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## AMENDMENT TO DECLARATION OF CONDOMINIUM

OR

## THE GARDENS SOUTH CONDOMINIUMS, PHASE I

The Declaration of Condominium of the Gardens South Condominiums, Phase I, filed of record on November 16, 1984, as Entry No 268617, in Book 363, Page 40-85, with the Washington County Recorder is hereby amended pursuant to Paragraph 27 of said Declaration as follows:

1. Delete Paragraph 20(b) on page 23 in its entirety and substitute the following paragraph in its place

(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. 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)

2 In Paragraph 27 delete the reference to Section 36 in the first sentence of Paragraph 27. The amended sentence shall read as follows

In addition to the amendment provisions contained in Section 6 above, and 35 below, but subject to the terms of Section 20, this Declaration and/or the Map may be amended provided, however, the vote required for amendment shall never be less than the vote required for action under the clause being amended

3 Delete Paragraphs 35 and 36 in their entirety and substitute in their place the following Section 35

35 Declarant's Option to Expand This condominium project shall be an expandable condominium project as defined in Utah Code Annotated § 57-8-10(4). In accordance with the requirements of said Statute, the Declarant subjects the project to the following terms and conditions which are applicable to the expansion of the project

(a) Declarant explicitly reserves unto itself and its assigns (without the requirement of the consent of the association or the Unit Owners) the right to expand

35

the project for a period of seven (7) years according to the Declaration.

(b) Except as provided in (a) above there shall be no other limitations on this option to expand.

(c) There shall be no circumstances except the voluntary termination by the Declarant or Declarant's assigns which will terminate this option prior to the time limit specified in (a) above.

(d) The legal description of all the land that may be added to the project is set forth at Exhibit A hereto, designated as Phase II Property.

(e) The property described at Exhibit A -- Phase II Property -- may be added in any particular portion and in any number of additional phases, accordingly, there shall be no limitations on such additions except as specifically reserved in this Paragraph 35

(f) Any portion of the property described at Exhibit A -- Phase II Property -- may be added at different times and there shall be no order in which they may be added to the project, that matter being left to the total discretion of Declarant or Declarant's assigns

(g) There shall be no limitations as to the location of any improvements that may be made on any portions of the additional land added to the condominium project accordingly, no assurance is made in that

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(h) The maximum number of units that may be created on the 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

(i) The maximum percentage of the aggregate land and floor area of all units that may be created on Phase II, the use of which will not or may not be restricted exclusively to residential purposes is 0%, it being the intention of the Declarant that this project be limited to residential purposes only

(j) Any structures erected on any portion of additional land added to the condominium project shall be compatible with the structures on the land originally within the project in terms of quality of construction, principal materials to be used, and architectural style. Further provided that no assurances may be given in this regard inasmuch as the determination of these items is reserved to Declarant or its assigns in Declarant's discretion.

(k) Except as may be contained in restrictions provided elsewhere in this Paragraph 35, no assurances are given as to the description of all other improvements that will be made in any portion of the additional land added to the project and Declarant specifically reserves unto itself and its assigns the right to design, plan and build

134

the improvements to the Phase II Property in its discretion

(l) No assurances are made with respect to whether or not the units that may be added to the project in the Phase II Property will be substantially identical to the units on the land originally within the project.

(m) Declarant reserves unto itself the right to create common areas and limited common areas and facilities within any portion of the additional land added to the condominium project. Accordingly, no assurances can be given in this regard as to the type, size, or maximum number of such limited areas or common areas within any addition in the Phase II Property.

(n) Supplementary Declaration. The annexation authorized under the foregoing paragraphs shall be made by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions or similar instrument, with respect to the additional property which shall extend the plan of this Declaration to such property.

Such Supplementary Declaration contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the plan of this Declaration.

51

The recordation of such Supplementary-Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the owners of units in said real property shall automatically be members of the Association.

(o) Declarant's Right to Amend. Until all portions of the Phase II Land are included in the Development, or until the right to enlarge the Development through the addition of tracts or subdivisions terminates, whichever event first occurs, Declarant shall have, and is hereby vested with, the right to unilaterally amend the Declaration as may be reasonably necessary or desirable (i) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information, (ii) to better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by the Declaration, (iii) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Development, or (iv) to conform this Declaration, or any amendments thereto, to the Utah Condominium Act, as may be amended from time to time, or to conform to the

underwriters guidelines of major secondary market investors in order to facilitate the availability of financing.

(p) Expansion of Definitions. In the event the property is expanded, the definitions used in this Declaration automatically shall be expanded to encompass and refer to the property as so expanded. E.g., "property" shall mean the real property described in Exhibit "A" of this Declaration plus any additional real property added by a Supplementary Declaration or by Supplementary Declarations, and reference to this Declaration shall mean this Declaration as so supplemented

4 Renumber the paragraph entitled "Gender" from Paragraph 37 to Paragraph 36 Renumber the paragraph entitled "Waivers" from Paragraph 38 to Paragraph 37 Renumber the paragraph entitled "Topical Headings" from Paragraph 39 to Paragraph 38.

5. Insert as Paragraphs 39 and 40 respectively, the paragraphs entitled "Notices" and "Compliance with State Laws" as follows

39 Notices Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the owner, at the latest address for such person as reflected in the records of the Association at

the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or the President of the Association.

40. Compliance with State Laws This Condominium Project has been created and is existing in full compliance with the requirements of the Act and all other applicable laws.

5 Renumber the paragraph entitled "Effective Date" from Paragraph 40 to Paragraph 41

IN WITNESS WHEREOF, the Declarant and the Gardens South Management Committee have executed this Amended Declaration this 4th day of October, 1985.

DECLARANT

THE GARDENS SOUTH  
DEVELOPMENT COMPANY, INC

By Edward M. Burgess  
Edward Burgess, President

ATTEST

Joseph Burgess  
Secretary

THE GARDENS SOUTH  
MANAGEMENT COMMITTEE

By Edward M. Burgess  
Its President

ATTEST

Joseph Burgess  
Secretary

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STATE OF UTAH )  
COUNTY OF WASHINGTON ) ss.

On the 4th day of October, 1985, personally appeared before me Edward Burgess, who being by me duly sworn did say that he is the President of The Gardens South Development Company, Inc., a Utah corporation, 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:  
03/11/89

*E. Burgess, C.L. Collier*  
Notary Public  
Residing In:  
St. George, Utah

STATE OF UTAH )  
COUNTY OF WASHINGTON ) ss.

On the 4th day of October, 1985, personally appeared before me EDWARD M. BURGESS, who being by me duly sworn did say that he is the President of The Gardens South Management Committee, a Utah non-profit corporation, that the within and foregoing instrument was presented to the Homeowners at a meeting held September 20, 1985, that notice of said meeting was duly given to all members as provided by the Declaration, Articles of Incorporation and the By-Laws, that the within and foregoing Amendment to the Declaration of Condominium was approved by 80% of the homeowners in attendance at said meeting and that the within and foregoing document was signed on behalf of the owners by EDWARD M. BURGESS, the President of the Gardens South Management Committee.

My Commission Expires:  
03/11/89

*E. Burgess, C.L. Collier*  
Notary Public  
Residing In:  
St. George, Utah