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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
HARVARD DRIVE CONDOMINIUMS

THIS DECLARATION is made and executed this 13 day of August, 1979, by STEVEN D. AIRMET and CHERIE L. AIRMET, husband and wife, and JOHN D. AIRMET and KATHY R. AIRMET, husband and wife (hereinafter collectively referred to as singular "Declarant"), pursuant to the provisions of the Utah Condominium Ownership Act (Sections 57-8-36), Utah Code Annotated (1953), as amended.

R E C I T A L S:

A. Declarant is the owner in fee of the real property (the Land) described in Article II hereof.

B. Declarant is the owner of the Land, the Building, including two Units and other improvements. All of such construction has been constructed in accordance with the plans contained in the Record of Survey Map to be recorded concurrently herewith.

C. Declarant desires, by filing this Declaration and the Record of Survey Map, to submit the Land and all improvements constructed thereon to the provisions of the Act as a Condominium Project to be known as "Harvard Drive Condominiums".

D. Declarant intends to sell the Unit to purchasers together with the undivided ownership interests in the Common Areas and Facilities appurtenant to such Units, subject to the covenants, restrictions, and limitations herein set forth.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby makes the following Declaration:

I. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act.

1. Act shall mean and refer to the Utah Condominium Ownership Act (Sections 57-8-1 through 57-8-36, Utah Code Annotated (1953), as the same may be amended from time to time.

2. Declaration shall mean and refer to this instrument.

3. Declarant shall mean and refer to Steven D. Airmet and Cherie L. Airmet and John D. Airmet and Kathy R. Airmet.

Transamerica
Title Insurance Services

BOOK 4924 PAGE 206
AUG 16 10 38 AM '79
KATIE L. DIXON
RECORDER
SALT LAKE COUNTY,
UTAH
TRANSAMERICA TITLE
REF. DEP.
Evelyn Thompson

4. Record of Survey Map or Map shall mean and refer to the Record of Survey Map filed herewith, consisting of two (2) sheets, and prepared and certified to by Robert B. Jones, a duly registered Utah Land Surveyor.

5. Property shall mean and refer to the land, the building, all improvements thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, provided, however, that this definition shall not be construed to include any items of personal property owned or purchased by each Unit Owner which is intended to be the sole property and use of such Unit Owner.

6. Building shall mean and refer to the building on the Land containing two Units and comprising a part of the Property.

7. Management Committee or Committee shall mean and refer to the Management Committee of the Harvard Drive Condominiums Condominium Project.

8. Common Areas and Facilities or Common Areas shall mean, refer to, and include:

(a) The real property and interests in real property which this Declaration submits to the terms of the Act.

(b) All Common Areas and Facilities designated as such in the Map.

(c) All Limited Common Areas and Facilities.

(d) All foundations, columns, girders, beams, supports, perimeter walls and roofs constituting a portion of or included in the improvements which comprise a part of the Project, and any walkways, fences, and other common facilities.

(e) Installations of central services such as power, light, gas and plumbing.

(f) All portions of the Project not specifically included within the individual Units.

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

9. Limited Common Areas shall mean and refer to those Common Areas designated herein or in the Map as reserved for the use of a certain Unit to the exclusion of the other Unit.

10. Condominium Unit or Unit means and refers to a separate physical part of the Property intended for independent use, consisting of rooms or spaces located in the Building. Units

are shown in the Map by single cross-hatching. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, evaporative coolers (and any replacement thereof, whether evaporative or refrigerated), fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of, inter alia, and as appropriate, wall-paper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural members or any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit.

11. Unit Designation shall mean and refer to the street address which designates a Unit in the attached Exhibit "A" and in the Map.

12. Unit Owner or Owner shall mean and refer to the owner of the fee in a Unit and the percentage of undivided interest in the Common Areas which is appurtenant thereto. The Declarant shall be deemed the owner of all unsold Units. In the event a Unit is the subject of an executory contract of sale, the contract purchaser shall, unless the seller and the purchaser have otherwise agreed and have informed the Committee in writing of such agreement, be considered the Unit Owner for purposes of voting and Committee membership.

13. Common Expenses shall mean and refer to all sums which are expended on behalf of both Unit Owners and all sums which are required by the Management Committee to perform or exercise its functions, duties, or rights under the Act and this Declaration, including but not by way of limitation, all water used by the Unit Owners since there is but one water meter for both Units.

14. Association shall mean and refer to both Owners of Harvard Drive Condominiums taken as, or acting as, a group.

15. Condominium Project or Project shall mean and refer to the Harvard Drive Condominiums Condominium Project.

16. Land shall mean and refer to the real property hereby submitted to the Project.

17. Mortgage shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered.

18. Mortgagee shall mean any person named as a Mortgagee or beneficiary under or holder of a deed of trust.

19. Percentage Interest shall mean and refer to the percentage undivided interest of each Unit in the Common Areas as set forth in Exhibit "A" annexed hereto.

20. Size shall mean and refer to the approximate square footage of the living space in each Unit as depicted on the Map and shown in said Exhibit "A".

II. SUBMISSION

Declarant hereby submits to the provisions of the Act to be known as "Harvard Drive Condominiums", the following described Land in Salt Lake County, Utah:

Beginning at a point West 210.00 feet from the Southeast corner of Lot 36, Section 36, Township 2 South, Range 1 West, Salt Lake Base and Meridian and running thence South 135.00 feet to the North line of Harvard Drive and at a point which is East 338.56 feet and North 25.00 feet from a spike marking the center of the intersection of Hoover Street and Harvard Drive, thence West along said North line 75.00 feet; thence North 135.00 feet; thence East 75.00 feet to the point of beginning. Contains 0.232 Acres

III. COVENANTS, CONDITIONS, AND RESTRICTIONS

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

1. Description of Improvements. The improvements included in the Project are now or will be located on the Land described in Article II above, and all such improvements are described on the Map. The Map indicates the number of stories, the number of Units which are contained in the Building, which comprise a part of such improvements, the dimensions of the Units, and all Common Areas thereof. There are two Units contained in the Building. The building is of wood frame construction, with brick veneer and aluminum siding and asphalt shingled roof.

2. Description and Legal Status of Units. The Map shows the designation of each Unit by street address, its location, dimensions from which its size may be determined, and the Common Areas to which it has immediate access. Each Unit shall be capable of being separately owned, encumbered, and conveyed.

3. Contents of Exhibit "A". Exhibit "A" to this Declaration furnishes the following information with respect to each Unit: (a) The Unit Designation by street address, (b) Its

Size; and (c) Its Percentage Interest.

4. Common and Limited Common Areas. The Common Areas contained in the Project are described and identified in Article I of this Declaration. Neither the Percentage Interest nor the right of exclusive use of a Limited Common Area and Facility shall be separated from the Unit to which it appertains; and even though not specifically mentioned in the instrument of transfer, such Percentage Interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate. Each Unit Owner shall at its own cost keep the Limited Common Areas designed for exclusive use in connection with his Unit in a clean, sanitary and attractive condition at all times. Limited Common Areas appurtenant to each Unit consist of (i) one carport and one open parking space identified by the same designation by which the Unit is identified, (ii) the deck, and (iii) the rear entrance and exit with iron railing. Owners of both Units shall jointly repair and maintain, or cause to be repaired and maintained, the yard, Building and other Common Areas so as to keep the same in clean, healthy and attractive condition at all times. Failure of one Unit Owner to cooperate with the other Unit Owner in that regard shall constitute a default for which the non-defaulting party may enforce under the Act including, but not limited to, the filing of lien, suit, or seeking any equitable relief.

5. Computation of Undivided Interests. The proportionate share of the Unit Owners in the Common Areas of the Project is based on the Size that each Unit bears to the aggregate Size of both Units. Both Units are of the same Size. The proportionate ownership in the Common Areas shall be for all purposes including, but not limited to, voting and assessment for Common Expenses.

6. Unit Maintenance. Each Owner shall at his own cost and expense maintain, repair, paint, re-paint, tile, wax, paper or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, windows and doors forming the boundaries of his Unit and all walls, ceiling, floors, windows and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he or she shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heater, heating equipment, air cooler, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in, or connected with, his Unit. Each Unit shall be maintained so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of the other Unit.

7. Easement for Encroachment. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance for the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon the adjoining Unit, an easement for such encroachment and for the maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either to the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building on the Land, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

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8. Access for Repair of Common Areas. Some of the Common Areas are or may be located within the Units, or may be conveniently accessible only through the Units. The Owner of one Unit shall have the right to have access to the other Unit and to all Common Areas from time to time, upon prior notice to the Owner of the other Unit, in the presence of the Owner of the other Unit unless such presence be waived by said Owner in writing, during such hours as may be reasonable, as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom. In the event that it becomes necessary for the making of emergency repairs to prevent damage to the Common Areas or to another Unit, the notice and present requirements contained herein shall be deemed to have been waived. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit shall be compensated for by the party responsible for or causing such damage; provided, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all such damage. Such damage shall be repaired and the Unit and/or the Common Areas damaged shall be restored substantially to the same condition as existed prior to the damage.

9. Right of Ingress, Egress, Lateral Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his or her Unit, and to the Limited Common Areas designated for use in connection with his or her Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

10. Easement to Management Committee. The Management Committee shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

11. Easement for Utility Services. There is hereby created a blanket easement upon, across, over and under the Tract above described in Article II for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephones, electricity, and other utility services.

12. Use of Condominium and Common Areas.

(a) Each of the Units in the Project is intended to be used for single family residential housing and is restricted to such use.

(b) Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any

part thereof over what the Committee, but for such activity, would pay, without the prior written consent of the Committee. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Committee and the Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

(c) No structural alterations to any Unit be made by either Owner without the prior written consent of the other Owner.

(d) Notwithstanding anything contained herein to the contrary, until the Declarant has completed and sold both Units, the Unit Owner who has purchased a Unit from the Declarant shall not interfere with the completion of improvements and sale of the remaining Unit. The Declarant reserves the right to use any Unit owned by Declarant as a model, management office or sales office until such time as Declarant conveys title thereto to a purchaser.

13. Status and General Authority of Committee and Association. The care, maintenance and protection of the Common Areas of the Project shall be the joint responsibility of the Unit Owners or the Management Committee, as the case may be. Such Owners may agree upon a division of labor and financial responsibility therefor, provided that neither Unit Owner shall be responsible for a greater share of labor or expense than his or her pro-rata interest in the Property; they may contract for such services as are reasonably necessary from time to time, but neither Unit Owner may bind the other to payment for services that benefit only one Unit. Such contracts as may be entered into for the benefit of the Building or other Common Areas shall be executed by both Unit Owners. In addition, the Unit Owners shall have the following authority and powers:

(a) The authority, upon execution by each of them, but without the consent of any other person(s), to grant or create, on such terms as they may deem advisable, utility and similar easements over, under, across and through the Common Areas.

(b) The authority to amend this Declaration or the Map by recording an instrument of amendment, executed by each of them.

(c) The power to agree to joint prosecution or defense of legal action, should such joint action be deemed advisable.

(d) The power to borrow money, as a joint obligation, upon execution by both Unit Owners of appropriate documents.

(e) The authority to promulgate such reasonable rules, regulations and procedures as may be necessary or desirable to aid them in performing any of their functions, or to insure that the Project is maintained and used in a manner consistent with their interests.

(f) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the performance of their joint functions.

14. Composition of Management Committee. The Committee shall be composed of two members, one who has ownership in one Unit, and one who has ownership in the other Unit. The Committee members shall serve for as long as they have an ownership interest in one of the Units. Each Unit-Owner/Committee Member shall be entitled to one vote at any meeting or on any issue which is or may be subject to or subjected to a vote; that is, each Unit shall have one vote only regardless of the number of persons owning either of the Units.

15. Committee Officers and Agents. The Unit Owners may agree, in writing, to designate one or the other of them as agent for both, for such purposes and with such authority as the written document may provide. They may also designate one or the other to keep records or minutes of meetings or discussions held between them which may effect their respective interests, or the care and maintenance of the Common Areas. They may also designate one or the other to take custody and control of funds which they may or may not choose to provide for Common Area maintenance or some other purpose. Funds for such purposes, if any, may be deposited in a banking or savings institution, in checking or savings account(s), which shall require the signature of both Unit Owners for withdrawal or expenditure.

16. Meetings. The Committee and Association being composed of only two persons, who own Units in the same Building, there need be no regular schedule of meetings, either as a Committee, or as an Association of Owners. However, in the event that one or the other of the Unit Owners deems it necessary or advisable that some matter relating to the enjoyment of the Project, should be the subject of a meeting or discussion and some proposed joint solution or action, such Unit Owner may, by registered letter, demand that the Unit Owners meet together for such purpose at such place, date and time as may be set forth in such letter. Upon receipt of such letter, the Unit Owner receiving such notice shall meet with the other Unit Owner, and they shall in good faith attempt to resolve the matters set forth in such letter.

17. Accounting. In the event that the Unit Owners elect, under the provisions of paragraph 15 above, to provide joint funds for any reason, there shall be kept, either by one of the Unit Owners by designation of both Unit Owners, or by some other person or firm, as designated by both Unit Owners, complete books and records showing contributions and expenditures. At the close of each accounting period, which period may be designated by the Unit Owners, said books and records shall be reviewed by a person designated by the Unit Owners, and a report prepared and submitted to each Unit Owner for inspection. Additionally, such books and records shall be open to inspection by each Unit Owner at all reasonable times.

18. Capital Improvements. Any addition or capital improvement to the Project, or which benefits the Project or the Common Areas, shall be approved in writing by both Unit Owners before work begins and before any contract or agreement for such addition or improvement is entered. Any Unit Owner who enters such contract or agreement, or makes such addition or improvement without first obtaining the prior written consent of the other Unit Owner shall be deemed to have waived any and all claims for contribution or compensation therefor.

19. Operation and Maintenance; Apportionment of Common Expenses. (a) The Committee shall provide for such repair, maintenance, and replacement of those Common Areas that must be replaced on a periodic basis and shall keep the Common Areas clean, functional, attractive and generally in good condition and repair. The Committee shall have no obligation regarding maintenance or care of Units. Expenses attributable to the Common Areas and to the Project as a whole including, but not by way of limitation, the payment of all water charges, shall be apportioned among both Units in proportion to their Percentage Interest, that is to say, in equal amounts.

(b) With further reference to the repair, maintenance, or replacement of the Common Areas, in the event one of the Unit Owners (the first party) shall deem it reasonably necessary to repair, maintain, or replace any portion of the Common Areas but the other party (the second party) fails or refuses to agree thereto, the issue shall be resolved in the following manner:

(1) the first party shall send to the second party by registered or certified mail, postage prepaid, a notice of the proposed repair, maintenance or replacement of any portion of the Common Areas. Within ten days after receipt of such notice, each of the parties shall select a representative to resolve the issue or issues raised in the notice. If said two representatives cannot reach a decision thereon, then they, the two representatives, select a third representative. In the event all three representatives cannot agree to resolve the said issue or issues, the decision of any two of them shall be binding and conclusive upon both Unit Owners.

(2) All fees, costs and expenses of the

representatives selected as provided hereunder shall be paid by both Unit Owners to be shared equally.

20. Payment of Expenses. Before the end of each calendar year the Committee shall prepare a budget which sets forth an itemization of the Common Expenses which are anticipated for the coming year. Such budget shall take into account any deficit or surplus realized during the current year. The total of such expenses shall be apportioned among all the Units on the basis of their Percentage Interest. Prior to the first day of each month during the year covered by the budget each Unit Owner shall pay to the Committee as his share of the Common Expenses 1/12th of the amount so apportioned to his Unit. If such monthly payments are too large or too small as a result of unanticipated income or expenses, the Committee may effect an equitable change in the amount of said payments. The dates and manner of payment shall be determined by the Committee. The foregoing method of assessing the Common Expenses to the Unit Owners may be altered by the Committee so long as the method it adopts is consistent with good accounting practices and requires that the portion of Common Expenses borne by each Owner during a 12-month period be determined on the basis of his Percentage Interest.

21. Remedies for Nonpayment. Should either Unit Owner fail to pay when due his share of the Common Expenses, the other Unit Owner may enforce any remedy provided in the Act or otherwise available for collection of delinquent Common Expense assessments, including but not limited to, imposition of lien on Units of Owners who are in default. Regardless of the terms of any agreement to which the Committee is not a party, liability for the payment of Common Expense assessments shall be joint and several, and any remedy for the collection of such assessments may be enforced against any person holding an ownership interest in the Unit concerned, against the interest which is held by him, against either or both the seller or purchaser under an executory contract of sale covering the Unit concerned, against the interests in the Unit which are held by any such seller or purchaser, and against any combination or all of such persons and interests. Any relief obtained, whether or not through foreclosure proceedings, shall include the Committee's costs and expenses and a reasonable attorney's fee. In the event of foreclosure, after the institution of the action the Unit Owner shall pay a reasonable rental for his use of the Unit and the Committee shall, without regard to the value of the Unit, be entitled to the appointment of a receiver to collect any rentals due from the Owner or any other person.

22. Insurance. The Unit Owners/Management Committee shall secure and at all times maintain the following insurance coverages:

(a) A multi-peril policy or policies of fire and casualty insurance covering all of the Common Areas, with 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. Each such policy shall contain the standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of Mortgagees as their interests may appear. The assured shall be the Association.

(b) A comprehensive policy of public liability insurance insuring the Association; the Committee, the Manager, and the Unit Owners against any liability incident to the ownership, use, or operation of the Common Areas and public ways of the Project or of any Unit which may arise among themselves, to the public, or to any invitees, or tenants of the Project, or of the Unit Owners. Limits of liability under such insurance shall be not less than Two Hundred Thousand Dollars (\$200,000.00) per occurrence, for personal property 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 or other Unit Owners. The scope of coverage must include all other coverage in the times and amounts required by private institutional mortgage investors for similar projects in location, construction and use.

(c) The Association shall maintain fidelity coverage to protect against dishonest acts on the part of Committee Members, employees, or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association 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.

The following additional provisions shall apply with respect to insurance:

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

(b) All policies shall be written by a company holding a rating of BBB+ or better from Best's Insurance Reports.

(c) The Committee shall have the authority to adjust losses.

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

(e) Each policy of insurance obtained by the Committee shall provide: a standard mortgagee clause commonly accepted by private institutional mortgage investors in the Area in which the Project is located; a waiver of the insurer's subrogation rights with respect to the Committee, the Manager, the Unit Owners, and their respective servants, agents, and guests; that it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Unit Owner or Owners; that it cannot be cancelled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Committee or of the Manager without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners; and that a mortgagee clause endorsement providing that there shall be not less than 10 days notice of reduction or cancellation relating to any of the policies.

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

23. Damage to Project. In the event of damage of or destruction of part or all of the improvements in the Condominium Project, the following procedures shall apply:

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

(b) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the

Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and both Unit Owners shall be assessed for any deficiency on the basis of their respective Percentage Interest.

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

Any reconstruction or repair which is required to be carried out by this Paragraph 23 regarding the extent of damage to or destruction or project improvements shall be made by three MAI appraisers selected by the Management Committee. The decision of any two such appraisers shall be conclusive.

24. Certain Provisions Applicable to Declarant. Notwithstanding any other provision herein contained, for so long as Declarant continues to own any of the Units the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of Unit Owner to pay assessments, except as herein otherwise provided, as to each Unit owned by Declarant in accordance with the Declaration.

(a) Declarant specifically disclaims any intent to have made any warranty or representation in connection with the project or the Declaration except as specifically set forth herein or in any agreement for sale of a Unit, and no person shall rely upon any warranty or representation not so specifically made therein.

(b) No amendment may be made to the Declaration without the written consent of Declarant so long as Declarant retains the ownership of one Unit; provided, however, that the obligation to acquire said written consent of Declarant shall cease on a date two (2) years from the date of recording of the Declaration.

25. Amendment. Except as provided below, the vote of 100% of the Percentage Interest shall be required to amend this Declaration or the Map. Any amendment so authorized shall be

accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Paragraph for amendment has occurred. The foregoing right of amendment shall be subject to the following paramount rights:

(a) Until both Units of the Project have been sold, Declarant shall have, and is hereby vested with, the right to unilaterally amend this Declaration or the Map. Such right shall obtain without regard to the subject matter of amendment, so long as the amendment involved is consistent with law.

(b) Notwithstanding anything to the contrary contained in the Declaration, neither the insurance provisions of Paragraph 22, nor the mortgagee protection provisions of Paragraph 27 shall be amended without the written approval of all institutional first Mortgagees.

26. Consent Equivalent to Vote. In those cases in which the Act or this Declaration requires the vote of a stated percentage of the Project's Percentage Interest for the authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the necessary Percentage Interest.

27. Mortgagee Protection. Notwithstanding anything to the contrary contained in the Declaration:

(a) An adequate reserve fund for repair, maintenance and replacement of the Common Areas must be established and shall be funded by regular monthly payments rather than by special assessments.

(b) There shall be established a working capital fund for the initial months of operation of the Project equal to a minimum amount of two months' estimated Common Area charge for each Unit.

(c) Any mortgage holder which comes into possession of the Unit pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage or deed (or assignment in lieu of foreclosure) shall be exempt from any "right of first refusal", or other provisions which may exist relating to sale or lease of the Units in the Project.

(d) Any agreement for professional management of the Project, or any other contract providing for services by the Declarant must provide for termination by either party without cause or payment of a termination fee of 90 days or less written notice and a maximum contract term of three years.

(e) In the event of damage to or destruction of any Unit, which loss exceeds \$1,000.00, or any part of the

Common Areas, which loss exceeds \$10,000.00, the institutional holder of any first mortgage on a Unit shall be entitled to timely written notice to any such damage or destruction. No Unit Owner or other party shall be entitled to priority over such institutional holder with respect to the distribution to such Unit of any insurance proceeds regardless of the amount of loss.

(f) If any Unit or portion thereof or the Common Areas 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, which taking of Common Areas exceeds \$10,000.00, or which taking of Units exceeds \$1,000.00, the institutional holder of any first mortgage of a Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition. No Unit Owner or other party shall have priority over such institutional holder regardless of the amount of the condemnation award with respect to the distribution to such Unit of the proceeds of any award or settlement.

(g) 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 By-Laws 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.

(h) Each holder of a first mortgage lien on a Unit who obtains title to a Unit by virtue of remedies provided in the Mortgage, including but not limited to, foreclosure of the mortgage, or by deed of assignment in lieu of foreclosure, shall take the Unit free of unpaid charges and shall not be liable for any unpaid claims or assessments and charges against the Unit which accrue prior to the acquisition of title of such Unit by Mortgagee.

(i) Any holder of a Mortgage is entitled to written notification from the Management Committee of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligation under the Declaration which is not cured within thirty (30) days.

(j) Any lien which the Management Committee may have on any Unit in the Project for the payment of Common Expense assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any first mortgage on the Unit.

(k) Unless at least 100% of the first Mortgagees (based on one vote for each Mortgage owned) of Units have given

their prior written approval neither the Management Committee, Declarant, nor the Association shall:

(1) By act or omission, seek to abandon or terminate the Project.

(2) Change the pro-rata interest or obligation of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro-rata share of ownership of each Unit in the appurtenant Common Areas.

(3) Partition or subdivide any Unit.

(4) Make any material amendment to the Declaration or to the By-Laws of the Management Committee, including, but not limited to, any amendment which would change the percentage interests of the Unit Owners in the Common Areas, except as provided in paragraph 25 concerning certain rights reserved to Declarant.

(5) By act or omission, seek to amend, partition, subdivide, encumber, sell, abandon or transfer, the Common Areas. (The granting of easements for public utilities or for any other public purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this subparagraph).

(6) Use hazard insurance proceeds for losses to any condominium property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or the Common Areas of the Project.

(7) Terminate professional management and assume self-management of the Project.

(1) The holders of first mortgages (or trust deeds) shall have the right to examine the books and records of the Project.

(m) Whenever there is a change of ownership of a Unit, the Committee shall require that the new Unit Owner furnish the Committee with the name of the holder of any first mortgage (or trust deed) affecting such Unit. The Management Committee or Manager shall maintain a current roster of Unit Owners and of the holders of first mortgages (or trust deed) affecting Units in the Project.

28. Duty of Owner to Pay Taxes on Unit Owned. It is understood that under the Act each Unit (and its Percentage Interest in the Common Areas) in the Project is subject to

separate assessment and taxation of each taxing authority and the special district (s) for all types of taxes and assessments authorized by law, and that as a result thereof no taxes will be assessed or levied against the Project as such, except for certain personal properties thereof. Accordingly, each Unit Owner will pay and discharge any and all taxes and assessments which may be assessed against him on his Unit.

29. Covenants to Run With Land; Compliance. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of the Act, the terms of this Declaration, and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Committee on behalf of Unit Owners, or, in a proper case, by an aggrieved Unit Owner. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

30. Information Regarding Transferee of Unit. Either Unit Owner who sells, leases, or otherwise disposes of his Unit shall submit to the other Unit Owner pertinent information concerning the transferee or new occupant within one week of any transfer of title or possession.

31. Duty of Unit Owners; Remedy. Each Unit Owner shall comply strictly with the provisions of this Declaration and with the administrative rules and regulations drafted pursuant thereto as the same may be lawfully amended from time to time and with the decisions adopted pursuant to this Declaration and the administrative rules and regulations, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee or manager on behalf of the Unit Owners, or in a proper case, by an aggrieved Unit Owner.

32. Indemnification. Any Unit Owner who by designation acts on behalf of the Unit Owners shall be indemnified and held harmless by the Unit Owners against all costs, expenses, and fees, reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his so acting, provided that his actions were taken in accordance and in compliance with the provisions of the Declaration, as amended, regarding notice and consent to and by the other Unit Owner.

33. Invalidity. The invalidity of any provisions of

this Declaration, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

34. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

35. Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

36. Topical Headings. The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define, limit, extend, or otherwise affect the content, meaning or intent of this Declaration or any paragraph or provision hereof.

37. Conflicts. This Declaration is set forth to comply with the requirements of the Act. In the event of any conflict between this Declaration and the provisions of the Act, the provisions of the latter shall control.

38. Effective Date. This Declaration shall take effect upon recording in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED on the day and year first above written.

Steven D. Airmet
STEVEN D. AIRMET

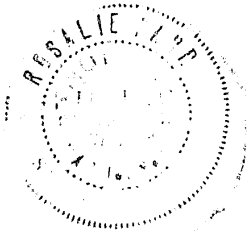
Cherie L. Airmet
CHERIE L. AIRMET

John D. Airmet
JOHN D. AIRMET

Kathy R. Airmet
KATHY R. AIRMET

STATE OF UTAH)
 : ss.
County of Salt Lake)

On this 13th day of August, 1979, personally appeared before me STEVEN D. AIRMET and CHERIE L. AIRMET, his wife, and JOHN D. AIRMET and KATHY R. AIRMET, his wife, the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.



Rosalie Paul
NOTARY PUBLIC
Residing at Salt Lake City, Utah

My Commission Expires:

3-18-80

EXHIBIT "A"

HARVARD DRIVE CONDOMINIUMS
A Utah Condominium Project

| <u>Unit No.</u> | <u>Size</u> | <u>Percentage Interest</u> |
|---|-------------|----------------------------|
| 393 East Harvard Drive Midvale, Utah | 996 | 50% |
| 395 East Harvard Drive Midvale, Utah | 996 | 50% |
| | | <hr/> |
| | | 100% |