

AMENDMENT TO THE DECLARATION OF CONDOMINIUM OF THE  
HOLLADAY CREEK CONDOMINIUM PROJECT

4362819

THIS AMENDMENT TO THE DECLARATION OF CONDOMINIUM OF THE HOLLADAY CREEK CONDOMINIUM PROJECT ("Amendment") is made and executed this 23 day of October, 1986, by the Holladay Creek Condominium Project (the "Project") pursuant to the provisions of the Utah Condominium Ownership Act, Section 57-8-1 et seq., Utah Code Annotated (1953), as amended, and the Declaration of the Project.

FD-2619

Recitals

A. The Declaration of Condominium of the Project dated October 11, 1984 (the "Declaration"), is filed with the Salt Lake County Recorder's Office, Entry No. 4005437 in Book 5599 at Page 418.

B. The Declaration was executed by Amdevco, Inc., a Utah corporation, and Capital City Bank, a Utah corporation, and Namdar, a Utah partnership, are the successors in interest of Amdevco, Inc., and, in accordance with the terms of the Declaration, is the Declarant for purposes of the Declaration and this Amendment. In accordance with the provisions of the Declaration, Eric Radman is the duly appointed president and a member of the Management Committee, and M.A. Allen is the duly appointed secretary/treasurer and remaining member of the Management Committee.

C. On October 23, 1986, a special meeting of the Unit Owners of the Project was duly called and convened at which a quorum was present. At such meeting, the holders of 75% of the undivided ownership interests voted for the approval of this Amendment, including all exhibits thereto, and, therefore, this Amendment has been duly and properly approved by the Unit Owners in accordance with the provisions of the Declaration.

D. The Project, by and through its Management Committee, desires, by filing this Amendment and the Bylaws attached hereto as Exhibit "B" and incorporated herein by this reference, to effect an amendment to the Declaration as more specifically set forth herein. The Declaration, as amended by this Amendment, is hereinafter referred to as the "Amended Declaration."

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5450

FOUNDED TITLE  
REBECCA GRAY  
DEC 8 1 28 PM '85  
KATIE L. NIXON  
RECORDER  
SALT LAKE COUNTY,  
UTAH

Amendment

NOW, THEREFORE, in consideration of the foregoing recitals, the Project hereby makes the following amendment to the Declaration which, pursuant to the Utah Condominium Ownership Act, shall be enforceable equitable servitudes, where reasonable, and shall run with the land.

I

Definitions

When used in this Amendment, all capitalized terms shall have the same meaning and definition as specified in the Declaration, except as modified below:

1. Sections 16 through 19 are hereby amended by deleting such provisions and inserting the following in lieu thereof:

16. Mortgage: Shall mean and include any mortgage or deed of trust on any Condominium Unit.

17. Mortgagee: Shall mean and include a mortgagee under any mortgage on any Condominium Unit and a beneficiary under any deed of trust on any Condominium Unit.

18. Bylaws: Shall mean and refer to the Bylaws of the Holladay Creek Condominium Project attached hereto as Exhibit "B" and incorporated herein by this reference.

II

Description of Property

This Amendment pertains to the tract of land located in Salt Lake County, state of Utah, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference, together with all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described tract of land.

III

Restrictions, Covenants, and Conditions

Article III, Sections 7 through 41 are hereby amended by deleting such provisions and inserting the following in lieu thereof:

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7. Statement of Purpose and Restriction on Use. The purpose of the Condominium Project is to provide residential housing for Unit Owners and to tenants and guests, all in accordance with the provisions of the Act. The Units and Common Areas shall be used and occupied as hereinafter set forth.

(a) Each of the Units shall be occupied by the Unit Owner, his family, servants, guests, or lessee as a private residence and for no other purpose. The Common Areas shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Unit Owners. Nothing in this Amended Declaration shall be construed to prohibit the Declarant from using any Unit owned by Declarant for promotional, marketing, or display purposes or from using any appropriate portion of the Common Areas for settlement of sales of Condominium Units.

(b) Nothing shall be done or kept in any Unit or in the Common Areas which will increase the rate of insurance for the Condominium Project or any part thereof applicable for residential use without the prior written consent of the Management Committee. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas which will result in the cancellation of insurance on the Project or any part thereof or which would be in violation of any law, regulation, or administrative ruling. No waste will be committed on the Common Areas.

(c) No immoral, improper, offensive, or unlawful use shall be made of the Condominium Project or any part thereof, and all valid laws, zoning ordinance, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations, or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Project shall be complied with, by and at the sole expense of the Unit Owner or the Management Committee, whichever shall have the obligation to maintain or repair such portion of the Project, and, if the latter, then the cost of such compliance shall be a Common Expense.

(d) No Unit Owner shall obstruct any of the Common Areas nor shall any Unit Owner place or cause or permit anything to be placed on or in any of the Common Areas (except those areas designated for such storage by the Amended Declaration, Bylaws, or the Management Committee)

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without the approval of the Management Committee. Nothing shall be altered or constructed in or removed from the Common Areas except on the prior written consent of the Management Committee.

(e) The Common Areas shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the Units. The lobbies, vestibules, public halls and stairways shall be used for no purpose other than for normal transit. Common Areas shall be kept free and clear of all rubbish, debris, and other unsightly materials.

(f) No Unit shall be rented for transient or hotel purposes or in any event for an initial period of less than six months. No portion of any Unit (other than the entire Unit) shall be leased for any period. The foregoing provisions of this paragraph, except the restriction against use for hotel or transient purposes, shall not apply to the Declarant, or to a Mortgagee in possession of a Unit as a result of foreclosure, judicial sale, or a proceeding in lieu of foreclosure.

(g) Trailers, campers, recreational vehicles, boats, and other larger vehicles may be parked on the Condominium Project only if they fit wholly within a parking space. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept on any of the Common Areas.

(h) No animals, other than small household pets in reasonable numbers, shall be raised, bred, or kept in any Unit or in the Common Areas. The foregoing shall be deemed to prohibit the keeping of any dog weighing more than 20 pounds and the keeping in any Unit more than two dogs and/or cats. Whenever a permitted household pet is not within the confines of a Unit, it shall be kept on a leash or in a cage.

(i) Except for such signs as may be posted by the Declarant for promotional or marketing purposes, no signs of any character shall be erected, posted, or displayed on, in, from, or about any Unit or Common Area without the prior written approval of the Management Committee. The foregoing provisions of this paragraph shall not apply to a Mortgagee in possession of a Unit as a result of foreclosure, judicial sale, or a proceeding in lieu of foreclosure.

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(j) No admission fees, charges for use, leases, or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas.

8. Declarant's Sales Program. Notwithstanding the provisions of the foregoing Section 7, until the happening of the event described below, 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 owned by Declarant.

(a) Declarant shall have the right to maintain two (2) 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.

(b) 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 Tract, but any such device shall be of a size and in a location as is reasonable and customary.

(c) 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 this Section. Within a reasonable period of time after the happening of the event described below, Declarant shall remove from the Project any signs, banners, or similar devices and any separate structure or facility which was placed on a portion of the Tract for the purpose of aiding Declarant's sales effort.

(d) The event referred to in paragraphs (a) and (c) of this Section 8 shall be the first to occur of the following:

(i) Declarant ceases to be a Unit Owner.

(ii) The expiration of seven (7) years after the date on which the Declaration was filed for record in the office of the County Recorder of Salt Lake County, Utah.

9. Person to Receive Service of Process. The person to receive service of process in the cases provided herein or in the Act is Ivan Radman, whose address is 4350 N. 850 So., Salt Lake City, Utah 84125. The person designated to receive

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service of process may be changed by the Management Committee, and shall be accomplished through recording the appropriate instrument.

10. Easements.

(a) Each Unit shall be subject to such easements as may be necessary for the installation, maintenance, repair, or replacement of any Common Areas and Facilities located within the boundaries of such Unit.

(b) In the event that, by reason of the construction, reconstruction, repair, settlement, movement, or shifting of any part of the building, any part of the Common Areas, or any Unit, encroaches or shall hereafter encroach on any part of any other Unit or any part of the Common Areas, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and the Common Areas, as the case may be, so long as all or any part of the building containing any such Unit shall remain standing; provided, however, that in no event shall a valid easement or any encroachment be created in favor of any Unit Owner or in favor of the Unit Owners as owners of the Common Areas if such encroachment occurred due to the willful conduct of such Unit Owner or Owners.

11. Taxes. It is understood that under the Act, each Unit, together with its percentage of undivided interest in the Common Areas in the Condominium Project, is deemed a parcel and subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law. Each Unit Owner will, accordingly, pay and discharge any and all taxes which may be assessed against his Unit. All taxes, assessments, and charges which may become liens prior to any first Mortgage, shall relate only to the individual Unit against which they are assessed and not to the project as a whole.

12. Obligation to Comply With Declaration, Bylaws, Rules, and Regulations. Each Unit Owner, tenant, subtenant or other occupant of a Unit shall comply with the provisions of the Act, the Amended Declaration, the Bylaws, and the rules, regulations, agreements, and determinations lawfully made and/or entered into by the Management Committee or the Unit Owners, when acting in accordance with their authority, and any failure to comply with any of the provisions thereof shall be grounds for taking any remedial measures provided for in the Bylaws.

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13. Amendment. The Amended Declaration, including the Map, Bylaws, and all other exhibits, may be amended on the affirmative vote or approval and consent of seventy-five percent (75%) of the Unit Owners unless a greater number is required by the Act. Any amendment so authorized shall be accomplished by recordation of an instrument executed by the Management Committee. In said instrument, the Management Committee shall certify that the vote or consent required by this Section has occurred.

14. Severability. The invalidity of any one or more phrases, sentences, subparagraphs, paragraphs, subsections, or sections hereof shall not affect the remaining portions of this instrument or if any portion or portions of this instrument should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections, or section or sections had not been inserted.

15. Declarant's Rights Assignable. All of the rights of Declarant may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer, or assignment. Any Mortgage covering all Condominium Units in the Project, title to which is vested in the Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections, and controls which are afforded to Declarant (in its capacity as Declarant) herein.

16. Waivers. No provisions contained in the Amended Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

17. Topical Headings. The topical headings contained in the Amended Declaration are for convenience only and do not define, limit, or construe the content of the Declaration.

#### IV

#### Effect and Effective Date

This Amendment hereby modifies or amends only those provisions of the Declaration specifically referred to herein, and all other provisions of the Declaration remain in full force and

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effect. In the event there is any conflict between the terms of this Amendment, including the exhibits hereto, and the Declaration, the terms of this Amendment shall govern. This Amendment shall take effect on recording.

IN WITNESS WHEREOF, the president and secretary of the Management Committee have executed this Declaration for and on behalf of the Holladay Creek Condominium this 2nd day of October, 1986.

HOLLADAY CREEK CONDOMINIUMS

ATTEST:

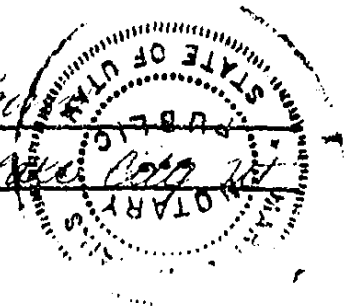
[Signature]  
Secretary  
of the Management Committee

BY [Signature]  
President  
of the Management Committee

STATE OF UTAH )  
:ss  
COUNTY OF SALT LAKE)

On the 2nd day of October, 1986, personally appeared before me [Signature] and [Signature], who being by me duly sworn did say that they are the president and secretary, respectively, of the Management Committee of the Holladay Creek Condominium Project and that they executed the within instrument on behalf of the Holladay Creek Condominium Project pursuant to resolutions of the Management Committee and the Unit Owners and that the statements contained herein are true.

[Signature]  
Notary Public  
Residing in [Signature]



My Commission Expires:  
12-04-89

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LEGAL DESCRIPTION

Beginning at a point which is South 89°36' East 1107.53 feet and North 14°01'40" West 1061.50 feet and South 77°44' West 142.0 feet from the South quarter corner of Section 4, Township 2 South, Range 1 East, Salt Lake Base and Meridian, which point is also North 14°01'40" West 126.98 feet and South 77°44' West 175.02 feet from a County Monument at Highland Drive and 4625 South Street; thence South 12°16' East 112.45 feet; thence South 77°15' West 25.0 feet; thence South 14°01'40" East 207.75 feet; thence South 75°04' West 256.47 feet; thence North 23°21' West 66.04 feet; thence North 8°45' East 163.97 feet; thence North 2°00' West 116.24 feet; thence North 77°44' East 207.98 feet to the point of beginning.

Together with the following right of way: Beginning at a point which is South 89°36' East 1107.53 feet and North 14°01'40" West 1061.5 feet and South 77°44' West 142.0 feet and South 12°16' East 112.45 feet and South 77°15' West 25.0 feet from the South quarter corner of Section 4, Township 2 South, Range 1 East, Salt Lake Base and Meridian, which point is also North 14°01'40" West 15.98 feet and South 12°16' East 112.45 feet and South 77°15' West 203.44 feet from a Salt Lake County Monument at Highland Drive and 4625 South Street; thence South 14°01'40" East 30.01 feet; thence North 77°15' East 170.43 feet to the West edge of Highland Drive; thence North 14°01'40" West 30.01 feet; thence South 77°15' West 170.43 feet to the point of beginning.

HOLLADAY CREEK CONDOMINIUM PROJECT

BYLAWS

ARTICLE I

GENERAL PROVISIONS

Section 1. Applicability. These Bylaws provide for the governance of the Holladay Creek Condominium Project pursuant to the requirements of the Utah Condominium Ownership Act, Utah Code Annotated 1953, §57-8-1, et. seq., as the same may be amended from time to time. The Tract located in Salt Lake County, Utah, and more particularly described in the Amended Declaration has been submitted to the provisions of the Act by recordation of the Declaration with the County Recorder's Office of Salt Lake County, Utah.

Section 2. Office. The office of the Condominium Project, the Owners Association, and the Management Committee shall be located at the Project or such other place as may be designated from time to time by the Management Committee.

Section 3. Definitions. Terms used herein without definitions shall have the meaning specified for such terms in the Declaration and Amendment to which these Bylaws are attached as Exhibit "B" or if not defined therein the meaning specified for such term in the Condominium Act.

(a) "Declarant Control Period" means the period prior to the earlier of (1) the date Units to which 75% or more of the aggregate percentage interest appertain have been conveyed to Unit Owners other than the Declarant or (2) the date five years after the first Condominium Unit has been conveyed to a Unit Owner other than the Declarant.

(b) "Eligible Insurer or Guarantor" shall mean and include the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veteran's Administration, the Federal Housing Administration, the Farmer's Home Administration, the Government National Mortgage Association, and any other public or private secondary mortgage market entity participating in purchasing or guaranteeing mortgages, and of which the Management Committee has notice.

(c) "Majority of the Unit Owners" means those Unit Owners owning Condominium Units to which more than 50% of the aggregate percentage interest actually voted in person or by proxy at a duly convened meeting at which a quorum is present.

(d) "Percentage Interest" means the number assigned to each Unit by the Declaration which establishes each Unit's undivided interest in the Common Areas, Common Expenses, and votes in the Owners Association.

## ARTICLE II

### ASSOCIATION OF UNIT OWNERS

Section 1. Composition. The Owners Association shall consist of all of the Unit Owners. The name of the Owners Association shall be HOLLADAY CREEK CONDOMINIUM UNIT OWNERS ASSOCIATION. For all purposes the Owners Association shall act merely as an agent for the Unit Owners as a group. The Owners Association shall have the responsibility of administering the Condominium Project, establishing the means and methods of collecting assessments and charges, arranging for the management of the Condominium Project, and performing all of the other acts that may be required or permitted to be performed by the Owners Association, by the Act, the Declaration, and the Amended Declaration. Except as to those matters which the Act specifically requires to be performed by the vote of the Owners Association, the foregoing responsibilities shall be performed by the Management Committee or Manager as more particularly set forth in Article III of these Bylaws.

Section 2. Annual Meetings. The annual meetings of the Owners Association shall be held at least 45 days before the beginning of each fiscal year on such date other than a Saturday, Sunday, or legal holiday as may be established by the Management Committee. If the special meeting held pursuant to Section 4(b) of this Article is held within six months of a scheduled annual meeting, the annual meeting shall not be held until the following year.

Section 3. Place of Meetings. Meetings of the Owners Association shall be held at the principal office of the Owners Association or at such other suitable place convenient to the Unit Owners as may be designated by the Management Committee.

Section 4. Special Meetings.

(a) Special meetings of the Unit Owners Association may be called at any time by the Management Committee or by any Unit Owner. Such special meetings shall be held at the place provided by Section 3 of this Article.

(b) Not later than five days following the termination of the Declarant Control Period, a special meeting of the Owners Association shall be held at which a new Management Committee will be formed and take control of the Condominium Project.

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Section 5. Notice of Meetings. The Management Committee shall give to each Unit Owner a notice of each annual or regularly scheduled meeting of the Unit Owners at least 21 but not more than 30 days and of each special meeting of the Unit Owners at least seven but not more than 30 days prior to such meeting stating the time, place, and purpose thereof. The giving of notice in the manner provided in this Section and Section 1 of Article X of these Bylaws shall be considered service of notice.

Section 6. Title to Units. Title to a Unit may be taken in the name of one or more persons and in any manner permitted by law. The Owners Association may acquire, hold, and transfer full legal title to one or more Units in the Condominium Project in its own name.

Section 7. Voting.

(a) Voting at all meetings of the Owners Association shall be on a percentage basis and the percentages of the vote to which each Unit Owner is entitled shall be the percentage interest assigned to his Unit in the Declaration. Otherwise, where the ownership of a Unit is in more than one person, the person who shall be entitled to cast the vote of such Unit shall be the person named in a certificate executed by all of the Owners of such Unit and filed with the Management Committee or in the absence of such named person from the meeting, the person who shall be entitled to cast the vote of such Unit shall be the person owning such Unit who is present. If more than one person owning such Unit is present, then such vote shall be cast only in accordance with their unanimous agreement. Such certificate shall be valid until revoked by subsequent certificate similarly executed. Whenever the approval or disapproval of a Unit Owner is required by the Act, the Amended Declaration, or these Bylaws, such approval or disapproval shall be made only by the person who would be entitled to cast the vote of such Unit at any meeting of the Owners Association.

(b) Except where a greater number is required by the Act, the Amended Declaration, or these Bylaws, a Majority of the Unit Owners is required to adopt decisions at any meeting of the Owners Association. If the declarant owns or holds title to one or more Units, the declarant shall have the right at any meeting of the Owners Association to cast the votes to which such Unit or Units are entitled.

(c) No Unit Owner may vote at any meeting of the Owners Association or serve on the Management Committee if payment of the assessment on his Unit is delinquent more than 30 days and the amount necessary to bring his account current has not been paid at the time of such meeting or action by the Owners Association or the Management Committee.

Section 8. Proxies. A vote may be cast in person or by proxy. Such proxy may be granted by any Unit Owner in favor of another Unit Owner, a person residing with the Unit Owner in the Unit owned by said Unit Owner, or in the case of a nonresident Unit Owner, the leasee of such Unit Owner's Unit. Proxies shall be duly executed in writing, shall be witnessed, shall be valid only for the particular meeting designation therein, and must be filed with the Management Committee before the appointed time of the meeting. Such proxy shall be deemed revoked only on actual receipt by the Management Committee before the appointed time of the meeting. Such proxy shall be deemed revoked only on actual receipt by the Management Committee of notice of revocation from any of the persons owning such Unit. No proxy shall be valid for a period in excess of 180 days after the execution thereof.

Section 9. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of 50% or more of the Unit Owners shall constitute a quorum at all meetings of the Owners Association.

Section 10. Conduct in Meetings. A member of the Management Committee designated by that committee shall preside over all the meetings of the Owners Association and keep the minutes of the meeting and record all resolutions adopted at the meeting as well as a record of all transactions occurring thereat.

### ARTICLE III

#### MANAGEMENT COMMITTEE

Section 1. Powers and Duties. The Management Committee shall have all the powers and duties necessary for the administration of the affairs of the Condominium Project. It may do all of such acts and things as are not by the Act, the Declaration, the Amended Declaration, or by these Bylaws required to be exercised and done by the Owners Association. The Management Committee shall have the power from time to time to adopt any rules and regulations deemed necessary for the benefit and enjoyment of the Condominium Project; provided, however, that such rules and regulations shall not be in conflict with the Act, the Declaration, the Amended Declaration, or these Bylaws. The Management Committee shall delegate to one of its members or to a person employed for such purpose the authority to act on behalf of the Management Committee on such matters relating to the duties of the manager (as defined in Section 3 of this Article) if any, which may arise between meetings of the Management Committee as the Management Committee deems appropriate. In addition to the duties imposed by these Bylaws or by any resolution of the Owners Association that may hereafter be adopted, the Management Committee shall on behalf of the Owners Association:

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(a) Prepare and adopt an annual budget in which there shall be expressed the assessments of each Unit Owner for the Common Expenses.

(b) Make assessments against the Unit Owners to defray the cost and expenses of the Condominium Project, establish the means and methods of collecting such assessments from the Unit Owners, and establish the period of the installment payment of the annual assessment for Common Expenses.

(c) Provide for the operation, care, upkeep, and maintenance of all of the Project.

(d) Designate, hire, and dismiss the personnel necessary for the maintenance, operation, repair, and replacement of the Common Areas and provide services for the Project and where appropriate provide for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of the duties which supplies and equipment shall be deemed part of the Project.

(e) Collect the assessments against the Unit Owners, deposit proceeds thereof in bank depositories designated by the Management Committee and use the proceeds to carry out the administration of the Condominium Project.

(f) Make and amend the rules and regulations.

(g) Open bank accounts on behalf of the Owners Association and designate the signatories thereon.

(h) Make or contract for the making of repairs and improvements to or alterations of the Condominium Project and repairs to and restoration of the Project in accordance with these Bylaws after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

(i) Enforce by legal means the provisions of the Amended Declaration, these Bylaws, and the rules and regulations. Act on behalf of the Unit Owners with respect to all matters arising out of any eminent domain proceeding and notify the Unit Owners of any litigation against the Owners Association involving the claim in excess of 10% of the amount of annual budget.

(j) Obtain and carry insurance against casualties and liabilities as provided in Article V of these Bylaws, pay the premiums thereof and adjust and settle any claims thereunder.

(k) Pay the cost of all authorized services rendered to the Owners Association and not billed to Unit Owners of individual Units or otherwise provided for in Sections 1 and 2 of Article IV of these Bylaws.

(l) Keep books of the detailed accounts in chronological order of the receipts and expenditures effecting the Condominium Project and the administration thereof specifying expenses of maintenance and repair of the Common Areas and any other expenses incurred. Such books and vouchers accrediting the entries therein shall be available for examination by the Unit Owners, their attorneys, accountants, and authorized agents during general business hours on business days at the times and in the manner set and announced by the Management Committee for the general knowledge of the Unit Owners. All books and records shall be kept in accordance with generally accepted accounting principles.

(m) Acquire, hold, and dispose of Units and mortgage the same as such expenditures and hypothecations are included in the budget adopted by the Owners Association.

(n) Do such other things and acts not inconsistent with the Act, the Amended Declaration, or these Bylaws which the Management Committee may be authorized to do by a resolution of the Owners Association.

Section 2. Manager. The Management Committee may employ for the Condominium a "Manager" at a compensation to be established by the Management Committee.

(a) Requirements. The Manager shall be a bona fide business enterprise which manages residential properties. Such firm shall have a minimum of two years experience in real estate management and shall employ persons possessing a high level of competence and the technical skills necessary for proper management of the Condominium Project. The Manager must be able to advise the Management Committee regarding the administrative operation of the Project and shall, as required, employ personnel knowledgeable in the areas of condominium insurance, accounting, contract negotiations, labor relations, and regulation.

(b) Duties. The Manager shall perform such duties and services as the Management Committee shall direct. Such duties and services may include, without limitation, the duties listed in Article III, Section 1, paragraphs (a), (c), (d), (e), (h), (i), (j), (k), (l), and (n). The Management Committee may delegate to the Manager all of the powers granted to the Management Committee by these Bylaws other

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than the powers set forth in Article III, Section 1, paragraphs (b), (f), (g), and (n). The Manager shall perform the obligations, duties, and services relating to the management of the Project in compliance with the provisions of these Bylaws.

(c) Standards. The Management Committee shall impose appropriate standards of performance on the Manager. Unless the Manager is instructed otherwise by the Management Committee.

(1) Cash accounts of the Owners Association shall not be commingled with any other accounts.

(2) No remuneration shall be accepted by the Manager from vendors, independent contractors, or others providing goods or services to the Owners Association whether in the form of commissions, finder's fees, service fees, or otherwise; any discount received shall benefit the Owners Association.

(3) Any financial or other interest which the Manager may have in any firm providing goods or services to the Project or Owners Association shall be disclosed promptly to the Management Committee.

(4) A financial report shall be prepared quarterly for the Owners Association containing:

(i) an income statement reflecting all income and expense activity for the proceeding period;

(ii) a balance sheet reflecting the financial condition of the Owners Association;

(iii) a budget report reflecting any actual or pending obligations which are in excess of budgeted amounts by an amount exceeding the operating reserves or 10% of a major budget category (as distinct from a specific line item in an expanded chart of accounts); and

(iv) a delinquency report listing all Unit Owners who are delinquent in paying Condominium assessments and describing the status of any actions to collect such assessments.

(d) Limitations. The Management Committee may employ a Manager for a term not to exceed one year. A contract with the Manager must provide that it may be terminated without payment of a termination fee without cause on no more than 90 days written notice and with cause on no more than 30 days written notice.



Section 3. Management Committee Number and Term of Office. Initially, the Management Committee shall consist of two persons designated by the Declarant to serve until the first annual meeting of the Owners Association is held to elect the Management Committee. Thereafter, the Management Committee shall consist of five persons. Prior to the end of the Declarant Control Period, the Declarant shall have the right to elect four members of the Management Committee, who need not be Unit Owners, but may be officers, agents, partners, or other affiliates of Declarant. In all other instances, members of the Management Committee shall be either a Unit Owner, a person residing with a Unit Owner in a Unit, or, in the case of a nonresident Unit Owner, the leasee of such Unit Owners' Unit. The members of the Management Committee shall be elected at the annual Owners Association meeting or at any special meeting of the Owners Association called for such purpose and shall serve for one year or until their successors are duly elected and qualified. A member of the Management Committee may be removed with or without cause by the Owners Association. A member of the Management Committee may resign at any time. Vacancies in the Management Committee caused by removal or resignation shall be filled by the Owners Association, except that prior to the end of the Declarant Control Period, vacancies in the Management Committee pertaining to members elected by Declarant shall be filled by the Declarant.

Section 4. Regular Meetings. Regular meetings of the Management Committee may be held at such time and place and shall be determined from time to time by a majority of the members but such meetings shall be held at least once every four months during each fiscal year. Notice of regular meetings of the Management Committee shall be given in writing to each member by hand delivery, mail, or telegraph at least three business days prior to the day named for such meeting.

Section 5. Special Meetings. Special meetings of the Management Committee may be called by any member of the Management Committee on three business days notice to each member given in writing by hand delivery, mail, or telegraph which notice shall state the time, place, and purpose of the meeting.

Section 6. Waiver of Notice. Any member of the Management Committee may at any time in writing waive notice of any meeting of the Management Committee and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member in person or by telephone communication at any meeting of the Management Committee shall constitute a waiver of notice by him of the time, place, and purpose of such meeting. If all members are present at any meeting of the Management Committee, no notice shall be required and any business may be transacted at such meeting.

Section 7. Quorum of Management Committee. At all meetings of the Management Committee, a majority of the members shall constitute a quorum for the transaction of business and the vote of a majority of the members present at a meeting in which a quorum is present shall constitute the decision of the Management Committee. A member of the Management Committee who participates in a meeting by means of telephone communication shall be deemed present at the meeting for all purposes.

Section 8. Compensation. No member of the Management Committee shall receive any compensation from the Condominium Project or the Owners Association for acting as such.

Section 9. Conduct of Meetings. The Management Committee shall designate one of its members to preside over all meetings of the Management Committee and to keep a record of all resolutions adopted by the Management Committee and a record of all transactions and proceedings occurring at such meeting.

Section 10. Action Without Meeting. Any action by the Management Committee required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Management Committee shall individually or collectively consent in writing to such action. Any such written consent shall be filed as part of the records of the Management Committee.

Section 11. Liability of the Management Committee, Members of the Management Committee, Unit Owners, Owners Association.

(a) The members of the Management Committee shall not be liable to the Owners Association or any Unit Owner for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Owners Association shall indemnify and hold harmless each of the members of the Management Committee from and against all contractual liability to others arising out of contracts made by the members of the Management Committee on behalf of the Owners Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Act, the Amended Declaration, or these Bylaws, except to the extent that such liability is satisfied by liability insurance. Members of the Management Committee shall have no personal liability with respect to any contract made by them, on behalf of the Owners Association. The liability of any Unit Owner arising out of any contract made by the Management Committee or a member thereof or out of the indemnification of any member of the Management Committee or for damages as a result of injuries arising in connection with the Common Areas solely by virtue of his ownership of a percentage interest therein or for liabilities incurred by the Owners

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Association shall be limited to the total liability multiplied by his percentage interest. Every agreement made by the Management Committee or the Manager on behalf of the Owners Association shall, if obtainable, provide that the members of the Management Committee, the Management Committee, or the Manager, as the case may be, are acting as agent for the Owners Association and shall have no personal liability thereunder except as Unit Owners, and that each Unit Owner's Liability thereunder shall be limited to the total liability thereunder multiplied by his percentage interest. The Owners Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened pending or completed action, suit, or proceeding by reason of the fact that he is or was a member of the Management Committee against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement incurred by him in connection with such action, suit, or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Condominium Project.

(b) The Owners Association shall not be liable for any failure of water supply or other services to be obtained by the Owners Association or paid for as a Common Expense or for injury or damage to person or property caused by the elements or by the Unit Owner of any Unit or any other person or resulting from electricity, water, snow, or ice which may leak or flow from or over any portion of the Common Areas or from any pipe, drain, conduit, appliance, or equipment. The Owners Association shall not be liable to any Unit Owner for loss or damage by theft or otherwise of articles which may be stored on any of the Common Areas. No diminution or abatement of any assessments as herein elsewhere provided shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or from any action taken by the Owners Association to comply with any law, ordinance, or with the order or directive of any municipal or other governmental authority.

Section 12. Management Committee as Attorney-In-Fact. The Management Committee is hereby irrevocably appointed as agent and attorney-in-fact for the Unit Owners of all of the Units and for each of them to manage, control, and deal with the interest of such Unit Owners in the Common Areas of the Condominium Project to permit the Management Committee to fulfill all of its powers, rights, functions, and duties. The Management Committee is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner, each Mortgagee, other named insureds and their beneficiaries, and any other holder of a lien or other interest in the Condominium Project to adjust and settle all claims arising under insurance policies purchased by the Management Committee and to execute and deliver release on the payment of claims.

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ARTICLE IV

OPERATION OF THE PROPERTY

Section 1. Determination of Common Expense and Assessments Against Unit Owners.

(a) Fiscal Year. The fiscal year of the Owners Association shall be January 1 through December 31 unless otherwise determined by the Management Committee.

(b) Preparation and Approval of Budget.

(i) At least 150 days before the beginning of each fiscal year, the Management Committee shall adopt a budget for the Owners Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair, and replacement of the Common Areas and those parts of the Units which it is the responsibility of the Management Committee to maintain, repair, and replace, and the cost of wages, materials, insurance premiums, services, supplies, and other expenses that may be declared to be Common Expenses by the Act, the Amended Declaration, these Bylaws, or a resolution of the Owners Association, and which will be required during the ensuing fiscal year for the administration, operation, maintenance, and repair of the Project and the rendering to the Unit Owners all related services. The budget shall reflect a separate assessment of limited Common Expenses.

(ii) Such budget shall also include such reasonable amounts as the Management Committee considers necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements. At least 60 days before the beginning of each fiscal year the Management Committee shall send to each Unit Owner a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and any special assessment payable by each Unit Owner. Such budget shall constitute the basis for determining each Unit Owner's assessment for the Common Expenses of the Condominium Project.

(c) Assessment and Payment of Common Expenses. Subject to the provisions of Section 1(a) of Article VIII hereof, the total amount of the estimated funds required from assessments for the operation of the property set forth in the budget adopted by the Management Committee shall be assessed against each Unit Owner in proportion to his respective percentage interest, except for limited Common Expenses which shall be

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assessed against each Unit Owner benefited in proportion to the relative percentage interest of such Units inter se, and shall be a lien against each Unit Owner's Unit as provided in Section 2, Article VIII of these Bylaws. On or before the first day of each fiscal year and the first day of each of the succeeding 11 months in such fiscal year, each Unit Owner shall be obligated to pay to the Management Committee or the Manager (as determined by the Management Committee) one-twelfth of such assessment. Within 90 days after the end of each fiscal year, the board of directors shall supply to all Unit Owners and to each Mortgagee requesting the same, an itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Management Committee for such fiscal year and showing the net reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, at the discretion of the Management Committee, be placed in a special account to be expended solely for the general welfare of the Percentage Interest to the next monthly installments due from Unit Owners under the current fiscal year's budget until exhausted. Any net shortage shall be assessed promptly against the Unit Owners in accordance with their Percentage Interest and shall be payable either:

(i) In full with payment of next monthly assessment due; or

(ii) In not more than six equal monthly installments as the Management Committee may determine.

(d) Reserves. The Management Committee shall build up and maintain reasonable reserves for working capital, operations, contingencies, and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. If the reserves are inadequate for any reason, including nonpayment of any Unit Owner's assessment, the Management Committee may, at any time, levy a further assessment which shall be assessed against the Unit Owners according to their respective Percentage Interest and which may be payable in a lump sum or installments as the Management Committee may determine. The Management Committee shall serve notice of any such further assessment on Unit Owners by a statement in writing giving the amount and reasons therefore, and such further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment which is due no more than ten days after the delivery of such notice of further assessment. All Unit Owners so notified shall be obligated to pay the adjusted monthly amount or, if such further assessment is not payable

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in installments, the amount of such assessment. Such assessment shall be a lien as of the effective date as set forth in the preceding paragraph (c) of this section.

(e) At the first meeting of the Management Committee pursuant to these Bylaws, the Management Committee shall determine the budget as defined in this section for the period commencing 30 days after said meeting and ending on the last day of the fiscal year in which such meeting occurs. Assessments shall be levied and become a lien against the Unit Owners during such period as provided in paragraph (c) of this section.

(i) The Declarant will collect from each initial purchaser at the time of settlement an "initial capital payment" equivalent to twice the estimated monthly assessment for common Expenses for such purchaser's Unit. The Declarant will deliver the funds so collected to the Management Committee to provide the necessary working capital for the Owners Association. Such funds may be used for certain prepaid items, initial equipment, supplies, organization costs, and other start-up costs, and for such other purposes as the Management Committee may determine.

(f) Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Management Committee to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay each monthly installment at the monthly rate established for the previous fiscal year until notified of the monthly payment which is due no more than ten days after such new annual or adjusted budget is adopted.

(g) Accounts. All sums collected by the Management Committee with respect to assessments against the Unit Owners or from any other source may be commingled into a single fund or held for each Unit Owner in accordance with his Percentage Interest.

Section 2. Payment of Common Expenses. Each Unit Owner shall pay the Common Expenses, including Limited Common Expenses, assessed by the Management Committee pursuant to the provisions of Section 1 of this Article. No Unit Owner may exempt himself from liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his Unit. No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent

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to the date of recordation of a conveyance by him in fee of such Unit. Prior to or at the time of any such conveyance, all liens, unpaid charges, and assessments shall be paid in full and discharged. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of such recordation, without the prejudice to the purchaser's right to recover from the selling Unit Owner amounts paid by the purchaser therefor; provided, however, that any such purchaser shall be entitled to a statement setting forth the amount of the unpaid assessments against the selling Unit Owner within five business days following a written request therefor to the Management Committee or Manager and such purchaser shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments in excess of the amount therein set forth; and provided, further, that each Mortgagee who comes into possession of a condominium Unit by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments or charges against such Unit which accrue prior to the time such Mortgagee comes into possession thereof, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units, including the mortgaged Unit.

Section 3. Collection of Assessments. The Management Committee or Manager, shall take prompt action to collect any assessments for Common Expenses due from any Unit Owner which remain unpaid for more than 30 days from the due date for payment thereof. Any assessment, or installment thereof, not paid within five days after due shall accrue a late charge in the amount of \$10.00, or such other amount as may be established from time to time by the Management Committee.

Section 4. Statement of Common Expenses. The Management Committee shall promptly provide any Unit Owner, contract purchaser, or Mortgagee so requesting the same in writing with a written statement of all unpaid assessments for Common Expenses due from such Unit Owner. The Management Committee may impose a reasonable charge for the preparation of such statement to cover the cost of preparation.

Section 5. Maintenance, Repair, Replacement, and Other Common Expenses.

(a) By the Management Committee or Manager. The Management Committee or Manager shall be responsible for the maintenance, repair, and replacement (unless, in the opinion of the Management Committee such expense was necessitated by the negligence, misuse, or neglect of a Unit Owner) of all of the Common Areas (including the Limited Common Areas) as

defined herein or in the Amended Declaration, whether located inside or outside of the Units, the cost of which shall be charged to all Unit Owners as a Common Expense; provided, however, that each Unit Owner shall perform normal maintenance on the Limited Common Areas appurtenant to his Unit and any portion of the remaining Common Areas which the Management Committee pursuant to the rules and regulations has given him permission to utilize, including, without limitation, the items enumerated in subsection (b) hereof.

(b) By the Unit Owner.

(i) Each Unit Owner shall keep his Unit and its equipment, appliances, and appurtenances in good order, condition, and repair and in a clean and sanitary condition, and shall do all interior redecorating, painting, and varnishing which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition, each Unit Owner shall be responsible for all damage to any other Units or to the Common Areas resulting from his failure or negligence to make any of the repairs required by this section. Each Unit Owner shall perform his responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owners. Each Unit Owner shall promptly report to the Management Committee or Manager any defect or need for repairs for which the Management Committee is responsible.

(ii) Any Unit Owner permitted by the Management Committee to use a specific portion of the Common Areas for storage is responsible for the maintenance and care of such portion and shall use such portion in a safe and sanitary manner.

(c) Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be done with contemporary building materials and equipment. The method of approving payment vouchers for all repairs and replacements shall be determined by the Management Committee and Manager.

Section 6. Additions, Alterations, or Improvements by Management Committee. Except during the Declarant Control Period, whenever in the judgment of the Management Committee or Manager, the Common Areas shall require additions, alterations, or improvements costing in excess of \$10,000 during any period of 12 consecutive months, the making of such additions, alterations, or improvements requires the prior approval of a Majority of the Unit Owners, and the Management Committee or Manager shall assess all

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Unit Owners for the cost thereof as a Common Expense (or Limited Common Expense). Any additions, alterations, or improvements costing \$10,000 or less during any period of 12 consecutive months may be made by the Management Committee without approval of the Unit Owners and the cost thereof shall constitute a Common Expense or Limited Common Expense, depending on the nature of the additions, alterations, or improvements. The \$10,000 limitation shall be increased annually by the percentage equal to any percentage increase in the annual budget of the Condominium Project. Notwithstanding the foregoing, if, in the opinion of the Management Committee, such additions, alterations, or improvements are exclusively or substantially exclusively for the benefit of the Unit Owner or Unit Owners requesting the same, such requesting Unit Owners shall be assessed therefor in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportion as may be determined by the Management Committee.

Section 7. Additions, Alterations, or Improvements by the Unit Owners. No Unit Owner shall make any structural addition, alteration, or improvement in or to his Unit without the prior written consent of the Management Committee. No Unit Owner shall paint or alter the exterior of his Unit, including the doors and windows, nor shall any Unit Owner paint or alter the exterior of any building, without the prior written consent of the Management Committee. The Management Committee shall be obligated to answer any written request by a Unit Owner for approval of a proposed structural addition, alteration, or improvement in such Unit Owner's Unit within 45 days after such request, and failure to do so within the stipulated time shall constitute a consent by the Management Committee to the proposed structural addition, alteration, or improvement. If any application to any governmental authority for a permit to make any such structural addition, alteration, or improvement in or to any Unit requires execution by the Owners Association, and provided consent has been given by the Management Committee then the application shall be executed on behalf of the Owners Association by the Management Committee only without, however, incurring any liability on the part of the Management Committee or any of them to any contractor, subcontractor, or materialman on account of such addition, alteration, or improvement, or to any person having claim for injury to person or damage to property arising therefrom. No Unit Owner by deed, plat, or otherwise shall subdivide or in any manner cause the ownership of his Unit to be separated into physical tracts or parcels smaller than the whole Unit as shown on the Map.

Section 8. Restrictions on Use of Units and Common Areas; Rules and Regulations. In addition to the restriction on use of Units and Common Areas set forth in the Amended Declaration, each Unit and the Common Areas shall be occupied and used in compliance with the rules and regulations which may be promulgated and changed by the Management Committee. Copies of the rules and

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regulations shall be furnished by the Management Committee to each Unit Owner. Changes to the rules and regulations shall be conspicuously posted prior to the time when the same shall become effective and copies thereof shall be furnished to each Unit Owner on request.

Section 9. Right of Access. By acceptance of his deed of conveyance, each Unit Owner thereby grants a right of access to his Unit, as provided by the Act and the Amended Declaration to the Management Committee, the Manager, any other person authorized by the Management Committee or the Manager, or any group of the foregoing for the purpose of enabling the exercise and discharge of their respective owners and responsibilities, including, without limitation, making inspections correcting any condition originating in his Unit or in a Common Area to which access is obtained through his Unit and threatening another Unit or the Common Areas, performing installations, alterations, or repairs to the mechanical or electrical services or the Common Areas and Facilities in his Unit, or elsewhere in the Project, or to correct any condition which violates any Mortgage; provided, however, that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right to entry shall be immediate, whether or not the Unit Owner is present.

Section 10. Utility Charges. The cost of utilities serving the Condominium Project not individually metered to a Unit shall be Common Expenses allocated pursuant to Section 1 of this Article.

## ARTICLE V

### INSURANCE

#### Section 1. Authority to Purchase; Notice.

(a) Except as otherwise provided in Section 5 of this Article, all insurance policies relating to the Condominium Project shall be purchased by the Management Committee. The Management Committee, the Manager, and the Declarant shall not be liable for failure to obtain any coverages required by this Article V or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost. The Management Committee shall promptly furnish to each Unit Owner written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Owners Association.

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(b) Each such policy shall provide that:

(i) The insurer waives any right to claim by way of subrogation against the Declarant, the Owners Association, the Management Committee, the Manager, or the Unit Owners, and their respective agents, employees, guests and, in the case of the Unit Owners, the members of their households;

(ii) Such policy shall not be cancelled, invalidated, or suspended due to the conduct of any Unit Owner (including his invitees, agents, and employees) or of any member or employee of the Management Committee or the Manager without a prior demand in writing that the Management Committee or the Manager cure the defect and neither shall have so cured such defect within 60 days after such demand;

(iii) Such policy may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 60 days prior written notice to the Management Committee and the Manager and, in the case of physical damage insurance, to all Mortgagees.

(c) The Declarant, so long as Declarant shall own any Unit, shall be protected by all such policies as a Unit Owner.

(d) All policies of insurance shall be written by reputable companies licensed to do business in the state of Utah. Physical damage policies shall be in form and substance and with carriers acceptable to Mortgagees holding a majority of the Mortgages (based on one vote for each Mortgage owned).

(e) The deductible, if any, on any insurance policy purchased by the Management Committee shall be a Common Expense, except where the claim is for components of a Unit.

## Section 2. Physical Damage Insurance.

(a) The Management Committee shall obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, cost of demolition, and water damage endorsements, insure the entire Condominium Project (including all of the Units and the bathroom and kitchen fixtures initially installed therein by the Declarant and the replacements thereto installed by the Declarant but not including furniture, wall coverings, furnishings, or other personal property supplied or installed

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by Unit Owners), together with all air-conditioning and heating equipment and other service machinery contained therein and covering the interests of the Owners Association, the Management Committee, and all Unit Owners and their Mortgagees, as their interest may appear, in an amount equal to 100% of the then current replacement cost of the Condominium Project (exclusive of the Tract, excavations, foundations, and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the Management Committee with the assistance of the insurance company affording such coverage).

(b) Such policy shall also provide:

(i) A waiver of any right of the insurer to repair, rebuild, or replace any damage or destruction, if a decision is made pursuant to these Bylaws not to do so;

(ii) The following endorsements (or equivalent):  
(aa) "no control" (to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or Unit Owner of their agents when such act or neglect is not within the control of the insured, or the Unit Owners collectively; nor by any failure of the insured, or the Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the warranty or condition with regard to any portion of the Condominium Project over which the insured, or the Unit Owners collectively, have no control) (bb) "contingent liability from operation of building laws or codes"; (cc) "increased cost of construction" or "condominium replacement cost"; and (dd) "agreed amount" or elimination of co-insurance clause;

(iii) That any "no other insurance" clause expressly exclude individual Unit Owner's policies from its operation so that the physical damage policy purchased by the Management Committee shall be deemed primary coverage and any individual Unit Owner's policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Management Committee hereunder provide for or be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees, unless otherwise required by law; and

(iv) A duplicate original of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be

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delivered by the insurer to any Mortgagee requesting the same, at least 30 days prior to expiration of the then current policy.

(c) Prior to obtaining any policy of physical damage insurance or any renewal thereof, the Management Committee shall obtain an appraisal from an insurance company, or such other source as the Management Committee may determine, of the then current replacement cost of the Condominium Project (exclusive of the Tract, excavations, foundations, and other items normally excluded from such coverage), without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this Section 2. All Mortgagees shall be notified promptly of any event giving rise to a claim under such policy arising from damage to the Common Areas in excess of 1% of the then current replacement costs of the Condominium Project. The Mortgagee of a Unit shall be notified promptly of any event giving rise to a claim under such policy arising from damage to such Unit.

Section 3. Liability Insurance. The Management Committee shall obtain and maintain comprehensive general liability (including libel, slander, false arrest, and invasion of privacy coverage) and property damage insurance in such limits as the Management Committee may from time to time determine, insuring each member of the Management Committee, the Manager, each Unit Owner, and the Owners (and their invitees, agents, and employees) arising out of, or incident to the ownership and/or use of the Common Areas. Such insurance shall be issued on a comprehensive liability basis and shall contain: (i) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured; (ii) hired and non-owned vehicle coverage; (iii) deletion of the normal products exclusion with respect to events sponsored by the Owners Association; and (iv) a "severability of interest" endorsement which shall preclude the insurer from denying liability to a Unit Owner because of negligent acts of the Owners Association or of another Unit Owner. The board of directors shall review such limits once each year, but in no event shall such insurance be less than \$1,000,000 covering all claims for bodily injury or property damage arising out of one occurrence.

Section 4. Other Insurance. The board of directors shall obtain and maintain:

(a) If the project is or comes to be 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

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National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Condominium Project shall be obtained and maintained. The minimum 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. Such policy shall be in the form of the standard policy issued by members of the National Flood Insurance Association or in the form of a policy which meets the criteria established by the Flood Insurance Administration.

(b) If a steam boiler is or comes to be contained in the Project, there shall be maintained boiler explosion insurance and in a broad form policy of repair and replacement boiler and machinery insurance, evidenced by the standard form of boiler and machinery insurance policy. Said insurance shall, as a minimum, provide coverage in the amount of \$50,000 per accident per location.

(c) The Owners Association may require that there be maintained in force fidelity coverage against dishonest acts on the parts of Managers (and employees of Managers), employees, members of the Management Committee, or volunteers responsible for handling funds belonging to or administered by the Manager, Management Committee, or Association of Unit Owners. The fidelity bond or insurance shall name the Owners Association as the obligee or insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than 150% of the Condominium Project's estimated annual operating expenses including reserves. Such fidelity bond or insurance shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(d) workmen's compensation insurance if and to the extent necessary to meet the requirements of law;

(e) such other insurance as the Management Committee may determine or as may be requested from time to time by a Majority of the Unit Owners.

Section 5. Separate Insurance. Each Unit Owner shall have the right, at his own expense, to obtain insurance for his own Unit and for his own benefit and to obtain insurance coverage on his personal property and for his personal liability as well as on any improvements made by him to his Unit under coverage normally called "improvements and betterments coverage"; provided, however, that no Unit Owner shall be entitled to exercise his right to acquire or maintain such insurance coverage so as to decrease the

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amount which the Management Committee, on behalf of all Unit Owners, may realize under any insurance policy maintained by the Management Committee or to cause any insurance coverage maintained by the Management Committee to be brought into contribution with insurance coverage obtained by a Unit Owner. All such policies shall contain waivers of subrogation. No Unit Owner shall obtain separate insurance policies on the Condominium, except as provided in this Section 5.

Section 6. Insurance Trustee.

(a) All physical damage insurance policies purchased by the Management Committee shall be for the benefit of the Owners Association, the Unit Owners, their Mortgagees, and the Declarant, as their interests may appear, and shall provide that all proceeds of such policies shall be paid in trust to the Management Committee as "Insurance Trustee" to be applied pursuant to the terms of Article VI.

(b) The sole duty of the Management Committee as Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in these Bylaws, for the benefit of the insureds, and their beneficiaries thereunder.

ARTICLE VI

REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

Section 1. When Repair and Reconstruction Are Required. Except as otherwise provided in Section 5 of Article VII, in the event of damage to or destruction of all or any part of the Project as a result of fire or other casualty, the Management Committee shall arrange for and supervise the prompt repair and restoration of the Project (including any damaged Units, and the floor coverings, kitchen or bathroom fixtures and appliances initially installed therein by the Declarant, and replacements thereof installed by the Declarant, but not including any furniture, furnishings, fixtures, equipment, or other personal property supplied or installed by the Unit Owners in the Units). Notwithstanding the foregoing, each Unit Owner shall have the right to supervise the redecorating of his own Unit.

Section 2. Procedure for Reconstruction and Repair.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to any portion of the Project, the Management Committee shall obtain reliable and detailed estimates of the cost of repairing and restoring such portion (including any damaged Units and any floor coverings and

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kitchen and bathroom fixtures and appliances initially installed by Declarant, and the replacements thereof installed by the Declarant, but not including any other furniture, furnishings, fixtures, or equipment installed by the Unit Owner in the Unit) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Management Committee as Insurance Trustee determines to be necessary.

(b) Assessment. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if on completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve or replacement funds and/or shall be deemed a Common Expense and a special assessment therefor shall be levied as follows:

(i) If the destruction or damage is confined to one Unit, then the Unit is responsible for any deficiency.

(ii) If the destruction or damage is confined to one building, then the Units contained in the damaged building shall be responsible for any deficiency.

(iii) If the damage or destruction involves both of the existing buildings, then all the Units shall be assessed for any deficiency on the basis of their respective percentage interest.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the Project, subject to any modifications required by changes in applicable governmental regulations, and using contemporary building materials and technology to the extent feasible.

### Section 3. Disbursements of Construction Funds.

(a) Construction Fund and Disbursement. The proceeds of insurance collected on account of casualty, and the sums received by the Management Committee as Insurance Trustee from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(i) If the estimated cost of reconstruction and repair is less than \$50,000, then the construction fund shall be disbursed in payment of such costs on order of

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the Management Committee; provided, however, that on request of 20% of the Mortgagees (based on one vote for each Mortgage owned), such fund shall be disbursed pursuant to subparagraph (ii).

(ii) If the estimated cost of reconstruction and repair is \$50,000 or more, then the construction fund shall be disbursed in payment of such costs on approval of an architect qualified to practice in Utah and employed by the Management Committee as Insurance Trustee to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect, and other persons who have rendered services or furnished materials in connection with the work stating that: (a) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (b) there is no other outstanding indebtedness known to such architect for the services and materials described; and (c) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificates does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(b) Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided among all Unit Owners in proportion to their Percentage Interests and shall be distributed in accordance with the priority of interests at law or in equity in each Unit.

(c) Common Areas. When the damage is to both Common Areas and Units, the insurance proceeds shall be applied first to the cost of repairing those portions of the Common Areas which enclose and service to Units, then to the cost of repairing the other Common Areas and thereafter to the cost of repairing the Units.

#### Section 4. When Reconstruction is Not Required.

(a) If 75% or more of the Condominium Project is destroyed or substantially damaged, if proceeds of the insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if 75% of the

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entire Owners Association votes to and makes provision for repair and reconstruction of the Project within 100 days after the destruction or damage; then restoration shall be accomplished in the manner directed under Sections 2 and 3 of this Article.

(b) If 75% or more of the Project is destroyed or substantially damaged, if proceeds of the insurance maintained by the Management Committee are insufficient to accomplish restoration, and if 75% of the Owners Association does not vote to and make provision for repair and reconstruction of the Project within 100 days after the destruction or damage; then the Management Committee shall promptly record with the Salt Lake County Recorder a notice setting forth such facts. On the recording of such notice, the provisions of Subsections 1 through 4 of Section 57-8-31, Utah Code Annotated (1953), as amended from time to time, shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

(c) For purpose of this Section, a determination of the extent of damage to or destruction of the Project shall be made as follows:

(i) The Management Committee or Manager shall select 3 M.A.I. appraisers;

(ii) Each appraiser shall independently arrive at a figure representing the percentage of the Project which has been destroyed or substantially damaged;

(iii) The percentage which governs the application of the provisions of this section shall be the average of the two closest appraisal figures.

## ARTICLE VII

### MORTGAGES

Section 1. Notice to Management Committee. A Unit Owner who mortgages his Unit shall notify the Management Committee of the name and address of his Mortgagee and shall file a conformed copy of the note, mortgage, trust deed note, trust deed, or other security instrument with the Management Committee.

Section 2. Notice of Default, Casualty, or Condemnation. The Management Committee when giving notice to any Unit Owner of a default in paying an assessment for Common Expenses or any other default, shall simultaneously send a copy of such notice to the Mortgagee of such Unit. Each Mortgagee shall also be promptly

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notified of any casualty when required by Section 2(b)(iv) of Article V, of all actions taken under Article VI and of any taking in condemnation or by eminent domain and actions of the Owners Association with respect thereto. For purposes of this section only, when notice is to be given to a Mortgagee, the Management Committee shall also give such notice to any Eligible Insurer or Guarantor.

Section 3. Notice of Amendment of Declaration or Bylaws. The Management Committee shall give notice to all Mortgagees at least seven days prior to the date on which the Unit Owners, in accordance with the provisions of these Bylaws, materially amend the Amended Declaration, Map, or Bylaws.

Section 4. Notice of Change in Manager. The Management Committee shall give notice to all Mortgagees at least 30 days prior to changing the Manager.

Section 5. Mortgagees' Approvals. Unless at least 75% of the Mortgagees (based on one vote for each Mortgage owned) and at least 75% of the Unit Owners (other than the Declarant) have given their prior written approval, the Owners Association shall not: (i) change any Unit's Percentage Interest in Common Expenses or in the Common Areas, except as provided by the Act; (ii) partition, subdivide, abandon, encumber, sell, or transfer the Common Areas of the Condominium (except for the granting of utility easements); (iii) by act or omission withdraw the submission of the Tract to the Utah Condominium Ownership Act; (iv) modify the method of determining the collecting assessments or allocating distributions of casualty insurance proceeds or condemnation awards; or (v) use hazard insurance proceeds for losses to the Condominium Project for any purpose other than repair, replacement, or restoration, except as provided in Section 4 of Article VI and the provisions of the Act.

Section 6. Other Rights of Mortgagees. All Mortgagees or their representatives shall have the right to attend and to speak at meetings of the Owners Association. All such Mortgagees shall have the right to examine the books and records of the Condominium Project and to require the submission of annual financial reports and other budgetary information.

Section 7. Information Submitted to Mortgagee Guarantors. The Management Committee shall submit a copy of all the amendments to the Declaration or Bylaws, all applicable rules and regulations governing the Condominium Project, all policies of insurance purchased pursuant to Article V hereof, and the budget of each fiscal year prepared pursuant to Article IV, Section 1 hereof to the Eligible Insurers or Guarantors. All other records of the Owners Association, Management Committee, or Manager dealing with the Condominium Project shall be made available for inspection, on request, to the Eligible Insurers or Guarantors during the normal business hours or under other reasonable circumstances.

## ARTICLE VIII

### COMPLIANCE AND DEFAULT

Section 1. Relief. Each Unit Owner shall be governed by, and shall comply with, all of the terms of the Amended Declaration, Map, Bylaws, and Act as any of the same may be amended from time to time. In addition to the remedies provided by the Act, a default by a Unit Owner shall entitle the Owners Association, acting through its Management Committee or through the Manager, to the following relief:

(a) Additional Liability. Each Unit Owner shall be liable for the expenses of all maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness or the act, neglect, or carelessness of any member of his family or his employees, agents, or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Management Committee. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy, or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation.

(b) Costs and Attorneys' Fees. In any proceedings arising out of any alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of such proceedings and such reasonable attorneys' fees as may be determined by the court.

(c) No Waiver of Rights. The failure of the Owners Association, the Management Committee, or of a Unit Owner to enforce any right, provisions, covenant, or condition which may be granted by the Amended Declaration, Map, Bylaws, or Act shall not constitute a waiver of the right of the Owners Association, the Management Committee, or the Unit Owner to enforce such right, provisions, covenant, or condition in the future. All rights, remedies, and privileges granted to the Owners Association, the Management Committee, or any Unit Owner pursuant to any term, provision, covenant, or condition of the Amended Declaration, Map, Bylaws, or Act shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Amended Declaration, Map, Bylaws, or Act or at law or in equity.

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(d) Interest. In the event of a default by any Unit Owner in paying any sum assessed against his Unit other than for Common Expenses which continues for a period in excess of 15 days, interest at a rate of 12% per annum for the first three months such assessment is in arrears, and 18% per annum thereafter may be imposed in the discretion of the Management Committee on the principal amount unpaid from the date due until paid.

(e) Abating and Enjoining Violations by Unit Owners. The violation of any of the rules and regulations adopted by the Management Committee, the breach of any Bylaws contained herein, or the breach of any provision of the Amended Declaration, or Act shall give the Management Committee the right, in addition to any other rights set forth in these Bylaws: (i) to enter the Unit in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Unit Owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Management Committee shall not thereby be deemed guilty in any manner of trespass; or (ii) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

(f) Legal Proceedings. Failure to comply with any of the terms of the Amended Declaration, these Bylaws, and the rules and regulations shall be grounds for relief, including without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in these Bylaws or any combination thereof and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Owners Association, the Management Committee, the Manager or, if appropriate, by an aggrieved Unit Owner and shall not constitute an election of remedies.

## Section 2. Lien For Assessments.

(a) Lien. The total annual assessment of each Unit Owner for Common Expense or any special assessment, or any other sum duly levied (including, without limitation, fines, interest, late charges, etc.), made pursuant to these Bylaws, is hereby declared to be a lien levied against the Unit of such Unit Owner as provided by the Act, which lien shall, with respect to annual assessments, be effective on the first day of each fiscal year of the Condominium Project and, as to special assessments and other sums duly levied, on the first day of the next month which begins more than ten days after delivery to the Unit Owner of a notice of such special assessment or levy. The Management Committee or the Manager

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may file or record such other or further notice of any such lien, or such other or further document, as may be required to confirm the establishment and priority of such lien.

(b) Acceleration. In any case where an assessment against a Unit Owner is payable in installments, on a default by such Unit Owner in the timely payment of any two consecutive installments, the maturity of the remaining total of the unpaid installments of such assessments may be accelerated, at the option of the Management Committee, and the entire balance of the annual assessment may be declared due and payable in full by the service of notice to such effect on the defaulting Unit Owner and his Mortgagee by the Management Committee or the Manager.

(c) Enforcement. The lien for assessments may be enforced and foreclosed in any manner permitted by the laws of the state of Utah; by power of sale pursuant to Section 3 of this Article or action in the name of the Management Committee, or the Manager, acting on behalf of the Owners Association. During the pendency of such suit, the Unit Owner shall be required to pay a reasonable rental for the Unit for any period prior to sale pursuant to any judgment or order of any court having jurisdiction over such sale. The plaintiff in such proceedings shall have the right to the appointment of a receiver, if available under the laws of the state of Utah.

(d) Remedies Cumulative. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

Section 3. Supplemental Enforcement of the Lien. In addition to the proceedings at law or in equity for the enforcement of the lien established by the Amended Declaration, these Bylaws, or the Declarant or the Management Committee to execute bonds conditioned on the faithful performance and payment of the installments of the lien established thereby and may likewise be required to secure the payment of such obligations by a declaration of trust recorded among the land records of Salt Lake County, Utah granting unto a default in the performance of such bond such declaration of trust may be foreclosed by such trustee or trustees acting at the direction of the Management Committee. In the event any such bonds have been executed and such declaration of trust is recorded, then any subsequent purchaser of a Unit shall take title subject thereto and shall assume the obligations provided for therein.

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Section 4. Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to these Bylaws on any Unit (and any penalties, interest on assessments, late charges, or the like) shall be subordinate to, and shall in no way affect the rights of the holder of a Mortgage made in good faith for value received; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser of the Unit at such sale from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment, which lien shall have the same effect and be enforced in the same manner as provided herein.

#### ARTICLE IX

#### MISCELLANEOUS

Section 1. Notices. All notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by United States mail, postage prepaid, or if notification is of a default or lien, sent by registered or certified United States mail, return receipt requested, postage prepaid, (a) if to a Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Management Committee or, if no such address is designated, at the address of the Unit of such Unit Owner, or (b) if to the Owners Association, the Management Committee, or to the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Unit Owners pursuant to this section. If a Unit is owned by more than one person, each such person who so designates an address in writing to the Management Committee shall be entitled to receive all notices hereunder.

Section 2. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these Bylaws of the intent of any provision thereof.

IN WITNESS WHEREOF, the Management Committee has caused these Bylaws to be executed as the Bylaws of the Holladay Creek Condominium Project this 21 day of October, 1986.

BY *Jan Rodman*  
\_\_\_\_\_, President  
of the Holladay Creek Condominium  
Management Committee

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