

DECLARATION OF CONDOMINIUM  
OF THE  
MANDOLIN CONDOMINIUM  
3737224 A UTAH CONDOMINIUM PROJECT

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This Declaration of Condominium, hereinafter referred to as the "Declaration", is made and executed this 22 day of NOVEMBER, 1982, by Don W. McBride and Yvonne Z. McBride, hereinafter referred to as the "Declarant".

RECITALS

A. Description of Land. The Declarant is the contract purchaser of the following described parcel of land, hereinafter referred to as the "Land", which is located in the County of Salt Lake, State of Utah: Commencing at the Northwest corner of Lot 3, Block 8, Plat "D", Salt Lake City Survey, and running thence South 61.25 feet; thence East 83 feet; thence North 61.25 feet; thence West 83 feet to the point of beginning.

B. Building and improvements. The Land contains certain buildings and other improvements as shown on the Map referred to below.

C. Record of Survey Map. The Declarant intends to execute, acknowledge and record in the office of the County Recorder of Salt Lake County, State of Utah, a certain instrument pertaining to the Project and entitled "Record of Survey Map for The Mandolin Condominium, a Utah Condominium Project".

D. Intent and purpose. The Declarant intends by recording this Declaration and the Map to submit the land, the buildings, and all other improvements situated in or upon the land to the provisions of the Utah Condominium Ownership Act. Utah Code Ann., Section 57-8-1, et. seq. (hereinafter referred to as the "Condominium Act") as a fee simple Condominium project and to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of all Condominiums within said project and the Owners thereof.

NOW WHEREFORE, the Declarant does hereby make the following declaration:

ARTICLE I

DEFINITIONS

1.01 Defined Terms. Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.

1.02 "Association" shall mean The Mandolin Condominium Owners Association, a Utah nonprofit corporation, organized to be the Association referred to herein.

1.03 "Board of Trustees" shall mean the governing board or management committee of the Association, appointed or elected in accordance with the Declaration and in accordance with the Articles of Incorporation and Bylaws of The Mandolin Condominium Owners association, attached hereto and incorporated by this reference.

1.04 "Building" shall mean the one building in the Project containing the Units as shown on the map.

1.05 "Common Areas" shall mean all physical portions of the project, except all Units.

1.06 "Common Expense Fund" shall mean the fund created or to be created pursuant to the provisions of Article IX of this Declaration and into which all monies of the Association shall be deposited.

1.07 "Common Facilities" shall mean all furniture, furnishings, equipment, facilities and other property (real, personal, or mixed) and interests therein at any time leased, acquired, owned, or held by the Association for the use and benefit of the Owners and all other property hereafter purchased in accordance with this Declaration with monies from the Common Expense Fund. Common Facilities shall be deemed to be part of the Common Areas, except to the extent otherwise expressly provided in this declaration.

1.08 "Condominium" shall mean a Unit and the undivided interest (expressed as a percentage of the entire ownership interest) in Common Areas appurtenant to such Unit, as set forth in Exhibit A attached hereto and by this reference made a part hereof.

1.09 "First Mortgagee" shall mean a mortgagee which is a bank, savings and loan association, mortgage company or other entity which has a first mortgage lien on any Condominium in the Project.

1.10 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation.

1.11 "FNMA" shall mean the Federal National Mortgage Association.

1.12 "Limited Common Areas" shall mean any Common Areas designated as reserved for use of a certain Unit or Units to the exclusion of the other Units in the Project. Structural separations between Units or the space which would be occupied by such structural separations may become Limited Common Areas for the exclusive use of the Owner or Owners of the Units on either side thereof as provided in Section 4.03 hereof. Any balconies, porches, parking stalls, or storage facilities that are identified on the Map with the same number or other designation by which a Unit is identified shall be Limited Common Areas for the exclusive use of the Owner of the Unit bearing the same number or designation.

1.13 "Manager" shall mean the person, firm, or company, if any, designated from time to time by the Association to manage the affairs of the Association and the Project.

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

1.15 "Mortgagee" shall mean (i) any persons or entities named as the beneficiary under any mortgage or deed of trust by which the interest of any Owner is encumbered, (ii) any successor to the interest of such person or entity, or (iii) any insurer or guarantor of such person or entity under such mortgage or deed or trust.

1.16 "Mortgage Servicer" shall mean a Mortgagee who services any mortgage or deed of trust on any individual Condominium in the Project on behalf of FHLMC and/or FNMA.

1.17 "Owner" shall mean the person or persons, including the Declarants, owning in fee simple a Condominium in the Project, as such ownership is shown by the records of the County Recorder of Salt Lake County, State of Utah. The term "Owner" shall not refer to any Mortgagee or to any person or persons purchasing a Condominium under contract until such contract is fully performed and legal title conveyed of record.

1.18 "Project" shall mean the Land, the building, and the improvements submitted by this Declarant according to the provisions of the Condominium Act.

1.19 "Unit" shall mean an individual air space unit, consisting of enclosed rooms occupying part of a building and bounded by the unfinished interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of the air space, as said boundaries are shown on the Map, together with all fixtures and improvements therein contained. Paint and other wall, ceiling, or floor coverings on interior surfaces shall be deemed to be part of the Unit. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or for the use and enjoyment of another Unit: Bearing walls, floors, ceilings and roofs (except the interior surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires, and other utility installations, except the outlets thereof when located within the Unit. The interior surfaces of a window or door means the points at which such surfaces are located when the window or door is closed.

## ARTICLE II

### SUBMISSIONS AND DIVISION OF PROJECT

2.01 Submission to Condominium Act. The Declarant hereby submits the Land, the Building, and all other improvements now or hereafter made in or upon the Land to the provisions of the Condominium Act. All of said property is and shall be held, conveyed hypothecated, encumbered, leased, rented, used, and improved as a fee simple Condominium Project to be known as The Mandolin Condominium, a Utah Condominium Project. All of said property is and shall be subject to the covenants, conditions, restrictions, uses, limitations, and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project and in

furtherance of a plan for improvement of said property and division thereof into Condominiums; further, each and all of the provisions hereof shall be deemed to run with the Land and shall be a burden and a benefit on the Land and shall be binding upon the Declarant, its successors and assigns, and to any person acquiring, leasing, or owning an interest in the real property and improvements comprising the project, and to their respective personal representatives, heirs, successors, and assigns.

**2.02 Division into Condominiums.** The Project is hereby divided into Condominiums, each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Areas as set forth in the Record of Survey Map attached hereto.

### ARTICLE III

#### BUILDINGS AND IMPROVEMENTS

**3.01 Buildings and Improvements.** The Building and other improvements constructed on the Land are described on the Map. The following information regarding the Building is also contained on the Map: (i) the number of floors and basements in the Building; and (ii) the number of Units on each floor of the Building.

**3.02 Description of Units.** The Map contains the Unit number, location, and dimensions of each Unit in the Project and all other information necessary to identify each such Unit.

**3.03 Description of Common Areas.** The Map contains a description of the Common Areas of the Project.

**3.04 Description of Limited Common Areas.** The map contains a description of the Limited Common Areas of the Project. The Map also designates the Unit or Units to which each of the Limited Common Areas is reserved.

**3.06 Principal Materials Used in Construction.** The Building is a three story brick structure with a basement and consists of 5 dwelling units. The building rests on a concrete and rock foundation and is covered with an asphalt shingle roof. The interior walls are constructed of two-by-fours covered with rock lath and plaster. The floors are covered with carpeting and vinyl floor coverings or are finished hardwood.

### ARTICLE IV

#### NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

**4.01 Interior of Units.** Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet, or otherwise decorate the interior surfaces of the walls, ceilings, floors, and doors forming the boundaries of his Unit and the surfaces of all walls, ceilings, floors, and doors within such boundaries. Each Owner shall also have the right to construct partition walls, fixtures, and improvements within the boundaries of his Unit; provided, however, that such partition walls, fixtures and improvements (i) shall comply with all applicable laws, ordinances, and building codes. (ii) shall not interfere with facilities necessary for the support, use, or enjoyment of any other part of the Project, (iii) shall

not impair the structural soundness or integrity of the Building in which it is located, and (iv) shall not encroach upon the Common Areas or any part thereof, unless the Board of Trustees shall consent in writing to such encroachment.

**4.02 Maintenance of Units.** Each owner shall keep the interior of his Unit, including without limitation, interior walls, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. In the event that any such Unit shall develop an unsanitary, unclean or unsafe condition or fall into a state of disrepair, and in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Board of Trustees, the Board of Trustees in behalf of the Association shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair.

**4.03 Title.** Title to a Condominium within the Project may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to any other real property may be held or owned in the State or Utah, including without limitation, joint tenancy or tenancy in common.

**4.04 Ownership of Common Areas.** The undivided interest in the Common Areas appurtenant to each Unit in the Project shall be as set forth in Exhibit A attached hereto. The percentages appurtenant to each Unit as shown in said exhibit shall have permanent character and shall not be altered (i) except with the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded, or (ii) except as otherwise permitted by the Condominium Act. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Areas in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules and regulations promulgated by the Association. Except as otherwise provided in this Declaration, any Owner shall have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner.

**4.06 Inseparability.** Title to no part of a Condominium within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Areas appurtenant to each Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete condominium. Every device, encumbrance, conveyance, or other disposition of a Condominium, or any part thereof, shall be construed to be a device, encumbrance, conveyance, or other disposition, respectively, of the entire Condominium, together with all appurtenant rights created by law or by this Declaration, including appurtenant Membership in the Association as hereinafter set forth.

**4.07 No Partition.** The Common Areas shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

**4.08 Separate Mortgages by Owners.** Each Owner shall have the right

separately to mortgage or otherwise encumber his Condominium. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the undivided interest therein appurtenant to his Condominium. Any mortgage or other encumbrance or any Condominium within the project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

**4.09 Separate Taxation.** Each Condominium within the Project, including each Unit and appurtenant undivided interest in the Common Areas, shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments and other charges of the State of Utah or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in proportion to the undivided interests in Common Areas appurtenant to such units. All such taxes, assessments, and other charges on each respective Condominium shall be separately levied against the Owner thereof. No forfeiture or sale of my Condominium for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominium.

**4.10 Mechanics Liens.** No Labor performed or material furnished for use in connection with any Unit with the consent or at the request of an Owner or his agent or subcontractor shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Areas, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials furnished.

**4.11 Description of Condominium.** Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium within the Project may describe a Unit by its identifying number or symbol as indicated in this Declaration or as shown on the map. Such description will be construed to describe the Unit, together with its appurtenant undivided interest in the Common Areas, and to incorporate all of the rights incident to ownership of a Condominium within the Project and all of the limitations on such ownership.

## ARTICLE V

### EASEMENTS

**5.01 Easements for Encroachments.** If any part of the Common Areas encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on 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

or any improvements constructed or to be constructed within the Project, 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, in accordance with the provisions of this Declaration.

5.02 Easements for Maintenance, Cleaning and Repair. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any Common Areas or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas or to any Unit. In addition, agents of the Association may enter any Unit when necessary in connection with any cleaning, maintenance repair, replacement, landscaping, construction, or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

5.03 Right to Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas as necessary for access to such Owner's Unit and to any Limited Common Areas appurtenant to such Unit, and shall have the right to horizontal, vertical, and lateral support of such Unit, and such rights shall be appurtenant to and pass with title to each Condominium.

5.04 Association's Right to Use Common Areas. The Association shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including without limitation the right to construct and maintain in the Common Areas facilities for use by Owners generally or by the Association and its agents exclusively.

5.05 Easements Deemed Created. All conveyances of Condominiums within the project hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

## ARTICLE VI

### RESTRICTIONS ON USE

6.01 Primary Residential Use. All Units within the Project shall be used exclusively for single family dwelling and for no other purpose. There shall be no condominiumizing, time sharing, leasing or other similar ownership of any unit whereby a unit would be occupied for a period less than thirty days.

6.02 Noxious or Offensive Activity. No noxious or offensive activity shall be carried on, in or upon any part of the project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or which may cause disturbance or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

6.03 Restrictions on Signs. No signs, flags, or advertising devices or any nature, including without limitation, commercial, political, informational, or directional signs or devices, shall be erected or maintained on any part of the Project, without the prior written approval of the Board of Trustees, except as may be necessary temporarily to caution or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Association. Notwithstanding any provision of this paragraph, any sign or similar device and any separate structure or facility for assisting declarant's sales efforts must comply with applicable zoning ordinances.

6.04 Pets and Animals. No animals, livestock poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas except that household pets may be kept or housed in Units when expressly permitted in writing by the Board of Trustees. Each Owner who desires to keep a pet in his Unit shall apply in writing to the Board of Trustees for permission to keep such pet. In no event shall any pet be permitted in any portions of the Common Areas unless carried or on a leash. Each Owner who keeps a pet in a Unit shall indemnify and hold all other Owners harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such pet in the Project.

6.05 No Alterations. No Owner shall, without the prior written consent of the Board of Trustees in each specific instance, make or cause to be made any alteration, addition, removal, or improvement in or to the Common Areas or any part thereof, or do any act that would impair the structural soundness or integrity of the Building or other improvements, or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Project.

6.06 No Obstructions. No Owner shall obstruct the Common Areas or any part thereof. No Owner shall store or cause to be stored in the Common Areas any property whatsoever, unless the Board of Trustees shall consent thereto in writing.

6.07 No Overloading. No Owner shall bring anything into his Unit or permit anything to be done in his Unit that will cause damage to the Building. No Owner shall overload the floor of his Unit. No Owner shall permit the use or operation in his Unit of any equipment, machinery, or other apparatus that will in any manner injure, vibrate, or shake the Building or portions thereof.

6.08 Prohibition of Damage and Certain Activities. Except with the prior written consent of the Board of Trustees, nothing shall be done or kept in any Unit, in the Common Areas, or in any other part of the project that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Project or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify

and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste.

**6.09 No Commercial Business.** No commercial business shall be permitted within the Project.

**6.10 No Lease for Transient or Hotel Purposes.** With the exception of a lender in possession of Condominium following a default in a First Mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease his Condominium for transient or hotel purposes. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles, and the 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.

**6.11 Rules and Regulations.** Each Owner shall comply strictly with all rules and regulations adopted by the Association for the governance of the Units, the Common Areas, and the Project, as such rules and regulations may be modified, amended, and construed by the Association in the sole discretion of its Board of Trustees.

## ARTICLE VII

### THE ASSOCIATION

**7.01 Membership.** Each Owner shall be entitled and required to be a member of the Association; Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Condominium is held by more than one person, the Membership appurtenant to that Condominium shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Condominium is held. An Owner shall be entitled to one Membership for each Condominium owned by him. Each Membership shall be appurtenant to the Condominium to which it relates and shall be transferred automatically by conveyance of that Condominium. Ownership of a Condominium within the Project cannot be separated from Membership in the Association.

**7.02 Board of Trustees.** Until such time as the responsibility for electing the Trustees of the Association is turned over to the Owners in accordance with Utah Law, the Declarant shall have the exclusive right to appoint and to remove all such trustees. This exclusive right shall terminate after the first of the following to occur:

- (i) three years from the date on which this Declaration is recorded, or
- (ii) after four Units have been conveyed.

**7.03 Votes.** The number of votes appurtenant to each respective Condominium shall be one (1) which shall not be altered except by the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration.

## ARTICLE VIII

### CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION AND BOARD OF TRUSTEES

**8.01 The Common Areas.** The Board of Trustees, acting on behalf of the Association and, subject to the rights and duties of the Owners as set for in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including the Common Facilities), and shall keep the same in good, clean, attractive, safe, and sanitary condition, order, and repair; provided, however, that unless otherwise stated herein, each Owner shall keep the Limited Common Areas designated for use in connection with his Unit, if any, in a clean, sanitary, and attractive condition. The Association shall be responsible for the maintenance and repair of the exterior of the Building, other improvements and grounds, including without limitation painting thereof, repair and replacement of exterior trim, roofs and fences, and maintenance of landscaping, walkways, driveways, and parking areas. The Board of Trustees shall also be responsible for maintenance, repair, and replacement of Common Areas within the Buildings, including, without limitation, utility line, common facilities and all improvements and other items located within or used in connection with the Common Areas. All goods and services procured by the Board of Trustees in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.

**8.02 Miscellaneous Goods and Services.** The Board of Trustees may, in behalf of the Association, obtain and pay of the services of such personnel as the Board of Trustees shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Board of Trustees may, in behalf of the Association, obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Board of Trustees may, in behalf of the Association, acquire and pay for out of the Common Expense Fund, water, sewer, garbage collection, electrical, gas, and other necessary or desirable utility services for the Common Areas (and for the Units to the extent not separately metered or billed), insurance, bonds, and other goods and services common to the Units.

**8.03 Limitation on Contract.** Any contract for professional management, or any contract providing for the services of the Owner, Developed, Sponsor or Builder of the Condominiums shall have a term of no more than three years and shall be terminable by the Association at any time upon 90 days written notice.

**8.04 Real and Personal Property.** The Board of Trustees may acquire and hold on behalf of the Association real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise; provided that any acquisition or disposition of any real, personal or mixed property by the Board of Trustees wherein the value of such property exceeds \$5,000.00 must be approved by a vote of at least 51% of the total votes of the Association at a meeting duly called for that purpose. All such property, including

Common Facilities, shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such fund.

**8.05 Rules and Regulations.** The Board of Trustees may make reasonable rules and regulations governing the use of the Units, the Common Areas, the Limited Common Areas, and all parts of the Project, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The Board of Trustees in behalf of the Association may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of such Owner arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner.

**8.06 Implied Rights.** The Association may exercise any right, power, or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## ARTICLE IX

### ASSESSMENTS

**9.01 Agreement to Pay Assessments.** The Declarant, for each Condominium owned by it within the Project, and for and as the Owner of the Project and every part thereof, hereby covenants and each Owner of any Condominium by the acceptance of instruments of conveyance and transfer, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time as provided in this Article IX.

**9.02 Annual Assessment.** Annual Assessments shall be computed and assessed against all Condominiums in the Project as follows:

(a) **Common Expense.** Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas and/or furnishing utility services and other common items to the Units. Such estimated expenses may include, without limitation, the following: Expenses of management; real property taxes and special assessments unless the condominiums are separately assessed; premiums for all insurance that the Association is required or permitted to maintain; repairs and maintenance; wages for Association employees; utility charges including charges for utility services to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, and/or sinking fund; creation of an adequate reserve fund for maintenance, repairs, and replacement of those Common Areas and Facilities that must be replaced on a periodic basis, and such reserve shall be funded by monthly payments rather than extraordinary special assessments; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under this

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Declaration. All funds received from assessments under this Section shall be part of the Common Expense Fund.

(b) Apportionment. Expenses attributable to the Common Expense or to the Project as a whole shall be apportioned among and assessed to all Owners in proportion to their respective undivided interests in Common Areas. The Declarant shall be liable for the amount of any assessments against Condominiums owned by it.

(c) Annual Budget. The Board of Trustees shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts, and any deficit or surplus from prior operating periods. The budget shall serve as the supporting document for the annual Assessment and as the major guideline under which the Project shall be operated. Such budget shall be unnecessary for assessments relative to any operating period ending before January 1, 1983.

(d) Notice and Payment. Except with respect to the first fiscal year, the Board of Trustees shall notify each Owner as to the amount of the Annual Assessment against his Condominium on or before December 15 each year. Each Annual Assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each month; provided, however, the Annual Assessment for the first fiscal year shall be based upon such portion of the first year and shall be payable in such installments and at such times as the Association, in the sole discretion of its Board of Trustees, may determine. All unpaid installments shall bear interest at the rate of 18% per annum until paid. In addition, in the event that any installment of any Annual Assessment is not paid within ten days of the date such installment is due, it shall be subject to a penalty for late payment of one dollar per day from the date each such installment became due until paid. The failure of the Board of Trustees to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date the payment shall become due in such case shall be deferred to a date fifteen days after notice of such assessment shall have been given.

(e) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, the Board of Trustees may on behalf of the Association levy additional assessments in accordance with the procedure set forth in Section 9.03 below, except that the vote therein specified shall be unnecessary.

9.03 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Board of Trustees may, on behalf of the Association, levy, at any time and from time to time, upon affirmative vote of at least fifty-one percent (51%) of the total votes of the Association, Special Assessments, payable over such periods as the Board of Trustees may determine, for the purpose of defraying, in whole or in part, the cost of any construction, unexpected repair or replacement of the Project or any part thereof, or for other expenses incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be

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construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of each Special Assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of 18% per annum from the date such portions become due until paid. In addition, in the event that any Special Assessment becomes due, it shall be subject to a penalty for late payment of one dollar per day from the date each such Special Assessment became due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

**9.04 Lien for Assessments.** All sums assessed to Owners of any Condominium within the Project pursuant to the provisions of this Article IX, together with penalties and interest as provided herein, shall be secured by a lien on such Condominium in favor of the Association. To evidence a lien for sums assessed pursuant to this Article the Board of Trustees may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Condominium, and a description of the Condominium. Such notice may be recorded in the office of the County Recorder of Salt Lake County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure 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 other manner permitted by law, in the same manner in which mortgages on real property may be foreclosed under the laws of the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding including reasonable attorney's fees and such costs shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Trustees shall have the right and power in behalf of the Association to bid in at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Condominium in the name of the Association.

**9.05 Personal Obligation of Owner.** The amount of any Annual or Special assessment against any Condominium shall be the personal obligation of the Owner of such Condominium to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Condominium or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the Owner shall pay the costs and expenses incurred by the Association including reasonable attorneys' fees.

**9.06 Statement of Account.** Upon payment of a reasonable fee not to exceed \$10.00 and upon written request of any Owner, Mortgagee, or prospective purchaser of a Condominium, the Board of Trustees shall issue a

written statement setting forth the following: The amount of the unpaid assessments, if any, with respect to such Condominium; the amount of the current annual assessment and the date or dates upon which installments thereof become due; credit for advanced payments or prepaid items, including without limitation the Owners' share of prepaid insurance premiums. Such statements shall be conclusive upon the Association in favor of persons who rely thereon in good faith. In the event that the Board of Trustees fails upon written request to issue such a written statement, any unpaid assessments with respect to such Condominium which became due prior to receipt of such request by the Board of Trustees shall become subordinate to a lien held by the person or entity requesting such statement.

**9.07 Personal Liability of Purchaser.** Subject to the provisions of Section 9.06, a purchaser of a Condominium shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Condominium up to the time of the grant or conveyance; provided, however, that the provisions of this section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

**9.08 Amendment of Article.** This Article IX shall not be amended unless the Owners of all Condominiums in the Project unanimously consent to such amendment in a duly recorded instrument.

## ARTICLE X

### INSURANCE

**10.01 Types of Insurance.** The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah:

(a) **Hazard Insurance.** The Association shall obtain, maintain and pay for as a Common Expense a "master" or "blanket" multi-peril policy of property insurance covering the entire Project, including, without limitation, fixtures and building service equipment to the extent that they are part of the Common Areas, common personal property and supplies belonging to the Association, and any fixtures, equipment or other property within the units which are encumbered by a Mortgage purchased by FNMA or FHLBC. Such master policy of hazard insurance shall provide 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 (including all perils normally covered by the standard "all risk" endorsement, where such is available) on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value of the Project exclusive of the Land, foundations and other items normally excluded from coverage (based upon current replacement cost). Such master policy of hazard insurance shall include the following endorsements, if available and required by FNMA or FHLBC: an Agreed Amount and Inflation Guard Endorsement; and Construction Code Endorsements (e.g., a Demolition Cost Endorsement, a contingent liability operation of Building Laws Endorsement and an Increased Cost of

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Construction Endorsement) if the Project should hereafter become subject to a construction code provision which would require the Association to incur a significant expense in order to effect code required changes in the undamaged portions of the Project in the event of partial destruction of the Project.

(b) Public Liability Insurance. The association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Areas and Common Facilities, commercial spaces and public ways (if any) in the project, whether or not they are leased to a third party. Such insurance policy shall contain a severability of Interest Endorsement or equivalent coverage which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner. The scope of coverage and the liability limits under such insurance policy shall be in the kinds and amounts commonly required by private institutional mortgage investors for projects similar to the Project in construction, location and use. In no event shall the scope of coverage fail to include protection against the legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas, legal liability arising out of lawsuits related to employment contracts entered into by the Association, and, if applicable, contractual and all-written contract insurance, employers liability insurance and comprehensive automobile liability insurance. In no event shall the liability limits of such insurance policy be less than \$1,000,000 per occurrence for personal injury or death, and/or property damage.

(c) Workman's Compensation Insurance. The Association shall obtain and maintain workman's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in forms required by law.

(d) Fidelity Insurance or Bond. The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Board of Trustees, employees, volunteers and all others who are responsible for the handling of funds belonging to or administered by the Association. Such fidelity bonds or insurance shall meet the following requirements:

(i) all shall name the Association as an obligee and the named insured;

(ii) all shall be written in an amount equal to at least one and one-half times the estimated annual operating expenses and reserves of the Association, unless a greater amount is required by FNMA;

(iii) all shall contain waivers by the insurers of the bond or policy of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, or shall contain an appropriate endorsement to the policy to cover any persons who serve without compensation;

(iv) all shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premiums) without at least ten days prior written notice to any Insurance Trustee and

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without at least ten days prior written notice to any Insurance Trustee and each Mortgage Servicer on behalf of FNMA or FHLMC.

(v) where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, all shall provide coverage for the officers, employees and agents of the Manager who handles the funds of the Association; and

(vi) the premiums shall all be paid by the Association as a common expense, except for premiums on fidelity bonds or insurance maintained by a management agent for its officers employees and agents.

(e) Flood Insurance. The Project is not located in an area identified by the Secretary of Housing and Urban Development or the Federal Emergency Management Agency as an area having special flood hazards for which flood insurance is not available because the community in which the project is located is ineligible for participation in the National Flood Insurance Program.

(f) Government Requirements. Notwithstanding any other provisions contained herein to the contrary, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium development projects established by FNMA and Government National Mortgage Association, so long as either is a mortgagee or Owner of a Condominium within the Project, except to the extent such coverage is not available or has been waived in writing by FNMA or Government National Mortgage Association.

10.02 Property Insurance Policy Requirements. The hazard, public liability and flood insurance policies obtained by the Association pursuant to Section 10.01 (a), (b), and (c) shall be subject to the following:

(a) The named insured under any such policies shall be set forth therein substantially as follows: The Mandolin Condominium Owners Association for the use and benefit of the individual Owners (designated by name if required by law). The policies may also be issued in the name of the authorized representative of the Association, including any insurance trustee with whom the Association, including any Insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Owners. Each Owner and each such Owner's Mortgagee shall be beneficiaries of the policy according to the undivided interest in the Common Areas appurtenant to each Owner's respective Condominium in the percentage of common ownership. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(b) Insurance coverage obtained and maintained pursuant to the requirement of Section 10.01 shall not be brought into contribution with insurance purchased by the Owners or their Mortgagees.

(c) Insurance coverage must not be prejudiced by (i) an act or neglect of the Owners when such act or neglect is not within the control of the Association or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control.

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(d) Coverage may not be cancelled or substantially reduced or modified (including cancellation for nonpayment of premium) without at least ten days prior written notice to any and all insured parties, including any Mortgage Servicer on behalf of FNMA or FHLMC, and any First Mortgagee.

(e) All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Owner of any condominium unit and/or their respective agents, employees or tenants and of any defenses based on co-insurance or on invalidity arising from the acts of the Insured.

(f) Each hazard insurance policy shall be written by a hazard insurance carrier which has a current financial rating by Best's Insurance Reports of Class B/VI or better.

(g) Policies shall be deemed unacceptable where (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, an Owner FNMA, FHLMC or any designee of FNMA, FHLMC; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent an Owner from collecting insurance proceeds;

(h) All policies shall contain or have attached the standard mortgagee clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area in which the Project is located and which appropriately names FHLMC, FNMA or FNMA's Mortgage Servicer in the policy if such corporations are holders of one or more first mortgages or Units within the Project. If Mortgage Servicer is named as Mortgagee in the mortgage clause, Mortgage Servicer's name shall be followed by the phrase "its successors and assigns." The mortgage clause in each policy shall provide that the insurance carrier shall notify the association, the Mortgage Servicer at the Mortgage Servicer's address, and any First Mortgagee at least ten days in advance of the effective date of any reduction in or substantial modification or cancellation of the policy. The standard mortgagee clause in each policy must be endorsed to provide that any proceeds shall be paid to The Mandolin Condominium Owners Association for the use and benefit of Mortgagors as their interests may appear, or must be otherwise endorsed to fully protect FNMA's or FHLMC's interest.

(i) Policy contracts shall provide that no assessment may be made against FNMA, FHLMC or their designees, and that any assessment made against others may not become a lien on the Mortgaged Premises superior to the first mortgage.

(j) Policies shall be in compliance with and consistent with applicable local and state insurance law. Each insurer and any reinsurer must be specifically licensed or authorized by law to transact business within the State of Utah.

10.03 Custody of Insurance Policies. The Board of Trustees shall provide the Mortgage Servicer with a copy of the "master" or "blanket"

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policy of Multi-peril property insurance, including copies of endorsements to such policy as required by FHLMC or FNMA, and where applicable, a copy of any flood insurance policy, a copy of the comprehensive policy of public liability insurance, an appropriate certificate or memorandum of insurance as to each Condominium in the Project which is the subject of a mortgage being serviced for FHLMC or FNMA and all other insurance drafts policies, notices invoices and other similar documents.

10.04 Notice of Loss. The Association shall notify the Mortgage Servicer at Servicer's address whenever (a) damage to a Unit covered by a Mortgage owned by FNMA or FHLMC exceeds \$1000, and/or (B) damage to common areas and related facilities exceeds \$10,000.

10.05 Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration.

10.06 Owner's Own Insurance. Each Owner, at his own expense, may procure and maintain at all times fire and extended coverage insurance covering personal property of the Owner and additional fixtures and improvements added by such Owner against loss by fire and other casualties. All policies providing such casualty insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article. If obtainable under industry practice without an unreasonable additional charge, all such insurance shall contain a waiver of the insurance company's right of subrogation against the Association, the Declarant, the Manager, other Owners, and their respective servants, agents and guests.

10.07 Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or by such other qualified appraisers as the Association may select.

10.08 Insurance Trustee, Power of Attorney. Each Owner appoints the Association, or the Insurance Trustee, or substitute Insurance trustee as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purposes. The Association or any Insurance Trustee must hold or otherwise dispose of any proceeds of insurance in trust for the owners and their first mortgage holders, as their interest may appear.

## ARTICLE XI

### DAMAGE OR DESTRUCTION

11.01 Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney-in-

fact in their name, place, and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted.

11.02 Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same vertical and orizontal boundaries as before.

11.03 Procedures. In the event all or any part of the Project is damaged or destroyed and subject to the provisions of Article XIV below, the Association shall proceed as follows:

(a) Notice to First Mortgagees. The Association shall give timely written notice to any institutional holder of any first mortgage on a Unit in the event of substantial damage to or destruction of any Unit or any part of the Common Areas.

(b) Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct that part of the Project damaged or destroyed.

(c) Sufficient Insurance. If the proceeds of the insurance maintained by the Association exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

(d) Insufficient Insurance--less than 75% Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five (75%) percent of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a special assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such special assessment shall be allocated and collected as provided in Section 9.03 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected are insufficient to pay all actual costs of repair and reconstruction.

(e) Insufficient Insurance--75% or More Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five (75%) percent or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed as provided in Section 11.03 (c) hereof only if fewer than

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51% of all the First Mortgagees approve the termination of the Project, or if within one hundred days following the damage or destruction, the Owners shall elect by a vote of at least 75% of the total votes of the Association to carry out such repair and reconstruction. If, however, the Owners shall not, within one hundred days after such damage or destruction, elect to carry out such repair and reconstruction, the Association shall record in the office of the Salt Lake County Recorder, Salt Lake County, State of Utah a notice setting forth such fact. Upon the recording of such notice the following shall occur:

(i) The Project shall be deemed to be owned in common by the Owners;

(ii) The undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of the undivided interest o previously owned by such Owner in the Common Areas;

(iii) Any liens affecting any of the Condominiums shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the project; and

(iv) The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the project, if any, shall be considered as one fund and shall be divided among all Owners in a percentage equal to the percentage of undivided interest owned by each respective Owner in the Common Areas, as set forth in Exhibit A, after first paying out of the respective share of each Owner all liens on the undivided interest in the Project owned by such Owner.

(f) In no event shall an Owner of a Unit or any other party have priority over the institutional holder of any first mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

**11.04 Repair of Reconstruction.** If the damage or destruction is to be repaired and reconstructed as provided above, the Association shall, diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications, unless other action is first approved in writing by at least fifty-one (51%) percent of all First Mortgagees.

**11.05 Disbursement of Funds for Repair and Reconstruction.** If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made shall constitute

a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the cost of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to their respective percentages of Ownership of the Common Areas.

11.06 Amendment of Article. This Article XI shall not be amended unless the Owners of all Condominiums in the Project unanimously consent in a duly executed and recorded document.

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ARTICLE XII  
CONDEMNATION

12.01 Condemnation. If at any time, all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat thereof, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof is made the subject of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Trustees shall give prompt written notice of any such proceeding or proposed acquisition to each Owner and to any First Mortgagee.

12.02 Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be distributed by the Board of Trustees, on behalf of the Association as herein provided.

12.03 Complete Taking. In the event the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall terminate and the condemnation award shall be allocated among and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Such distribution shall be made by check payable jointly to the Owner and his respective Mortgagees as appropriate.

12.04 Partial Taking. In the event less than the entire Project is taken, the following shall occur:

(a) Allocation of Award. As soon as practicable, the Board of Trustees shall, on behalf of the Association, reasonably and in good faith, apportion the condemnation award between compensation, severance damages, or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners, including Owners whose entire Units have been taken, in proportion to their respective undivided interests in the common areas;

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Condominiums that have not been taken, in proportion to their respective undivided interests in the Common Areas;

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit;

(iv) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances.

(v) If apportionment or allocation is already established by

negotiation, judicial decree, statute, or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant;

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees as appropriate; and

(vii) No provision of this Article XII or any other provision in this Declaration, the Articles, or the Bylaws shall entitle the Owner of a Unit or other party to priority over any First Mortgagee holding any first mortgage on such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement, or proceeds from any eminent domain or condemnation proceeding.

(b) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall not terminate, but shall continue. In such event, the Project shall be reorganized as follows:

(i) If any partial taking results in the taking of any entire Unit, then the Owner thereof shall cease to be a Member of the Association and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Areas.

(ii) If any partial taking results in the taking of a portion of a Unit and if no determination is made by the Board of Trustees that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then the fair market value of such remaining portion of the Unit shall be determined by the Board of Trustees and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reduced in proportion to the diminution in fair market value of such Unit resulting from the taking. The voting rights and undivided interest in the Common Areas so divested from such Unit shall be reallocated to, and shall appertain to, such Unit and the other Units in the Project in proportion to their respective undivided interests in the Common Areas; provided, however, that such Unit shall participate in such reallocation on the basis of its undivided interest reduced in accordance with the preceding sentence.

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination by the Board of Trustees that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the entire undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Areas, and the remaining portion of such Unit shall thenceforth be part of the Common Areas.

(iv) The Board of Trustees shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section; provided, however, that if any such determination shall have been

or such action taken by judicial decree, the Board of Trustees shall defer thereto and proceed in accordance therewith.

(c) Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by its provisions specified in Article XI hereof for cases of Damage or Destruction; provided, however, that the provisions of said Article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

## ARTICLE XIII

### OBsolescence

13.01 Adoption of Plan. Subject to the provisions of Section XIV hereof, Owners holding seventy-five (75%) percent or more of the total votes of the Association may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction of the Project. Written notice of adoption of such a plan shall be given to all Owners and First Mortgagees.

13.02 Payment for Renewal and Reconstructions. The Association shall levy a Special Assessment sufficient to provide funds to pay the estimated expenses of renewal or reconstruction. Such Special Assessment shall be allocate and collected as provided in Section 9.03 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected provide insufficient to pay the actual expenses of such renewal or reconstruction. In the event amounts collected pursuant hereto are in excess of the amounts required for renewal or reconstruction, such excess shall be distributed to the Owners in proportion to their respective percentages of ownership in the Common Areas.

13.03 Sale of Project. Subject to the provisions of Section XIV hereof, the Owners may at any time, by a affirmative vote of at least seventy-five percent (75%) of the total votes of the Association, at a special meeting of the Members of the Association duly called for such purpose, elect to sell or otherwise dispose of the Project. In such event, the Board of Trustees shall forthwith record in the office of the County Recorder of Salt Lake County, State of Utah, a notice setting forth such facts, and the recording of such notice by the Board of Trustees, the Project shall be sold or otherwise disposed of by the Board of Trustees as attorney in fact for all of the Owners. Such action shall be binding upon all Owners and each Owner shall have the duty to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary or appropriate to effect such sale or other disposition of the Project. The proceeds of such sale or disposition shall be apportioned among the Owners in proportion to their respective undivided interests in the Common Areas, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium. Each such account shall remain in the name of the Association, and shall be further identified by the Condominium designation and the name of the Owner. The Board of Trustees, as attorney-in-fact, shall use and disburse the total amount of each such account, without contribution from one account to another, first to the payment of valid tax and special assessment liens on Condominium in favor of any governmental assessing authority, second to the payment of any First Mortgagee holding a first mortgage lien on the

Condominium, third to the payment of assessments made pursuant to this declaration, fourth to the payment of other holders of liens or encumbrances of the Condominium in the order of priority of their liens, and the balance remaining, if any, to the respective Owner.

13.04 Amendment of Article. This article XIII shall not be amended unless the Owners of seventy-five percent (75%) of the Condominiums in the Project and at least seventy-five percent (75%) of the First Mortgagees, based upon one vote for each mortgage, consent and agree to such amendment by duly executed and recorded instrument.

## ARTICLE XIV

### MORTGAGE PROTECTION

14.01 Notice of Action to First Mortgagee. Upon written request made to the Association by a First Mortgagee, specifying the name and address to the First Mortgagee and the Unit number or address of the Unit, any such First Mortgagee shall be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a first mortgage held, insured, or guaranteed by such First Mortgagee;
- (b) Any delinquency in the payment of assessments or charges owed by the owner of a Condominium that is subject to a first Mortgage held, insured, or guaranteed by such First Mortgagee, which remains uncured for a period of 60 days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed action which would require the consent of a specified percentage of First Mortgagees as specified in section 14.02;
- (e) Any proposed amendment of the Declaration effecting a change in:
  - (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto;
  - (ii) the interests in the Common Areas or Limited Common Areas appertaining to any Unit or the liability for common expenses appertaining thereto;
  - (iii) the number of votes in the Association appertaining to any Unit; or
  - (iv) the purposes to which any Unit or the Common Areas are restricted.
- (f) Any proposed termination of the condominium regime.

14.02 Matters requiring Prior First Mortgagee Approval. The prior written consent of Owners entitled to vote at least seventy-five percent (75%) of the total votes in the Association, and at least seventy-five

percent (75%) of all First Mortgagees shall be required to:

(a) Abandon or terminate the legal status of the Project (whether by act or omission), provided that any election to terminate the legal status of the Project following the destruction of a substantial taking of the Project through condemnation shall only require the prior written consent of at least fifty-one percent (51%) of all First Mortgagees;

(b) Establish self-management of the Project by the Association when professional management has been previously required by any First Mortgagee;

(c) Add or amend any material provision of the Declaration, Articles, Bylaws or Map, which establishes or governs any of the following: (An addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only);

(i) Voting;

Liens; (ii) Assessments, assessment liens or subordination of such

Common Areas; (iii) Reserves for maintenance, repair and replacement of the

(iv) Fidelity bonds;

(v) Rights to use of Common Areas;

(vi) Responsibility for Maintenance and repair of the several portions of the Project;

(vii) Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;

(viii) Boundaries of any Unit;

(ix) The undivided ownership interests in the Common Areas or Limited Common Areas;

(x) Convertibility of Units into Common Areas or of Common Areas into Units;

(xi) Leasing of Units;

(xii) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Condominium; and

(xiii) Any provisions which are for the express benefit of First Mortgagees.

(Any First Mortgagee who receives a write request from the Association to approve additions or amendments to the constituent documents and who fails

to deliver or post to the Association a negative response within 30 days shall be deemed to have approved such request.)

(d) Change the pro rata interest or obligations of any individual Condominium for the purpose of:

(i) levying assessments or charges or allocating distributions of hazard Insurance proceeds or condemnation awards; or

(ii) determining the pro rata ownership of each Condominium in the Common Areas.

(e) Partition or subdivide any Condominium;

(f) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas. (The granting of easements by the Association for public utilities or for other public purposes consistent with the intended use of the Common Areas by the Owners shall not be deemed a transfer within the meaning of this clause);

(g) Use hazard insurance proceeds for losses to any portion of the Project for other than the repair, replacement or reconstruction of the Project. In addition, the prior written approval of at least fifty-one percent (51%) of all First Mortgagees shall be required to effect any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, which will not be substantially in accordance with the Declaration and the original architectural plans and specifications.

14.03 Prior Liens Relate Only to Individual Condominiums. All taxes, assessments and charges which may become Liens prior to the first mortgage under local law shall relate only to the individual Condominiums and not to the Project as a whole.

14.04 Subordination of Common Expense Lien. Any lien which the Association may have on any Condominium in the Project for the payment of common expense assessments attributable to such Condominium and any fees, late charges, taxes or interest levied by the Association in connection therewith shall be subordinate to the lien or equivalent security interest of any first mortgage on the Condominium recorded prior to the date on which any such common expense assessments became due.

14.05 Information Made Available to First Mortgagee Upon Request. Any First Mortgagee shall, upon request, be entitled to: (a) inspect the books and records of the Association during normal business hours; and (b) receive an annual audited financial statement of the Association within 90 days following the end of any fiscal year of the Project; and (c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

14.06 First Mortgagee Rights in Event of Foreclosure. Each holder of a first mortgage Lien on a Unit who obtains title to the Unit pursuant to the remedies provided in the mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments and charges against the Unit

which accrue prior to the acquisition of title to such Unit by the Mortgagee, except for claims for a pro rata share of such assessments of charges resulting from a pro rata allocation of such assessments or charges to all Units in the Project including the mortgaged Unit.

## ARTICLE XV

### COMPLIANCE WITH DECLARATION AND BYLAWS

15.01 Compliance. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Association or, in a proper case, by an aggrieved Owner.

## ARTICLE XVI

### GENERAL PROVISIONS

16.01 Intent and Purpose. The provisions of this Declaration, and Any Supplemental or Amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision, restriction, covenant, or condition contained in this Declaration shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

16.02 Construction. The provisions of this Declaration shall be in addition and supplemental to the provisions of the Condominium Act and all other provisions of law. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to expand, limit, or otherwise affect the meaning or interpretation of this Declaration or any provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion shall not affect the validity or enforceability of any other provision.

16.03 Notice and Registration of Mailing Address. Each Owner shall register from time to time with the Association his current mailing address. All notices, demands, and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes of personally served or if sent by first class U.S. Mail, postage prepaid, addressed to the Owner at his registered mailing address or, if no address has been registered, to the Unit of such Owner. All notice demands, and other communications to the Association as provided for in this Declaration shall be in writing and shall be

sufficient for all purposes if personally served or if sent by first class U.S. mail, postage prepaid, addressed to the Association at its offices at 36 F Street, Salt Lake City, Utah 84103, or to such other address as the Association may hereafter specify to the Owners in writing. Any notice, demand, or other communication shall be deemed to have been given and received when personally served or when deposited in the U.S. mail, postage prepaid, and in the form provided in this section.

16.04 Audit. Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, at the expense of the common expense fund, shall obtain an audit, by certified public accountant, of all books and records pertaining to the Project at no greater than annual intervals, and copies of the audit shall be furnished to the Owners.

16.05 Effective Date. This Declaration shall become effective upon recording.

16.06 Amendment. Except as otherwise provided herein, this Declaration may be amended if Owners holding at least two-thirds of the total votes in the Association consent and agree to such amendment by instrument duly recorded in the office of the Salt Lake County Recorder, State of Utah.

16.07 Agent for Service. The name and address of the person to receive service of process in all cases provided by the Condominium Act shall be the registered agent and address of the Association as shown on the official corporate records maintained in the office of the Secretary of State of Utah. The initial registered agent and address for the Association is Don W. McBride, 36 F Street, Salt Lake City, Utah 84103.

16.08 Limitation on Associations Liability. The Association shall not be liable for any failure of water service or other utility service to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in or upon the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any part of the Buildings or its drain pipes, conduits, appliances, or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

16.09 Owner's Obligations. All obligations of an Owner, under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting, or selling under contract his Condominium. The Owner of a Condominium with the Project shall have no obligation for expenses or other obligations accruing after he conveys such Condominium.

16.10 Model Units, Sales Offices, and Advertising Signs. Declarant and Declarant's agents shall have the right to establish and maintain model units and sales offices on the land within the Project, and the right to use such model units and sales offices during the period that Condominiums in the Project remain unsold. Declarant reserves the right to maintain advertising signs on the Project during the period that Units in the Project remain unsold.

16.11 Termination. The prior written approval of seventy-five percent (75%) of (a) all First Mortgagees which hold first mortgage liens on Condominiums in the Project, based on one vote for each first mortgage owned, and (b) the total votes of the Association shall be required before the Project may be abandoned or terminated, except as provided by law in the case of substantial destruction or in the case of taking by condemnation or eminent domain.

IN WITNESS WHEREOF, the undersigned Declarants have executed this Declaration the day and year first written above.

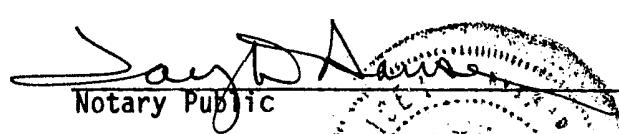
Declarants:

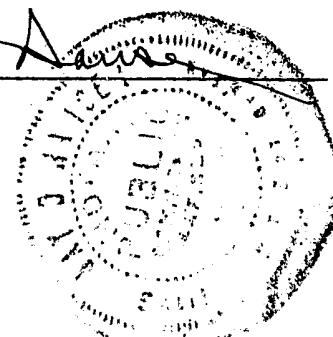
Don W. McBride

  
Yvonne Z. McBride ATTORNEY IN FACT

STATE OF UTAH  
County of Salt Lake } ss.

On the 22 day of November, 1982, personally appeared before me, Glen Z. McBride, known to me to be attorney in fact for Don W. McBride and Yvonne Z. McBride, and acknowledged to me that he executed the above instrument for and in behalf of said Don W. McBride and Yvonne Z. McBride.

  
Notary Public



My commission expires:

CONSENT TO SUBMIT PROPERTY TO CONDOMINIUM OWNERSHIP

N. H. Hansen Inc., the undersigned, a Utah corporation, with its principle offices at 6112 Glenoaks St.  
MURRAY, UTAH, being the holder of fee title to the real property hereinabove submitted by Declarants to the provisions of the Utah Condominium Ownership Act, does hereby consent to such submission by the Declarant. In so consenting, the undersigned merely submits its interest in said real property to the provisions of the said Act. The undersigned has made no representation or warranties in the Declaration and does not assume any of the obligations of a sponsor of the said Condominium Project.

Dated this 19th day of NOVEMBER, 1982.

N. H. Hansen, Inc.,  
a Utah corporation

By Angeline W. Hansen  
Its President

STATE OF UTAH )  
County of Salt Lake ) ss.

On the 10th day of NOVEMBER, 1982, personally appeared before me ANGELINE W. HANSEN, who being by me duly sworn did say that he/she is the PRESIDENT of N. H. Hansen Inc., a Utah corporation, and that the foregoing declaration was signed in behalf of said corporation by authority of its bylaws or a resolution of its board of directors, and did acknowledge to me that said corporation executed the foregoing instrument.

Angeline Hansen  
Notary Public

My commission expires: 6-1-85



CONSENT TO SUBMIT PROPERTY TO CONDOMINIUM OWNERSHIP

Ross A. Van Vranken, Jr. and Carol P. Van Vranken, the undersigned, being the contract purchasers of the real property hereinabove submitted by Declarants to the provisions of the Utah Condominium Ownership Act, do hereby consent to such submission by the Declarant. In so consenting, the undersigned merely submits its interest in said real property to the provisions of the said Act. The undersigned has made no representation or warranties in the Declaration and does not assume any of the obligations of a sponsor of the said Condominium Project.

Dated this 10<sup>th</sup> day of November, 1982.

Ross A. Van Vranken  
Ross A. Van Vranken, Jr.

Carol P. Van Vranken  
Carol P. Van Vranken

STATE OF UTAH )  
County of Salt Lake ) ss.

On the 19<sup>th</sup> day of Nov., 1982, personally appeared before me the above named Ross A. Van Vranken, Jr. and Carol P. Van Vranken (husband and wife) who acknowledged to me that they did sign the foregoing instrument.

Stan E. Ogden  
Notary Public

My commission expires:

1/15/85



DEC 7 3 26 '82

BOOK 5424 PAGE 448  
KATHLEEN REED  
SALT LAKE CITY  
UTAH  
\$100  
REF

1900  
Stan E. Ogden

KATHLEEN REED  
SALT LAKE CITY  
UTAH

APPROVAL BY CITY

SALT LAKE CITY, a body corporate and politic, and the City in which  
Mandolin Condominium, a Utah condominium project, is located, by and  
through its duly elected Mayor, does hereby give final approval to the said  
Project, to the foregoing Declaration, to the Record of Survey Map recorded  
concurrently herewith, and to the attributes of the 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.

DATED:

NOV 24 1982

11/24/82

SALT LAKE CITY

By J. D. W.  
Mayor

ATTEST:

Dorothy Marshall

Recorder

*APPROVED*

NOV 24 1982

NOV 24 1982

*CITY REC'D.*

EXHIBIT A

<u>Unit No.</u>	<u>Square Footage</u>	<u>% Interest in Common Areas and Facilities</u>
1	667.23	16.88
2	816.33	20.65
3	804.49	20.36
4	837.84	21.20
5	826.22	20.90
<hr/> TOTALS	<hr/> 3952.11	<hr/> 100.00

BY-LAWS  
OF  
THE MANDOLIN CONDOMINIUM OWNERS ASSOCIATION  
A Utah Nonprofit Corporation

NOV 23 1982

I. NAME AND LOCATION

1.1 Name. The name of the corporation is The Mandolin Condominium Owners Association.

1.2 Principle Office. The initial principal office of the Association shall be at 36 F Street #3, Salt Lake City, Utah 84103, but meetings of the Members and Trustees may be held at such times and places within the State of Utah as the Board of Trustees may designate.

II. DEFINITIONS

When using these By-laws the following terms shall have the meaning indicated:

2.1 Articles shall mean and refer to the Articles of Incorporation of The Mandolin Condominium Owners Association..

2.2 Association shall mean the Mandolin Condominium Owners Association, a Utah Nonprofit Corporation.

2.3 Member shall mean every person or entity who holds membership in the Association.

2.4 Property shall mean the tract of real property situated in Salt Lake County, State of Utah, located at 36 F Street, Salt Lake City, Utah, and which is more particularly described in the Exhibit Attached to the Declaration referred to below.

2.5 Declaration shall mean the Declaration of Condominium of the Mandolin Condominium, a Utah Condominium Project, executed and acknowledged by the Declarant on the 22 day of NOVEMBER, 1982, and filed for record with the Salt Lake County Recorder, Salt Lake County, Utah.

2.6 Common Areas shall mean all physical portions of the Project except all Units.

2.7 Owner shall mean the person or persons owning in fee simple a Condominium in the Project, as such ownership is shown by the records of the Salt Lake County Recorder, State of Utah.

2.8 Project shall mean the land, the buildings, and improvements of The Mandolin Condominium as described in the Declaration.

2.9 Unit shall mean an individual air space unit, consisting of enclosed rooms occupying part of a building and bounded by the unfinished interior surfaces of the walls, floors, ceilings, windows, and doors along the perimeter boundaries of the air space, as said boundaries are shown in the Declaration and the exhibits attached thereto.

### III. MEETING OF MEMBERS

3.1 Annual Meeting. The regular annual meeting of the Members shall be held on the 15th day of January of each year unless such date shall fall on a Saturday, Sunday, or legal holiday,, in which case the regular annual meeting of the Members shall be held on the first regular business day following said date. The time of the meeting shall be 7:30 o'clock p.m. The purpose of the meeting will be the election of Trustees to become members of the Board of Trustees of the Corporation.

3.2 Special Meetings. A special meeting of the Members may be called by the Board of Trustees or upon the written request of any three Members.

3.3 Place of Meeting. The Board of Trustees may designate any place within the State of Utah as the place for holding any regular or special meeting of the Members.

3.4 Notice of Meetings. Written notice stating the place, date, and hour of each meeting, and in the case of a special meeting, the purpose of the meeting shall be given to all Members and such other persons or entities as required by the Declaration at least ten but not more than thirty days prior to the date of the meeting. Notice shall be deemed to have been given upon personal service or upon mailing, first class postage prepaid to the address for such person or entity appearing in the records of the Association at the time of mailing.

3.5 Quorum. Except as otherwise provided in the Declaration or by-law, those Members present in person or by proxy shall constitute a quorum at any meeting of the Members.

3.6 Proxies. At any meeting of the Members, a Member may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. All proxies shall be filed with the Secretary of the Association before or at the time of the meeting. Unless otherwise provided therein, no proxy shall be valid after eleven months from the date of execution.

3.7 Votes. There shall be one vote appurtenant to each respective condominium. The number of votes appurtenant to each Condominium shall not be altered without the unanimous written consent of all Owners expressed in an amendment to the Declaration, duly recorded.

3.8 Necessary Vote. Except as otherwise provided in the Declaration or by-law, the affirmative vote of a majority of those Members present in person or by proxy and entitled to cast a vote at the meeting shall be sufficient for the adoption of any matter voted on by the Members.

#### IV. BOARD OF TRUSTEES

4.1 Number, Tenure and Qualifications. The affairs of the Association shall be managed by a Board of Trustees composed of three persons elected by the vote of the Members at a regular meeting of members or at a meeting of members called for that purpose. Each member of the Board of Trustees shall serve for a period of one year or until a successor is elected and qualified.

4.2 Compensation. The Board of Trustees may provide by resolution that Trustees may be paid their expenses, if any, of the attendance of each meeting of the Board. Trustees shall not be paid any salary or other compensation for their services as Trustees and shall not receive directly or indirectly any other profit or pecuniary advantage by virtue of their status as a Trustee.

4.3 Action Taken Without a Meeting. The Board of Trustees shall have the right to take any action which they might otherwise take without first holding a meeting. Any action so taken shall be approved or ratified in writing signed by all of the Trustees. Any action so taken shall have the same effect as though taken at a meeting of the Board of Trustees.

#### V. POWERS AND DUTIES OF THE BOARD OF TRUSTEES

5.1 Powers. The Board of Trustees shall have power to:

(a) Adopt and publish rules and regulations governing the use of the Common Areas, and personal conduct of the Members and their agents and guests thereon, and establish penalties for the infractions thereof;

(b) Exercise each and every power granted in the Declaration or by-law to levy, assess, collect and enforce the regular and special assessments of the Association.

(c) Exercise for the benefit of the Association and its Members all of the powers granted by the Declaration or otherwise granted to the Association by law and not reserved to the Members by the Articles or the Declaration.

5.2 Duties. It shall be the duty of the Board of Trustees to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members or at such other times as requested in writing in accordance with the provisions of the Declaration or the law;

(b) Supervise all officers, agents, and employees of the Association;

(c) Fix the amount of the regular and special assessments

against the Units and Owners and send written notice of such assessments to the Owners and others in accordance with the provisions of the Declaration;

(d) Foreclose the liens of the Association against Units as provided in the Declaration;

(e) Cause the Common Areas to be properly maintained;

(f) Prepare and issue all reports, notices, and certificates called for by the Declaration;

(g) Procure and maintain adequate liability and hazard insurance on the Condominiums and Common Areas as required by the Declaration;

(h) Obtain such fidelity bonds for employees and officers as required by the Declaration and as may be appropriate;

(i) Do each thing required of the Board of Trustees by the Declaration and otherwise manage the affairs of the Association for the benefit of its Members.

## VI. MEETING OF THE TRUSTEES

6.1 Regular Meetings. Regular meeting of the Board of Trustees may be held without notice at the times and places, within the State of Utah, that the Board establishes for such regular meetings by resolution.

6.2 Special Meetings. Special meetings of the Board of Trustees may be called by any member of the Board.

6.3 Notice. Written notice of the place, date and time of any special meeting shall be given at least three days prior to the meeting. Such notice will be deemed to have been furnished if mailed first class postage prepaid at least six days prior to the meeting to each Trustee at the address for such Trustee on record with the Association as of the date of mailing. Attendance of any Trustee at a meeting shall constitute a waiver of notice of such meeting unless the Trustee attends for the express purpose of objecting to the meeting as not having been properly convened. Neither the business to be transacted nor the purpose of any meeting need be specified in the notice thereof.

6.4 Quorum. Two Trustees shall constitute a quorum for the transaction of any business of the Association. The act of a majority of the Trustees shall constitute the act of the Board of Trustees unless a greater number is required by law.

6.5 Vacancies. Any vacancy on the Board may be filled by the unanimous vote of the remaining Trustees. A Trustee so selected shall serve for the unexpired term of his predecessor.

## VII. OFFICERS

7.1 Number and Qualification. Trustees may select such officers of the Association as they shall determine but at least a President and Secretary shall be elected. Officers need not be members of the Association.

7.2 Tenure. Officers of the Association shall be elected by the Board of Trustees. Each officer shall hold office until his successor has been duly elected and qualified. Any officer may be removed by the Board whenever, in the judgment of the Board, the best interests of the Association would be served thereby.

7.3 President. The President shall be the chief executive officer of the Association subject to the control of the Board of Trustees.

7.4 Secretary. The Secretary shall perform, such services as may be assigned to him by the Board of Trustees, including but not limited to the keeping of all books, records and reports of the Association.

7.5 Compensation. Officers may receive a reasonable compensation for their services to the corporation upon such terms and at such rates as shall be determined by the Board of Trustees.

## VII. MISCELLANEOUS

8.1 Construction. These By-Laws are to be construed together with the provisions of the Utah Condominium Ownership Act, Utah Code Ann. Section 57-8-1, et. seq., the Utah Nonprofit Corporation and Co-operative Association Act, Utah Code Ann. Section 16-6-18 et. seq. and the Declaration. Any conflict between these By-Laws and the said Laws or Declaration shall be resolved in favor of the Laws and/or the Declaration. Any powers granted or duties assigned to the Association, its officers or Board of Trustees by said Laws or Declaration which are not mentioned herein shall be construed to have been given or assigned to the Association, its officers or Board of Trustees.

8.2 Amendment. These By-Laws may be amended by the majority vote of the Board of Trustees at a meeting called for that purpose.

DATED this 23 day of NOVEMBER, 1982.

### BOARD OF TRUSTEES

On the 24th day of November, 1982  
appeared before me Glen Z. McBride  
and stated that he is the signer  
of the foregoing instrument.

*Amelia R. Domingo*  
Notary Public residing in  
Salt Lake County

July 9, 1985

commission expires

*ELEN Z. MCBRIDE*  
ELLEN Z. MCBRIDE  
ATTORNEY IN FACT FOR DON W. MCBRIDE  
*NONNE Z. MCBRIDE*  
NONNE Z. MCBRIDE



Office of the Lieutenant Governor

CERTIFICATE OF INCORPORATION

OF

MANDOLIN CONDOMINIUM OWNERS ASSOCIATION, THE

I, DAVID S. MONSON, LT. GOVERNOR/SECRETARY OF STATE OF THE STATE OF UTAH,  
HEREBY CERTIFY THAT DUPLICATE ORIGINALS OF ARTICLES OF INCORPORATION FOR THE  
INCORPORATION OF  
MANDOLIN CONDOMINIUM OWNERS ASSOCIATION, THE

DULY SIGNED AND VERIFIED PURSUANT TO THE PROVISION OF THE UTAH NON-PROFIT  
CORPORATION AND COOPERATIVE ASSOCIATION ACT, HAVE BEEN RECEIVED IN MY OFFICE  
AND ARE FOUND TO CONFIRM TO LAW.

ACCORDINGLY, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY LAW, I HEREBY  
ISSUE THIS CERTIFICATE OF INCORPORATION OF

MANDOLIN CONDOMINIUM OWNERS ASSOCIATION, THE

AND ATTACH HERETO A DUPLICATE ORIGINAL OF THE ARTICLES OF INCORPORATION.  
100395.



IN TESTIMONY WHEREOF, I have hereunto  
set my hand and affixed the Great Seal of the  
State of Utah, at Salt Lake City, this <sup>14</sup> day  
of OCTOBER, 19<sup>82</sup>

*David S. Monson*  
LIEUTENANT GOVERNOR

LED in the Office of the Clerk, Salt Lake County  
and filed in the office of the  
CLERK OF THE COUNTY OF SALT LAKE  
on the 14th day of October, 1982

ARTICLES OF INCORPORATION  
RECEIVED  
OF

October 14th  
1982  
DAVID S. MCKEEAN  
LAW OFFICES OF  
SIMPSON, MCKEEAN  
AND CO.

5.00

1982 OCT 14 AM 5:54

THE MANDOLIN CONDOMINIUM OWNERS ASSOCIATION

100395

LT. DIV/SEC. OF STATE

THE UNDERSIGNED natural person of the age of twenty-one (21)

years or more, acting as incorporator of a non-profit corporation in accordance with the provisions of the Utah Nonprofit Corporation and Co-operative Association Act, Utah Code Ann. Section 16-6-18 et. Seq., adopt the following Article of Incorporation for such corporation:

ARTICLE I - NAME

The name of the corporation is THE MANDOLIN CONDOMINIUM OWNERS ASSOCIATION.

ARTICLE II - DURATION

The duration of the corporation is perpetual.

ARTICLE III - PURPOSE

The purpose for which this corporation is organized is to establish a Non-profit Association of the Owners of The MANDOLIN Condominium, a Condominium project established in accordance with the Utah Condominium Ownership Act, Utah Code Ann. Section 57-8-1 ET. Seq. and pursuant to Declaration of Condominium of The MANDOLIN Condominium duly executed and recorded with the office of the Salt Lake County Recorder, Salt Lake County, State of Utah, to do all business useful or necessary for the conduct of the affairs of the Condominium in accordance with said Declaration and the law, and to act solely as a non-profit corporation in accordance with the provisions of the Utah Nonprofit Corporation and Co-operative Association Act.

#### ARTICLE IV - MEMBERSHIP

The corporation shall have as its members the Owners of Condominium in The ~~MANDLIN~~ Condominium, a Utah Condominium Project, as the term "Owners" is defined in the Declaration of said Condominium Project, which Declaration is recorded with the office of the Salt Lake County Recorder, Salt Lake County, State of Utah. No shares of stock shall be issued evidencing membership in the corporation and no limitation shall be placed on the number of persons or entities who may become members.

#### ARTICLE V - TRUSTEES

The number of trustees constituting the initial governing board shall be three and their names and addresses are as follows:

1. Don W. McBride 159 Erie Street Tiffin, Ohio 44883
  
2. Yvonne Z. McBride 159 Erie Street Tiffin, Ohio 44883
  
3. Glen Z. McBride 36 F Street #3 Salt Lake City, Utah 84103

#### ARTICLE VI - INCORPORATOR

<sup>270</sup>  
The name and address of the incorporator is Glen Z. McBride, ~~36 F~~  
~~VINE ST.~~  
~~Street #3~~, Salt Lake City, Utah 84103.

#### ARTICLE VII - INITIAL PRINCIPAL OFFICE

The location and street address of the initial principal office of the corporation is <sup>270</sup>~~36 F~~ <sup>VINE ST.</sup> Street #3, Salt Lake City, Utah 84103. THE AGENT IS GLEN Z. MCBRIDE. *gmc*

CONDONIUM CONVERSION  
36 'F' Street  
Salt Lake City, Utah

Building Report  
September 17, 1982

The subject apartment building is a three story masonry structure with a "U" shaped, wood framed, gable roof. It consists of five dwelling units and a two-car garage. It was built in 1901 as a duplex, and underwent a complete and thorough renovation in 1941, at which time it was converted to a five-plex. Evidence supports that the original construction and the renovation were of the best quality materials and workmanship of the time.

The general condition of the building is very good. The present owner has been upgrading the facility the past several months. The improvements include a new automatic lawn sprinkling system, new landscaping, new floor covering in all common areas, new door locksets new paint (interior and exterior), new front entrance, controlled access security system with intercom, new water heater system, and upgraded electrical service including sub-feed protection at each meter, increased wire size to each individual panel from the main service panel, new light switches and outlets and new light fixtures. No major structural or mechanical repairs appear to be needed at this time. General observations of the building are as follows:

A. Structure:

1. Foundation - The building is built on a 14" wide sandstone foundation. All visible foundations appear to have no cracking or settling. Mortar joints have recently been pointed.
2. Framing - All framing appears to be performing. Interior partitions and plaster show no apparent cracking due to settling or other causes of differential movement. All floors feel solid and the ceilings show no sign of excessive deflection.
3. The roof is an asphalt shingled roof, except for small flat portions at the northeast and southeast. There are no apparent leaks and therefore, with proper maintenance should give up to ten more years of service before new roofing will be required.
4. Though the building would not comply with modern code requirements for lateral load resistance, it is in excellent condition for its age and could easily last another 50 or so years.

B. Plumbing:

1. Piping - Generally pipes are in good condition.
2. All plumbing appears to have an additional useful 20 year life with normal maintenance and repairs.

3. Water pressure from the main supply line was measured at 107 psi. Water volume at each unit is adequate.

C. Electrical:

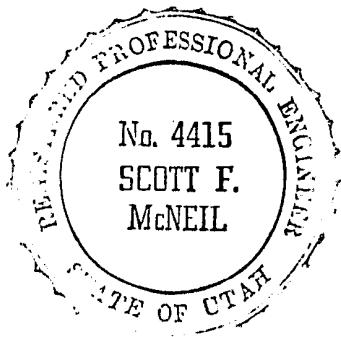
1. Electrical service, after recent alterations, has been determined adequate. Each living unit has an individual 60 amp fuse panel with 110 volt and 220 volt service. Meters and disconnects for each unit are centrally located in the basement.
2. All electrical wiring is run in conduit. The capacity of the wiring that has not been replaced has been determined to be adequate.
3. Electrical circuitry in each kitchen requires upgrading to accommodate a dishwasher or disposal.

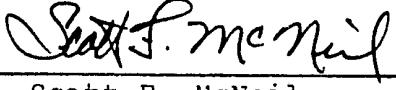
D. Mechanical:

1. Heating - A central gas fired steam boiler (Fitz-gibbons - Model G-18, built in 1959) provides heating to each unit. It has a steam capacity of 1800 sq.ft. (EDR) with a 1,000,000 BTU input and a 432,000 BTU output. Heating in all areas of each unit is controlled by mechanical dampers. Though the system is old it has and is performing well and should be able to give several more years of service.
2. Cooling - A central swamp cooler (Approximately 8,000 CFM) provides cooling to each unit. This appears in good condition. Cooling to each unit is controlled with mechanical dampers. The cooler also should be good for several more years of service if properly maintained.
3. Water heating system - Two 40 gallon gas water heaters were installed in November, 1981. Under normal use they are adequate in providing sufficient hot water for the five units.

E. Landscaping:

1. All landscaped areas are sprinkled automatically.
2. All large trees surrounding the building have been pruned. These trees present no danger to the structure.



  
Scott F. McNeil