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DECLARATION OF CONDOMINIUM  
OF  
THE GARDENS SOUTH CONDOMINIUMS  
PHASE I

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HEIDI J. GALLIAN  
WASHINGTON COUNTY  
REGISTERED

THIS DECLARATION, containing covenants, conditions and restrictions relating to the Gardens South Condominiums Phase I is made on the date set forth at the end hereby by The Gardens South Development Co. Inc., a Utah Corporation, hereinafter called "Declarant," for itself, its successors, grantees and assigns, pursuant to the Condominium Ownership Act of the State of Utah.

RECITALS

I

Declarant is the owner of certain land located in Washington County, Utah, hereinafter referred to as the "land" and more particularly described at Exhibit A of this Declaration which is attached hereto and made a part hereof.

II

Declarant has constructed or will construct certain buildings and improvements thereon in accordance with the plans and drawings set forth in the Record of Survey Map filed concurrently herewith, prepared and certified by L. Reid Pope Utah Registered Land Surveyor.

III

Declarant desires by filing this Declaration and the Record of Survey Map to submit the above-described real property and the said buildings and other improvements being constructed or to be constructed thereon to the provisions of the Utah Condominium Ownership Act as a project known as the Gardens South Condominiums Phase I.

IV

Declarant desires and intends to sell fee title to the individual Units contained in said project, together with undivided ownership interests in the Common Areas and Facilities appurtenant thereto, to various purchasers, subject to the covenants, limitations, and restrictions contained herein.

c Russell J. Gallian

40

Declarant desires and intends to develop the above project consisting of 12 units in Phase I and Common Areas (subject to addition as provided hereinafter).

#### DECLARATION

NOW, THEREFORE, for such purposes, Declarant hereby makes the following Declaration containing covenants, conditions and restrictions relating to this project which, pursuant to the provisions of the Condominium Ownership Act of the State of Utah, shall be enforceable equitable servitudes, where reasonable, and shall run with the land:

1. Name of the Project: The name by which the Project shall be known is the Gardens South Condominiums Phase I.

2. Definitions: The terms used herein shall have the meaning stated in the Utah Condominium Ownership Act and as given in this section 2 unless the context otherwise requires.

(a) The words "The Act" shall mean and refer to the Utah Condominium Ownership Act, Utah Code Annotated 1953, Section 57-8-1, et. seq., as the same may be amended from time to time.

(b) The words "Association of Unit Owners" or "Association" shall mean and refer to the Gardens South Owners Association, a Utah non-profit corporation, of which all of the Unit Owners are members. A copy of the Articles are attached hereto as Exhibit B. The Association shall be governed in accordance with the Articles, Declaration and By-Laws.

(c) The words "Common Areas and Facilities" shall mean and refer to:

(1) The land described in Exhibit "A" hereto.

(2) That portion of the Property not specifically included in the respective Units as herein defined.

(3) All foundations, columns, girders, beams, supports, main walls, roofs, stairways, exterior walkways, streets, such recreational areas and facilities as may be provided, yards, fences, service and parking areas and entrances and exits, and in general all other apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance and safety of the Common Areas and Facilities or normally in common use;

(4) Those areas specifically set forth and designated in the Map as "Common Ownership" or "Limited Common Area"; and

(5) All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein.

(d) The words "Common Expenses" shall mean and refer to all expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities, except as expressly limited; to all items, things and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration, the By-Laws, such rules and regulations pertaining to the Project as the Association of Unit Owners or the Management Committee may from time to time adopt, and such other determinations and agreements lawfully made and/or entered into by the Management Committee.

(e) The word "Condominium" shall mean and refer to the ownership of a single Unit in this Project together with an undivided interest in the Common Areas and Facilities of the Property.

(f) The words "Condominium Project" or sometimes the "Project" shall mean and refer to the entire Property, including the addition of future phases as defined below, together with all rights, obligations and organizations established by this Declaration.

(g) The word "Declarant" shall mean The Gardens South Development Co. Inc., a Utah Corporation which has made and executed this Declaration, and/or its successor which, by either operation of law or through a voluntary conveyance, transfer or assignment, comes to stand in the same relation to the Project as did its predecessor.

(h) The word "Declaration" shall mean this instrument by which the Gardens South Condominiums Phase I are established as a Condominium Project.

(i) The words "Limited Common Areas and Facilities" or "Limited Common Areas" shall mean and refer to those Common Areas and Facilities designated herein or on the Map as reserved for use of a certain Unit to the exclusion of the other Units including the covered parking stalls, patios, terraces, and/or balconies which lead to and/or are associated with certain Units.

(j) The words "Management Committee" or "Committee" shall mean and refer to the committee as provided in the Declaration and the By-Laws hereto attached as Exhibit C (which By-Laws are hereby incorporated by reference and made a part of this Declaration). Said Committee is charged with and shall have the responsibility and authority to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the Project.

(k) The term "Manager" shall mean and refer to the person, persons or corporation selected by the Management Committee to manage the affairs of the Condominium Project.

(l) The word "Map" shall mean and refer to the Record of Survey Map of the Gardens South Condominiums Phase I recorded concurrently herewith by Declarant.

12

(m) The word "Mortgage" shall mean and include both a first mortgage on any Unit and a first deed of trust on any Unit.

(n) The word "Mortgagee" shall mean and include both the mortgagee under a first mortgage on any Unit and the beneficiary under a first deed of trust on any Unit.

(o) The word "Phase" shall mean and refer to each separate step in development of the property which is initiated through the submission of a tract to the terms of the Act. The term shall also include all improvements which are constructed and all appurtenances, rights, obligations, and legal relationships which come into existence in conjunction with the submission of any single tract. The submission which is effected by this Declaration, the rights and obligations which are created by this Declaration, and the improvements described in the Map which have been or will be constructed, together constitute a Phase, to-wit: Phase 1, of the Gardens South Condominiums project.

(p) The word "Property" shall mean and include the land, the building, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith. The legal description of the property is set forth at Exhibit "A" hereto. The Property is subject to increase in subsequent Phases.

(q) The word "Unit" shall mean and refer to one of the Condominium Units designated as a Unit on the Map. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit, such as appliances, fireplace (except beyond where the flue exits the interior dimension of the Unit), electrical receptacle and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of, among other things, and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural members of any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit.

(r) The words "Unit Number" shall mean and refer to the number, letter or combination thereof designating the Unit in the Declaration and in the Map.

(s) The words "Unit Owner" or "Owner" shall mean the person or persons owning a Unit of the Gardens South Condominiums Phase I in fee simple and an undivided interest in the fee simple estate of the Common Areas and Facilities as shown in the records of

the County Recorder of Washington County, Utah. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Unit Owner or Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such a party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

(t) Those definitions contained in the Act, to the extent they are applicable to and not inconsistent herewith, shall be and are hereby incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

3. Submission to Condominium Ownership. Declarant hereby submits the above-described Property, tract of land, buildings, constructed, together with all appurtenances thereto, to the provisions of the Act as a Condominium Project and this Declaration is submitted in accordance with the terms and the provisions of the Act and shall be construed in accordance therewith. It is the intention of Declarant that the provisions of the Act shall apply to the Property.

4. Covenants to Run with the Land. This Declaration containing covenants, conditions and restrictions relating to the Project shall be enforceable equitable servitudes which shall run with the land and this Declaration and its servitudes shall be binding upon Declarant, its successors and assigns and upon all Unit Owners or *subsequent unit owners, their grantees, mortgagees, successors, heirs, executors, administrators, devisees and assigns.*

5. Description of Property.

(a) Description of Land. The land is that tract or parcel in Washington County, Utah, more particularly described in Exhibit A hereto.

(b) Description of Improvements. The significant improvements contained or to be contained in the Project include those described in this paragraph (b). Phase I of the Project includes: One buildings of 12 units, to be constructed of wood frame construction as more particularly set forth on the Record of Survey Map. In addition, Unless changed by Supplemental Declaration in the sole discretion of Developer, one covered parking stall per unit shall be built with locable storage unit, plus additional uncovered parking, green areas and amenities in the discretion of Declarant.

The undivided interest of ownership of each condominium owner as provided above is subject to change if additional Phases are added as more fully sent forth and described in the Declaration.

(c) Description and Legal Status of Units. The Map and/or Exhibit D hereto shows the Unit Number of each Unit, its location, those Limited Common Areas and Facilities which are reserved for its use, and the Common Areas and Facilities to which it has immediate access. All Units, of whatever type, shall be

capable of being independently owned, encumbered and conveyed. The boundary lines of each Unit are the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, all window panes, doors, window frames and door frames and trim. Each Unit shall include both the portions of the building that are not common areas and facilities within such boundary lines and the space so encompassed. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors, and ceilings, non-supporting interior walls and all utility pipes, lines, systems, fixtures, or appliances found within the boundary lines of the unit and servicing only that unit. The actual physical boundaries of a Unit constructed or reconstructed substantially in accordance with the Map and original plans shall be conclusively presumed to be its boundaries rather than the description expressed in the deed or plans, regardless of minor variance due to construction error, settling, and/or lateral movement.

(d) Common Areas and Facilities. Except as otherwise provided in the Declaration, the Common Areas and Facilities shall consist of the areas and facilities described in the definitions and constitute in general all of the parts of the Property except the Units. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include the following, whether located within the bounds of a Unit or not;

(1) All structural parts of the buildings including, without limitation, foundations, columns, joints, beams, supports, supporting walls, floors, ceilings and roofs;

(2) Parking areas (not designated as Limited Common Area), lawns, shrubs, and gardens, and recreational area;

(3) Any utility pipe or line or system servicing more than a single Unit, and all ducts, wires, conduits, and other accessories used therewith;

(4) All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities in the Map;

(e) Completion. The following procedures shall be followed to enforce any bonded obligation or other form of financial assurance ("Bond") to complete and Common Area Improvements (provided that this section shall not require that a bond be obtained, but shall control those situations where a completion bond is obtained):

(1) Management Committee Consideration. The Management Committee shall consider and vote on the question of action by the Association to enforce the obligations under any Bond with respect to any improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that improvement in the Planned Construction Statement

appended to the Bond, or within thirty (30) days after any written extension of a completion date from the Association. For this purpose Notice of Completion shall refer to a notice to be supplied by the Declarant that the improvements are completed. The Planned Construction Statement shall refer to the building plan, by phase, that is appended to the Bond and, if applicable, filed with any regulatory body requiring the same.

(2) Member Consideration. A special meeting of Members shall be held to vote on overriding a decision by the Management Committee not to initiate action to enforce the obligations under any Bond, or on the failure of the Management Committee to thirty-five (35) days nor more than forty-five (45) days after receipt by the Management Committee of a petition for such meeting signed by Members representing at least five percent (5%) of the total votes of the Association.

(3) Member Vote. The affirmative vote of a majority of the votes held by Members other than Developer, to take action to enforce the obligations under the Bond, shall be deemed to be the decision of the Association. The Management Committee shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

(f) Description of Limited Common Areas and Facilities. Each owner of a unit is hereby granted an irrevocable and exclusive license to use and occupy the limited common areas and facilities reserved exclusively for the use of their unit. The limited common areas appurtenant to any given unit shall consist of all balconies or decks or patios which are adjacent to, contiguous with and open into the unit, and plus the covered parking stall with storage unit designated at Exhibit D hereto.

(g) Restrictions on Use. The Units and Common Areas and Facilities shall be used and occupied as hereinafter set forth.

(1) Each of the Units shall be occupied by the Unit Owner, his family, servants or guests as a private residence or a recreational condominium and for no other purpose, except for rights of ingress and egress and rights to parking reserved to Declarant. Each driveway and parking area shall be used by the Unit Owners, their families, servants or guests for the parking or storage of motor vehicles or such other items as the Management Committee may approve and for no other purpose. No driveway or parking area shall be used for parking of trailers, mobile homes, boats, snowmobiles, or campers that have been detached from trucks unless otherwise allowed by the Rules and Regulations adopted by the Management Committee.

(2) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rate of insurance on the buildings or contents thereof beyond that customarily applicable for residential use, or will result in the cancellation of insurance in the buildings, or the contents thereof,

without the prior written consent of the Management Committee. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas and Facilities which is in violation of any law, ordinance or regulation of any governmental authority.

(3) No Unit Owner shall cause or permit anything including those designated on the map. The exclusive right to use and occupy each limited common area shall be appurtenant to and shall pass with the title to the unit with which it is associated.

6. Alterations. For the six (6) years following the recordation hereof, and for six years following the recordation of any expansion the Declarant reserves the right to change the interior design and interior arrangement of any Unit and to alter the boundaries between Units or to combine units, so long as the Declarant owns the Units so altered. Any such change shall be reflected by an amendment of this Declaration and of the Map which may be executed by the Declarant alone, notwithstanding the procedures for amendment described in Section 27 of this Declaration. Such change may increase or decrease the number of Units and alter the boundaries of the Common Areas and Facilities. If the boundaries between Units are altered or the number of Units increased, in the amendment related thereto the Declarant shall reapportion the percentage of ownership in the Common Areas and Facilities which are allocated to the altered Units on the basis of the number of units.

7. Statement of Purpose and Restriction on Use.

(a) Purpose. The purpose of the Project is to provide residential housing and parking space for Unit Owners and to tenants and guests, all in accordance with the provisions of the Act. The units may be used for recreational housing and may be rented for this purpose on any basis allowable by applicable zoning.

(b) Restrictions on Use. The Units and Common Areas and Facilities shall be used and occupied as hereinafter set forth.

(1) Each of the Units shall be occupied by the Unit Owner, his family, tenants, servants or guests as a private residence or a recreational condominium and for no other purpose, except for rights of ingress and egress and rights to parking reserved to Declarant. Each driveway and parking area shall be used by the Unit Owners, their families, servants or guests for the parking or storage of motor vehicles or such other items as the Management Committee may approve and for no other purpose. No driveway or parking area shall be used for parking of trailers, mobile homes, boats, or campers that have been detached from trucks unless otherwise allowed by the Rules and Regulations adopted by the Management Committee.

(2) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rate of insurance on the buildings or contents thereof beyond that customarily applicable for residential use, or will result in the



cancellation of insurance in the buildings, or the contents thereof, without the prior written consent of the Management Committee. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas and Facilities which is in violation of any law, ordinance or regulation of any governmental authority.

(3) No Unit Owner shall cause or permit anything (including, without limitation, a sign, awning, canopy, shutter, clothes line, radio or television antenna) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Management Committee.

(4) No noxious or offensive activity shall be carried on in any Unit or in the Common Areas and Facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants.

(5) Nothing shall be done in any Unit or in, on, or to the Common Areas and Facilities which will impair the structural integrity of the buildings or any part thereof or which would structurally change the buildings or any part thereof except as is otherwise provided herein.

(6) No animals or pets of any kind are to be raised, bred or kept in any Unit or in the Common Areas or Limited Common Areas in the Project except pursuant to rules and regulations established by the Management Committee.

(7) The Common Areas and Facilities shall be kept free and clear of all rubbish, debris and other unsightly materials.

(8) There shall be no camping or temporary residence or structure on the Common Area. No camping shall be allowed in any recreational or other vehicle parked in Common Area.

(9) Without the prior specific written permission of the Management Committee there shall be no use of the Common Area (a) which injures, erodes or scars said area or the vegetation thereon, or (b) which increases the cost of maintenance thereof, or (c) which in any way alters the Common Areas or the location, color, design or materials of any Improvement visible from the Common Area. The Common Area shall be used only by record Owners of a Condominium and dependents living with them, their tenants, and a reasonable number of invited guests, as prescribed by the Management Committee. Each Owner shall be liable to the Association for any damage to the Common Area caused by him or his family, tenants or guests, which is not covered by insurance.

(10) No admission fees, charges for use, leases or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas and Facilities, unless otherwise decided by the Management Committee.

8. Person to Receive Service of Process. The person to receive service of process in the cases provided herein or in the Act is Russell J. Gallian, whose address is One South Main Street, Suite 306, P.O. Box 1339, St. George, Utah 84770. The said person may be changed by the recordation by the Management Committee of an appropriate instrument.

9. Ownership and Use.

(a) Ownership of a Unit. Except with respect to any of the Common Areas and Facilities located within the bounds of a unit, each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit and to the ownership of an undivided interest in the Common Areas and Facilities in the percentage expressed in Exhibit D. (Subject to change as provided in this Declaration.)

(b) Nature of and Restriction of Ownership and Use. Each Unit Owner shall have and enjoy the rights and privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own Units, it being intended that they may and shall be owned as any other property rights by persons, corporations, partnerships, or trusts, and in the form of common tenancy. The Unit Owners may lease or rent their Units with their appurtenant rights subject to terms and conditions chosen solely by tenants and other occupants or users of the Project, shall be subject to the Act, this Declaration, the By-Laws, and all rules and regulations of the Association of Unit Owners and Management Committee.

(c) Prohibition Against Subdivision of Unit. No Unit Owner, except Declarant pursuant to Paragraphs 6 or 35, by deed plat or otherwise, shall subdivide or in any manner cause the ownership of his Unit to be separated into physical tracts or parcels smaller than the whole Unit as shown on the Map and no driveway, parking area or other limited common area which is incident to any Unit shall be conveyed separately from such Unit.

(d) Ownership of Common Areas and Facilities. The Common Areas and Facilities contained in the Project are described and identified in Section 5(d) of this Declaration. Said Common Areas and Facilities shall be owned by the Unit Owners as tenants in common. No percentage of undivided ownership interest in the Common Areas and Facilities shall be separated from the Unit to which it appurains; and even though not specifically mentioned in the instrument of transfer, such a percentage of undivided ownership interest shall automatically accompany the transfer of the Unit to which it relates. The Common Areas and Facilities shall be used only in a manner which is consistent with their community nature and with the use restrictions applicable to the Units contained in the Project.

(e) Use of Common Areas and Facilities. Except with respect to Limited Common Areas each Unit Owner may use the Common Areas and Facilities in accordance with the purpose for which they

are intended, but subject to this Declaration and the By-Laws. This right of use shall be appurtenant to and run with each Unit.

(f) Computation of Undivided Interest. The percentage of undivided ownership interest in the Common Areas and Facilities which is appurtenant to each Unit has been computed by dividing 1/12, the total number of units, as set forth at Exhibit D. A Unit Owner's percentage of ownership interest in the Common Areas and Facilities shall be for all purposes, including voting and assessment of common expenses. These percentages of ownership are subject to change as provided in this Declaration.

10. Use of Limited Common Areas and Facilities. A Unit Owner's exclusive right of use and occupancy of the Limited Common Areas and Facilities reserved for their Unit shall be subject to and in accordance with this Declaration and the By-Laws. Any Limited Common Area shall be leased only to persons who reside in the Project or used by the family, servants or guests thereof on a temporary basis.

11. Voting-Multiple Ownership. The vote attributable to and exercisable in connection with a Unit shall be the percentage of undivided ownership interest in the Common Areas and Facilities which is appurtenant to such Unit. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves by contract, or otherwise. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

12. Management.

(a) Management Committee. The business, property and affairs of the Project shall be managed, operated and maintained by the Management Committee of the Association as agent for the Unit Owners. The Management committee shall have, and is hereby granted, the following authority and powers:

(1) The authority, without the vote or consent of the Unit Owners or of any other person(s), to grant or create, on such terms as it deems advisable, utility and similar easements, over, under, across and through the Common Areas and Facilities; and work performed pursuant to such easements must be done in a workman-like manner and any damage to the interior structure or decor of a Unit must be repaired;

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

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

(4) The power and authority to convey or transfer any interest in real property, so long as any vote or consent necessary under the circumstances has been obtained;

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

(6) The power and authority to add any interest in real property obtained pursuant to paragraph (5) above to the Project, so long as such action has been authorized by the necessary vote or consent;

(7) The authority to promulgate such reasonable rules, regulations, 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 interests of the Unit Owners; and

(8) The power and authority to perform any other acts and to enter into any of the transactions which may be reasonably necessary for the Management Committee to perform its functions as agent for the Unit Owners, including but not limited to the power to sue and be sued.

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.

(b) Composition of Management Committee. The Committee shall be composed of five (5) members. At the first regular Association meeting two (2) Committee members shall be elected for three-year terms, two (2) Committee members shall be elected for two-year terms and one (1) Committee member for a one-year term. At each annual Association meeting thereafter any vacant seat on the Committee shall be filled with a member elected for a three-year term. Only Unit Owners and officers and agents of Owners other than individuals shall be eligible for Committee membership. At the annual meeting the percentage of undivided ownership interest appurtenant to a Unit may be voted in favor of as many candidates for Committee membership as there are seats on the Committee to be filled; provided, however, that until the annual Owners meeting to be held on or about June 30, 1988, (hereinafter referred to as the "Event"), Declarant alone shall be entitled to select three (3) of the five (5) Committee members. Notwithstanding the foregoing

limitations, until the first annual meeting of the Owners, the members of the Committee, although numbering less than five (5) shall be the following persons and each shall hold the office indicated opposite his name:

President- Ed Burgess	P.O. Box 463 Cedar City, Utah 84720
Vice President- Keith Burgess	1174 North 1100 West St. George, Utah 84770
Secretary/Treasurer- Joe C. Burgess	Box 1001 Cedar City, Utah 84720

Any Committee member who fails on three successive occasions to attend Committee meetings (whether regular or special) or who has failed to attend at least 25% of all Committee meetings (whether regular or special) held during any twelve-month period shall automatically forfeit their seat. In the event a Committee seat which was filled by Declarant becomes vacant prior to the Event, whether by reason of forfeiture or due to anyother cause, Declarant shall select a replacement member to sit on the Committee until the expiration of the term for which the member being replaced was elected. Unless he forfeits or otherwise loses his seat as herein provided, a member shall serve on the Committee until his successor is elected and qualifies. Committee members shall be reimbursed for all expenses reasonably incurred in connection with Committee business.

(c) Responsibility. The Management Committee shall be responsible for the control, operation and management of the Project in accordance with the provisions of the Act, this Declaration, such administrative, management and operational rules and regulations as it may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by said Committee.

(d) Additional Facilities. The Management Committee shall, subject to any necessary approval, have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the best interest of the Unit Owners and to effect the necessary amendment of documents and maps in connection therewith.

(e) Name. The Management Committee shall be known as the Gardens South Condominium Management Committee.

(f) Manager. The Committee may carry out through a Project Manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Committee, shall be responsible for managing the Project for the benefit of the Committee and the Unit Owners, and shall, to the extent permitted by law and the terms of the agreement with the Committee, be authorized

to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. Any agreement for professional management of the project which may be entered into by the Management Committee or the Association shall call for a term not exceeding one (1) year renewable by agreement of the parties for successive one-year periods, and shall provide that for cause such management agreement may be terminated by the Management Committee or by the Association upon not in excess of thirty (30) days written notice, and shall provide that such agreement may be terminated by either party without cause upon ninety (90) days written notice and without any payment of a termination fee.

### 13. Easements.

(a) Each Unit shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any Common Areas and Facilities located within the boundaries of such Unit.

(b) In the event that, by reason of the construction, reconstruction, repair, settlement, movement or shifting of any building, any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon any part of any Unit or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Areas and Facilities or any other Unit, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and the Common Areas and Facilities, as the case may be, so long as all or any part of the building containing any such Unit shall remain standing; provided, however, that in no event shall a valid easement or any encroachment be created in favor of any Unit Owner or in favor of the Unit Owners as owners of the Common Areas and Facilities if such encroachment occurred due to the willful conduct of such Unit Owner or Owners.

(c) It is contemplated that a cable or central television antenna system will be installed and connected to each Unit. Said system, when installed, shall be maintained by the television company which installs the system. To the extent required to implement the foregoing plan, there shall be an easement appurtenant to each Condominium for the purpose of connecting the same with the central television cable or antenna. The Common Area shall be subject to such easement in favor of all Condominiums and in favor of the company which installs the system, to provide for the passage through the Common Area and any Improvement thereon of television connections from any Condominium to the cable system, and shall be subject to further easements for the placement and maintenance of such connections. The foregoing easements are granted and reserved subject to the condition that their use and enjoyment shall not unreasonably interfere with the use, occupancy or enjoyment of all or any part of the Common Area.

14. Change in Ownership. The Management Committee shall maintain up-to-date records showing the name of each person who is

an Owner, the address of such person, and the Unit which is owned by them. In the event of any transfer of a fee or undivided fee interest in a Unit either the transferor or transferee shall furnish the Management Committee with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Washington County, Utah. The Management Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Management Committee may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Wash. County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Management Committee is otherwise advised.

15. Assessments. Subject to the provisions of paragraph 19 with respect to the payment of common expenses by Declarant, every Unit Owner shall pay his proportionate share of the common expenses. Assessments shall commence as to all Condominiums in a Phase on the first day of the month immediately following the first close of the sale of a Condominium in that Phase. Payment thereof shall be in such amounts and in such intervals as the Management Committee determines in accordance with the Act, the Declaration or the By-Laws. There shall be a lien for nonpayment of common expenses as provided by the Act. Assessment of common expenses shall commence at such time as determined by the Management Committee. No assessment for a single improvement in the nature of a capital expenditure which exceeds the sum of \$5,000 shall be made without the same having been first voted on and approved by at least a majority of the Project's undivided ownership interest. Any increase in regular assessment in excess of 20% over the previous year's assessment, or any special assessments in excess of 5% of the total annual budget shall require the affirmative consent of a majority of the owners, not including the Declarant.

16. Destruction or damage. In the event of destruction or damage of part or all of the improvements in the Condominium Project, the procedures of this section shall apply.

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

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

(c) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance

maintained by the Management Committee are not alone sufficient to accomplish restoration, and if the Unit Owners within 100 days after the destruction or damage by a vote of at least 75% of the entire undivided ownership interest in the Project elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subsection (b) above.

(d) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage and by a vote of at least 75% of the entire undivided ownership interest in the Project, elect to repair or reconstruct the affected improvements, the Management Committee shall promptly record with the Washington County Recorder a notice setting forth such facts. Upon the recording of such notice the provisions of subsections (1) through (4) of Section 57-8-31, Utah Code Annotated (1953), as amended from time to time, shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

(e) Any reconstruction or repair which is required to be carried out by this section shall be accomplished at the instance and direction of the Management Committee. Any determination which is required to be made by this section regarding the extent of damage to or destruction of Project improvements shall be made as follows: The Management Committee shall select three MAI appraisers; each appraiser shall independently arrive at a figure representing the percentage of project improvements which have been destroyed or substantially damaged; the percentage which governs the special assessment in excess of 5% of the total annual budget shall require the affirmative consent of a majority of the unit owners not including the Declarant.

17. Taxes. It is understood that under the Act each Unit, together with its percentage of undivided interest in the Common Areas and Facilities in the Project, is deemed a parcel and subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law. Each Unit Owner will, accordingly, pay and discharge any and all taxes which may be assessed against his Condominium Unit.

18. Insurance.

(a) Hazard Insurance. The Management Committee or Association of Unit Owners shall at all times maintain in force hazard insurance meeting the following requirements:

(1) A multi-peril type policy covering the entire Project (both Units and Common areas and Facilities) shall be maintained. Such policy shall provide coverage against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as



automatically are covered with respect to condominium projects similar to the Project in construction, location, and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than one hundred percent (100%) of the full insurable value (based upon replacement cost). Such policy shall include an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and if necessary or appropriate, an "Increased Cost of Construction Endorsement" or its equivalent, and a "Contingent Liability from Operation of Building Laws Endorsement" or its equivalent.

(2) If the Project is or comes to be situated in a locale identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Project shall be obtained and maintained. The minimum amount of coverage afforded by such policy shall be the lesser of the maximum amount of insurance available under said Act or the aggregate of the unpaid principal balances of the Mortgages affecting the individual Units. Such policy shall be in the form of the standard policy issued by members of the National Flood Insurers Association or in the form of a policy which meets the criteria established by the Flood Insurance Administration.

(3) The named insured under each policy required to be maintained by the foregoing items (1) and (2) shall be in form and substance essentially as follows: The Gardens South Owner's Association, a Utah non-profit corporation or its authorized representative, for the use and benefit of the individual Owners.

(4) Each such policy shall include the standard mortgage clause (without contribution) which either shall be endorsed to provide that any proceeds shall be paid to the Association of Unit Owners for the use and benefit of Mortgagees as their interests may appear or shall be otherwise endorsed to fully protect the interests of Mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each Mortgagee at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

(5) Each such policy shall provide that notwithstanding any provision thereof which gives the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable if it is in conflict with any requirement of law or without the prior written approval of the Association.

(b) Fidelity Insurance. The Management Committee or Association shall at all times maintain in force fidelity coverage against dishonest acts on the part of manager (and employees or volunteers responsible for handling funds belonging to or administered by the Management Committee or Association of Unit Owners.

The fidelity bond or insurance shall name the Association as the obligee or insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one hundred percent (100%) of the Project's estimated annual operating expenses, including reserves. Such fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(c) Liability Insurance. The Management Committee or Association of Unit Owners shall at all times maintain in force a comprehensive policy of public liability insurance covering all of the Common Areas and Facilities. Such insurance shall include a "Severability of Interest Endorsement" or its equivalent which shall preclude the insurer from denying the claim of a unit Owner because of negligent acts of other Owners, the Management Committee, or the Association of Unit Owners. The coverage afforded by such public liability insurance shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as customarily are covered with respect to condominium projects similar to the Project in construction, location and use. The limits of liability under such insurance shall not be less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence.

(d) General Requirements Concerning Insurance. Each insurance policy or fidelity bond maintained pursuant to the foregoing Sections 18(a) through 18(c) shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best's Insurance Reports of Class X (or equivalent rating) or better. No such policy or fidelity bond shall be maintained where: (1) under the terms of the carrier's charter, by-laws, bond or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a Mortgagee, the Management Committee, the Association of Unit Owners, a Unit, the Common Areas, or the Project; (2) by the terms of the carrier's charger, by-laws, bond or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; (3) the bond or policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds; or (4) the bond or policy provides that the insurance thereunder shall be brought into contribution with insurance purchased by the individual Unit Owners or their Mortgagees. Each such fidelity bond or policy shall provide that: (a) coverage shall not be prejudiced by any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association of Unit Owners or the Management Committee; (b) coverage shall not be prejudiced by any failure by the Association or Committee to comply with any warranty or condition with regard to any portion of the Project over which the Association and Committee have no control; (c) coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior

written notice to any and all insureds named therein, including any Mortgagee named as an insured; and (d) the insurer waives any right to subrogation it might have as to any and all claims against the Association, the Management Committee, and Unit Owners, and/or their respective agents, employees or tenants. If due to changed circumstances, excessive cost, or any other reason, any of the insurance coverage required to be obtained and maintained under Sections 18(a) through 18(c) hereof cannot reasonably be secured, with respect to such coverage the Association or the Committee shall obtain and maintain such substitute, different or other coverage as may be reasonable and prudent under the circumstances as they then exist.

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

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

(2) The Committee shall have authority to adjust losses.

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

(4) Each policy of insurance obtained by the Committee shall, if possible, provide: A waiver of the Insurer's subrogation rights and respect to the Committee, the Manager, the Unit Owners, and their respective servants, agents, and guests; that it cannot be cancelled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Committee or of the Manager without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners.

(5) Any Unit Owner may obtain additional insurance at his own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Committee. Any Unit Owner who individually obtains insurance covering any portion of the Project shall supply the Committee with a copy of his policy within thirty (30) days after he acquires such insurance.

(6) Notwithstanding anything herein contained to the contrary, insurance coverages must be in such amounts and meet other requirements of the Federal Mortgage Association.

#### 19. Payment of Expenses.

(a) Declarant hereby covenants to, and each Owner shall, by acceptance of a deed to a Condominium whether from Developer or a

subsequent owner of such Condominium, bind himself, his heirs, personal representatives and assigns to pay all assessments and charges determined and levied by the Association upon each Condominium owned by him, including interest thereon and collection costs thereof, in any, including attorneys' fees. The obligation to pay such assessments, charges, interest and costs cannot be waived or avoided by nonuse of the Common Area or abandonment or transfer of a Condominium, and constitutes a personal obligation and a covenant running with the land. The grantee of a voluntary conveyance of a Condominium, except as provided in the Mortgagee Protection Articles of these Restrictions, is jointly and severally liable with the grantor for all unpaid assessments which accrued against the Condominium prior to the time of conveyance and which are described in a statement from the Association to such grantee prior to conveyance of the Condominium.

(b) Each Unit Owner shall pay the Management Committee their allocated portion of the cash requirement deemed necessary by the Management Committee to manage and operate the Project, upon the terms, at the time, and in the manner herein provided without any deduction on account of any set-off or claim which the Owner may have against the Management Committee, Declarant, or Association. Each installment shall be due on or before the first day of each month. If the Unit Owner shall fail to pay any installment within five (5) days of the time when the same becomes due, the Owner shall pay interest thereon at the rate of eighteen percent (18%) per annum from the date when such installment shall become due to the date of the payment thereof, together with all costs and expenses, including attorney's fees, incurred in any proceedings brought to collect such unpaid common expenses.

(c) The cash requirements above referred to for each year, or portions of the year, are hereby defined and shall be deemed to be such aggregate sum as the Management Committee from time to time shall determine, in its judgment, is to be paid by all the Owners of the Project then in existence to enable the Management Committee to pay all estimated expenses and outlays of the Management Committee to the close of such year, growing out of or in connection with the maintenance and operation of such land, buildings and improvements; which sum may include, among other things, the cost of management, special assessments, fire, casualty, flood, fidelity, public liability and other insurance or bond premiums, common lighting, landscaping, and the care of the grounds, repairs, and renovations to Common Areas and Facilities, and other services which are separately billed or metered to the individual Units by the utility or party furnishing such service, legal and accounting fees, management fees, expenses and liabilities incurred by the Management Committee under or by reason of this Declaration, the payment of any deficit remaining from the previous period, the creation of a reasonable contingency or other necessary reserve or surplus fund, as well as all other costs and expenses relating to the Project. The Management Committee may, from time to time, up to the close of the year for which such cash requirements have been so fixed or determined, increase or diminish the amount previously

fixed or determined for such year. It may include in the cash requirements for any year, any liabilities or items of expense which accrued or became payable in the previous year, or which might have been included therein; and also any sums which the Management Committee may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

(d) The portion payable with respect to each Unit in and for each year or for a portion of a year shall be a sum equal to the aggregate amount of such cash requirements for such year, or portion of year, determined as aforesaid, multiplied by the percentage of undivided interest in the Common areas and Facilities appurtenant to such Unit, as shown in Exhibit D, except as hereinafter provided. Such assessments, together with any additional sums accruing under this Declaration, shall be payable monthly in advance, or in such payments and installments as shall be provided by the Management Committee. Provided, however, Declarant's obligation for common expenses (which shall not include reserves for future expenditures) may be limited to subsidization of the association, under such subsidy agreement as may be negotiated by the Association and approved by applicable regulatory authority, but in no event more than the amount payable if Declarant were required to pay a full assessment on unsold and completed units.

(e) The Management Committee shall have discretionary powers to prescribe the manner of maintaining and operating the Project and to determine the cash requirements of the Management Committee to be paid as aforesaid by the Owners under this Declaration. Every such reasonable determination by the Management Committee within the bounds of the Act, and this Declaration shall be final and conclusive as to the Owners, and all expenditures made by the Management Committee, within the bounds of the Act and this Declaration shall as against the Owner be deemed necessary and properly made for such purpose.

(f) If an Owner shall at any time let or sublet his Unit and shall default for a period of one month in the payment of any assessments, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner occupying the Unit the rent due or becoming due and payment of such rent to the Management Committee shall be sufficient payment and discharge of such tenant or subtenant and the Owner to the extent of the amount so paid.

(g) Each monthly assessment and each special assessment shall be separate, distinct and personal obligations of the Owner(s) of the Unit against which the same is assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the following lien securing the same: the amount of any assessment, whether regular or special, assessed to a Unit plus interest at eighteen percent (18%) per annum, and costs, including reasonable attorney's fees, shall become

a lien upon such Unit upon recordation of a notice of assessment as provided by the Act. The said lien for nonpayment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

(1) Tax and special assessment liens on the Unit in favor of any assessment unit, and special district; and

(2) Encumbrances on the interest of the Unit Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

(h) A certificate executed and acknowledged by the Manager or Management Committee stating the unpaid common expenses then outstanding with respect to a Unit shall be conclusive upon the Management Committee and the Owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner or encumbrancee or prospective Owner or encumbrancee of a Unit upon request at a reasonable fee not to exceed Ten Dollars (\$10.00). Unless a written request for a certificate of indebtedness shall be complied with within ten (10) working days, all unpaid common expenses which became due prior to the date of making of such request shall be subordinate to the lien or interest held by or obtained by the person making the request. Any encumbrancee holding a lien on a Unit may pay any unpaid Common Expenses payable with respect to such Unit and upon such payment such encumbrancee shall have a lien on such Unit for the amounts paid of the same rank as the lien of his encumbrance.

(i) Upon payment of delinquent assessments concerning which a notice of assessment has been recorded or other satisfaction thereof, the Management Committee shall cause to be recorded in the same manner as the notice of assessment a further notice stating the satisfaction and release of the lien hereof. Such lien for nonpayment of assessment may be enforced by sale by the Management Committee or by a bank or trust company or title insurance company authorized by the Management committee, such sale to be conducted in accordance with the provisions of the law applicable to the foreclosure of mortgages or in any manner permitted by law. In any foreclosure, the Unit Owner shall be required to pay the costs and expenses of such proceedings including reasonable attorney's fees.

(j) In the event of foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Unit and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Management Committee or Manager shall have the power to bid on the Unit at foreclosure and to hold, lease, mortgage and convey the Unit.

(k) In all cases where all or part of any assessments for Common Expenses and for any expenses of and advances by the Management Committee cannot be promptly collected from persons or entities liable therefor under the Act or the Declaration, the Management

Committee shall reassess the same as a Common Expense, without prejudice to its rights of collection against persons or entities.

20. Mortgage Protection.

(a) From and after the time a Mortgagee makes written request to the Management Committee or the Association of Unit Owners therefore, the Committee or the Association shall notify such Mortgagee in writing in the event that the Owner of the Unit encumbered by the Mortgage held by such Mortgagee neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

(b) The lien or claim against a Unit for unpaid assessments or charges levied by the Management Committee or by the Association of Unit Owners pursuant to this Declaration or the Act shall be subordinate to the Mortgage affecting such Unit, and the Mortgagee thereunder which comes into possession of the Unit shall take the same free of such lien or claim for unpaid assessments or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure (except for claims for a pro rata share of such prior assessments or charges resulting from a pro rata reallocation thereof to all Units including the Unit in which the Mortgagee is interested). No assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not to burden a Mortgagee which comes into possession shall be collected or enforced by either the Management Committee or the Association from or against a Mortgagee, a successor in title to a Mortgagee, or the Condominium Unit affected or previously affected by the Mortgage concerned (to the extent any such collection or enforcement would prejudice the interests of the Mortgagee or successor in title to the Mortgagee interested in such Unit).

(c) Unless all of the Mortgagees of the individual Units have given their prior written approval, neither the Management Committee nor the Association of Unit Owners shall be entitled, by act, omission, or otherwise:

(1) To abandon or terminate the Project or to abandon or terminate the arrangement which is established by this Declaration and the Record of Survey Map (except as provided in Section 16 hereof in the event of certain destruction or damage);

(2) To partition or subdivide any Unit, except as granted to the Declarant in Section 6;

(3) To abandon, partition, subdivide, encumber, sell or transfer all or any part of the Common Areas and Facilities (except for the granting of easements for utilities and similar purposes consistent with the intended use of the Common Areas and except as provided in Section 16 hereof in the event of certain destruction or damage);

(4) To use hazard insurance proceeds resulting from damage to any part of the Project (whether to Units or to the Common Areas) for purposes other than the repair, replacement, or reconstruction of such improvements, except as provided in Section 16 hereof in the event of certain destruction or damage;

(5) To change the pro rata interests or obligations of any Unit which apply for (a) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (b) determining the pro rata share of ownership of each Unit in the Common Areas and Facilities, (except as allowed in the case of expansion or adjustment at Sections 6 and 36).

(6) To alter the provisions of Section 12 hereof in such a way as to diminish the protections afforded to the Owners regarding the duration or terminability of agreements for managerial services; or

(7) To alter the provisions of Section 18 hereof in such a way as to diminish the insurance protection required to be afforded to the parties designed to be protected thereby, or to fail to maintain the insurance coverage described therein.

(d) Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Management Committee, of the Association of Unit Owners, or of the Project. Any mortgagee shall have the right to designate a representative to attend all meetings of the Association of Unit Owners. From and after the time a Mortgagee makes written request to the Management Committee or the Association of Unit Owners therefore, the Committee or the Association shall furnish to such Mortgagee (i) copies of such annual operating reports and other reports or writings summarizing or reflecting the financial position or history of the Project as may be prepared for distribution to or use by the Committee, the Association, or the Unit Owners and (ii) written notice of all meetings of the Association of Unit Owners.

(e) The Management Committee and the Association may establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and Facilities and shall cause such reserve to be funded by regular monthly or other periodic assessments on an installment basis against the Units rather than by special assessments.

(f) From and after the time a Mortgagee makes written request to the Management Committee or the Association of Unit Owners therefore, the Committee or the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of: (a) The Common Areas involving an amount in excess of, or reasonably estimated to be in excess of Ten Thousand Dollars (\$10,000.00); or (b) any Unit involving an amount in excess of or reasonably estimated to be in



excess of One Thousand Dollars (\$1,000.00). Said notice shall be given within ten (10) days after the Management Committee or said Association learns of such damage, loss, taking or anticipated condemnation.

(g) In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Section, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority as the case may be, applicable to the Management Committee and Association of Unit Owners with respect to the subject concerned.

(h) No amendment to this Section which has the effect of diminishing the rights, protection or security afforded to Mortgagees shall be accomplished or effective unless all of the Mortgagees of the individual Units have given their prior written approval to such amendment. Any amendment to this Section shall be accomplished by an instrument executed by the Management Committee and filed for record in the office of the Washington County Recorder. In any such instrument an officer of the Management Committee shall certify that any prior written approval of Mortgagees required by this Section as a condition to amendment has been obtained.

21. Eminent Domain. In the event that eminent domain proceedings are commenced against the Project or any portion thereof, the provisions of Section 57-8-32.5, Utah Code Annotated (1953), as amended from time to time, shall apply. The Management Committee shall give written notice of such proceedings to all Mortgagees of record. No first lien priority of any Mortgagee shall be diminished or otherwise disturbed by virtue of such proceedings.

## 22. Maintenance.

(a) Each Owner of a Unit at their own expense shall keep the interior of such Unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating and painting which may at any time be necessary to maintain the good appearance of such Unit. Except to the extent that the Management Committee is protected by insurance against such injury, the Unit Owner shall repair all injury or damage to the Unit or building or buildings caused by the act, negligence or carelessness of the Unit Owner or that of any tenant or subtenant, or any member of the Unit Owner's family or of the family of any tenant or subtenant and all such repairs, redecorating and painting shall be of a quality and kind equal to the original work. In addition to decorating and keeping the interior of the Unit in good repair, the Unit Owner shall be responsible for the maintenance or replacement of any plumbing, fixtures, refrigerators, air conditioning and heating equipment, dishwashers, disposals, ranges, etc., that may be in or connected with the Unit, and the maintenance of limited common balcony. Without the written

permission of the Management Committee first had and obtained, a Unit Owner shall not make or permit to be made any structural alteration, in or to the Unit, or driveways, or in or to the exterior of the buildings, and shall not paint or decorate any portion of the exterior of the Unit or of the building in which the Unit is located.

(b) Except as hereinafter provided, the Management Committee shall provide for such maintenance and operation of the Common Areas and Facilities and of the Limited Common Areas and Facilities as may be reasonably necessary to keep them clean, functional, attractive and generally in good condition and repair. The Management Committee shall have no obligation regarding maintenance or care of the Units.

23. Right of Entry. The Management Committee and its duly authorized agents shall have the right to enter any and all of the Units and the Limited Common Areas appurtenant thereto in case of an emergency originating in or threatening such Unit or any other part of the Project, whether or not the Unit Owner or occupant thereof is present at the time. The Committee and its duly authorized agents shall also have the right to enter into any and all of said Units and Limited Common Areas at all reasonable times as required for the purpose of making necessary repairs upon the Common Areas and Facilities of the Project or for the purpose of performing emergency installations, alterations or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations or repairs are necessary to prevent damage or threatened damage to other Units in the Project; and provided further, that the Unit Owner affected by such entry shall first be notified thereof if available and if time permits.

24. Administrative Rules and Regulations. The Management Committee shall have the power to adopt and establish by resolution, such building management and operational rules as it may deem necessary for the maintenance, operation, management and control of the Project. The Committee may, from time to time by resolution, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the Unit Owners, such amendment, alteration or provision shall be taken to be a part of such rules. Unit Owners shall at all times obey such rules and see that they are faithfully observed by those person over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all Unit Owners, tenants, subtenants or other occupants of the Units.

25. Obligation to Comply with Declaration, By-Laws, Articles, Rules and Regulations. Each Unit Owner, tenant, subtenant or other occupant of a unit shall comply with the provisions of the Act, this Declaration, the By-Laws, and the rules and regulations, all agreements and determinations lawfully made and/or entered into by the Management Committee or the Unit Owners, when acting in accordance

with their authority, and any failure to comply with any of the provisions thereof shall be grounds for an action by the Management Committee or other aggrieved party for injunctive relief or to recover any loss or damage resulting therefrom.

26. Indemnification of Management Committee. Each member of the Management Committee shall be indemnified and held harmless by the Association of Unit Owners against all costs, expenses and liabilities whatsoever, including, without limitation, attorney's fees, reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Committee; provided, however, the foregoing indemnification shall not apply if the loss, expense of liability involved resulted from the willful misconduct, or gross negligence of the member.

27. Amendment. In addition to the amendment provisions contained in Section 6 above, and 35 and 36 below but subject to the terms of Section 20, this Declaration and/or the Map may be amended provided, however, the vote required for an amendment shall never be less than the vote required for action under the clause being amended. No amendment shall be effective until recordation in the office of the County Recorder of a document fully setting forth the amendment, specifically referring to this Declaration, and setting forth the authority by which the amendment was adopted. Any amendment so authorized shall be accomplished by recordation of an instrument executed by the Management Committee. In said instrument the Committee shall certify that the vote or consent required by this Section has occurred. Notwithstanding the above, Declarant reserves the right to unilaterally amend the Covenants to provide for restrictions as may be required to satisfy the requirements of any state in which the Declarant desires to sell Units, and where Declarant is required to register the Project. Notwithstanding any other provision contained herein, until the sale of all units in the project, including additional phases as may be added have been consummated, no amendment to the Map or to any provision of this Declaration which has or may have the effect of diminishing or impairing any right, power, authority, privilege, protection or control accorded to Declarant (in his capacity as declarant) herein shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant. Notwithstanding anything in this Declaration to the contrary, no amendment to this Declaration which has the effect of diminishing the rights, protection or security afforded to Mortgagees shall be accomplished or effected unless all of the Mortgagees of the individual Units have given their prior written approval to such amendment.

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

additional provisions shall govern any application of this section:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner;

(b) Any change in ownership of a Unit 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; and

(c) Unless the consent of all Owners having an interest in the same Unit are secured, the consent of none of such Owners shall be effective.

29. Declarant's Sales Program. Notwithstanding any other provision in this Declaration, until Declarant ceases to be a Unit Owner (which maybe renewed by filing a Supplemental Declaration to Expand) or the expiration of six (6) years after the date on which this Declaration is filed for record in the office of the County Recorder of Washington County, Utah, whichever first occurs (hereinafter referred to as the "Occurrence"), Declarant shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of all Units owned by Declarant:

(a) Declarant shall have the right to maintain such sales offices and/or model Units as Declarant determines is needed in its sales program. Such offices and/or model Units may be one or more of the Units owned by them, 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) Declarant shall have the right to the use of all common areas, units owned or leased by the Declarant as Declarant deems appropriate to its sales effort, including, but not limited to, large gatherings of people for promotional or community relation purposes, and the right to offer the use of the facilities at no charge to non owners for the promotion of sales or community relations.

(c) Declarant shall have the right to maintain promotional, advertising, and/or directional signs, banners or similar devices at any place or places on the Property.

(d) Declarant shall have the right to use the Common Areas and Facilities of the Project and any units owned or leased by Declarant or its agents or assigns for general offices, rental services, offices for project support, personal and similar uses.

(e) Declarant shall have the right from time to time to locate or relocate any of their sales offices, model Units and/or signs, banners or similar devices. Within a reasonable period of time after the sale of the last units, Declarant shall have the right to remove from the Project any signs, banners or similar devices, or any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

30. Limitation on Improvements by Association. Until the completion of sales as described above, neither the Association nor the Management Committee shall, without the written consent of Declarant, make any improvements to or alteration in any of the Common Areas and Facilities, 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.

31. Severability. The invalidity of any one or more phrases, sentences, subparagraphs, paragraphs, 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 instrument should be invalid or should operate to render this instrument invalid, this instrument 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.

32. 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 Condominium Units in the Project title to which is vested in the 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.

33. Lease of Units. Any lease agreement respecting a Unit shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the By-Laws attached hereto as Exhibit C, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Other than the foregoing, there shall be no restriction on the right of any Unit Owner to lease his Unit. The Unit Owner shall notify the Management Committee of the names of the lessee of the Unit.

34. Legal Description of a Unit. Every conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown on the Map with the appropriate reference to the Map and to this Declaration, as each shall appear in the official records of Washington County, Utah, and in substantially the following form:

Building \_\_\_\_, Unit \_\_\_\_ as shown in the Record of Survey Map for the GARDENS SOUTH CONDOMINIUMS PHASE I, a Project appearing in the Records of the County Recorder of Washington County, Utah, and as defined and described in the Declaration of Condominium, appearing in such records in Book \_\_\_\_, Pages \_\_\_\_ to \_\_\_\_ of Official Washington County Records.

This conveyance is subject to the provisions of the aforesaid Declaration of Condominium.

Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common

Areas, and to incorporate all the rights incident to Ownership of a Unit and all the limitations on such ownership as described in this Declaration.

35. Sale as Time Period Units by Declarant. Declarant reserves exclusively unto itself, for a period of six (6) years without consent of Unit Owners, to sell units on an undivided ownership basis or in Time Period Units, as defined in the Utah Condominium Ownership Act. In the event that Declarant shall elect to do so, it may be accomplished by the filing of a Supplementary Declaration, provided that any such declaration shall provide any expenses associated with the use of the interior of the unit, including reservation systems, additional management, interior maintenance and the like shall be borne by such Units Owners and/or Declarant. Any Unit Owner desiring to sell his unit on a similar basis may not do so without the express written consent of Declarant, which consent may be withheld without justification.

36. Declarants Option to Expand. Declarant reserves unto itself or its assigns the right to expand the Project for a period of seven years from the recording of the Declaration. The expansion of the condominium into subsequent phases may be accomplished without the consent of any unit owners by filing a Supplementary Declaration and Supplementary Record of Survey Map. The legal description of areas that may be added to the condominium project are contained at Exhibit A hereto, designated as Phase II property. The property may be added in any particular portion and in any number of additional phases, and at any time subject to the overall time limitation of this paragraph. Declarant shall have the right to add any condominium units or common areas or amenities as it shall deem appropriate. No assurances can be made as to the exact location or style of the units. The maximum number of units that may be created on additional land shall be 200. The maximum number of units per acre that may be created on any such portion added to the condominium project shall be 20 on the average for the property annexed. Any structure erected on any portion of the additional land shall be compatible with the structure on the land originally within the project in terms of quality and construction, principal materials to be used and architectural style, provided that precise assurances of the design and materials to be used cannot be made and Declarant reserves under itself the right to determine these items in its discretion. Also no assurances can be made of a description of improvements that will be made on any portion of the additional land that may be added to the condominium project. Also, no assurances can be made that any units created on any portion of the additional land added to the condominium project will be substantially identical to the units on the land originally within the Project. The Supplementary Declaration which may add any subsequent phases shall contain a statement declaring the change in the undivided ownership, which change shall also affect the proportionate computation of common area expenses. Upon adding new phases, the Management Committee shall promptly recompute the budget for common area expenses (subject to the reservation of rights in the Declarant for unbuilt or unoccupied units as provided in this

Declaration).

37. Gender. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

38. Waivers. No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

39. Topical Headings. The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

40. Effective Date. This Declaration shall take effect upon recording.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 16 day of Nov., 1984.

ATTEST:

THE GARDENS SOUTH DEVELOPMENT  
COMPANY INC.

By Edward Burgess Pres.  
Edward Burgess, (President)

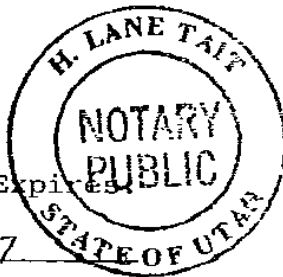
c Russell J. Gallian

STATE OF UTAH )  
 : ss.  
COUNTY OF WASHINGTON )

On the 16 day of Nov, 1984, personally appeared before me Edward Burgess, who being by me duly sworn did say that he is the president of The Gardens South Development Co. Inc., a Utah Corporation, and that the within and foregoing instrument was signed on behalf of said corporation and said person acknowledged to me that said corporation executed the same.

My Commission Expires

May 7, 1987



H. Lane Tait  
NOTARY PUBLIC  
Residing in:

Salt Lake City, Utah

## EXHIBIT "A"

## LEGAL DESCRIPTION

OF

THE GARDENS SOUTH CONDOMINIUMS, PHASE I

## PHASE I

Beginning at a point North 0°54'43" West 1092.83 feet along the section line and South 89°05'17" West 436.50 feet from the East ¼ Corner of Section 36, Township 42 South, Range 16 West, Salt Lake Base & Meridian; said point being on the Southerly line of a 50.0 foot right-of-way for 950 South Street, and running thence South 89°05'17" West 57.50 feet along said right-of-way; thence leaving said right-of-way and running South 0°54'43" East 354.00 feet; thence North 89°05'17" East 160.00 feet; thence North 0°54'43" West 32.50 feet; thence North 89°05'17" East 109.18 feet; thence North 31°00' West 135.565 feet; thence North 57°45' West 100.00 feet; thence South 89°05'17" West 60.00 feet; thence North 0°54'43" West 149.50 feet to the point of beginning. Containing 1.150 Acres.

## PHASE II PROPERTY

SUBSEQUENT ADDITIONAL PHASES

BEGINNING at a point North 0°54'43" West 1092.83 feet along the Section Line and South 89°05'17" West 138.00 feet from the East 1/4 Corner of Section 36, Township 42 South, Range 16 West, Salt Lake Base and Meridian; said point being on the Southerly Line of a 50.00 foot right-of-way for 950 South Street, and running thence South 89°05'17" West 298.50 feet along said right-of-way; thence leaving said right-of-way and running South 0°54'43" East 149.50 feet; thence North 89°05'17" East 60.00 feet; thence South 57°45'00" East 100.00 feet; thence South 31°00' East 135.565 feet; thence South 89°05'17" West 109.18 feet; thence South 0°54'43" East 32.50 feet; thence South 89°05'17" West 160.00 feet; thence South 0°54'43" East 42.00 feet; thence North 89°05'17" East 115.00 feet; thence North 40°56'44" East 361.17 feet; thence North 0°54'43" West 127.00 feet to the point of beginning. Containing 1.342 acres.

Beginning at a point South 0°54'43" East 1568.00 feet along the Section Line from the Northeast Corner of Section 36, Township 42 South, Range 16 West, Salt Lake Base and Meridian; and running South 89°05'17" West 138.00 feet; thence South 0°54'43" East 127.00 feet; thence South 40°56'44" West 361.17 feet; thence South 89°05'17" West 115.00 feet; thence South 0°54'43" East 120.00 feet; thence North 89°05'17" East 160.00 feet; thence North 54°05'17" East 407.74 feet to the Section Line; thence North 0°54'43" West 282.3 feet to the point of beginning. Containing 2.463 acres.



Beginning at a point South 0°54'43" East 1850.13 feet along the Section Line from the Northeast Corner of Section 36, Township 42 South, Range 16 West, Salt Lake Base and Meridian; and running thence South 54°05'17" West 407.74 feet; thence South 89°05'17" West 160.00 feet; thence South 0°54'43" East 191.00 feet; thence North 89°05'17" East 494.00 feet to the Section Line; thence North 0°54'43" West 424.87 feet to the point of beginning. Containing 3.063 acres.

Beginning at a point South 0°54'43" East 1275.00 feet along the Section Line from the Northeast Corner of Section 36, Township 42 South, Range 16 West, Salt Lake Base and Meridian; and running thence South 89°05'17" West 494.00 feet; thence South 0°54'43" East 200.00 feet; thence North 89°05'17" East 494.00 feet to the Section Line; thence North 0°54'43" West 200.00 feet to the point of beginning. Containing 2.270 acres.

Together with all property continguous to the above described legal descriptions for Phase I and Susequent Additional Phases and within 1,000 feet of exterior borders, which Declarant reserves the right to expand to, but with respect to which Declarant claims no right title or interest.

EXHIBIT "B"  
ARTICLES OF INCORPORATION  
OF  
GARDENS SOUTH OWNERS ASSOCIATION  
(A Utah Nonprofit Corporation)

268617

The undersigned persons over the age of twenty-one years, acting as the incorporators of a non-profit corporation under the Utah Non-Profit Corporation and Cooperative Association Act, hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE I

Name

The name of the corporation is Gardens South Owners Association.

ARTICLE II

Duration

The duration of the Corporation is perpetual.

ARTICLE III

Purpose

The Corporation is organized for the purposes of:

Managing for the common use and benefit of unit owners in the Gardens South Condominiums Phase I (and such additional phases as may be added according to the Declaration of Condominium (the Declaration) for said project), all common areas of the project and performing all functions contemplated by the Declaration.

No part of the net earnings of the Corporation shall inure (other than by acquiring, constructing, or providing management, maintenance, care of associated property, and other than by a rebate or excess membership dues, fees, or assessments or distribution as a conduit of sale proceeds, insurance proceeds or condemnation proceeds) to the benefit of or be distributable to its members, trustees, officers or other private persons. Notwithstanding any other provision of these Articles, this Corporation shall not, except to an insubstantial degree, engage in any activity or exercise any powers that are not in furtherance of the purposes of this Corporation.

ARTICLE IV

Members

The Corporation shall have Members consisting of a Utah Condominium Project. The rights and duties incidental to such membership is defined and established by the "Declaration" and the

"By-Laws" of the association.

## ARTICLE V

268617

### Board of Trustees

(Management Committee)

The affairs of the Corporation shall be managed by a governing Board of Trustees designated as the "Management Committee" consisting of not less than three (3) trustees. The initial Management Committee shall consist of three (3) members and the Management Committee shall be expanded to five (5) members upon a subsequent date in accordance with the By-Laws.

## ARTICLE VI

### By-Laws

The internal affairs of the Corporation and of the Association of Unit Owners shall be governed by the provided for in the By-Laws and Declaration of the Garden South Condominium Phase I which will be hereafter adopted and filed in the official records of the Washington County Recorder of the State of Utah.

## ARTICLE VII

### Initial Trustees

The names and street addresses of the persons who are to serve as the initial trustees of the Management Committee are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Ed Burgess	P.O. Box 463 Cedar City, Utah 84720
Keith Burgess	1174 North 1100 West St. George, Utah 84770
Joe C. Burgess	P.O. Box 1001 Cedar City, Utah 84720

## ARTICLE VIII

### Incorporator

The name and street address of the incorporator of the Corporation is as follows:

<u>NAME</u>	<u>ADDRESS</u>
Russell J. Gallian	P.O. Box 1339 St. George, Utah 84770

ARTICLE IX

268617

Initial Principal Office and Agent

The name of the initial registered agent and initial principal office of the Corporation is:

Ed Burgess  
P.O. Box 463  
Cedar City, Utah 84720

This office may be changed at any time by the Management Committee without amendment of these Articles of Incorporation.

ARTICLE X

Dissolution

Upon the dissolution of the Corporation, the Management Committee shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation in accordance with the By-Laws.


IN WITNESS WHEREOF, we the original undersigned Incorporator, hereinabove named, have executed these Articles upon this 15 day of November, 1984.

INCORPORATOR:

  
\_\_\_\_\_  
Russell J. Gallian

STATE OF UTAH                    )  
  : ss.  
COUNTY OF WASHINGTON )

On the 15<sup>th</sup> day of November, 1984, personally appeared before me Russell J. Gallian, the signer of the above instrument, who duly acknowledged to me that he executed the same.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

Oct. 3, 1987

Residing in:

Washington County

EXHIBIT "C"

BY-LAWS OF

GARDENS SOUTH OWNERS ASSOCIATION

268617

a Utah non-profit corporation

I. IDENTITY

These are the By-Laws of the Gardens South Owners Association duly made and provided for in accordance with the Utah Condominium Ownership Act. Any term used herein which is defined in the Declaration to which the By-Laws are appended shall have the meaning ascribed therein.

II. APPLICATION

1. Place of Meetings. Meetings of the Association shall be held at such place within the State of Utah as the Management Committee may specify in the notice, except as herein otherwise specified.

2. Annual Meetings. The first annual meeting of the Association shall be held at the Project on August 15, 1985. Thereafter, the annual meetings shall be held on such day of each succeeding year; provided, however, that whenever such date falls on a legal holiday, the meeting shall be held on the next succeeding business day, and further provided that the Management Committee may by resolution fix the date of the annual meeting on such date or at such other place as the Management Committee may deem appropriate.

3. Special Meetings. Special meetings of the Association may be called at any time by the Management Committee or by Unit Owners who collectively hold at least thirty percent (30%) of the total vote. Such meeting shall be held on the Project or such other place as the Management Committee may specify and the notice thereof shall

c Russell J. Gallian

R2172 **GALLIAN, DRAKE & WESTFALL**  
ATTORNEYS AND COUNSELORS AT LAW

state the date, time and matter to be considered.

4. Notices. Written or printed notice stating the place, day and hour of all meetings of the Association and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days before the date of the meeting, either personally or by mail to each Unit Owner. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid.

5. Quorum. At the meeting of the Association, those Owners present at such meeting shall constitute a quorum for any and all purposes, except where express provisions of these By-Laws or the Declaration of Condominium require a vote of a specified percentage of the Association membership, in which event a quorum shall be the percentage of the interest required for such vote. In the absence of a quorum, the chairman of the meeting may adjourn the meeting from time to time, without notice other than by announcement at the meeting, until holders of the amount of interest requisite to constitute a quorum shall attend. At any such adjournment meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.

6. Voting. When a quorum is present at any meeting, the vote of the Unit Owners representing more than fifty percent (50%) of the undivided interest present at the meeting either in person or represented by proxy, shall decide any question of business brought

before such meeting, including the election of the Management Committee, unless the question is one upon which, by express provision of the Declaration or these By-Laws, a greater vote is required, in which case such express provision shall govern and control the decision of such question. All votes may be cast either in person or by proxy. All proxies shall be in writing, and in the case of proxies for the annual meeting, they shall be delivered to the secretary at least five (5) days prior to said annual meeting. Proxies for special Unit Owners' meetings must be of record with the secretary at least two days prior to said special meeting.

7. Waivers of Notice. Any Unit Owner may at any time waive any notice required to be given under these By-Laws, or by statute or otherwise. The presence of a Unit Owner in person at any meeting of the Unit Owners shall be deemed such waiver.

#### IV. MANAGEMENT COMMITTEE

1. Purpose of Powers. The business, property and affairs of the Project shall be managed and governed by the Management Committee, which for purposes of the Utah Nonprofit Corporation and Cooperative Association Act shall be the same as the "Governing Board" as used in said Act.

2. Election. The Management Committee shall be elected as provided in the Declaration.

3. Vacancies. Vacancies on the Management Committee shall be filled as provided in the Declaration.

4. Regular Meetings. A regular annual meeting of the Management Committee shall be held immediately after the adjournment of each annual meeting of the Unit Owners. Regular meetings, other

than the annual meeting, shall or may be held at regular intervals at such places and at such times as either the president or the Management Committee may from time to time designate.

5. Special Meetings. Special meetings of the Management Committee shall be held whenever called by the president, vice president, or by two or more members. By unanimous consent of the Management Committee, special meetings may be held without call or notice at any time or place.

6. Quorum. A quorum for the transaction of business at any meeting of the Management Committee shall consist of a majority of the members of the Management Committee then in office.

7. Compensation. Members of the Management Committee as such, shall not receive any stated salary or compensation; provided that nothing herein contained shall be construed to preclude any member of the Management Committee from serving the Project in any other capacity and receiving compensation therefore.

8. Waiver of Notice. Before or at any meeting of the Management Committee, any member thereof, 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 of the Management Committee at any meeting thereof shall be a waiver of notice by him of the time and place thereof.

9. Adjournments. The Management Committee may adjourn any meeting from day to day or for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.



## V. OFFICERS

1. Designation and Election. The principal officers of the Management Committee shall be a president, a vice president, and a secretary/treasurer, all of whom shall be elected by and from the Management Committee. The Management Committee may appoint an assistant secretary and an assistance treasurer and such other officers as in their judgment may be necessary or desirable. Such election or appointment shall regularly take place at the first meeting of the Management Committee immediately following the annual meeting of the Unit Owners; provided, however, that elections of officers may be held at any other meeting of the Management Committee.

2. Other Officers. The Management Committee may appoint such other officers, in addition to the officers hereinabove expressly named, as they shall deem necessary, who shall have authority to perform such duties as may be prescribed from time to time by the Management Committee.

3. Removal of Officers and Agents. All officers and agents shall be subject to removal, with or without cause, at any time by the affirmative vote of the majority of the then members of the Management Committee.

4. President. The president shall be the chief executive of the Management Committee, and shall exercise general supervision over its property and affairs. He shall sign on behalf of the Project all conveyances, mortgages and contracts of material importance to its business, and shall do and perform all acts and things which the Management Committee may require of him. He shall

preside at all meetings of the Unit Owners and the Management Committee. He shall have all of the general powers and duties which are normally vested in the office of the president of a corporation, including, but not limited to, the power to appoint committees from among the members (or otherwise) from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Project.

5. Vice President. The vice president shall take the place of the president and perform his duties whenever the president shall be absent or unable to act. If neither the president nor the vice president is able to act, the Management Committee shall appoint some other member thereof to do so on an interim basis. The vice president shall also perform such other duties as shall from time to time be prescribed by the Management Committee.

6. Secretary. The secretary shall keep the minutes of all meetings of the Management Committee and of the Unit Owners; he shall have charge of the books and papers as the Management Committee may direct; and he shall in general, perform all the duties incident to the office of secretary.

7. Treasurer. The treasurer shall have the responsibility for the funds and securities of the Management Committee and shall be responsible for keeping full and accurate accounts of all receipts of all disbursements in books belonging to the Management Committee. He shall be responsible for the deposit of all monies and all other valuable effects in the name, and to the credit of, the Management Committee in such depositories as may from time to time be designated by the Management Committee.

8. Compensation. No compensation shall be paid to the officers for their services as officers. No remuneration shall be paid to an officer for services performed by him for the Management Committee in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Management Committee before the services are undertaken.

#### VI. ACCOUNTING

1. Books and Accounts. The books and accounts of the Management Committee shall be kept under the direction of the treasurer and in accordance with the reasonable standards of accounting procedures.

2. Report. At the close of each accounting year, the books and records of the Management Committee shall be reviewed by a person or firm approved by the Unit Owners. Report of such review shall be prepared and submitted to the Unit Owners at or before the annual meeting of the Unit Owners. Provided, however, that a certified audit by a certified public accountant approved by the Unit Owners shall be made if Owners representing at least seventy-five percent (75%) of the undivided interest in the Common Areas and Facilities determine to require the same.

3. Inspection of Books. All books and records at the Association shall be available at the principal office of the Management Committee and may be inspected by any Unit Owner, or his agent or attorney, for any proper purpose at any reasonable time.

#### VII. BUILDING RULES

The Management Committee shall have the power to adopt and establish, by resolution, such building, management and operational

rules and regulations as it may deem necessary for the maintenance, operation, management and control of the Project, and the Management Committee may from time to time, by resolution, alter, amend, and repeal such rules and regulations. Unit Owners shall at all times obey such rules and regulations and use their best efforts to see that they are faithfully observed by their lessees and the persons over whom they have or may exercise control or supervision, it being clearly understood that such rules and regulations shall apply and be binding upon all Unit Owners of the Project. Provisions of the Act pertaining to rules and regulations are incorporated herein by reference and shall be deemed a part hereof.

#### VIII. AMENDMENT OF THE BY-LAWS

The By-Laws may be altered or amended in the same manner and subject to the same conditions as apply with respect to amendment of the Declaration.

#### IX. OPERATION AND MAINTENANCE OF PROJECT

The Management Committee shall be responsible for the maintenance, control, operation and management of the Project in accordance with the provisions of the Act, the Declaration under which the Project was established and submitted to the provisions of the Act, these By-Laws and such rules and regulations as the Association of Unit Owners may adopt from time to time as herein provided, and all agreements and determinations lawfully made and

268617

entered into by the Association of Unit Owners.

ADOPTED this 16 day of November, 1984.

GARDENS SOUTH OWNERS ASSOCIATION  
MANAGEMENT COMMITTEE

Edward Burgess  
Edward Burgess

Keith Burgess

Joe Burgess  
Joe C. Burgess

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## EXHIBIT "D"

SCHEDULE OF UNITS, PARKING ASSIGNMENTS AND UNDIVIDED INTERESTS  
OF GARDENS SOUTH CONDOMINIUM PHASE I

<u>BUILDING C</u>		
<u>UNIT NUMBER</u>	<u>COVERED PARKING SPACE</u>	<u>UNDIVIDED INTEREST IN COMMON AREAS*</u>
1	1C	1/12
2	3C	1/12
3	5C	1/12
4	7C	1/12
5	9C	1/12
6	11C	1/12
7	2C	1/12
8	4C	1/12
9	6C	1/12
10	8C	1/12
11	10C	1/12
12	12C	1/12

Parking assignments may be changed or eliminated by Declarant at any time prior to the first deed of the unit to a buyer by filing an appropriate Supplemental Declaration.