

AFTER RECORDING PLEASE RETURN TO:

Charles L. Maak  
Martineau & Maak  
1800 Beneficial Life Tower  
36 South State Street  
Salt Lake City, Utah 84111

420454

Recorded at request of 1975 UTAH TITLE CO. Fee Paid \$ 36.00  
Date OCT 1 at 12:00 P.M. MARGUERITE S. BOURNE Recorder Davis County  
By Janeil Gordon Deputy Book 577 Page 513

DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS

THE SUNDOWNER CONDOMINIUM  
PHASE 2

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, hereinafter called the "Declaration," is made by COUNTRY HILLS, INC., a Utah corporation (hereinafter referred to as "Declarant"), pursuant to the provisions of the Utah Condominium Ownership Act.

RECITALS:

A. Declarant is the owner of all that certain real property subject to this Declaration located in Clearfield, Davis County, Utah, and more particularly described as follows (hereinafter referred to as the "Real Property"):

Beginning at a point which is on the East boundary of Sundowner Condominium, Phase 1, being West 1687.93 ft., and South 112.57 ft., and S 89°54'15" W 90.0 ft., and S 0°08'33" W 150.0 ft., and N 89°54'15" E 170.0 ft., and S 0°08'33" W 120.0 ft., and S 89°54'15" W 35.0 ft., and S 0°08'33" W 115.0 ft. from the Northeast corner of Section 7, T. 4 N., R. 1 W., S.L.B.&M.; and running thence S 89°51'27" E 110.0 ft.; thence S 0°08'33" W 227.49 ft.; thence S 32°35'25" W 94.94 ft.; thence N 57°24'35" W 70.0 ft.; thence N 0°08'33" E 270.0 ft. to the point of beginning. (Contains .70 acres, more or less).

B. The Real Property consists of the land above described, together with certain residential Buildings and certain other improvements heretofore constructed or hereafter to be constructed upon said premises.

C. Declarant has constructed or will construct residential Buildings and other improvements upon the Real Property in accordance with the plans and drawings set forth in the Record of Survey Map filed for record concurrently herewith.

D. Declarant desires by filing this Declaration and the said Record of Survey Map to submit the Real Property and the Buildings and other improvements constructed or to be constructed thereon to the provisions of the Utah Condominium Ownership Act as a condominium project known as The Sundowner, Phase 2.

E. Declarant desires and intends to sell the fee title to the individual units contained in such Condominium Project, together with an undivided ownership interest in the common areas and facilities appurtenant thereto, to various purchasers, subject to the covenants, limitations, easements, and restrictions herein contained.

F. On January 22, 1974 Declarant created Phase 1 of The Sundowner Condominium Project by filing for record in the office of the County Recorder of Davis County, Utah an instrument entitled "Declaration of Covenants, Conditions, and Restrictions, The Sundowner Condominium Phase 1" (hereinafter referred to as the "Phase 1 Declaration") and an instrument styled "Record of Survey Map of The Sundowner Condominium Phase 1" (hereinafter referred to as the "Phase 1 Map"). The Phase 1 Declaration was recorded as Entry No. 390625 in Book 532 at Page 190. The Phase 1 Map was recorded as Entry No. 390624 in Book "S" at Page 567.

G. The Phase 1 Declaration anticipated that the Condominium Project related thereto would be but the first Phase of a larger Project which ultimately might come into existence. Accordingly, in the Phase 1 Declaration, and particularly in Paragraph 12 thereof, Declarant reserved the right, upon the occurrence of certain conditions, to include one or more additional Phases as a part of a single Condominium Project consisting of Phase 1 and all subsequent Phases which may be merged with Phase 1.

H. The Condominium Project created by this Declaration and the Survey Map recorded herewith constitutes Phase 2 of The Sundowner Condominium Project. Consistent with the expectations it had in connection with the creation of Phase 1 of the Project, Declarant anticipates that upon fulfillment of the necessary conditions it will desire that Phase 2 be added to and merged with Phase 1 and/or with other subsequent Phases of The Sundowner Condominium Project. Accordingly, Declarant wishes to reaffirm and reserve the right to include Phase 2 as a part of a single Project consisting of Phase 1 and all subsequent Phases which may be merged with Phase 1.

I. Under the arrangement created by the Phase 1 Declaration, each Phase of The Sundowner Condominium Project which is created is to be a Condominium Project separate and distinct from Phase 1 and any other previously created Phase until occurrence of the events, and recordation of the instrument, necessary to merge the subject Phase into a Project comprised of Phase 1 and all Phases previously merged into Phase 1. Accordingly, under the arrangement created by the Phase 1 Declaration, The Sundowner Condominium Phase 2 is to constitute a separate and distinct Condominium Project until occurrence of the conditions prerequisite to its merger into one or more other Phases and, hence, this Declaration and the Record of Survey Map recorded herewith must be sufficient, standing alone, to define and create Phase 2.

J. The Phase 1 Declaration also provides that, after a particular Phase has been merged with Phase 1 and other Phases theretofore added to Phase 1, the Declaration and Record of Survey

Map for the Project as it then exists shall consist of all Declarations and Maps theretofore filed with respect to the various Phases which comprise constituent parts of the expanded Project. Due to this state of affairs, this Declaration and the Record of Survey Map which is recorded herewith must be such that they are susceptible of being read together with and blended into the provisions of the Phase 1 Declaration and the Phase 1 Map (and, in addition, that certain "Mortgage Protection Agreement" concerning Phase 1, dated January 13, 1975, executed by the Management Committee of The Sundowner Condominium Project in favor of holders of first Mortgages on Units in Phase 1, and recorded on January 14, 1975 as Entry No. 407536 in Book 558 at Page 591).

K. At the time the Phase 1 Declaration and the Phase 1 Map were recorded, the Utah Condominium Ownership Act made no provision for an "expandable" condominium project or for the creation of a project via separate phases. Consequently, in creating the expansion arrangement which is provided for in the Phase 1 Declaration, Declarant utilized general legal principles not particularly treated in said Condominium Ownership Act, including principles relating to reasonableness, certainty, and constructive and actual notice.

L. Achieving the two ends which are described in the above Paragraphs I and J -- i.e., structuring the provisions of this Declaration and of the Record of Survey Map recorded concurrently herewith so as to allow them not only to support Phase 2 as a separate and distinct Condominium Project but also to be susceptible of an eventual blending with the Phase 1 Declaration and Phase 1 Map -- would pose no particular difficulty if the state of the law at the present time were the same as it had been when the Phase 1 Declaration was recorded. However, during the interim the Utah Condominium Ownership Act has been amended (by Laws of Utah 1975, Chapter 173, Sections 1 through 20), and said amendments include provisions and procedures relating to the creation and expansion of an expandable condominium.

M. The provisions of the 1975 amendments to the Utah Condominium Ownership Act concerning expandable projects are not identical with the provisions of the Phase 1 Declaration concerning the creation of additional Phases of, and the merger of such additional Phases into, The Sundowner Condominium. Nevertheless, the provisions and procedures respecting expansion and additional phases which are set forth in the Phase 1 Declaration in many respects substantially comply with those requirements of the referenced 1975 amendments which relate to the particular subject or concept (concerning expansion) involved or, in those instances or concerning those particular subjects where such provisions and procedures do not so substantially comply, such provisions and procedures create or employ an arrangement which substantially achieves the same policy as those requirements of the referenced 1975 amendments which relate to the particular subject or concept (concerning expansion) involved. Accordingly, under and by virtue of the provisions of Section 57-8-36, Utah Code Annotated (1953) [added to the Utah Condominium Ownership Act by Laws of Utah 1975, ch. 173, § 19], the terms of the Phase 1 Declaration concerning the creation of additional Phases of, and the merger of such

additional Phases into, The Sundowner Condominium are valid, effective, and enforceable.

N. Due to the current validity, effectiveness, and enforceability of the "phasing" arrangement created by the Phase 1 Declaration, and also due to the fact that various third parties have heretofore acquired an interest in Phase 1 (or in various of the Units included therein), the provisions of the Phase 1 Declaration concerning expansion or phasing of the Condominium Project -- rather than analogous provisions of the 1975 amendments to the Utah Condominium Ownership Act -- have been taken into account in the preparation of this Declaration and will furnish the guidance and the requirements necessary at such time as Phase 2 and/or future Phases of The Sundowner Condominium are merged into the preexisting Project.

O. The 1975 amendments to the Utah Condominium Ownership Act effected various changes in the statutory requirements for a condominium project not expandable in nature. Since The Sundowner Condominium Phase 2 and the Record of Survey Map recorded herewith will, as noted above, constitute a separate and distinct condominium project until such time as said Phase 2 is merged into Phase 1 and Phases theretofore added to Phase 1, the provisions of this Declaration have been drawn so as to comply to the extent possible with the requirements of the Utah Condominium Ownership Act, as amended in 1975, respecting condominium projects not expandable in nature. In certain respects, however, this goal is not capable of being totally achieved -- for if it were, the result would be to frustrate the ability ultimately to merge Phase 2 into the preexisting Project and to blend the provisions of this Declaration into those of the Phase 1 Declaration (taking into account the terms of that certain "Mortgage Protection Agreement" concerning Phase 1, dated January 13, 1975, executed by the Management Committee of The Sundowner Condominium Project in favor of holders of first Mortgages on Units in Phase 1, and recorded on January 14, 1975 as Entry No. 407536 in Book 558 at Page 591). Such failure to completely and literally comply with all of the additional requirements of the referenced 1975 amendments concerning condominium projects not expandable in nature is justified, legitimate, and permissible under and by virtue of that part of Section 57-8-36, Utah Code Annotated (1953) [added to the Utah Condominium Ownership Act by Laws of Utah 1975, ch. 173, § 19], which provides that any existing condominium project (i.e., one established by instruments filed for record prior to July 1, 1975) and the rights and obligations of all parties interested therein shall, to the extent that the existing project's declaration, bylaws, and record of survey map are inconsistent with the provisions of the 1975 amendments to the Utah Condominium Ownership Act, be governed and controlled by the provisions of said Act as they existed prior to said 1975 amendments and by the terms of the existing project's declaration, bylaws, and record of survey map to the extent that such terms are consistent with applicable law other than said 1975 amendments.

P. The provisions of this Declaration and of the Record of Survey Map recorded herewith are intended to be read, considered, and construed in light of the contents of the foregoing

Paragraphs A through O, especially as regards the relationship and interaction between the provisions of this Declaration and the amendments to the Utah Condominium Ownership Act which were accomplished by Laws of Utah 1975, Chapter 173, Sections 1 through 20.

DECLARATION:

NOW, THEREFORE, the Declarant hereby declares and certifies as follows:

1. Definitions. The terms used herein and in the By-laws (attached hereto as Exhibit "B"), shall have the meaning stated in the Utah Condominium Ownership Act and as follows unless the context otherwise requires.

(a) The Act. The term the "Act" shall mean and refer to the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated, 1953) as the same may be amended from time to time.

(b) Project. Until recordation of a Notice of Merger (referred to in Paragraph 12 of the Phase 1 Declaration) merging Phase 2 into Phase 1, the term "Condominium Project," "Condominium," or "Project" whenever used in this Declaration shall mean and refer to Phase 2 of The Sundowner Condominium. After the recordation of said Notice of Merger, the term "Condominium Project," "Condominium," or "Project" whenever used in this Declaration shall mean and refer to Phase 1 and Phase 2 taken together, plus any additional Phase(s) which may have theretofore been, thereafter be, or concurrently therewith be merged into said Phases 1 and 2.

(c) Map. The term "Map" or sometimes "Survey Map" or "Record of Survey Map" shall mean and refer to the Record of Survey Map of this Condominium Project filed for record simultaneously herewith by the Declarant.

(d) Common Areas. The term "Common Areas and Facilities" or simply the "Common Areas," shall mean and refer to:

(1) The land on which the Buildings and other improvements are constructed.

(2) Those Common Areas and Facilities specifically set forth and designated as such in the Map.

(3) That part of the Condominium Project not specifically

included in the respective Units as hereinafter defined.

(4) All foundations, columns, girders, beams, supports, main walls, retaining walls, roofs, stairs, stairways, entrances, and exits of the Buildings, exterior walkways, streets, yards, gardens, fences, installations of central services such as power, light, water, gas, all apparatuses and installations existing for common use, such recreational and community facilities as may be provided for, and all other parts of the Project necessary or convenient to its existence, maintenance, and safety of the Common Areas or normally in common use.

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

(e) Unit Owner. The term "Unit Owner" or "Owner" shall mean and refer to any person or entity, including the Declarant, at any time owning a condominium unit including a proportionate share of the Common Areas as defined herein. The term "Unit Owner" or "Owner" shall not refer to any Mortgagee as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure, or any proceedings in lieu of foreclosure.

(f) Property. The term "Property" shall mean and refer to the land ("Real Property") above described, the Buildings, all other improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

(g) Unit. The term "Unit" or sometimes "Apartment Unit" means that part of the Property owned in fee simple by Unit Owners intended for independent use as defined in the Act and as shown on the Map. The boundary lines of each Unit are the interior surfaces of its perimeter walls, bearing walls, floors, ceiling, windows and window frames, doors and door frames, and trim, and includes both the portions of the Building so described and the airspace so encompassed, together with all fixtures and appliances therein contained.

(h) Common Expenses. The term "Common Expenses" shall mean all items, things, and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration, the Bylaws, such rules and regulations, and other determinations and agreements pertaining to the Condominium Project as the Management Committee or the Unit Owners may from time to time adopt.

(i) Management Committee. The term "Management Committee" shall mean the governing body of the Project, elected or selected pursuant to Paragraph 6 hereof.

(j) Manager. The term "Manager" shall mean the person, persons, corporation, or other entity engaged by the Management Committee to manage the affairs of the Project.

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

(l) Mortgagee. The term "Mortgagee" shall mean and include both a mortgagee under a first Mortgage on any Unit and a beneficiary under a first deed of trust on any Unit.

(m) Limited Common Areas. The words "Limited Common Areas and Facilities," or sometimes simply "Limited Common Areas," shall mean those Common Areas designated herein or in the Map as reserved for the use of the particular Units to which they are adjacent, attached, appurtenant, and/or designated to the exclusion of the other Units.

(n) Building. The term "Building" shall mean and refer to a structure containing or to contain Units.

(o) Building Number. The term "Building Number" shall mean and refer to the number, letter, or combination thereof which designates a Building in the attached Exhibit "A" and on the Record of Survey Map.

(p) Association. The term "Association of Unit Owners" or "Association" shall mean and refer to all of the Owners taken as, or acting as, a group.

(q) Entire Tract. The term "Entire Tract" shall mean and refer to all of the land described on Exhibit "C" to the Phase 1 Declaration.

(r) Real Property. The term "Real Property" shall mean and refer to each portion of the Entire Tract which is or was separately submitted to the terms of the Act with the intention that it would thereby comprise, or in the future might become, a part of a Condominium Project of which Phase 1 is a constituent part. The parcel of land described on the first page hereof, and which this Declaration submits to the terms of the Act, constitutes a Real Property.

(s) Phase. The term "Phase" shall mean and refer to each separate step in development of the Entire Tract which is or was initiated through the submission of a Real Property to the terms of the Act. The term shall also include all improvements which are constructed and all appurtenances, rights, obligations, and legal relationships which come into existence in conjunction with the submission of any single Real Property. The submission which is effected by this Declaration, the rights and obligations which are created by this Declaration, and the improvements described in the Survey Map which have been or will be constructed, together constitute a Phase -- Phase 2 -- of the Condominium.

(t) Phase 1. The term "Phase 1" shall mean and refer to the Phase which was created through the recordation of the Phase 1 Declaration and Phase 1 Map.

(u) Incorporation of Act Definitions. To the extent applicable to the tenure hereof and not inconsistent herewith, the definitions contained in the Act are incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

2. Submission to Condominium Ownership. The Declarant hereby submits the above-described Real Property, the Buildings, and other improvements and structures constructed thereon or hereafter to be constructed thereon, together with all appurtenances thereto, to the provisions of the Act as a Condominium Project to be known as The Sundowner Condominium, Phase 2. RESERVED from said submission, however, are all easements, rights-of-way, and powers reasonably necessary to enable Declarant to accomplish expansion of the Project through the creation, construction, and addition of future Phases in accordance with Paragraph 12 of the Phase 1 Declaration. ALSO RESERVED from said submission is an easement over and across said Real Property (consistent with improvements situated thereon) for access to the balance of the Entire Tract, whether or not said balance or any part thereof is ever added to the Project in accordance with said Paragraph



12. ALSO RESERVING UNTO DECLARANT such easements and rights of ingress and egress over, across, through, and under said Real Property as may be reasonably necessary for Declarant: (i) To construct and complete each of the Buildings and all of the other improvements described in this Declaration or in the Survey Map, and to do all things reasonably necessary or proper in connection therewith; (ii) To construct and complete each or any of the Buildings and/or other improvements associated with each or any subsequent Phase of The Sundowner Condominium; (iii) To improve portions of the Real Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate; and (iv) To develop and improve, as Declarant may in its sole discretion determine to be appropriate, each and every portion of the Entire Tract, irrespective of whether or not the particular portion of the Entire Tract developed or improved is or is to be part of The Sundowner Condominium or any Phase. If, pursuant to any of the foregoing reservations, the Real Property is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire 20 years after the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah. ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Real Property or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Survey Map or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described Real Property at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

Declarant hereby declares that the Project and every part thereof is held and shall be held, conveyed, devised, leased, granted, encumbered, used, occupied, and otherwise affected in any manner, subject to provisions of this Declaration and the Act. Each and all of the provisions hereof are hereby declared to be in furtherance of the general plan and scheme of condominium ownership, and are further declared to be for the benefit of the Project and every part thereof, and for the benefit of each Unit Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land, or as equitable servitudes, as the case may be, and shall bind all persons hereafter acquiring or owning any interest in the Project however such interest may be obtained.

3. Description of Improvements. The improvements included in the Project are now or will be located upon the Real Property described above. The significant improvements contained or to be contained in the Project include two (2) Buildings, asphalt roadways, a common parking area containing approximately six (6) car stalls, concrete sidewalks, and the various Limited Common Areas appurtenant to the Units contained in said Buildings. The location and configuration of the improvements referred to in the foregoing sentence is depicted on the Survey Map. The Project also contains or is to contain other improvements of a less significant nature, such as landscaping, all of which are to be of the type and in the location reasonably determined to be appropriate by Declarant. The Survey Map shows the basements (if any), the number of stories, and the number of Units which are or shall be contained in the two (2) Buildings included in the Project. Said Buildings are or shall be composed of the following materials: wood frame with loan and non-load bearing walls studded with wood; basement floor of concrete; first floor of wood; second floor of wood; trus roof covered with plywood; roofs surfaced with asphalt shingles; interior walls surfaced with sheetrock; and exterior surfaced with plywood siding.

4. Nature and Incidents of Condominium Ownership.

(a) Nature of Ownership. The Project is hereby divided into eight (8) Units, each consisting of a fee simple interest in a Unit and an undivided fee simple interest in the Common Areas in accordance with the attached Exhibit "A" setting forth the respective undivided interest (subject to periodic adjustment as provided for in Paragraph 12 of the Phase 1 Declaration) in the Common Areas appurtenant to each Unit. Such undivided interests in the Common Areas are hereby declared to be appurtenant to the respective Units. The proportionate share of the Unit Owners in the Common Areas is based on the proportionate value that each of the Units bears to the total value of all Units, with each of such values being the estimated value that each Unit involved would have had if it had been in existence, and if said value had been determined, at the time the Phase 1 Declaration was filed for record (all in accordance with Paragraph 12 of the Phase 1 Declaration). The percentage of ownership in the Common Areas shall be for all purposes including, but not limited to, voting and assessment for the Common Expenses.

(b) Limited Common Areas. The Limited Common Areas shall consist of the following: Patios, balconies, and the driveway areas which run from the garage portions of the Units to the street. Each of the Units on the first level of all Buildings has the exclusive right to use and occupy the fenced patio yard immediately adjacent thereto as shown on the Map. Each of the Units on the second level of all Buildings has a patio balcony area connected thereto as a Limited Common Area as shown on the Map. Each Unit has included in it a space, located on the first level of all Buildings, designed to serve as a garage. The driveway area running from the garage portion of each Unit to the street shall constitute a Limited Common Area reserved for the exclusive use of the Unit concerned.

(c) Holding Title. Title to a Unit may be held or owned by any entity and in any manner in which title to any other

real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common.

(d) No Separation. No part of a Unit or of the legal rights comprising ownership of a Unit may be separated from any other part thereof during the period of condominium ownership prescribed herein, so that each Unit, the undivided interest in the Common Areas appurtenant to such Unit, and the exclusive right to use and occupy the Limited Common Area appurtenant to such Unit, shall always be conveyed, devised, encumbered, and otherwise affected only together and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Unit or any part thereof shall constitute a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration.

(e) No Partition. The Common Areas shall be owned in common by all the Owners of Units, and no Unit Owner may bring any action for partition thereof or to subdivide any Unit.

(f) Use of Common Areas and Limited Common Areas. Subject to the limitations contained in this Declaration, any Unit Owner shall have the nonexclusive right to use and enjoy the Common Areas and shall have the exclusive right to use and enjoy the Limited Common Areas designated herein for exclusive use by such Unit Owner.

(g) Unit Maintenance. Each Owner shall have the exclusive right at his sole cost and expense to maintain, repair, paint, repaint, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, windows, and doors forming the boundaries of his Unit and all walls, ceilings, floors, windows, and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair, or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in, or connected with, his Unit.

(h) Maintenance of Limited Common Areas. Each Owner shall keep the Limited Common Areas designed for use in connection with his Unit in a clean, sanitary, and attractive condition.

(i) Easement for Encroachment. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance 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 or Units, an easement 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 a Building on the Real Property, 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.

(j) Access for Repair of Common Areas. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable right, to be exercised by the Management Committee as their agent, 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, repair, or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units. The Management Committee shall also have such right independent of the agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas, or as a result of emergency repairs within another Unit at the instance of the Management Committee or of Unit Owners shall be an expense of all the Unit Owners; provided, however, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the property shall be restored substantially to the same conditions as existed prior to the damage. Amounts owing by Owners pursuant hereto shall be collected by the Management Committee by assessments pursuant to Paragraph 7 below.

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

(l) Easement to Management Committee. The Management Committee shall have a nonexclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

(m) Easements for Utility Services. Easements are reserved through the Project as may be required for utility services.

(n) Reciprocal Easements. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall be necessary to effectuate subparagraphs (i), (j), (k), (l), and (m) above even though no specific reference to such easement or to those subparagraphs appears in any conveyance.

5. Description of a Unit. Every conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown on the Map

with the appropriate reference to the Map and to this Declaration, as each shall appear on the records of the County Recorder of Davis County, Utah, in substantially the following fashion:

Unit \_\_\_\_\_ in Building \_\_\_\_\_ as shown in the Record of Survey Map for The Sundowner Condominium Phase 2, appearing in the records of the County Recorder of Davis County, Utah in Book \_\_\_\_\_, Page \_\_\_\_\_ of Plats, and as defined and described in the Declaration of Covenants, Conditions, and Restrictions for The Sundowner Condominium Phase 2, appearing in such records in Book \_\_\_\_\_, Page \_\_\_\_\_ of Records, together with an undivided interest as tenant in common in and to the Common Areas and Facilities present and future and subject to the ownership therein of Unit Owners in prior or future Phases as the same are established and identified in the Declaration and Map referred to hereinabove and/or in the Phase 1 Declaration and Phase 1 Map, which said undivided interest is subject to periodic change as to both magnitude and the Common Areas to which it relates.

Such description will be construed to describe the Unit, together with its appurtenant undivided interest in the Common Areas, and to incorporate all the rights incident to ownership of a Unit and all the limitations on such ownership as described in this Declaration.

#### 6. Management Committee, Rights, and Obligations.

(a) Management Body. The business, property, and affairs of the Project shall be managed by the Management Committee composed of five (5) members. At the first regular Owners' Meeting two Committee members shall be elected for a one-year term, two members for a two-year term, and one member for a three-year term. At each annual Owners' Meeting thereafter any vacant seat on the Committee shall be filled with a member elected for a three-year term. Members shall serve on the Committee until their successors are elected and qualify. Only Unit Owners, spouses of Owners, or agents of Owners other than individuals shall be eligible for Committee membership. At the annual meeting each Unit Owner may vote his percentage of undivided ownership interest in favor of as many candidates for Committee membership as there are seats on the Committee to be filled; provided, however, that until the happening of the event described in the second paragraph of this subparagraph (a), Declarant alone shall be entitled to appoint three of the five Committee members. In the event a Committee seat which was filled by Declarant becomes vacant prior to the happening of the event described in the second paragraph of this subparagraph (a), Declarant shall have the right to select a replacement to sit on the Committee for the balance of the term associated with the vacated seat. In all other cases of vacancy the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected.

The event referred to in the first paragraph of this subparagraph (a) shall be the first to occur of the following:

(i) Units to which an aggregate of at least three-fourths (3/4) of the undivided ownership interest (as originally computed and set forth in Exhibit "A" hereto) in the Common Areas appertain have been conveyed by Declarant; or

(ii) The expiration of three (3) years after the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah.

(b) Rights and Duties. The Management Committee, subject to the rights of the Owners set forth in Paragraph 4 hereof, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishing and equipment related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The Management Committee shall be responsible for the maintenance and repair of exterior surfaces of the Buildings, including, without limitation, the painting of the same as often as necessary, the replacement of trim, the maintenance and repair of roofs, the maintenance and repair of other Common Areas, and all other improvements or material located within or used in connection with the Common Areas. The Management Committee shall have the exclusive right to contract for all goods, services, and insurance payment for which is to be made from the common expense fund, subject to the provisions of subparagraph (f) below. The specifications of duties of the Management Committee with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas, as set forth in the first sentence of this paragraph. The cost of such management, operation, maintenance, and repair by the Management Committee shall be borne as provided in Paragraph 7 of this Declaration.

(c) Payment for Services, etc. The Management Committee may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Management Committee shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Management Committee or by any person or entity with whom or which it contracts. The Management Committee may 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. The Management Committee may arrange with others to furnish lighting, water, snow removal, grounds maintenance, and other common services to each Unit. The cost of such services shall be borne as provided in Paragraph 7 of this Declaration.

(d) Personal Property Ownership and Use. The Management Committee may acquire and hold for the use and benefit of

all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interest in the Common Areas. Such interest shall not be transferable except with the transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto, and such beneficial interest may in no event be reserved by the transferor of a Unit. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

(e) Rules and Regulations. The Management Committee may make reasonable rules and regulations governing the use of the Units and the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Management Committee may suspend any Owner's voting rights in the meeting of Unit Owners during any period or periods during which any Owner fails to comply with such rules and regulations, or with any other obligations of such Owner under this Declaration. The Management Committee may also take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations or to obtain damages for noncompliance, all to the extent permitted by law.

(f) Capital Improvements. There shall be no structural alterations, capital additions to, or capital improvements of, the Common Areas requiring an expenditure in excess of \$3,000.00 without the prior approval of Unit Owners holding a majority of the voting power.

(g) Other Rights. The Management Committee may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably necessary to effectuate any such right or privilege.

#### 7. Assessments.

(a) Agreement to Pay Assessments. Each Owner of any Unit by the acceptance of a deed or contract therefor, whether or not it be so expressed in the deed or contract, shall be deemed to covenant and agree with each other and with the Management Committee to pay to the Management Committee annual assessments made by the Management Committee for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time in the manner provided hereunder.

(b) Basis of Assessments. The total annual assessments against all Units shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with

the maintenance and operation of the Common Areas or furnishing utility services to the Units, which estimates may include, among other things, expenses of management, grounds maintenance, taxes and special assessments levied by governmental authorities until the Units are separately assessed as provided herein, premiums for all insurance which the Management Committee is required or permitted to maintain pursuant hereto, common lighting, water charges, repairs and maintenance, wages for Management Committee employees, legal and accounting fees, any deficit remaining from a previous period, the creation of a reasonable contingency reserve, surplus and/or sinking fund, and other expenses and liabilities which may be incurred by the Management Committee for the benefit of the Owners under or by reason of this Declaration.

(c) Apportionment of Expenses. Expenses attributed to the Common Areas and to the Project as a whole shall be apportioned among all Units in proportion to their respective undivided interests in the Common Areas. For this purpose Declarant shall be considered to own only the undivided interest in Common Areas based upon Units not conveyed by Declarant.

(d) Method, Payment of Assessments, etc. Annual assessments shall be made on a calendar year basis. The Management Committee shall give written notice to each Owner as to the amount of the annual assessment with respect to his Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year; provided, however, that the first annual assessment shall be for the balance of the calendar year remaining after the date fixed by the Management Committee as the date of commencement of the Project. Each annual assessment shall be due and payable in monthly installments on the first of each and every month and no separate notices of such monthly installments shall be required. Each monthly assessment shall bear interest at the rate of ten percent (10%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

(e) Special Assessments. In addition to the annual assessments authorized hereunder, the Management Committee may levy in any assessment year, a special assessment, subject to the provisions of Paragraph 6(f) above, payable over such a period as the Management Committee may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This paragraph shall not be construed as an independent source of authority for the Management Committee to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other paragraphs hereof which shall make specific reference to this paragraph. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interest in the Common Areas. Declarant's interest in Common Areas shall be determined on the same basis set forth in subparagraph (c). Notice, in writing, of the amount of such special assessments and the time of payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30)



days after such notice shall have been given. A special assessment shall bear interest at the rate of ten percent (10%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

(f) Lien for Unpaid Assessments. All sums assessed to any Unit pursuant to this Paragraph, together with interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Management Committee. Such lien shall be superior to all other liens and encumbrances on such Unit, except only for: (i) valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; and (ii) encumbrances on the interest of the Unit Owner recorded prior to the date notice of the lien provided for herein is recorded, which by law would be a lien prior to subsequently recorded encumbrances. All other lienors acquiring liens on any Unit after this Declaration shall have been recorded shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence a lien for sums assessed pursuant to this Paragraph, the Management Committee 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 Unit, and a description of the Unit. Such a notice shall be signed by the Management Committee and may be recorded in the office of the County Recorder of Davis County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Management Committee in the same manner in which mortgages on real property may be foreclosed in Utah. In any such foreclosure, the Owner shall also be required to pay the costs and expenses of such proceedings and costs and expenses of filing the notice of lien and all reasonable attorneys' fees. All such costs, expenses, and fees shall be secured by the lien being foreclosed. The lien shall also secure, and the Owner shall also be required to pay the Management Committee, any assessments against the Unit which shall be due during the period of foreclosure. The Management Committee shall have the right and power to bid an amount equal to its then-existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the same as the Owner thereof.

A release of notice of lien shall be executed by the Management Committee and recorded in the office of the County Recorder of Davis County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Paragraph, and upon such payment, such encumbrancer shall be subrogated to all rights of the Management Committee with respect to such lien, including priority.

(g) Personal Obligation of Assessments. The amount of any annual or special assessment against any Unit shall be

the personal obligation of the Owner thereof to the Management Committee. Suit to recover a money judgment for such personal obligation shall be maintainable by the Management Committee without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit.

(h) Information Concerning Unpaid Assessments. Upon payment of a reasonable fee not to exceed Ten Dollars (\$10.00) and upon written request of any Owner or any mortgagee, prospective mortgagee or prospective purchaser of a Unit, the Management Committee shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit, the amount of the current yearly assessment and the portion thereof which has theretofore been paid, credit for advance payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums, and such statement shall be conclusive upon the Management Committee in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, all unpaid assessments which became due prior to the date of recordation of the lien of a mortgagee making such request shall be subordinate to the lien of a mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the ten (10) day period provided herein and thereafter additional written request is made by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Unit.

(i) Purchaser's Obligation. Subject to the provisions of subparagraph (h), a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

#### 8. Use of Condominium Units.

(a) Single Family Housing Use. Each of the eight (8) Units in the Project is intended to be used for single family residential housing and is restricted to such use.

(b) Restrictions Concerning Common Areas. There shall be no obstruction of the Common Areas by the Owners and/or their guests without the prior written consent of the Management Committee. The Management Committee may by rules and regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interest of all the Owners or protecting the Units or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Management Committee, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas except upon the prior written consent of the Management Committee.

(c) Miscellaneous Restrictions. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Management Committee, but for such activity, would pay, without the prior written consent of the Management Committee. 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 body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Management Committee and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees; provided, however, that any invitee of the Declarant shall not, under any circumstances, be deemed to be an invitee of any other Owner. No noxious, destructive, or offensive activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

(d) Animals. No livestock or 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 in the Units, subject to strict observances of rules and regulations adopted by the Management Committee.

(e) No Violation of Rules and Regulations. No Owner shall violate the rules and regulations for the use of the Units and of the Common Areas as adopted from time to time by the Management Committee.

(f) Restrictions on Alterations. No structural alterations to any Unit shall be made by any Owner without the prior written consent of the Management Committee.

(g) Declarant's Sales Program. Notwithstanding any of the other provisions of this Declaration, until the happening of the event described in the second paragraph of this subparagraph (g) Declarant shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of all Units (irrespective of the Phase in which they are situated) owned or to be owned (upon the creation of any subsequent Phase or Phases) by Declarant:

(i) Declarant shall have the right to maintain in Phase 2 three or less sales offices and/or model apartments. Such offices and/or model apartments may be one or more Units (of any floor area and at any location) owned by it, one or more separate structures or facilities placed on the Real Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing. If one or more separate structures or facilities is employed

by Declarant, each shall be reasonably located given the layout of the Project and each have an aggregate floor area not substantially in excess of the aggregate floor area of the largest Unit then contained in the Project.

(ii) Declarant shall have the right to maintain a reasonable number of promotional, advertising, and/or directional signs, banners, or similar devices at any place or places on the Real Property, but any such device shall be of a size and in a location as is reasonable and customary.

Declarant shall have the right from time to time to locate or relocate any of its sales offices, model apartments, and/or signs, banners, or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this subparagraph. Within a reasonable period of time after the happening of the event described in the second paragraph of this subparagraph (g) Declarant shall have the right to remove from the Project any signs, banners, or similar devices and any separate structure or facility which was placed on the Real Property for the purpose of aiding Declarant's sales effort.

The event referred to in the first paragraph of this subparagraph (g) shall be the first to occur of the following:

(i) Declarant ceases to be the Owner of any Unit in any Phase or each and every portion of the Entire Tract is part of a Phase, whichever last occurs; or

(ii) The expiration of ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah.

#### 9. Insurance.

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

(i) A multi-peril type policy covering the entire Condominium Project (both Units and Common Areas and Facilities) shall be maintained. As a minimum, such policy shall provide fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than eighty percent (80%) of the insurable value (based upon replacement cost).

(ii) If a steam boiler is contained in the Project, there shall be maintained boiler

explosion insurance evidenced by the standard form of boiler and machinery insurance policy. Said policy shall, as a minimum, provide coverage in the amount of Fifty Thousand Dollars (\$50,000.00) per accident per location.

(iii) If the Project is situated in a locale identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Condominium Project shall be obtained and maintained. The amount of coverage afforded by such policy shall be the lesser of the maximum amount of insurance available under said Act or the aggregate of the unpaid principal balances of the Mortgages affecting the individual Units.

(iv) The name of the insured under each policy required to be maintained by the foregoing items (i), (ii), and (iii) shall be in form and substance essentially as follows: "Association of Unit Owners of The Sundowner Condominium Project for the use and benefit of the individual Owners." [Said Owners shall be designated by name, if required.]

(v) Each such policy shall include the standard mortgagee clause which either shall be endorsed to provide that any proceeds shall be paid to the Association of Unit Owners for the use and benefit of Mortgagees as their interests may appear or shall be otherwise endorsed to fully protect the interests of Mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each Mortgagee at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(b) Fidelity Insurance. If the Project contains or comes to contain more than thirty (30) Units, the Management Committee or Association shall at all times while such state of affairs exists maintain in force fidelity coverage against dishonest acts on the part of managers, trustees, employees, Committee members, or volunteers responsible for handling funds belonging to or administered by the Management Committee or Association of Unit Owners. The fidelity bond or insurance shall name the Association as the insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one and one-half times the Project's estimated annual operating expenses and reserves. An appropriate endorsement to the policy shall be secured to cover persons who serve without compensation if the policy would not otherwise cover volunteers.

(c) Liability Insurance. The Management Committee or Association of Unit Owners shall at all times maintain in force a comprehensive policy of public liability insurance covering all of the Common Areas and Facilities. Such insurance shall include a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of other Owners, the Management Committee, or the Association of Unit Owners.

(d) General Requirements Concerning Insurance. Each insurance policy maintained pursuant to the foregoing subparagraphs (a), (b), or (c) shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best's Insurance Reports of BBB+ or better. No such policy shall be maintained where: (i) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a Mortgagee, the Management Committee, or the Association of Unit Owners; (ii) by the terms of the carrier's charter, bylaws, or policy, 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 the party entitled from collecting insurance proceeds.

(e) Additional Coverage. The provisions of this Paragraph 9 shall not be construed to limit the power or authority of the Management Committee or Association of Unit Owners to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

#### 10. Casualty Damage or Destruction.

(a) Binding Effect. Title to each Unit is hereby made subject to the terms and conditions hereof which bind the Declarant and all subsequent Owners, whether or not it be so expressed in the deed by which any Owner acquires his Unit.

(b) Management Committee as Agent of Owners. All of the Owners irrevocably constitute and appoint the Management Committee their true and lawful agent in their name, place, and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided.

(c) Authority of Management Committee. As attorney-in-fact, the Management Committee 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 a Unit Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the Project to substantially the same condition in which it existed prior to damage, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

(d) Management Committee's Duties re Mortgage Purchase.

In the event any Mortgagee should not agree not to rebuild, the Management Committee shall have the option to purchase such Mortgage by payment in full of the amount secured thereby if 80% of the Owners are in agreement not to rebuild. The Management Committee shall obtain the funds for such purpose by special assessments under Paragraph 7 of this Declaration.

(e) Repair or Reconstruction of Damages.

As soon as practicable after any damage to or destruction of a portion of the Project, the Management Committee shall cause each of three (3) MAI appraisers to determine the percentage of damage or destruction. The percentage which governs application of provisions of this subparagraph shall be the average of the two closest figures. After determining the percentage of damage, the Management Committee shall diligently pursue to completion the repair and reconstruction of the part of the Project damaged or destroyed, if the Project is damaged or destroyed to the extent of 75% or less than the value thereof. The Management Committee may take all necessary or appropriate action to effect repair or reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be substantially in accordance with the original plans and specifications of the Project or may be in accordance with any other plans and specifications the Owners may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Unit may not vary by more than 5% from the number of cubic feet and the number of square feet for such Unit as originally constructed pursuant to such original plans and specifications, and the location of the Buildings shall be substantially the same as prior to damage or destruction. The same easements for encroachments as declared in Paragraph 4(i) (above) shall and do hereby apply under the provisions of this Paragraph. In the event the Project is destroyed or damaged to the extent of more than 75% of the value thereof and the Unit Owners do not, at a meeting within 100 days after the damage or destruction and by a vote of at least 80% of the undivided interest in the Common Areas, determine to restore the premises, the Management Committee shall record a notice setting forth such facts. Thereupon the provisions of subsections (1) through (4) of § 57-8-31, Utah Code Annotated, shall apply and shall govern the rights of all parties. Notwithstanding anything to the contrary contained herein, however, the Project shall be restored, irrespective of the extent of damage, if insurance proceeds are alone sufficient for such purpose.

(f) Purpose of Insurance Proceeds; Special Assessments.

The proceeds of any insurance collected shall be available to the Management Committee for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Management Committee, pursuant to Paragraph 7 hereof, may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in that Paragraph. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

(g) Disposition of Insurance Proceeds, etc. The insurance proceeds held by the Management Committee and the amounts received from the assessments provided for in Paragraph 10(f) above constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of reconstruction or repair shall be made from the insurance proceeds. If there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Unit Owners in proportion to the contributions each Owner made pursuant to the assessments the Management Committee made under Paragraph 10(f) of this Declaration.

11. Duty of Owner to Pay Taxes on Unit Owned. It is understood that under the Act each Unit (and its percentage of interest in the Common Areas) in the Project is subject to separate assessment and taxation of each taxing authority and the special district(s) for all types of taxes and assessments authorized by law, and that as a result, no taxes will be assessed or levied against the Project as such. Accordingly, each Unit Owner will pay and discharge any and all taxes and assessments which may be assessed against him on his Unit.

12. Right to Expand and Merge. The Condominium Project created by this Declaration and the Survey Map recorded herewith constitutes Phase 2 of The Sundowner Condominium Project. Consistent with the expectations it had in connection with the creation of Phase 1, Declarant anticipates that upon fulfillment of the necessary conditions it will desire that Phase 2 be added to and merged with Phase 1 and/or with other subsequent Phases of The Sundowner Condominium Project and/or from time to time it will desire that other subsequent Phases be added to and merged with a Project of which Phase 2 is a constituent part. Accordingly, Declarant hereby reaffirms and reserves the right to accomplish the same, all upon the terms and conditions, and under the provisions, set forth in Paragraph 12 of the Phase 1 Declaration -- which said Paragraph 12 is hereby incorporated herein and made a part hereof by this reference.

13. Service of Process. The name of the person to receive service of process in the cases contemplated by the Act and the place of his residence are:

Robert B. Jackson  
4191 College Drive  
Ogden, Utah 84403

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

The lien or claim against a Unit for unpaid assessments or charges levied by the Management Committee or by the Association



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

Unless at least seventy five percent (75%) of the Mortgagees (based upon one vote for each Mortgage) of the individual Units have given their prior written approval, neither the Management Committee nor the Association of Unit Owners shall be entitled, by act, omission, or otherwise:

(a) To abandon or terminate the Condominium Project or to abandon or terminate the arrangement which is established by this Declaration and the Record of Survey Map (except as provided in Paragraph 10 hereof concerning destruction);

(b) To partition or subdivide any Unit;

(c) To abandon, partition, subdivide, encumber, sell, or transfer all or any part of the Common Areas and Facilities (except for the granting of easements for utilities and similar purposes consistent with the intended use of the Common Areas and except as provided in Paragraph 10 hereof concerning destruction);

(d) To use hazard insurance proceeds resulting from damage to any part of the Condominium Project (whether to Units or to the Common Areas) for purposes other than the repair, replacement, or reconstruction of such improvements, except as provided in Paragraph 10 hereof concerning destruction;

(e) To change the pro rata interests or obligations of any Unit which apply for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro rata share of ownership of each Unit in the Common Areas and Facilities, except as such changes may occur as a result of the expansion and merger by Declarant dealt with in Paragraph 12 hereof;

(f) To alter the provisions of Paragraph 9 hereof in such a way as to diminish the insurance protection required to be afforded to the parties designed to be protected thereby, or to fail to maintain the insurance coverage described therein.

Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Management Committee, of the Association of Unit Owners, or of the Condominium Project.

To the extent the same is reasonably possible and practical and is not inconsistent with the significant interests of the Association of Unit Owners, the Management Committee and the Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and Facilities and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Units rather than by special assessments.

Any agreement for professional management of the Condominium Project which may be entered into by the Management Committee or the Association of Unit Owners shall call for a term not exceeding three (3) years and shall provide that for cause such management agreement may be terminated by the Management Committee or by the Association of Unit Owners upon not in excess of ninety (90) days written notice.

From and after the time a Mortgagee makes written request to the Management Committee or the Association of Unit Owners therefor, the Committee or the Association shall notify such Mortgagee in writing in the event that there occurs any loss to or taking of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand Dollars (\$10,000.00). Said notice shall be given within ten (10) days after the Management Committee or the Association learns of such loss or taking.

In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Paragraph 14, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits or authority, as the case may be, applicable to the Management Committee and Association of Unit Owners with respect to the subject concerned.

No amendment to this Paragraph 14 which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effective unless at least seventy five percent (75%) of the Mortgagees (based upon one vote for each Mortgage) of the individual Units have given their prior written approval to such amendment. Any amendment to this Paragraph 14 shall be accomplished by an instrument executed by the Management Committee and filed for record in the office of the Davis County Recorder. In any such instrument an officer of the

Management Committee shall certify that any prior written approval of Mortgagees required by this Paragraph 14 as a condition to amendment has been obtained.

15. Amendment. Except as otherwise provided in the final provision of the foregoing Paragraph 14, until a Notice of Merger is filed with respect to the final Phase of The Sundowner Condominium or until 7 years after the filing of the Phase 1 Declaration with the Davis County Recorder's office, whichever occurs earlier, the Declarant alone, and acting unilaterally, shall have the right to amend this Declaration and the Map as may be reasonably necessary or desirable to facilitate the practical, technical, administrative, or functional integration of Phase 2 or any other Phase into the Project. The Management Committee shall, except as otherwise provided in the final provision of the foregoing Paragraph 14, have the right to amend this Declaration upon a two-thirds (2/3) vote of those in attendance at a duly called and constituted meeting of the Unit Owners. Any amendment by the Declarant or by the Management Committee shall be recorded in the Davis County Recorder's office, and if adopted by the Unit Owners shall be accompanied by a certificate of the Chairman or Vice Chairman and Secretary of the Management Committee certifying to the adoption of said amendment. Thereafter the amendment shall be binding upon every Owner, whether or not the Owner of a particular Unit consented thereto. Notwithstanding any provision herein to the contrary, so long as Declarant has the right to create additional Phases no amendment to this Declaration shall be valid unless the same is consented to in writing by Declarant.

16. Completion Obligation. Declarant hereby covenants in favor of each Owner interested in Phase 2 that no later than eighteen (18) months after the earlier of the date on which a prospective Owner contracts with Declarant for the purchase of a Phase 2 Unit or the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah: (i) The Phase 2 Unit which such Owner has contracted to purchase, the Building within which such Unit is contained or is to be contained, and each Limited Common Area appurtenant to such Unit shall be fully constructed and ready for use or occupancy (as the case may be); and (ii) There shall be substantially completed and usable as part of the Common Areas of Phase 1 and/or Phase 2 all landscaping, sidewalks, roads, parking areas, recreational facilities (i.e., swimming pool and clubhouse), and utility lines and conduits necessary to enable full use and enjoyment of the Unit concerned.

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

18. Indemnification of Management Committee. Each member of the Management Committee shall be indemnified and held

harmless by the Unit Owners against all costs, expenses, and liabilities whatsoever, including, without limitation, attorneys' fees, reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Committee.

19. Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

20. Severability. If any of the provisions of this Declaration or any Paragraph, sentence, clause, phrase, or word or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, Paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

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

22. Applicability of Act and Effective Date. The provisions of the Act shall apply to the Project except to the extent that they are inconsistent with the provisions of this Declaration. This Declaration shall take effect upon recording in the office of the County Recorder of Davis County, Utah.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has caused this instrument to be executed this 26th day of September, 1975.

COUNTRY HILLS, INC.

ATTEST:

Jacqueline M. Jackson By Robert B. Jackson  
Jacqueline M. Jackson, Secretary Robert B. Jackson, President

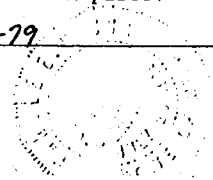
STATE OF UTAH )  
 ) ss.  
COUNTY OF DAVIS )

On this 26 day of September, 1975, personally appeared before me ROBERT B. JACKSON and JACQUELINE M. JACKSON, who being by me duly sworn, did say that they are the President and Secretary, respectively, of COUNTRY HILLS, INC., a Utah corporation, and that the foregoing Declaration was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said Robert B. Jackson and Jacqueline M. Jackson acknowledged to me that said corporation executed the same.

My Commission Expires:

7-29-79

Carol E. Riggs  
Notary Public  
Residing at: Salt Lake City, Utah



CITY APPROVAL

On this 30th day of September, 1975 CLEARFIELD CITY CORPORATION, a body corporate and politic and the municipality in which The Sundowner Condominium Phase 2 is located or to be located, hereby gives final approval to said Condominium Project, to the foregoing Declaration, to the Record of Survey Map recorded concurrently with said Declaration, and to those attributes of said Condominium Project which are mentioned in § 57-8-35(3) of the Utah Condominium Ownership Act (as amended and expanded by Laws of Utah 1975, Chapter 173, Section 18).

ATTEST:

CLEARFIELD CITY CORPORATION

[Signature]  
City Recorder

By [Signature]  
Mayor

STATE OF UTAH )  
COUNTY OF DAVIS ) ss.

On this 30th day of September, 1975, personally appeared before me [Signature] and [Signature], known to me to be the Mayor and City Recorder, respectively, of CLEARFIELD CITY CORPORATION, a body corporate and politic, who duly acknowledged to me that they executed the foregoing instrument on behalf of said municipality pursuant to authority.

My Commission Expires:

July 9, 1978

[Signature]  
Notary Public  
Residing at: [Signature]

EXHIBIT "A"  
TO  
DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
[THE SUNDOWNER CONDOMINIUM PHASE 2]

<u>Apartment Unit No.</u>	<u>Location (Building No.)</u>	<u>Value*</u>	<u>% Ownership in Common Areas</u>
a	Bldg. 12	23,702	12.3706
b	Bldg. 12	24,694	12.8883
c	Bldg. 12	24,694	12.8883
d	Bldg. 12	22,710	11.8528
a	Bldg. 13	23,702	12.3706
b	Bldg. 13	24,694	12.8883
c	Bldg. 13	24,694	12.8883
d	Bldg. 13	22,710	11.8528
			100.00%

\*Each value indicated is the estimated value that the Unit concerned would have had if it had been in existence, and if said value had been determined, at the time the Phase 1 Declaration was filed for record.

NOTE: The value of each Unit in Phase 1 which was used to determine the Percentage of Ownership initially appurtenant to each such Unit (as shown on Exhibit "A" to the Phase 1 Declaration) is the same as the value shown hereon for a Phase 2 Unit the type and configuration of which corresponds to the type and configuration of the Phase 1 Unit concerned (as revealed by comparing information shown on the Phase 1 Map with information shown on the Record of Survey Map for Phase 2 recorded concurrently herewith).

NOTE: The Percentages of Ownership shown hereon are subject to periodic change as to both magnitude and the Common Areas to which they relate.

EXHIBIT "B"BY-LAWS  
OF  
THE SUNDOWNER CONDOMINIUM PHASE 2I. IDENTITY

These are the By-Laws of THE SUNDOWNER Condominium Project, Phase 2.

II. APPLICATION

All Unit Owners, tenants, or any other person(s) who might use the facilities of the Project in any manner are subject to the regulations set forth in these By-Laws. The mere acquisition or rental of any of the Units or the mere act of occupancy or use of any of said Units or the Common Areas will signify that these By-Laws are accepted, ratified, and will be complied with by such person.

III. ADMINISTRATION

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

2. Annual Meetings. The first regular meeting of the Unit Owners shall be held on the 14th day of November, 1975, at such place as the Management Committee shall specify. Thereafter, the annual meeting shall be held on such day of each succeeding year; provided, however, that whenever such date falls on a legal holiday, the meeting shall be held on the next succeeding business day, and provided further, that the Management Committee may by resolution fix the date of the annual meeting on such date and at such place as the Management Committee may deem appropriate.

3. Special Meetings. Special meetings of the Unit Owners may be called at any time by written notice served by the Management Committee, or by Unit Owners having 35 percent of the total votes, delivered not less than seven (7) days prior to the date of the meeting to all Unit Owners, and notice thereof shall state the place, date, time, and matters to be considered.

4. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited

in the United States mail, postage prepaid, addressed to each Unit Owner at the address given by such person to the Management Committee or the Manager for the purpose of service of such notice or to the Unit of such person if no address has been given. Such address may be changed from time to time by notice in writing to the Management Committee or Manager.

5. Quorum. At any meeting of the Unit Owners, the Owners of forty percent (40%) in aggregate in interest of the undivided ownership in the Common Areas shall constitute a quorum for any and all purposes, except where by express provisions a greater vote is required, in which event a quorum shall be the number required for such a vote. In the absence of a quorum the Chairman of the meeting may adjourn the meeting from time to time, without notice other than by announcement at the meeting, until holders of the amount of interest requisite to constitute a quorum shall attend.

6. Voting. When a quorum is present at any meeting, the vote of Unit Owners representing more than fifty percent (50%) of the undivided ownership of Common Areas and Facilities, present in person or represented by proxy, shall decide any question of business brought before such meeting, including the election of the Management Committee, unless the question is one upon which, by express provision of statute, the Declaration, or these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question. All votes may be cast either in person or by proxy. All proxies shall be in writing, and in the case of proxies for the annual meeting, they shall be delivered to the Secretary at least five (5) days prior to said annual meeting. Proxies for special Unit Owners meetings must be of record with the Secretary at least two (2) days prior to said special meeting.

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

#### IV. MANAGEMENT COMMITTEE

1. Purpose and Powers. The business, property, and affairs of the Condominium shall be managed and governed by the Management Committee pursuant to Paragraph 6 of the Declaration. The Management Committee, as it deems advisable, may enter into a management agreement or agreements with a third person, firm, or corporation to act as the Manager of the Project.

2. Regular Meetings. A regular annual meeting of the Management Committee shall be held immediately after the adjournment of each annual Unit Owners meeting. Regular meetings, other than the annual meeting, shall or may be held at regular intervals at such places and at such times as the Chairman of the Management Committee may from time to time designate.



3. Special Meetings. Special meetings of the Management Committee shall be held whenever called by the Chairman, the Vice Chairman, or by three or more members. By unanimous consent of the Management Committee, special meetings may be held without call or notice at any time or place.

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

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

6. Waiver of Notice. Before or at any meeting of the Management Committee, any member thereof may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to giving of such notice. Attendance by a member of the Management Committee at a meeting shall be a waiver of notice by him of the time and place thereof.

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

8. Fidelity Bonds. The Management Committee may require that all officers and employees of the Management Committee handling or responsible for funds shall require adequate fidelity bonds. The premium on such fidelity bonds shall be paid by the Management Committee.

#### V. OFFICERS

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

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

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

4. Chairman. The Chairman shall be the chief executive of the Management Committee, and shall exercise general supervision over its property and affairs. He shall sign on behalf of the Condominium Project all instruments and contracts of material importance to its business and shall do and perform all acts and things which the Management Committee may require of him. He shall preside at all meetings of the Unit Owners and the Management Committee. He shall have all of the powers or duties which are normally vested in the office of the president of a corporation, including but not limited to the power to appoint committees from among the members from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Condominium Project.

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

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

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

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

## VI. ACCOUNTING

1. Books and Accounts. The books and accounts of the Management Committee shall be kept under the direction of the

Treasurer in accordance with the reasonable standards of accounting procedures.

2. Report. At the close of each accounting year, the books and records of the Management Committee shall be reviewed by a person or firm approved by the Unit Owners. Report of such review shall be prepared and submitted to the Unit Owners at or before the annual meeting of the Unit Owners; provided, however, that an audit by a certified public accountant approved by the Unit Owners shall be made if at least 75 percent of the Owners of undivided interest in the Common Areas determine to do so.

3. Inspection of Books. Financial reports, such as are required to be furnished, shall be available at the principal office of the Management Committee or the Manager for inspection at reasonable times by any Unit Owner.

#### VII. BUILDING RULES

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

#### VIII. AMENDMENT OF BY-LAWS

These By-Laws may be amended at any duly constituted meeting of the Unit Owners called for the purpose by the affirmative vote of at least two-thirds (2/3) of the ownership in the Common Areas.