs 18.1 and 18.2

above may be extended to mortgages not otherwise entitled thereto.

19. FAILURE OF MANAGEMENT COMMITTEE TO INSIST ON STRICT PERFORMANCE NO WAIVER

19.1 The failure of the Management Committee or Manager to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, these Bylaws or the rules and regulations, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future, of such term, covenant, condition or restriction but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Management Committee or Manager of any assessment from an Owner, with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Management Committee or Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Management Committee or Manager.

20. ENFORCEMENT

20.1 In any action of enforcement pursuant to Section 57-8-8 of the Act, the plaintiff shall be entitled to recover reasonable attorneys' fees.

21. AUDIT

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

22. INTERPRETATION

22.1 Liberal construction. The provisions of this Declaration shall be liberally construed to effectuate the purpose of



creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officers and its corporate seal to be affixed hereto this 6th day of May 1968.



Equity Realty & Const., Inc.

By Lenora P. Anderson  
Lenora P. Anderson, President

Attest

Gary S. Anderson  
Gary S. Anderson, Secretary

STATE OF UTAH )  
COUNTY OF SALT LAKE )

On the sixth day of May A.D., 1968, personally appeared before me Lenora P. Anderson and Gary S. Anderson, who being duly sworn did say, each for himself, that she, the said Lenora P. Anderson is president, and he, the said Gary S. Anderson, is secretary of Equity Realty & Const., 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 and said Lenora P. Anderson and Gary S. Anderson each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

R. Burton  
Notary Public

