

Presented to the Board of Commissioners  
AND APPROVED

JUL 26 1979

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*Mildred V. Higham*  
CITY RECORDER

When recorded, please return to:

J. Craig Carman  
J. Craig Carman & Associates, Inc., P.C.  
1811 West 2300 South  
Salt Lake City, Utah 84119

55-50  
REC OF J. Craig Carman  
REF. *[Signature]*

JUL 30 11 07 AM '79  
KATIE L. DIXON  
RECORDER  
SALT LAKE COUNTY,  
UTAH

EASTGATE CONDOMINIUM

DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS AND BYLAWS

This Declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration," and the Bylaws which are attached hereto as Appendix B and made a part hereof, are made and executed in Salt Lake County, Utah, this 16th day of May, 1979, by Charles W. Akerlow and Carole M. Akerlow, John Joel Thomas and Venice W. Thomas, and Brent R. Dyer and Carol Lynn Dyer, hereinafter "Declarant," for themselves, their successors, grantees, and assigns, pursuant to the provisions of the Utah Condominium Ownership Act, Sec. 57-8-1, et seq., Utah Code Annotated 1953, as amended, hereinafter referred to as "the Act."

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain real property located in Salt Lake County, hereinafter referred to as the "Land," more particularly described in Section 3 hereof; and

WHEREAS, there are certain Buildings (hereinafter defined) and other improvements now existing upon the Land, all of which are to be included within the Property (hereinafter defined), and it is the desire and intention of Declarant to submit the Property to a condominium regime and to sell and convey the same to various purchasers, subject to the covenants, conditions and restrictions herein reserved to be kept and observed; and

WHEREAS, Declarant desires and intends by filing this Declaration to submit the Property to the provisions

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of the Condominium Act as a condominium project and to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the Property and owners thereof;

NOW, THEREFORE, Declarant does hereby publish and declare that all of the Property described above is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of the Property and the creation of individual condominiums, and shall be deemed to run with the Land and shall be a burden and a benefit to Declarant, its successors and assigns, and any person acquiring or owning an interest in the Property, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. Name of the Condominium Property. The name by which this condominium project shall be known is Eastgate Condominiums, hereinafter referred to as "the Project".

2. Definitions. The terms used in this Declaration and in the Bylaws shall be as defined in the Act, unless otherwise indicated by the context, except as follows:

(a) "Buildings" shall mean those structures located on the Land containing Units.

(b) "Mortgage" shall mean a deed of trust as well as a mortgage.

(c) "Mortgagee" shall mean a beneficiary under or holder of a deed of trust as well as a mortgage.

(d) "Lease" shall mean any agreement for the leasing or rental of a Unit.

(e) "Property" shall mean and include the Land, the Buildings, all improvements and structures thereon, and all easements, rights, and appurtenances belonging thereto and all articles of personal property intended for use in connection therewith.

(f) "Institutional Holder" shall mean a mortgagee which is a bank or savings and loan association or established mortgage company, or

other entity chartered under Federal or State laws, any corporation or insurance company, or any federal or state agency.

(g) "Parking Space" shall mean those parking areas designated as part of the Units pursuant to the provisions of this Declaration, or owned by the tenant association to be used as they see fit.

(h) "Map" shall mean Record of Survey map.

### 3. Detailed Description.

a. Description of Land. The Land is located in Salt Lake County and is more particularly described as follows:

Beginning at the NE Corner Lot 6, Block 54, Plat B, Salt Lake City Survey, W 9.5 rods, S 7 rods, E 9.5 rods, N 7 rods to point of beginning according to the official records of the Salt Lake County Recorder's office.

#### b. Description of Buildings.

(1) The project consists of 1 building(s).

(2) The building has 4 stories and basements.

(3) The building has a total of 24 units.

(4) The principal construction materials used are as follows:

The building is constructed with structural brick masonry exterior walls, stucco siding exterior walls and glass windows. Interior walls between units are of wood construction with insulation batts, sound board and gypsum board covering. The building is supplied with electricity, water and sewage service. The units are individually heated by electric forced air heaters. The building has a built-up tin and gravel roof.

(5) A description of all other significant improvements contained or to be contained in the project are as follows: Parking facilities for the Unit Owners.

c. Description of Units. The number of each Unit, its location and square footage together with the Parking Space or Spaces included as part of said Unit are as set forth in Appendix A attached hereto and made a part hereof. Access to the Common Areas and Facilities from each Unit is through a hallway, stairway or entryway and by walkways in the Common Areas and Facilities. The boundary line of each Unit is as reflected on the Map and shall include the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floors, and uppermost ceilings, and the interior surfaces of doors, window frames, door frames and trim. Each Unit shall include both the portions of the Building that are not Common or Limited Common Areas and Facilities within such boundary lines and the space so encompassed. Specifically, the Unit shall include the Parking Space or Spaces designated in Appendix A as appurtenant to the Unit. Without limitation, a Unit shall include any finished material applied or affixed to the interior surfaces of the walls, floors and ceilings of the Unit.

d. Description of Common Areas and Facilities. The Common Areas and Facilities shall mean all Land and all portions of the Property not contained within any Unit or within the Limited Common Areas and Facilities; including, but not by way of limitation, roofs, foundations, pipes, ducts, flues, chutes, floors, ceilings, conduits, wires and other utility installations to the outlets; bearing walls, perimeter walls, columns and girders to the undecorated and/or unfinished interior surfaces thereof, regardless of location; walkways, parking spaces number 25 through 36, all recreational areas and facilities which may hereafter be contained within the Property; all installations of heat, power, lights, and hot and cold water existing for common use, and all other parts of the Property necessary or convenient to its existence, maintenance and safety or normally in common use and all areas and facilities designated as Common Areas and Facilities in the Act.

e. Description of Limited Common Areas and Facilities. Limited Common Areas and Facilities mean and include those portions of the Common Areas and Facilities reserved for the use of certain Units to the exclusion of other Units.

The limited Common Areas and Facilities shall be the balconies and/or patios that are immediately adjacent to and contiguous with certain Units as more particularly identified in the Map. The use and occupancy of designated limited Common Areas and Facilities shall be reserved to its associated Unit and each Unit Owner is hereby granted an irrevocable license to use and occupy said Limited Common Areas and Facilities.

f. Ownership Fraction and Voting Rights. The fraction of undivided interest in the Common Areas and Facilities appertaining to each Unit and its Unit Owner for all purposes, including voting, is set forth in Appendix A attached hereto and made a part hereof as if herein set forth in full.

4. Statement of Purposes, Use and Restrictions. The Units, Common Areas and Facilities and Limited Common Areas and Facilities shall be occupied and used as follows:

(a) A Unit Owner shall not occupy or use his Unit, or permit the same or any part hereof to be occupied or used, for any purpose other than for the personal use for dwelling purposes by the Unit Owner and the Unit Owner's family or the Unit Owner's guests, renters or lessees.

(b) With the exception of an Institutional Lender in possession of a Unit following a default in a first mortgage, a foreclosure proceeding or any deed or any other arrangement in lieu thereof, a Unit Owner shall not be permitted to lease his Unit for transient or hotel purposes. No Unit Owner may lease less than the entire Unit. Any Lease shall be required to be in writing and shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and the Bylaws associated therewith and any failure by a Lessee to comply with the terms of such Declaration and Bylaws shall be deemed a default under the Lease.

(c) No commercial business shall be permitted within the Property.

(d) There shall be no obstruction of the Common Areas and Facilities. Except in the case

of designated storage areas, nothing shall be stored in the Common Areas and Facilities without the prior written consent of the Management Committee.

(e) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or Limited Common Areas and Facilities which will increase the rate of insurance on the Property without the prior written consent of the Management Committee. No Owner shall permit anything to be done or kept in his Unit, Common Areas and Facilities or in the Limited Common Areas and Facilities which will result in the cancellation of insurance of any Unit, or any part of the Common Areas and Facilities or Limited Common Areas and Facilities, or which would be in violation of any law. No waste will be committed of the Common Areas and Facilities or Limited Common Areas and Facilities.

(f) No sign of any kind shall be displayed to the public view or from any Unit or from the Common Areas and Facilities or Limited Common Areas and Facilities without the prior written consent of the Management Committee.

(g) No animals, livestock or poultry of any kind other than common household pets shall be raised, bred or kept in any Unit or in the Common Areas and Facilities or Limited Common Areas and Facilities.

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

(i) Nothing shall be altered or constructed in or removed from the Common Areas and Facilities or Limited Common Areas and Facilities, except upon the prior written consent of the Management Committee.

(j) There shall be no violation of rules for the use of the Common Areas and Facilities or Limited Common Areas and Facilities adopted by the Management Committee and furnished in writing to the Owners, and the Management Committee is authorized to adopt such rules.

(k) Declarant, and persons it may select, shall have the right of ingress and egress over, upon and across the Common Areas and Facilities and Limited Common Areas and Facilities and the right to store materials thereon and make such other use thereof as may be reasonably necessary and incident to sale of the Units and operation of the Units and Common Areas and Facilities in connection with the overall development. Declarant and its duly authorized agents, representatives and employees may maintain a maximum of one model Unit during the sale of the Units. Declarant shall have the right to change the location of the model Unit from time to time in its sole discretion. Any furnishings or other improvements to such Units shall remain the sole property of Declarant and shall be removed by Declarant within fourteen days of cessation of use of such model Unit.

5. Agent for Service of Process. Until such time as Declarant transfers the right and responsibility to elect a Management Committee to the Unit Owners as provided in the Bylaws, the name and address of the person in Salt Lake County, Utah, for the service of notice or process in matters pertaining to the Property as provided under the Condominium Act is:

John Joel Thomas  
Suite 300,  
68 South Main Street  
Salt Lake City, Utah 84101

Thereafter the person to receive service of notice or process shall be any member of the Management Committee residing in Salt Lake County, Utah, as listed in the Affidavit filed with the Recorder of Salt Lake County.

6. Damage or Destruction: Sale. In the event that the Building and/or other improvements on the Land are damaged or destroyed by fire or other casualty or disaster, such Building and/or other improvements shall be promptly repaired, restored or reconstructed to the extent required to restore them to substantially the same condition in which they existed prior to the occurrence of the damage or destruction, with each Unit and the Common Areas and Facilities having the same vertical and horizontal boundaries. Such repairs, restoration or reconstruction shall be paid for out of any insurance proceeds received on account of the damage or destruction; provided, however, that if the insurance proceeds are not sufficient for such purpose, the deficiency shall be assessed as a

Common Expense, provided further, that if the damage or destruction shall affect only Units, such deficiency shall be assessed against the Unit Owners affected thereby and not as a Common Expense.

In the event of damage or destruction to the Building and/or other improvements on the land, the Management Committee shall inform each Institutional Holder of a first Mortgage on a Unit in writing of such damage or destruction.

Notwithstanding the foregoing, in the event that 75 percent or more of the Units are destroyed and the Unit Owners by an affirmative vote of at least 75 percent of the total voting power and all Institutional Holders of first Mortgages of the Units file notice with the Management Committee within 90 days after such destruction that they do not desire that the Buildings be reconstructed or restored, the Management Committee shall record, with the Recorder of Salt Lake County, Utah, a Notice setting forth such facts, and upon the recording of such Notice:

(a) the Property shall be deemed to be owned as tenants in common by the Unit Owners.

(b) the undivided interest in the Property owned in common which shall appertain to each Unit Owner shall be the fraction of undivided interest previously owned by such Unit Owner in the Common Areas and Facilities;

(c) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the fraction of undivided interest of the Unit Owner in the Property; and

(d) the Property shall be subject to an action for partition at the suit of any Unit Owner, or in which event (the Property is not susceptible of fair partition without depreciating the value thereof) the net proceeds of sale together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Unit Owners in proportion to their respective fractions of undivided interest in the Common Areas and Facilities, after first paying out of the respective shares of the Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Unit Owner.



Notwithstanding all other provisions of this Declaration, the Unit Owners may, by a majority vote of the Unit Owners at a meeting of the Association duly called for such purpose, and with the prior written approval of each Institutional Holder, elect to sell or otherwise dispose of the Property. Such action shall be binding upon all Unit Owners and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale.

7. Combination of Units. An Owner of two or more adjoining units shall have the right upon approval of the management committee to combine one or more adjoining units and to alter or amend the declaration and map to reflect such combination. Such amendments may be accomplished by the unit owner recording an amended or amendments to this declaration, together with an amended map or maps containing the same information with respect to the altered units as required in the initial declaration and map with respect to the initial units. All costs and expenses required in such amendments shall be borne by the Unit Owner declaring such combination. All such amendments to the declaration and map must be approved by attorneys employed by the management committee to insure the continuing legality of the declaration and the map. The cost of such review by the attorneys shall be borne by the person wishing to combine the Units.

8. Voting. At any meeting of the Association of Unit Owners, each Unit Owner, including Declarant, either in person or by proxy, shall be entitled to cast a number of votes in behalf of his Unit or Units corresponding with the fraction of undivided interest in the Common Areas and Facilities as listed in Appendix A. Where there is more than one record Unit Owner, any or all of such persons may attend any meeting of the Association of Unit Owners, but it shall be necessary for those present to act unanimously in order to cast the votes to which they are entitled. Declarant shall be entitled to vote with respect to any Condominium owned by it.

9. Notices. Any notice permitted or required to be delivered as provided herewith may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered 48 hours after a copy of same has been deposited in the U.S. Postal Service, first class postage prepaid, addressed to each such person at the address given by such person to the Management Committee for the purpose of service of such notice or to the Unit of such person if no such address has been

given. Such address may be changed from time to time by notice in writing to the Management Committee.

10. Exclusive Ownership and Possession by Unit Owner. Each Unit Owner shall be entitled to exclusive ownership and possession of his Unit. Each Unit Owner shall have an undivided interest in the Common Areas and Facilities as listed in Appendix A. The fraction of undivided interest in the Common Areas and Facilities shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Unit Owner may use the Common Areas and Facilities in accordance with the purposes for which they are intended, so long as he does not hinder or encroach upon the lawful rights of the other Unit Owners.

A Unit Owner shall not be deemed to own the undecorated and/or unfinished interior surfaces of the perimeter walls, floors, ceilings, windows and doors bounding his Unit, nor shall a Unit Owner be deemed to own the utilities running through his Unit which are utilized for, or serve, more than one Unit, except as a tenant in common with the other Unit Owners. A Unit Owner, however, shall be deemed to own the decorated and/or finished interior surfaces of the perimeter walls, floors, ceilings, windows, and doors bounding his Unit and shall have the obligations set forth herein with respect thereto.

11. Use of Parking Spaces. The Property has 36 parking spaces, numbers 1 through 24 which are assigned to and are a part of the individual Units and numbers 25 through 36 which are assigned to and are part of the Common Area.

The use and occupancy of all parking areas shall be for the parking of automobiles, motorcycles, trailers, and other wheeled conveyances. The Management Committee may by rule or regulation allow other uses of the parking areas not inconsistent with this Declaration and the Bylaws appended hereto.

The Parking Spaces, and the Units to which they are appurtenant, are contained on Exhibit A and made a part hereof as if herein set forth in full.

12. Certain Obligations of Owners. Except for those portions (if any) which the Management Committee is required to maintain and repair hereunder, each Unit Owner shall at his expense keep the interior of his Unit, its equipment, furniture and furnishings, and appurtenances,

including Parking Spaces in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his Unit, provided, that the redecorating, painting and repair of all Parking Spaces shall be at the direction of the Management Committee and paid for as a Common Expense. In addition to decorating and keeping the interior of the Unit in good repair, the Unit Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, lighting fixtures, appliances, carpeting and other furniture and furnishings that may be in or connected with the Unit.

The design of the Buildings has resulted in certain installation for air conditioning and heating being characterized under the Condominium Act as Limited Common Areas and Facilities. Notwithstanding that fact, the Unit Owner shall be responsible for the cost of maintenance, repair or replacement of the air conditioning and heating equipment serving his Unit alone. When more than one Unit is served by such equipment, such costs shall be shared equally among those Unit Owners; provided that maintenance, replacement or repair of air conditioning or heating equipment serving more than one Unit shall be at the direction of the Management Committee.

The Management Committee shall not be responsible to the Unit Owner for loss or damage by theft or otherwise of articles which may be stored by the Unit Owner in his Unit or the Limited Common Areas and Facilities appurtenant thereto.

The Unit Owner shall promptly discharge any lien (other than Mortgage liens) which may hereafter be filed against his Unit.

13. Prohibition Against Structural Changes by Unit Owner. No Unit Owner shall, without first obtaining written consent of the Management Committee, make or permit to be made any structural alteration, improvement or addition in or to his Unit or in or to the Common Areas and Facilities or in or to any Limited Common Areas and Facilities. No Unit Owner shall do any act or work that will impair the structural soundness or integrity of the Buildings or safety of the Property or impair any easement or hereditament without the written consent of all Unit Owners. No Unit Owner shall paint or decorate any portion of the exteriors of the Building(s) or other Common Areas and Facilities or Limited Common Areas and Facilities without first obtaining written consent of the Management Committee.

14. Entry for Repairs. The Management Committee and their respective agents may enter any Unit when necessary in connection with any maintenance, landscaping or construction for which the Management Committee is responsible. Such entry shall be made with as little inconvenience to the Unit Owners as practicable, and any damage caused thereby shall be promptly repaired by the Management Committee out of the Common Expense Fund.

15. Failure to Insist on Strict Performance No Waiver. The failure of the Association of Unit Owners or Management Committee to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Management Committee of any assessment from a Unit Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Management Committee or its designs.

16. Limitation of Management Committee Liability. The Management Committee shall not be liable for any failure of any service to be obtained and paid for by the Management Committee hereunder, or for injury or damage to person or property caused by the elements or by another Unit Owner or person, or resulting from electricity, water or rain which may leak or flow from outside or from any parts of the Buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place, unless caused by gross negligence of the Management Committee. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Areas and Facilities or from any action taken to comply with any law, ordinance or order of a governmental authority.

17. Indemnification of Management Committee Members. Each member of the Management Committee shall be indemnified by the Unit Owners against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having been a member

of the Management Committee, or any settlement thereof, whether or not he is a member of the Management Committee at the time such expenses are incurred, except in such cases wherein the member of the Management Committee is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties and except to the extent such liability, damage or injury is covered by insurance; provided that in the event of a settlement the indemnification shall apply only when the Management Committee approves such settlement as being for the best interests of the Unit Owners.

18. Personal Property. The Management Committee may acquire and hold, for the benefit of the Association of Unit Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in such personal property shall be held by the Unit Owners in the same proportion as their respective undivided interests in the Common Areas and Facilities, and shall not be transferable except with a transfer of a Condominium. A transfer of a Condominium shall vest in the transferee ownership of the transferor's beneficial interest in such personal property.

At the time when the first conveyance of Units are made by Declarant to the Unit Owners, Declarant shall execute and deliver a bill of sale to the Association of Unit Owners, transferring title to all items of personal property located on the Property and furnished by Declarant, which personal property is intended for the common use and enjoyment of the Unit Owners.

19. Encroachments. None of the rights and obligations of any Unit Owners created by this declaration, bylaws or by any deed conveying a Unit shall be affected in any way by an encroachment: (i) by any portion of the Common Areas and Facilities upon any Unit; (ii) by any Unit upon any portion of the Common Areas and Facilities, or (iii) any Unit upon another Unit due to settling or shifting of the building or other structure, including the rebuilding of the building and other structure after fire or other casualty or an eminent domain taking or delivery of a deed in lieu of condemnation, unless there occurs an encroachment that results from the willful or negligent act or omission of the Unit Owner of the encroaching Unit, or of the owners of the units to which the use of the encroaching Limited Common Areas and Facilities is appurtenant, or of the Management Committee in the event of an encroachment by any portion of the Common Area and Facilities other than the Limited Common Areas and Facilities.

There are hereby created valid easements for the maintenance of any encroachments permitted by this paragraph of this declaration so long as such encroachments exist.

20. Mortgage Protection. Notwithstanding anything to the contrary contained in the Declaration or the Bylaws:

(a) Common Expenses shall include an adequate reserve fund for maintenance, repairs and replacement of those Common Areas and Facilities that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments.

(b) No provision of this Declaration or the Bylaws shall give a Unit Owner, or any other party, priority over any rights of the first Mortgagee of the Unit pursuant to its Mortgage or otherwise in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Areas and Facilities.

(c) Any "right of first refusal" that may hereafter be added to this Declaration or the Bylaws shall not impair the rights of a first Mortgagee to:

(1) Foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage, or

(2) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or

(3) Interfere with a subsequent sale or lease of a Unit so acquired by the Mortgagee.

(d) Any agreement for professional management of the Project or any other contract providing for services of the Declarant, developer, builder or sponsor, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

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

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

(f) Any first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage or foreclosure or deed in lieu of foreclosure of the Mortgage will not be liable for such Unit's unpaid dues or charges which accrue prior to the acquisition of title to such Unit by the Mortgagee.

(g) A first Mortgagee, upon request, will be entitled to written notification from the Association of Unit Owners of any default in the performance by the Mortgagor-Unit Owner of any obligation under this Declaration or the Bylaws which is not cured within sixty (60) days.

(h) Unless at least three-fourths (3/4) of both the first Mortgagees (based upon one vote for each first Mortgage owned) and the Owners (other than Declarant) of the individual Units have given their prior written approval, the Association of Unit Owners shall not be entitled to:

(1) By act or omission, seek to abandon the Property or terminate the Condominium Regime;

(2) Change the pro-rata interest or obligations of any individual Units for the purpose of: (i) levying assessments of charges or allocating distributions of hazard insurance proceeds of condemnation awards, or (ii) determining the prorata share of ownership of each Unit in the Common Areas and Facilities.

(3) Partition or subdivide any Unit;

(4) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas and Facilities.

(The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas and Facilities shall not be deemed a transfer within the meaning of this clause);

(5) Use hazard insurance proceeds for losses to the Property (whether to Units or to Common Areas and Facilities) for other than the repair, replacement or reconstruction of such Property, except as provided by the Act in case of substantial loss to the Units and/or Common Areas and Facilities.

(i) Common Areas and Facilities, and all amenities (such as parking, recreation and service areas) shall be part of Eastgate and shall be fully installed, completed, and in operation for use by the Unit Owners prior to the sale and conveyance of the last Unit in the Condominium Regime.

(j) A Mortgagee who has acquired title to a Unit in the Project pursuant to any remedy under the Mortgage or any proceeding or procedure in lieu thereof, shall thereby become a member of the Eastgate Association of Unit Owners.

(k) No Unit Owner, or any other party shall have priority over any rights of a first Mortgagee of a Unit pursuant to its Mortgage or otherwise in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or taking of Units and/or Common Areas and Facilities. All first Mortgagees shall be entitled to receive such insurance proceeds and awards for losses to or a taking of Units and/or Common Areas and Facilities on a first priority basis, as provided in the Mortgage instruments.

(l) No provision of this section shall be amended without the consent of all first mortgagees.

(m) The holders of first Mortgages shall have the right to examine the books and records of the Property.

(n) Whenever there is a change in ownership of a Unit, the Management Committee shall require that the new Unit Owner furnish the Management Committee with the name of the holder of any first



Mortgage affecting such Unit. The Management Committee or Manager shall maintain a current roster of Unit Owners and of the holders of first Mortgages affecting Units in the Property.

21. Insurance. The Management Committee shall obtain and maintain at all times insurance coverage to carry out the purposes of the Bylaws. Such coverage shall be of the type and kind as provided herein and include insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other properties similar to the Project in construction, design, and use. The Management Committee shall obtain insurance with the following provisions or endorsements:

(a) Exclusive authority to adjust losses shall be vested in the Management Committee;

(b) The insurance coverage shall not be brought into contribution with insurance purchased by individual Unit Owners or their respective Mortgages;

(c) Each Unit Owner may obtain additional insurance covering his real property interest at his own expense;

(d) The insurer waives its rights of subrogation as to any claims against the Association of Unit Owners, the Management Committee, the Manager, the Unit Owners, and their respective servants, agents, and guests;

(e) The insurance coverage cannot be cancelled, invalidated, or suspended because of the conduct of any one or more individual Unit Owners or their respective lessees, employees, agents, contractors, or guests;

(f) The insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of any officer, employee, agent or contractor of the Association of Unit Owners, Management Committee, or Manager, without prior demand in writing that the Association of Unit Owners cure the defect and then only if the defect is not cured within fifteen (15) days;

(g) All hazard insurance policies shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better. Such hazard

insurance carrier shall be specifically licensed or authorized by law to transact business within the State of Utah.

(h) Each policy of insurance obtained by the Management Committee shall provide: a standard mortgagee clause commonly accepted by private institutional mortgage investors in the area of which the Property is located. Such mortgagee clause shall provide that the insurance carrier shall notify the first mortgagee at least ten (10) days in advance of the effective date of any cancellation or reduction of any policy or policies.

(i) The Management Committee shall not obtain or maintain a policy or policies of insurance where:

(1) Under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against one or more of the Unit Owners, any first Mortgagee or first Mortgagees, or the Federal Home Loan Mortgage Corporations, hereinafter FHLMC, or FHLMC's designee; or

(2) By the terms of the carrier's charter bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or

(3) The policy includes any limiting clauses (other than insurance conditions) which could prevent FHLMC or one or more of the Unit Owners from collecting insurance proceeds.

(j) The Management Committee shall maintain a multi-peril type policy covering the Project with the provisions and endorsements set forth hereinabove, providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost). Each such policy shall contain the standard mortgagee clause which must:

(1) 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; and

(2) Provide that the insurance carrier shall notify the first Mortgagee (or trustee), at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(k) Each such policy shall state that the insured is the Association of Unit Owners for the use and benefit of the individual Owners. The limits and coverage of such insurance shall be reviewed at least annually by the Management Committee and shall include an appraisal of the Property by a qualified representative of the insurance company writing the master policy on the Property. The Association of Unit Owners shall, upon request, furnish a letter wherein the Association agrees to notify FHLMC whenever:

(1) Damage to a Condominium covered by a Mortgage purchased in whole or in part by FHLMC exceeds \$1,000, or

(2) Damage to Common Areas and Facilities and related facilities exceeds \$10,000.

(1) The Management Committee shall obtain a comprehensive policy of public liability insurance insuring the Association of Unit Owners, the Management Committee, the Manager, and the Unit Owners against any liability incident to the ownership, use, or operation of the Common Areas and Facilities, commercial spaces, if any, and public ways in the Property or of any Unit which may arise among themselves, to the public or to any invitees or tenants of the Property, or of the Unit Owners. Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage). Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association of Unit Owners or other Unit Owners. The scope

of coverage must include all other coverage in the types and amounts required by private institutional mortgage investors for projects similar in location, construction and use. The limits in coverage of said liability policy or policies shall be reviewed at least annually by the Management Committee, including an evaluation of the adequacy of the policy by a qualified representative of the insurance company writing the master policy on the Property, and shall be increased at the discretion of the Management Committee. Said policy or policies shall be issued on a comprehensive liability basis and, if possible, shall provide cross-liability endorsements for possible claims for any one or more or group of insureds against any one or more or group of insureds, without prejudice to the right of a named insured under the policies to maintain an action against another named insured.

(m) The Management Committee shall maintain fidelity coverage against dishonest acts on the part of members of the Management Committee, Managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association of Unit Owners. The fidelity bond or insurance must name the Association of Unit Owners as the named insured and shall be written in an amount sufficient to provide protection which in no event shall be less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(n) Each Unit Owner shall be required to notify the Management Committee of, and shall be liable for, any increased insurance premium for insurance maintained by the Management Committee on all improvements made by the Unit Owner to his Unit, the value of which is in excess of One Thousand Dollars (\$1,000). Each Unit Owner shall bear the risk of loss for all improvements made to his Unit that were not the subject of notice to the Management Committee.

(o) Any Unit Owner who obtains individual insurance coverage covering any portion of the Property, other than personal property belonging to such Unit Owner, shall be required to file a

copy of such individual policy or policies with the Management Committee within thirty (30) days after obtaining such insurance coverage. No Unit Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount that the Management Committee, on behalf of all the Unit Owners, may realize under any insurance policy that the Management Committee may have in force covering the Property or any part thereof at any time.

(p) According to the Department of Housing and Urban Development Map Number 4912-0008-A dated August 30, 1977, the Property is not located in an area identified by the Department of Housing and Urban Development as an area having special flood hazards. In the event that at some future time the Property should be declared to be in such a flood area, a blanket policy of flood insurance on the Property shall be maintained in the amount of the aggregate of the outstanding principal balances of the Mortgage loans on the Units comprising the Property or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended whichever is less. The name of the insured under each required policy must be in form and substance as that required by the Federal Home Loan Mortgage Corporation at any given time.

22. Enforcement. Each Unit Owner shall comply strictly with the provisions of this Declaration, the Bylaws and the rules, regulations and decisions issued pursuant thereto and as the same may be lawfully amended from time to time. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee on behalf of the Association of Unit Owners, or in a proper case, by an aggrieved Unit Owner.

23. No Partition. There shall be no judicial partition of the Property or any part thereof, nor shall Declarant or any person acquiring any interest in the Property or any part thereof seek any such judicial partition, until the happening of the conditions set forth in this Declaration in the case of damage or destruction or unless the Property has been removed from the provisions of the Condominium Act as provided in Section 57-8-22 of that Act; provided, however, that if any Unit shall be owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent

a judicial partition as between such co-tenants so long as the Institutional Holder of any first Mortgage on such Unit gives prior written approval. Such partition shall not affect any other Condominium.

24. Termination. All of the Unit Owners may remove the property from the provisions of the act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the Unit Owners in the Property.

After removal of the property from the act, the Unit Owners shall own the Property and all assets of the Association as tenants in common and the respective mortgages and lienors shall have mortgages and liens upon the respective undivided interests of the Unit Owners. Such undivided interests of the Unit Owners shall be the same as the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Owners' Units prior to removal from the act.

This paragraph 24 cannot be amended without consent of all Unit Owners and all record owners or mortgages on Units.

25. Condemnations or Eminent Domain. If any Unit or portion thereof or the Common Areas and Facilities or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Management Committee will notify in writing the Institutional Holder of any first Mortgage on a Unit which would be affected by such proceedings or proposed acquisition.

26. Liens. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual condominium units and not to the condominium project as a whole.

27. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project.

28. Amendment. Except as otherwise provided herein and except as prohibited by the Condominium Act, the provisions of this Declaration and the Bylaws set forth in Appendix B may be amended by an instrument in writing, signed and acknowledged, by Owners owning 75% of the voting power which amendment shall be effective upon recordation

with the Recorder of Salt Lake County. Provided, however, the written consent of each Institutional Holder of a first Mortgage on a Unit shall be required to amend the following:

(a) Any provision altering the fractions of undivided interest in the Common Areas and Facilities or voting rights;

(b) Any provision amending Sections 20 and 26 of the Declaration;

(c) Any other provision or section of this Declaration of the Bylaws which would prejudice the interest of the Institutional Holders of first Mortgages on the Units.

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

30. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of this Declaration or the intent of any provision hereof.

31. Law Controlling. This Declaration and the Bylaws attached hereto shall be construed and controlled by and under the laws of the State of Utah.

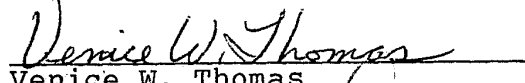
32. Effective Date. This Declaration shall take effect when recorded with the Recorder of Salt Lake County.

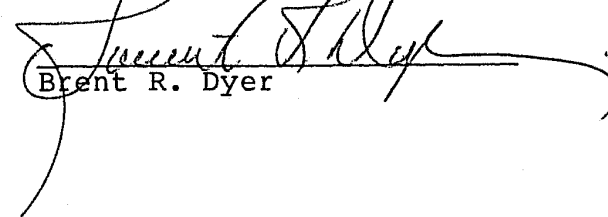
IN WITNESS WHEREOF, the undersigned have executed this instrument this 16th day of May, 1979.

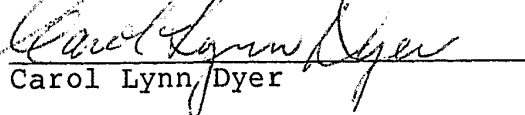
  
Charles W. Akerlow

  
Carole M. Akerlow

  
John Joel Thomas

  
Venice W. Thomas

  
Brent R. Dyer

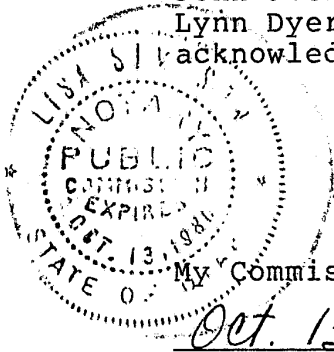
  
Carol Lynn Dyer

Condo. Bylaws & Declar.

BOOK 4911 PAGE 394

STATE OF UTAH )  
 : SS.  
COUNTY OF SALT LAKE )

On the 16<sup>th</sup> day of May, 1979, personally appeared before me Charles W. Akerlow, Carole M. Akerlow, John Joel Thomas, Venice W. Thomas, Brent R. Dyer, and Carol Lynn Dyer, the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.



Lisa R. Simpson  
Notary Public  
Residing in Salt Lake County,  
State of Utah

My Commission expires:

Oct. 13, 1980



APPENDIX "A"

EASTGATE CONDOMINIUM

<u>Unit No.</u>	<u>Location</u>	<u>Approximate Square Footage</u>	<u>Assigned Parking Spaces</u>	<u>Fractional Interest</u>
200	2nd Floor	933	1	4.13%
201	2nd Floor	965	2	4.27%
202	2nd Floor	1070	3	4.74%
203	2nd Floor	772	4	3.41%
204	2nd Floor	770	5	3.41%
205	2nd Floor	986	6	4.37%
206	2nd Floor	1016	7	4.51%
207	2nd Floor	1013	8	4.49%
300	3rd Floor	933	9	4.13%
301	3rd Floor	965	10	4.27%
302	3rd Floor	1070	11	4.74%
303	3rd Floor	772	12	3.41%
304	3rd Floor	770	13	3.41%
305	3rd Floor	986	14	4.37%
306	3rd Floor	1016	15	4.51%
307	3rd Floor	1013	16	4.49%
400	4th Floor	933	17	4.13%
401	4th Floor	965	18	4.28%
402	4th Floor	1070	19	4.74%
403	4th Floor	772	20	3.41%
404	4th Floor	770	21	3.41%
405	4th Floor	986	22	4.37%
406	4th Floor	1016	23	4.51%
407	4th Floor	1013	24	4.49%

Common Area Parking

25 through 36

SALT LAKE CITY APPROVAL

On this 26<sup>th</sup> day of July, 1979,  
Salt Lake City Corporation, a Body Politic, a Corporation of the  
State of Utah, and the municipality in which the Eastgate Condominiums  
are located, hereby gives final approval to said project, to the fore-  
going declaration, to the record of survey map recorded concurrently  
herewith, and to the attributes of said project which are mentioned  
in Section 57-8-35(3) of the Utah Condominium Ownership Act, as  
amended and expanded by the Laws of Utah 1975, Chapter 173, Section 18.

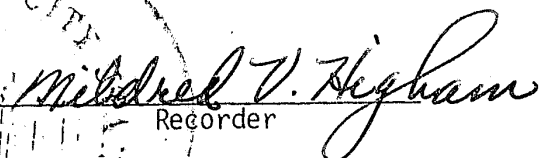
SALT LAKE CITY CORPORATION

By

  
Mayor



Attest:

  
Recorder

APPENDIX B  
BYLAWS OF  
EASTGATE CONDOMINIUM

I. Application of Bylaws.

All present and future Unit Owners, Mortgages, and occupants of Units and their lessees, renters, agents, servants, and guests, and any other persons who may use the facilities of the Property in any manner are subject to the Declaration, these Bylaws and Rules and Regulations made pursuant hereto, and any amendment to these Bylaws upon the same being passed and duly recorded.

The acceptance of a deed or conveyance, the entering into of a contract for purchase or a lease, or the act of occupancy of a Unit shall constitute an agreement that these Bylaws and any Rules and Regulations made pursuant hereto and the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

II. Management Committee.

The affairs of the Association of Unit Owners shall be conducted by a Management Committee composed of three (3) members.

A. Election

At each annual meeting, subject to the provisions of Section K of this Article II, the Unit Owners shall elect members of the Management Committee for the forthcoming year; provided, however, the first Management Committee elected hereunder may be elected at a special meeting duly called, said Management Committee to serve until the first annual meeting held thereafter. Nominations for the Management Committee shall be made by the Unit Owners from the floor in accordance with the Parliamentary Rules set forth hereinafter at the annual meeting. At least two members of the Management Committee shall be required to be Unit Owners.

B. Term

Members of the Management Committee shall serve for a term of two years; provided, however, that initially two of the three members of the first Management Committee

elected shall serve for a one-year term. The other member shall serve for a two-year term. Thereafter, all members elected each year shall serve for a two-year term. The members of the Management Committee shall serve until their respective successors are elected, or until their death, resignation or removal.

C. Resignation and Removal

Any member of the Management Committee may resign at any time by giving written notice to the President and Management Committee, and any member may be removed from membership on the Management Committee by a majority vote of Unit Owners. Whenever there shall occur a vacancy on the Management Committee due to death, resignation, removal or any other cause, the remaining members shall elect a successor to serve until the next annual meeting of the Association of Unit Owners, at which time said vacancy shall be filled for the unexpired term.

D. Compensation

The Management Committee shall receive no compensation for their services unless expressly provided for and approved in writing by Unit Owners holding a majority interest in the Common Areas and Facilities.

E. Powers and Authority of the Management Committee

The Management Committee, for the benefit of Eastgate and the Unit Owners, shall enforce the provisions of the Declaration, Bylaws and Rules and Regulations governing the Property and, subject to the provisions of Article V hereof, shall acquire or arrange for and pay for out of the Common Expense Fund the following:

1. Water, sewer, garbage collection and other necessary utility service for the Common Areas and Facilities;
2. Water, sewer and other necessary utility costs for Units and Limited Common Areas and Facilities which are not separately metered or charged;
3. A policy or policies of fire insurance, with extended coverage endorsements, for the full insurable replacement value of the Units and Common Areas and as provided in the Declaration. Insurance proceeds shall be payable and applicable as provided in the Declaration;

4. A policy or policies of public liability insurance insuring the Management Committee, the Association of Unit Owners and the individual Unit Owners against any liability to any person or persons incident to the ownership and/or use of the Property. Such policy or policies shall be consistent with the provisions of the Declaration.

5. Workmen's Compensation Insurance to the extent necessary to comply with any applicable laws;

6. Notwithstanding any other provision herein, the Management Committee shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and a fidelity bond requirements for condominium projects established by Federal Home Loan Mortgage Corporation.

7. The services of a Manager providing professional services (the "Manager") to manage its affairs as provided in Article IX hereof, to the extent deemed advisable by the Management Committee, as well as such other personnel as the Management Committee shall determine shall be necessary or proper for the operation of the Common Areas and Facilities, whether such personnel are employed directly by the Management Committee or are furnished by the Manager;

8. Legal and accounting services necessary or proper in the operation of the Common Areas and Facilities or the enforcement of the Declaration;

9. A fidelity bond naming the Manager and such other persons as may be designated by the Management Committee as principals and the Unit Owners as obligees consistent with the provisions of the Declaration.

10. Painting, maintenance, repair and all landscaping of the Common Areas and Facilities and of all parking areas, and such furnishings and equipment for the Common Areas and Facilities as the Management Committee shall determine are necessary and proper, and the Management Committee shall have the exclusive right and duty to acquire the same for the Common Areas and Facilities; provided, however, that the interior surfaces

of each Unit shall be painted, maintained and repaired by the Unit Owner thereof, all such maintenance to be at the sole cost and expense of that particular Unit Owner;

11. Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Management Committee is required to secure or pay for pursuant to the terms of the Declaration or Bylaws or which in its opinion shall be necessary or proper for the operation of the Common Areas and Facilities or for the enforcement of the Declaration, provided that if any such materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for particular Units, the cost thereof shall be specially assessed to the owners of such Units;

12. Maintenance and repair of any Unit, if such maintenance or repair is reasonably necessary in the discretion of the Management Committee to protect the Common Area and Facilities or preserve the appearance and/or value of the Property, and the Unit Owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity therefore delivered by the Management Committee to said Unit Owner, provided that the Management Committee shall levy a special assessment against the Condominium of such Unit Owner for the cost of said maintenance or repair;

13. The Management Committee shall have the exclusive right to contract for all goods, services and insurance, payment for which is to be made from the Common Expense Fund. This provision shall not be construed to prohibit the Management Committee from delegating such authority to the Manager as it deems proper.

F. Additional Powers of the Management Committee

The Management Committee shall have the right to acquire, operate, lease, manage and otherwise trade and deal with property, real or personal, including Condominiums, as may be necessary or convenient in the operation and management of the Property, and in accomplishing its purposes set forth in the Declaration.

G. Regular Meetings of the Management Committee

Two members of the Management Committee shall constitute a quorum and, if a quorum is present, the decision of a majority of those present shall be the act of the Management Committee. The Management Committee shall annually elect all of the officers of the Association of Unit Owners as set forth in Article IV of these Bylaws. The officers shall be elected at a meeting of the Management Committee to be called immediately following the annual meeting of the Association of Unit Owners.

H. Special Meetings of the Management Committee

Special meetings of the Management Committee may be called by or at the request of the President or by any two Management Committee members.

I. Notice of Meetings

Regular meetings of the Management Committee may be held without notice. The person or persons calling a special meeting of the Management Committee shall, at least ten days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called; if an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

J. Waiver of Notice

Any member of the Management Committee may, at any time, waive notice of any meeting of the Management Committee in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at a meeting shall constitute a waiver of notice of such meeting except where a member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the Management Committee are present at any meeting thereof, no notice shall be required and any business may be transacted at such meeting.

K. Declarant's Option to Appoint

Until the earlier of a date when seven (7) Units have been sold and closed or three years from the recording of the Declaration, the members of the Management Committee shall at Declarant's option be appointed by Declarant. One hundred and twenty days after the earlier of the dates provided for hereinabove, the terms of all

members of the Management Committee who were appointed by Declarant shall expire and at such time the Association of Unit Owners shall have the responsibility of electing replacement members of the Management Committee.

L. Notice of Election

After the first election of the Management Committee, Declarant shall execute, acknowledge and record an affidavit stating the names of all of the members of the Management Committee. Thereafter, any two persons who are designated of record as being members of the most recent Management Committee (regardless of whether or not they shall still be members) may execute, acknowledge and record an affidavit stating the names of all of the members of the then current Management Committee; provided, that, in the event of the disability or other incapacity of two such persons, Manager shall be empowered to execute the aforesaid affidavit. The most recently recorded of such affidavits shall be prime facie evidence that the persons named therein are all of the incumbent members of the Management Committee and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

M. Fiscal Year

The fiscal year shall be as determined by the Management Committee.

III. Meetings of the Association of Unit Owners.

The presence in person or by proxy at any meeting of the Association of Unit Owners of thirteen Unit Owners, in response to notice to all Unit Owners of record properly given in accordance with Section 10 of the Declaration, shall constitute a quorum. Upon request, any Institutional Holder of a first Mortgage on a Unit shall be entitled to written notice of all meetings of the Association of Unit Owners and to designate a representative to attend all such meetings. In the event that the total number of Unit Owners present does not equal thirteen, the meeting shall be adjourned for 24 hours, at which time it shall reconvene and the presence of thirteen Unit Owners shall constitute a quorum. Unless otherwise expressly provided in the Declaration, any action may be taken at any meeting of the Association of Unit Owners upon the affirmative vote of a majority of the voting power of the Unit Owners present and voting provided that a quorum is present as provided for above.



#### A. Annual Meeting

There shall be a meeting of the Association of Unit Owners on the last Saturday of January of each year at 2:00 p.m. on the Property or at such other reasonable place or time (not more than 60 days before or after such date) as may be designated by written notice of the Management Committee delivered to the Unit Owners not less than 30 days prior to the date fixed for said meeting. At or prior to such meeting, the Management Committee shall furnish to the Unit Owners a budget for the current fiscal year that shall itemize the estimated Common Expenses of the fiscal year with the estimated allocation thereof to each Unit Owner, and a statement of the Common Expenses, itemizing receipts and disbursements, for the preceding fiscal year, together with the allocation thereof to each Unit Owner.

#### B. Special Meetings

Special meetings of the Association of Unit Owners may be called at any time for the purpose of considering matters which, by the terms of the Declaration, require the approval of all or some of the Unit Owners, or for any other reasonable purpose. Said meetings shall be called by written notice, signed by a majority of the Management Committee or by any ten Unit Owners and delivered not less than 30 days prior to the date fixed for said meeting. Said notices shall specify the date, time and place of the meeting, and the matters to be considered thereat.

#### C. Parliamentary Rules

Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Declaration or these Bylaws.

#### IV. Officers of the Association

The officers of the Association of Unit Owners shall be a President, Vice President, Secretary, and Treasurer. Any of the offices may, by direction of the Management Committee, be combined as one office. Any officer must be a Unit Owner. The President must be a member of the Management Committee. No officer shall receive compensation for serving as such. Officers shall be annually elected by, and may be removed and replaced by, the Management Committee. The Management Committee may in its discretion require that officers be subject to fidelity bond coverage.

A. President

The President shall preside at all meetings of the Association of Unit Owners and of the Management Committee and may exercise the powers of a presiding officer of an association including the appointment of committees.

B. Vice President

The Vice President shall perform the functions of the President in the absence or inability of the President.

C. Secretary

The Secretary shall keep minutes of all proceedings of the Management Committee and of the meetings of the Association of Unit Owners and shall keep such books and records as may be necessary and appropriate for the records of the Association and its Management Committee.

D. Treasurer

The Treasurer shall be responsible for the fiscal affairs of the Association, but may delegate the daily handling of income and expense payments to the authorized Manager employed by the Association.

V. Maintenance, Repair and Replacement of Common Areas and Facilities.

It shall be the responsibility of the Management Committee to determine questions relating to the maintenance, repair and replacement of all Common Areas and Facilities. There shall be no structural alterations, capital additions to, or capital improvements of the Common Areas and Facilities requiring an expenditure in excess of \$1,000.00 for any single expenditure or a total of \$2,000.00 in any fiscal year without 30 days prior notice to all Unit Owners. Unless within the aforementioned 30 day period Unit Owners holding the majority of the total voting power of the Association of Unit Owners shall give notice of disapproval of such structural alterations, capital additions to, or capital improvements of the Common Areas and Facilities, the Unit Owners shall be deemed to have approved the same. Notwithstanding the foregoing, the Management Committee shall have authority to cause to be performed such repairs of the Common Areas and Facilities as it may deem necessary to preserve the same against loss or destruction.

VI. Common Expenses.

A. Assessments

1. Within 30 days prior to the annual meeting, the Management Committee shall estimate the net charges to be paid during the current fiscal year, including a reasonable provision for contingencies and replacements and less any expected income and any surplus from the prior fiscal year's operation, together with the estimated utility costs for Units and Limited Common Areas and Facilities which are not separately metered or charged. Said "Estimated Cash Requirement" shall be approved at the annual meeting and assessed monthly to the Unit Owners pursuant to the Declaration and Appendix A thereof. Declarant will be liable for the amount of any assessment against Units owned by Declarant. If said estimated sum proves inadequate for any reason, including nonpayment of any Unit Owner's assessment, the Management Committee may at any time levy a further assessment, which shall be assessed to the Unit Owners in like proportion unless otherwise provided herein. Each Unit Owner shall be obligated to pay assessments made pursuant to this paragraph to the Management Committee on or before the first day of each month, or in such other reasonable manner as the Management Committee shall designate.

2. The monthly payments made by Unit Owners shall be kept in separate accounts as the Management Committee may deem proper, including accounts for general working capital, for the general operating reserve, and for a reserve fund for replacements and major maintenance.

3. All funds collected hereunder shall be expended for the purposes designated in the Declaration or Bylaws.

4. The omission by the Management Committee before the expiration of any fiscal year to fix the Estimated Cash Requirement hereunder for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of the Declaration or a release of the Unit Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the Estimated Cash Requirement fixed for the preceding year shall continue until a new

requirement is fixed. Amendments to this Article VI shall be effective only upon unanimous written consent of the Unit Owners and their Mortgages. No Unit Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Areas and Facilities or by abandonment of his Unit.

5. The Manager or Management Committee shall keep accurate records of the receipts and expenditures affecting the Common Areas and Facilities specifying and itemizing the maintenance and repair expenses of the Common Areas and Facilities and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by any Unit Owner at convenient hours of week days.

6. Anything contained herein to the contrary notwithstanding, the Management Committee shall at all times treat all funds of the Association of Unit Owners so as to avoid adverse income tax consequences, including, but not limited to, applying surplus funds toward expenses so that no common profits accrue to the Association and maintaining any reserves of the Association in a manner that will not result in these sums being treated as taxable income to the Association.

#### B. Default in Payment of Assessments

Each assessment (including all monthly installments under Article VI.A.1) and each special assessment shall be separate, distinct and personal debts and obligations of the Unit Owner against whom the same are assessed at the time the assessments are made and shall be collectible as such. The Management Committee shall have the right to impose a reasonable late charge for nonpayment of Common Expense payments within 15 days of the date such payments became due. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment, whether regular or special, assessed to the Unit Owner of any Condominium plus interest at the highest legal rate permitted by Utah law (not to exceed 18 percent per annum) and costs, including reasonable attorney's fees, shall become a lien upon such Condominium upon recordation of a notice of assessment by the Management Committee. 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 Condominium in favor of any taxing authority, and

2. all amounts due or that shall become due on a Mortgage of record on the Condominium.

A certificate executed and acknowledged by a majority of the Management Committee stating the indebtedness secured by the lien provided for under this Section B upon any Condominium shall be conclusive upon the Management Committee and the Unit 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 Unit Owner or any encumbrancer or prospective encumbrancer of a Condominium upon written request at a reasonable fee. Unless the written request for a certificate of indebtedness shall be complied with within thirty days, all unpaid Common Expenses which became due prior to the date of the making of such request shall be subordinate to the lien held by the person making the request, provided the person making the request specifically states in the written request his intention to have this provision apply. Any encumbrancer holding a lien on a Condominium may pay any unpaid Common Expenses payable with respect to such Condominium and upon such payment such encumbrancer shall have a lien on such Condominium for the amounts paid of the same rank as the lien of his encumbrance.

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

In case of foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Condominium 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 the Manager acting on its behalf shall have the power to buy in the Condominium at foreclosure or other sale and to hold, lease, mortgage and convey the Condominium.

VII. Abatement and Enjoinment of Violations by Unit Owners.

The violation of any Rules or Regulations adopted by the Management Committee or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Management Committee the right, in addition to any other rights set forth in these Bylaws:

A. to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Management Committee shall not thereby be deemed guilty in any manner of trespass; or

B. to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

VIII. Rental or Lease of Units by Unit Owners.

Any Unit Owner who rents or leases his Unit shall file with the Management Committee or Manager a copy of the rental or lease agreement affecting said Unit. The provisions of the Declaration and the Bylaws shall apply with equal force to renters or lessees of Units.

Any Unit Owner who rents or leases his Unit shall be responsible for the conduct of his tenants, and upon written notice from the Management Committee or the Manager said Unit Owner shall be responsible for correcting violations of the Declaration, Bylaws, or Rules and Regulations of Eastgate committed by such tenants.

If a Unit Owner fails to correct violations by tenants within 72 hours of such notice, the Management Committee or Manager shall be deemed to be the agent of the Unit Owner and empowered to take any enforcement action the Unit Owner would be entitled to take, the cost of such action to be assessed to the Unit Owner and payable within 30 days of assessment. Such costs shall be collected and enforced in the same manner as common assessments.

The power of the Management Committee or Manager hereunder shall include but not be limited to any and all legal remedies available under the laws of the State of Utah. Any Unit Owner by the act of renting or leasing his Unit shall be deemed to have consented to these procedures and shall indemnify and save harmless the Management Committee and the Manager from and against any and all liability therefor. It is expressly understood that the remedies available to the Management Committee or Manager shall include but not be limited to the right to seek eviction of the tenant without any liability to the Unit Owner.

#### IX. Manager

Declarant or any successor Management Committee may delegate any of its duties, powers or functions (including but not limited to the authority to give the certificate provided for in Article VI.B hereof and the authority to give the subordination agreements provided for in the Declaration) for such period of time and pursuant to such terms and conditions as either deems advisable to any person or firm designated to act as a Manager of the project. Any management agreement entered into shall be terminable by the Management Committee with or without cause upon 30 days written notice thereof, and the term of any such agreement shall not exceed one (1) year but may be renewable by agreement of the parties for successive one year periods. Provided, however, the effectuation of any decision by the Management Committee to terminate professional management and assume self management of the project shall require the prior written approval of each Institutional Holder of a first Mortgage lien on the Units. Any such delegation which extends beyond the term of office of the delegator shall be binding upon the successor Management Committee. Neither Declarant nor the members of the Management Committee shall be liable for any omission or improper exercise by the Manager of any of such duties, powers or functions so delegated by written instrument executed by Declarant or a majority of the Management Committee as the case may be.

#### X. Special Committees.

The Management Committee by resolution may designate one or more special committees, each committee to consist of two or more Unit Owners, which, to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. Such Special Committee or Committees shall have such name or names as may be determined from time to time by the Management Committee. Such Special Committees shall keep regular minutes of their proceedings and report the same to the

Management Committee when required. The members of such Special Committee or Committees designated shall be appointed by the Management Committee. The Management Committee may appoint Unit Owners by death, resignation, removal or inability to act for any extended period of time.

XI. Rules and Regulations.

The Management Committee shall have the right to adopt and amend such Rules and Regulations as may be authorized by the Condominium Act and Declaration for the purpose of governing the details of the operation and use of the Common Areas and Facilities and setting forth restrictions on, and requirements respecting the use and maintenance of Units, the parking areas, and Common Areas and Facilities. Copies of the Rules and Regulations shall be furnished to each Unit Owner prior to the time the same shall become effective.

XII. Audit.

Any Unit Owner may at any reasonable time at his own expense cause an audit or inspection to be made of the books of account of the Manager or Management Committee pertaining to the Property. The Management Committee, as a Common Expense, shall obtain an annual audit by an independent public accountant of the books of account pertaining to the Property and furnish copies thereof to the Unit Owners and all Institutional Holders of first Mortgages within 90 days following the end of the fiscal year.

XIII. Terms.

The terms used herein shall have the same meanings as provided in the Declaration and the Condominium Act.

XIV. Books and Records.

All Unit Owners and all Institutional Holders of a first Mortgage on a Unit shall be entitled to inspect the books and records of Eastgate during normal business hours.

XV. Interpretation.

The provisions of these Bylaws shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium



property. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

XVI. Severability.

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

XVIII. Captions.

The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these Bylaws nor the intent of any provision hereof.

XIX. Form of Organization.

The Association of Unit Owners may be incorporated or unincorporated, as determined by the Declarant. If the Association is incorporated, it shall be organized as a Non-Profit Corporation under the laws of the State of Utah.

XX. Effective Date.

These Bylaws shall take effect upon recording of the Declaration of which they are a part.