

RESTATED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF COTTONWOOD COVE AT TANNER  
LANE, A DEMINIMUS PLANNED UNIT DEVELOPMENT,  
ESTABLISHED PURSUANT TO THE UTAH CONDOMINIUM  
OWNERSHIP ACT

4551534

This Declaration of Covenants, Conditions and Restrictions, hereinafter called the 'Declaration', is made and executed in Salt Lake County, Utah, this 30<sup>th</sup> day of October, 1987, by TRI-N CORPORATION, a Utah Corporation, hereinafter referred to as Declarant, and the MANAGEMENT COMMITTEE OF COTTONWOOD COVE AT TANNER LANE, consisting of Michael F. Nagle, Scott G. Nagle and Gary Nagle hereinafter called the 'Committee' acting for themselves and for the owners of units in said lands, and pursuant to the provisions of the Utah Condominium Ownership Act as provided in 53 UCA 57-8-1, as amended, et seq., hereinafter referred to as the Condominium Ownership Act' or 'Act'.

1. RECITALS

1.1 Cottonwood Cove at Tanner Lane is a deminimus planned unit development, which was originally described as TANNER LANE CONDOMINIUMS. The said project is located in Salt Lake County, Utah and is contained within the exterior boundaries of the following described parcel:

All of Tanner Lane Condominiums, as shown by the Record of Survey Map, filed for record May 4, 1983 in Plat Book 83-05 at Page 51, records of the Salt Lake County Recorder, and as defined by the Declaration of Covenants, Conditions and Restrictions filed for record May 4, 1983 as Entry No. 3789119, indexed in Book 5456 at Page 1724, which project is further described as lying within:

Beginning at a point that is 1,245.667 feet North and 1,647.5241 feet West from the East Quarter Corner of Section 21, Township 2 South, Range 1 East, SLB&M, and running thence South 00 degrees 07'45" West 998.7259 feet; thence South 68 degrees 52'10" West 236.2594 feet; thence North 00 degrees 21'10" West 141.7101 feet;

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KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
STEWART TITLE  
REC BY: JEDD BOGENSCHUTZ, DEPUTY

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thence North 00 degrees 07'52" West 453.3938 feet;  
thence North 90 degrees 00'00" West 90.0000 feet;  
thence North 00 degrees 00'00" East 489.0208 feet;  
thence South 89 degrees 57'30" East 312.4003 feet to  
the point of beginning.

1.2 The Declarant, The Contour Corporation, and their successor in interest, Tri-N Corporation, have filed a Record of Survey Map on May 4, 1983 in Plat Book 83-05 at Page 51 pursuant to the Act, and the successor to the Declarant has filed a Supplemental Record of Survey Map in Plat Book 87-09 at Page 115 illustrating the development plans for the project, which supplemental map has been approved by the Salt Lake County Planning Commission.

1.3 The Declaration filed originally on May 4, 1983 as Entry No. 3799119, indexed in Book 5456 at Page 1724, and the Restated and Amended Declaration filed for record on September 9, 1987 as Entry No. 4520099, indexed in Book \_\_\_\_\_ at Page \_\_\_\_\_ subjected this project to the provisions of the Condominium Ownership Act. This Declaration herein is a restated declaration of all of the covenants, conditions and restrictions by the Committee in accordance with the provisions contained in the previous declarations and is intended to update and more clearly state the intent of the Declarant and owners of lands within the project. This Declaration imposes its provisions upon all lands, common areas and buildings now constructed or hereafter to be constructed on said project and shall be considered to be covenants running with the land. This project was originally styled as TANNER LANE CONDOMINIUM, but by the Restated and Amended Declaration that name was changed to COTTONWOOD COVE AT TANNER LANE, a deminimus planned unit development. Any reference to the project as Tanner Lane Condominium shall be considered to refer to Cottonwood Cove at Tanner Lane.

1.4 Declarant and the Committee desire and intend by filing this Restated Declaration and any Supplemental Record of Survey Maps for individual units hereafter constructed and built pursuant to the plans approved by the Salt Lake County Planning Commission to subject all such units to the Act as a deminimus planned unit development project and to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of said property and the owners thereof.

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## 2. SUBMISSION

Declarant and the Committee hereby make the following Declaration and submit the land and units constructed or to be constructed hereon to the Act. the land and units shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for improvement of said land, and shall be deemed to run with the land and shall be binding upon Declarant, its successors and assigns, and any person acquiring or owning an interest in the project, their grantees, successors, heirs, personal representatives, devisees and assigns.

## 3. NAME OF THE PROJECT

The name by which this project shall be known hereafter is COTTONWOOD COVE AT TANNER LANE. Any references in any deed, mortgage, deed of trust, release, reconveyance, or any other document that shall describe the said project by its former name TANNER LANE CONDOMINIUM shall be deemed to have intended to describe COTTONWOOD COVE AT TANNER LANE, a deminimus planned unit development.

## 4. DEFINITIONS

4.1 Declarant shall mean The Contour Corporation, originally, and its successor, Tri-N Corporation, which has made, executed and restated this Declaration.

4.2 The term 'Act' shall mean and refer to the Utah Condominium Ownership Act, 53 UCA 57-8-1, as amended, et seq.

4.3 The term 'Condominium' shall mean and refer to the ownership of a single occupancy space in this project, together with the undivided ownership interest in the Common Areas and Facilities.

4.4 The term 'the land' shall mean, refer to and consist of the the property described herein and submitted to the Act as a deminimus planned unit development

4.5 The term 'Declaration' shall mean this instrument by which Cottonwood Cove at Tanner Lane, a deminium planned unit development, whether denominated as such or by its prior name

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Tanner Lane Condominiums, became established, together with any supplemental, amended or restated declarations.

4.6 The term 'property' or 'planned unit development' shall mean and include the land, the buildings, all improvements and structures thereon, and all easements, rights belonging thereto, and all articles of personal property intended for use in connection therewith.

4.7 The term 'Condominium Project' or 'Project' shall mean and refer to the entire development of the land under the act as a deminimus planned unit development. This term shall refer to all of the land developed heretofore under the style of Tanner Lane Condominium and to be constructed hereafter based upon the plan approved by the Salt Lake County Planning Commission and as shown on any Supplemental Record of Survey Maps filed.

4.8 The term 'Map' shall mean and refer to the Record of Survey Map of Cottonwood Cove at Tanner Lane, a deminimus planned unit development and includes any such Record of Survey Map under the style of Tanner Lane Condominiums. Such term shall include Supplemental Record of Survey Maps filed in connection with units to be constructed hereafter based upon the plan approved by the Salt Lake County Planning Commission.

4.9 The term 'unit' shall mean and refer to that part of the property owned in fee simple for independent use and shall include the elements of the project developed as a deminimus planned unit development which are not owned in common with the owners of other units as shown on the map.

4.10 The term 'unit owner' shall mean and refer to the person or persons owing a unit in fee simple and an undivided interest in the fee simple estate of the Common Areas and Facilities in the percentage specified and established in the Declaration.

4.11 The term 'unit owners' shall mean and refer to unit owners of the Cottonwood Cove at Tanner Lane, a deminimus planned unit development or under its former style of Tanner Lane Condominiums, and includes the original purchasers and others who subsequently become unit owners.

4.12 The term 'Association of Unit Owners' or 'Association' shall mean and refer to all of the unit owners acting as a group in accordance with the Act and this Declaration.

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4.13 The term 'unit number' shall mean and refer to a number, letter or combination thereof with designates a unit in the Declaration and on the Record of Survey Map.

4.14. The terms 'majority' or 'majority of unit owners' shall mean the owners of more than 50% in the aggregate in interest of the undivided ownership of the Common Areas and Facilities.

4.15 The term 'Management Committee' or 'Committee' shall mean and refer to a committee composed of persons designated by the Declarant and/or elected to such position by the Association of Unit Owners, as provided in this Declaration. Said Committee is charged with and shall have the responsibility and authority to make and enforce all of the reasonable rules and regulations covering the operation and maintenance of the property.

4.16 The term 'Manager' shall mean and refer to the person, persons or corporations selected by the Management Committee to manage the affairs of the project.

4.17 The term 'Common Areas and Facilities' or 'Common Areas' shall mean and refer to:

A. The land described in paragraph 5.1 hereof.

B. That portion of the project developed as a deminimus planned unit development not specifically included in the respective units as herein defined.

C. All buildings, structures, walkways, parkings areas, recreational parking areas, streets, alleys, facilities, yards, gardens, fences, power facilities and other utility service facilities, and in general all other apparatus, installations and other parts of the property necessary and convenient to the existence, maintenance and safety of the Common Area, or normally in common use and not included specifically within the exterior boundaries of the unit.

D. Those Common Areas and Facilities specifically set forth and designated as such in the Map.

E. All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein, except the portion of the project developed hereunder as a deminimus planned unit development included in the respective units.

4.18 The term 'Limited Common Areas and Facilities' shall mean and refer to those common areas and facilities

designated in the Declaration and upon the Map as reserved and designated for the exclusive use of certain units to the exclusion of other unit owners.

4.19 The term 'Common Expenses' shall mean and refer to all expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities; to all items, things, and sums described in the Act which are lawfully assessed against the unit owners in accordance with the provisions of the Act, this Declaration, such rules and regulations pertaining to the project developed hereunder as a deminimus planned unit development, as the Association of Unit Owners or the Management Committee may from time to time adopt, and such determinations and agreements lawfully made and/or entered into by the Management Committee.

4.20 The term 'mortgagee' shall mean and include both a mortgagee under a first mortgage on any unit and a beneficial interest held under a first deed of trust on any unit.

4.22 Those definitions contained in the Act, to the extent they are applicable to and not inconsistent herewith, shall be and hereby are incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

## 5. DESCRIPTION OF PROPERTY

5.1 Description of Land. The land on which the Cottonwood Cove at Tanner Lane, a deminimus planned unit development, is located is that certain parcel of land hereinbefore described at paragraph 1.1 herein, and formerly referred to as Tanner Lane Condominiums. Any reference to said land by either its original name or the new name shall be to describe the land herein.

5.2 General Description of Buildings. The units of the project developed hereunder as a deminimus planned unit development, are located on twenty-four separate buildings. The buildings are all either one or two story structures consisting of 35 separate units in 24 such buildings. The buildings are each comprised of a concrete foundation basement level with a truss joist wood floor on the main level and second level, or a concrete floor with no basement and wood truss floor on the second level and roof system covered by architectural grade asphalt shingles or wooden shake shingles; the buildings are wood frame structures with the exterior in brick veneer and aluminum siding. Each unit is designed for use as a single family

residence.

All other details involving the respective units and their descriptions and precise location are found in the Record of Survey Map filed for record on May 4, 1983 in Plat Book 83-05 at Page 51 and in Supplemental Record of Survey Maps to be filed hereafter as units not currently build are constructed. Any deviation between the anticipated location and the final location as constructed shall be controlled by the precise location on the ground and as depicted in any such Supplemental Record of Survey Map.

5.3 Description of Units. Each unit shall consist of:

A. Each space enclosed by the exterior of the building walls, overhangs, foundations, and basements, including roofs, garages and porches.

B. Each such unit shall be described substantially as follows:

Unit \_\_\_\_\_, COTTONWOOD COVE AT TANNER LANE, a deminimus planned unit development, developed pursuant to the Utah Condominium Ownership Act, as shown in the Record of Survey Map filed for record on May 4, 1983 in Plat Book 83-05 at Page 51, [and as shown in a Supplemental Record of Survey Map filed for record on \_\_\_\_\_ in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_], and as defined by the Restated Declaration of Covenants Conditions and Restrictions filed for record on \_\_\_\_\_ as Entry No. \_\_\_\_\_ indexed in Book \_\_\_\_\_ at Page \_\_\_\_\_

TOGETHER WITH an undivided percentage ownership interest in the Common Areas and Facilities as provided in the Declaration.

Any reference to Tanner Lane Condominiums, or the previous declarations shall be deemed to refer to this declaration and define the units in Cottonwood Cove at Tanner Lane, a deminimus planned unit development.

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C. Units forming a part of the project developed as a de minimus planned unit development under the Act are graphically depicted upon the Record of Survey Map and any Supplemental Record of Survey Maps hereafter filed with the general particulars of the buildings on the Record of Survey Map and that certain Supplemental Record of Survey Map filed for record on September 9, 1987 in Plat Book 87-09 at Page 115 showing the anticipated plan for development of the project, and specifically on any Supplemental Record of Survey Map that hereafter may be filed.

D. Each unit owner has immediate access to the limited common areas and facilities designated for their use.

E. Every contract for sale of a unit and every other instrument affecting title to a unit may describe that unit by its identifying number or symbol as designated on the Map with the appropriate reference to the Map and to the Declaration, as each shall appear on the records of the Salt Lake County Recorder. Such description shall be construed to describe the unit, together with the appurtenant undivided interest in the common areas and facilities, and to incorporate all rights of ownership incident to ownership of such a unit and all of the limitations on such ownership as described in this declaration, including the appurtenant undivided interest. Any reference to such unit by its previous name of Tanner Lane Condominium shall be deemed to refer to Cottonwood Cove at Tanner Lane and any reference to the Declaration shall be deemed to refer to the restated declaration hereof.

5.4 Description of Common Areas and Facilities. The Common Areas and Facilities shall consist of all parts of the project except the units. Such definition shall include all utility facilities providing service to the units located within the common areas, limited common areas, and all repairs and maintenance to any such common facilities.

5.5 Each unit owner is hereby granted an irrevocable license to use and occupy the limited common areas and facilities designated on the Record of Survey Map, or upon any Supplemental Record of Survey Map executed by the Declarant depicting the same, as reserved exclusively for the use of that unit, which shall consist of all the Common Areas and Facilities, which are intended for the exclusive use of the unit, the use and occupancy of which shall in each case be limited to such unit.



6. STATEMENT OF PURPOSES, USE AND RESTRICTIONS

6.1 Purposes. The purpose of this deminimus planned unit development is to provide housing and related facilities for the unit owners and their respective families, tenants, guests and servants.

6.2 Restrictions on Use. the units and Common Areas and Facilities shall be used and occupied as follows:

A. No part of the project shall be used for other than housing and the related common purposes for which the project was designed. East unit shall be used and occupied as a residence for a single family and for no other purpose.

B. There shall be no obstruction of the Common Areas and Facilities, nor shall anything be stored in the Common Areas and Facilities without the prior written consent of the Management Committee, except as is otherwise provided herein.

C. Nothing shall be done or kept in any unit or in Common Areas and Facilities which will increase the rates of insurance on the buildings or contents thereof beyond that customarily 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 and Facilities which will result in the cancellation of insurance on any buildings, or the contents thereof, or which would be in violation of any law or regulation of any governmental authority. No waste shall be comitted in the Common Areas and Facilities.

D. No unit owner shall cause or permit anything (including without limitation a sign, awning, canopy, shutter, storm door, screen door, radio or television antenna) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or to the outside of windows or doors, without the prior written consent of the Management Committee.

E. No animals or birds of any kind shall be raised, bred or kept in any unit or in the Common Areas or Facilities, except that dogs, cats and other household pets may be kept in units, subject to the rules adopted by the Association of Unit Owners, provided that they are not kept, bred or maintained for any commercial purpose; and provided further that any such pet causing or creating a nuisance or disturbance shall be permanently removed from the project upon 10 days written notice from the Management Committee.

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F. No noxious or offensive activity shall be carried on in any unit or in the Common Areas and Facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other unit owners or occupants.

G. Nothing shall be done in any unit or in, on or to the Common Areas and facilities which will impair the structural integrity of the buildings or any part thereof, or which would structurally change the buildings or any part thereof, except as is otherwise provided herein.

H. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Areas or Facilities. The Common Areas and Facilities shall be kept free and clear of all rubbish, debris and other unsightly materials.

I. No industry, business, trade, occupation or profession of any kind, whether for commercial, religious, educational, charitable or other purposes, shall be conducted, maintained or permitted on any part of the project, except such as may be permitted by the Management Committee and subject to the rules, nor shall any "For Sale" or "For Rent" signs or to the the window displays or advertising be maintained or permitted by any unit owner on any part of the project or in any unit therein, except that:

(i) The Declarant may perform or cause to be performed such work as is incident to the completion of the development of the project, or to the sale or lease of units owned by Declarant;

(ii) The Declarant may place "For Sale" or "For Rent" signs on any unsold or unoccupied units and may place such other signs on the project as may be required to facilitate the sale or lease of unsold units;

(iii) The Association of Unit Owners or the Management Committee or its agent or representative may place "For Sale" or "For Rent" signs on any unit or on the project for the purpose of disposal of units by any unit owners, mortgagee or the Association of Unit Owners; and

(iv) A unit owner with respect to a unit, and the Association of Unit Owners or Management Committee or its agent or representative with respect to the the Common Areas and Facilities, may perform or cause to be performed any maintenance, repair, or remodeling work, or other work, required or permitted by this Declaration.

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## 7. OWNERSHIP AND USE

7.1 Ownership of a Unit. Except with respect to any of the Common Areas and Facilities located within the bounds of a unit, each unit owner shall be entitled to the exclusive ownership and possession of his unit and to the ownership of an undivided interest in the Common Areas and Facilities in the percentage expressed in 'Exhibit B', attached hereto and made a part hereof by this reference.

7.2 Prohibition Against Subdivision of a Unit. No unit owner shall, by deed, plat, lease or otherwise, subdivide or in any manner cause his unit to be separated into tracts or parcels smaller than the whole unit as shown in the Map.

7.3 Supplemental Record of Survey Maps. The Declarant or the Management Committee, upon constructing any unit not constructed at the date hereof or upon the change of any unit heretofore constructed cause to be filed for record a Supplemental Record of Survey Map showing the precise location of such unit as constructed or relocated.

7.4 Ownership of Common Areas and Facilities. The Common Areas and Facilities shall be owned by each of the unit owners as tenants in common, and ownership thereof shall remain undivided. No action for partition of any part of the Common Areas and Facilities shall be maintainable, except as specifically provided in the Utah Condominium Ownership Act, nor may any unit owner otherwise waive or release any rights in the Common Areas and Facilities.

7.5 Use of Common Areas and Facilities. Except with respect to Limited Common Areas, each unit owner may use the Common Areas and Facilities in accordance with the purposes for which they are intended, but subject to this Declaration, such right of use shall be appurtenant to and run with the unit.

7.6 Interest in Common Areas and Facilities. The percentage of interest in the Common Areas and Facilities of each unit has been determined by the Declarant on the basis of par value which is based upon the living space square footage in accordance with the Condominium Ownership Act, which percentages are contained in Exhibit B.

7.7 Use of Limited Common Areas and Facilities. A unit owner's use and occupancy of the Limited Common Areas and Facilities reserved for his unit shall be subject to and in accordance with this Declaration. Each Owner shall maintain the

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Limited Common Areas and Facilities associated with his unit.

8. AGENT FOR SERVICE OF PROCESS

The name and address of the person in Salt Lake County, State of Utah, appointed as the first agent to receive service of process in matters pertaining to the property as provided under the Condominium Ownership Act is:

M.F. Nagle  
7678 Chad Street

Tri-N Corporation  
Midvale, UT 84047

The agent may be changed from time to time by filing the appropriate instruments of record.

9. PERCENTAGE OF OWNERSHIP AND VOTING RIGHTS

The percentage of ownership in the Common Areas and Facilities of the project shall be for all purposes, including voting. The common expenses shall be allocated among the unit owners in accordance therewith. The percentage of ownership in the Common Areas and Facilities shall be set forth in Exhibit B.

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## 10. EASEMENTS

10.1 The Management Committee may hereafter grant easements for utility purposes for the benefit of the condominium property, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, irrigation lines, storm drain lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along, on and through any portion of the Common Areas and Facilities.

10.2 Each unit shall be subject to such easement as may be necessary for the installation, maintenance, repair or replacement of any Common Areas and Facilities located within the boundaries of such unit.

10.3 In the event that by reason of the construction, reconstruction, settlement or shifting of any building, any part of the Common Areas and Facilities encroaches or shall thereby encroach upon any part of the Common Areas and Facilities or any other unit, 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 and Facilities, 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 for any encroachment be created in favor of the unit owners as owners of the Common Areas and Facilities if such encroachment occurred due to the willful conduct, negligent act or omission of such unit owner or owners.

## 11. MANAGEMENT

11.1 The business, property and affairs of the Project shall be managed by a Management Committee consisting of five members who are officers or agents of Declarant or unit owners in the Project, said members to be elected as provided hereafter. Such Management Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration and/or any amendments subsequently filed thereto; provided, however, that the Management Committee may engage the services of a professional manager and fix and pay a reasonable fee or compensation therefor, and further provided that any agreement for professional management of the Project, shall provide for a term not exceeding three (3) years and shall provide that without cause and without payment of a termination fee, such management

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agreement or other contract may be terminated by either party thereto on ninety (90) days or less written notice.

11.2 The Management Committee shall be responsible for the control, operation and management of the Project in accordance with the provisions of the Declaration and such administrative, management and operational rules and regulations as it may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the Committee. The Committee shall, in connection with its exercise of any of the powers delineated in subparagraphs (A) through (I) below, constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted, the following authority and powers (all of which are, however, subject to any specific restrictive provisions of this Declaration:

A. The authority, without the vote or consent of the unit owners or of any other person(s), to grant or create, on such terms as it deems advisable, reasonable utility and similar easements over, under, across and through the Common Areas and Facilities.

B. The authority to execute and record, on behalf of all the unit owners, any amendment to the Declaration or Record of Survey Map which has been approved by the vote or consent necessary to authorize such amendment.

C. The power to sue and be sued.

D. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

E. The power and authority to convey or transfer any interest in real property, so long as any vote or consent necessary under the circumstances has been obtained.

F. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action has been authorized by any vote or consent which is necessary under the circumstances.

G. The power and authority to add any interest in real property obtained pursuant to subparagraph F above to the Planned Unit Development Project, so long as such action has been authorized by the necessary vote or consent.

H. The authority to promulgate such reasonable rules,

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regulations and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Declaration or the interests of the unit owners.

I. The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions on behalf of the unit owners.

Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who on good faith and for value relies upon said instruments.

11.3 The Committee shall be composed of five (5) members. Until three years from the date hereof, or until units to which three-fourths of the undivided interest in the common areas and facilities have been conveyed by Declarant, whichever occurs first, Declarant shall appoint the members of the Committee. Commencing with the first annual meeting to be held on the first Thursday in March, 1988, the terms of each member of the Committee shall be one (1) year. At each annual owners meeting, five (5) Committee members shall be elected. Only unit owners, officers and agents of owners other than individuals, and officers and agents of Declarant shall be eligible for Committee membership. At each annual meeting the fraction of undivided ownership interest appurtenant to a unit may be voted in favor of as many candidates for Committee membership as there are seats on the Committee to be filled. Any Committee member who fails on three successive occasions to attend Committee meetings (whether regular or special), or who has failed to attend at least 25 percent of all Committee meetings (whether regular or special) held during any six-month period, shall automatically forfeit his seat. In the event a Committee seat becomes vacant, whether by reason of forfeiture or due to another cause, the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected. Unless he forfeits or otherwise loses his seat as herein provided, a member shall serve on the Committee until his successor is elected and qualifies. Committee members shall be reimbursed for all expenses reasonably incurred in connection with Committee business. Any member of the Management Committee may resign at any time by giving written notice to the president of the Association or the remaining Management Committee members.

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Any member of the Management Committee may be removed from membership on the Management Committee by a two-thirds majority vote of the Association. Whenever there shall occur a vacancy on the Management Committee due to death, resignation, removal or any other cause, the remaining members shall elect a successor member to serve until the next annual meeting of the Association, at which time said vacancy shall be filled by the Association for the unexpired term, if any. The members of the Management Committee shall receive no compensation for their services unless expressly approved by a majority of the Association; provided, however, that any member of the Management Committee may be employed by the Association in another capacity and receive compensation for such employment.

11.4 The meeting of the Management Committee shall be held at such places within the State of Utah as the Management Committee shall determine. Three (3) members of the Management Committee shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Management Committee. The Management Committee shall annually elect all of the officers of the Association. The meeting for the election of officers shall be held at the first annual meeting of the Association. Special meetings of the Management Committee may be called by the president or by any two Management Committee members. Regular meetings of the Management Committee may be held without call or notice. The person or persons calling a special meeting of the Management Committee shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called; if an agenda is prepared for such a meeting, the meeting need not be restricted to discussion of those items listed on the agenda. Any member of the Management Committee may, at any time, waive notice of any meeting of the Management Committee, in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Management Committee at a meeting shall constitute a waiver of notice of such meeting except, if a Management Committee member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the Management Committee are present at any meeting of the Management Committee, no notice shall be required and any business may be transacted at such meeting.

11.5 No member of the Management Committee shall be liable to the unit members for any mistake of judgment, for



negligence, or on other grounds, except for such member's own individual and willful misconduct or bad faith. The unit owners shall indemnify and hold harmless each member of the Management Committee from and against all liability, including reasonable attorney's fees, to third parties arising out of any contract made by the Management Committee on behalf of the owners, unless such contract was made in bad faith or contrary to the provisions of the Act or this Declaration. The liability of any unit owner arising out of any contract made by the Management Committee or out of the indemnification provision set forth in the foregoing portion of this paragraph 11.5 shall be limited to the total liability, concerned multiplied by such owner's undivided ownership interest in the Common Areas.

11.6 All officers and employees of the Association shall serve at the will of the Management Committee. The officers shall be a president, secretary and treasurer. The Management Committee may appoint such other assistant officers as the Management Committee may deem necessary. No officer shall be required to be a unit owner, but the president must be a member of the Management Committee. No officer shall receive compensation for serving as such. Officers shall be annually elected by the Management Committee and may be removed and replaced by the Management Committee. The Management Committee may, in its discretion, require that officers (and other employees of the Association) be subject to fidelity bond coverage.

The president shall be the chief executive of the Management Committee and shall preside at all meetings of the unit owners and of the Management Committee and may exercise the powers ordinarily allocable to the presiding officer of an association, including the appointment of committees. The president shall exercise general supervision over the property and its affairs. He shall sign on behalf of the Association all conveyances, mortgages and contracts or materials important to its business. He shall do and perform all acts which the Management Committee may require.

The secretary shall keep minutes of all proceedings of the Management Committee and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the unit owners and the Management Committee. In the absence or liability of the president, the secretary shall perform the functions of the president.

The treasurer shall be responsible for the fiscal affairs of the Association, but may delegate the daily handling of the funds and the keeping of records to a manager or managing

company.

## 12. MEETINGS OF THE ASSOCIATION.

12.1 The presence in person or by proxy at any meeting of the Association of fifty percent (50%) of the unit owners in response to notice to all unit owners of record properly given shall constitute a quorum. In the event that fifty percent (50%) of the unit owners are not present in person or by proxy, the meeting shall be adjourned for twenty-four (24) hours, at which time it shall reconvene and any number of unit owners present at such subsequent meeting shall constitute a quorum. Unless otherwise expressly provided in this Declaration any action may be taken at a meeting of the unit owners upon a majority vote of the unit owners who are present in person or by proxy and who are voting.

12.2 There shall be an annual meeting of the Association on the first Thursday of March at 7:00 p.m. at such reasonable place as may be designated by written notice by the Management Committee delivered to the unit owners no less than fifteen (15) days prior to the date fixed for said meeting. At or prior to an annual meeting, the Management Committee shall furnish to the unit owners: (a) a budget for the coming fiscal year that shall itemize the estimated common expenses of the coming fiscal year with the estimated allocation thereof to each unit owners; and (b) a statement of the common expenses itemizing receipts and disbursements for the previous and current fiscal years, together with the allocation thereof to each unit owner. Within ten (10) days after the annual meeting, that budget statement shall be delivered to the unit owners who were not present at the annual meeting.

12.3 Special meetings of the Association may be held at any time at such reasonable place as is designated in writing by the Management Committee to consider matters which, by the \* of the Declaration, require the approval of all or some of the unit owners, or for any other reasonable purpose. Special meetings shall be called by written notice signed by a majority of the Management Committee, or by unit owners representing at least one-third (1/3) in interest of the undivided ownership of the Common Areas and Facilities and delivered to all unit owners not less than fifteen (15) days prior to the date fixed for said meeting. The notice shall specify the date, time and place of the meeting, and the matters to be considered.

12.4 Robert's Rules of Order (latest edition) shall govern the conduct of the Association's meeting when not in

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conflict with this Declaration.

12.5 The vote attributable to and exercisable in connection with a unit shall be the fraction of undivided ownership interest which is then appurtenant thereto. In the event there is more than one owner of a particular unit, the vote relating to such unit shall be exercised as such owners may determine among themselves. A vote cast at any meeting by any of such owners shall be conclusively presumed to be the vote attributable to the unit concerned unless an objection is immediately made by another owner of the same unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

12.6 The Committee shall maintain up-to-date records showing the name of each person who is an owner, the address of such person, and the unit which is owned by him. In the event of any transfer of a fee or undivided fee interest in a unit, either the transferor or transferee shall furnish the Management Committee with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Management Committee may for all purposes act and rely on the information concerning owners and unit ownership which is thus acquired by it or, at its option, the Committee may act and rely on current ownership information respecting any unit or units which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an owner shall be deemed to be the address of the unit owned by such person unless the Management Committee is otherwise advised.

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### 13. ASSESSMENTS.

13.1 Every unit owner shall pay his proportionate share of the common expenses, which share shall be equal to the percentage of undivided interest in the Common Areas and Facilities as set forth Exhibit B. Payment thereof shall be in such amounts and at such times as the Management Committee determines in accordance with the Act and the Declaration. There shall be a lien for nonpayment of common expenses as provided by Utah Code Annotated, 57-8-20 (1953 as amended). The lien for nonpayment of common expenses may be enforced as provided therein and as provided in this Declaration.

13.2 Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such rate of interest as may be set by the Management Committee, from the date when due until paid. All payments on account shall be first applied to interest and then to the assessment payment first due.

13.3 A lien for unpaid assessments shall also secure reasonable attorney's fees and all costs and expenses, including taxes, if any, incurred by the Management Committee incident to the collection of such assessment or enforcement of such a lien.

13.4 In assessing the unit owners for capital improvements in the Common Areas and Facilities, there shall be no single improvement exceeding the sum of Five Thousand Dollars (\$5,000) made by the Management Committee without the same having been first voted on and approved by the Association at a meeting duly called for that purpose. The foregoing shall not apply in connection with damage or destruction referred to in paragraph 15 hereof or to such improvements of the Common Areas and Facilities as are necessary in the Management Committee's reasonable judgment to preserve or maintain the integrity of the Common Areas and Facilities or the property.

13.5 If the unit owner shall at any time let or sublet his unit and shall default for a period of one month in the payment of assessments, the Management Committee may at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the owner the rent due or becoming due and the payment of such rent to the Management Committee shall be sufficient payment and discharge of such tenant or subtenant and the owner to the extent of the amount so paid.

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13.6 Within thirty (30) days prior to the annual meeting of the Association, the Management Committee shall estimate the Common Expenses for the following year. The estimated common expenses shall include such amounts as the Management Committee may deem proper for general working capital, for the general operating reserve, for a reserve fund for replacements and major maintenance, and shall take into account any expected income, surplus or deficit in the common expenses for any prior year. These estimated common expenses shall be presented at the annual meeting and thereafter shall be assessed on a monthly basis to the unit owners in proportion to their percentage of undivided interest in the common areas and facilities as set forth in the Declaration. If the estimated common expenses prove inadequate for any reason, including nonpayment of any unit owner's assessments, the Management Committee may, by resolution duly adopted make additional assessments, which shall be assessed to the unit owners in the same manner as the estimated common expenses. Each unit owner shall be obligated to pay to the Management Committee assessments made pursuant to this paragraph on or before the first day of each month, or in such other reasonable manner as the Management Committee shall designate. The funds received by the Management Committee from assessments shall be kept in a separate account known as the "common expense fund" and shall be expended by the Management Committee only in accordance with the provisions of the Act and this Declaration.

13.7 The rights, duties and functions of the Management Committee set forth in this paragraph shall be exercised by Declarant until thirty (30) days after the first annual meeting of the Association.

13.8 The failure of the Management Committee before the expiration of any year to estimate the common expenses as required herein shall not be deemed a waiver or modification in any respect of the provisions of the Declaration or a release of the unit owner from the obligation to pay any past or future assessments, and the established common expenses fixed for the previous and current year shall continue until a new estimate is fixed.

13.9 Amendments to this paragraph 13, not inconsistent with the requirements of the Act, shall be effective only upon unanimous written consent of the unit owners and their mortgages.

13.10 No unit owner may exempt himself from liability for common expenses by waiver of the use of enjoyment of any of the Common Areas and Facilities or by abandonment of his unit.

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13.11 The treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Common Areas and Facilities, specifying and itemizing the maintenance, repair and replacement expenses of the Common Areas and Facilities and any other expenses incurred. Such records shall be available for examination by the unit owners during regular business hours. In accordance with the actions of the Management Committee assessing common expenses against the units and unit owners, the treasurer shall keep an accurate record of such assessments and of the payments thereof by each unit owner.

13.12 All common expense and assessments shall be a separate, distinct and personal liability of the owner of the unit at the time each assessment is made. The Management Committee shall have the rights and remedies contained in the Act and in the Declaration to enforce the collection of assessments for common expenses.

13.13 Any person who shall have entered into a written agreement to purchase a unit shall be entitled to obtain a written statement from the treasurer setting forth the amount of unpaid assessments charged against the unit and its owners, and if such statement does not reveal the full amount of unpaid assessments as of the date it is rendered, neither the purchaser nor the unit shall be liable for the payment of an amount in excess of the unpaid assessment shown thereon, provided that the former unit owner/grantor shall remain so liable. Any such excess which cannot be promptly collected from the former unit owner/grantor shall be reassessed by the Management Committee as a common expense to be collected from all unit owners, including without limitation the purchaser of the unit, his successors and assigns. The new unit owner shall, and the former unit owner shall not, be liable for any assessments made after the date of transfer of title to a unit, even though the common expenses for the expenses incurred or the advances made by the Management Committee for which the assessment is made relate in whole or in part to any period prior to the date. Notwithstanding the foregoing, an owner of record will remain primarily liable to the Association for the common expenses, and if a unit is being sold on contract, the record owner will be responsible and liable for payment of common expenses until the final conveyance is delivered and recorded.

13.14 In the event that title to a unit is transferred at a sheriff's sale pursuant to execution upon any lien against the unit, the Management Committee shall give notice in writing to the Sheriff of any unpaid assessments for common expenses which are a lien against the unit, and for any expenses of or advances by the Management Committee which have not theretofore

been reduced to a lien, which shall be paid out of the proceeds of the sale prior to the distribution of any balance to the former unit owner against whom the execution was issued. If the lien upon which the execution is predicated is prior or superior to the Association's lien for common expenses, the purchaser at such sheriff's sale and the unit involved shall not be liable for unpaid assessments for common expenses and for any expenses of or advances by the Management Committee which became due prior to the sheriff's sale of the unit. Any such unpaid assessments which cannot be promptly collected from the former unit owner shall be reassessed by the Management Committee as a common expense to be collected from all of the unit owners, including the purchaser who acquired title at the sheriff's sale, his successors and assigns. To protect its right to collect unpaid assessments for common expenses which are a lien against a unit, and for any expenses of and advances by the Management Committee, the Management Committee may, on behalf of all the unit owners, purchase the unit at sheriff's sale provided such action is authorized by the affirmative vote of a majority of the members of the Management Committee.

13.15 In addition to the statements issuable to purchasers of units, the Management Committee shall provide a current statement of unpaid assessments for common expenses and for any expenses of and advances by the Management Committee in respect of the unit, to the unit owner, to any person who shall have entered into a binding agreement to purchase the unit and to any mortgage or reasonable request.

13.16 In all cases where all or part of any assessments for common expenses and for any expenses of and advances by the Management Committee cannot be promptly collected from the persons or entities liable therefor under the Act or the Declaration, the Management Committee shall reassess the same as a common expense, without prejudice to its rights of collection against such persons or entities.

#### 14. INSURANCE

14.1 The Management Committee shall obtain and maintain at all times insurance of the type and kinds as provided herein and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereby customarily be covered with respect to other properties similar to the Planned Unit Development Project in construction, design, and use. The Management Committee shall obtain insurance with the following

provisions or endorsements:

A. Exclusive authority to adjust losses shall be vested in the Management Committee as insurance trustee.

B. The insurance coverage shall not be brought into contribution with insurance purchased by individual unit owners or their respective mortgagees.

C. Each unit owner may obtain additional insurance covering his real property interest at his own expense.

D. The insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of any one or more individual owners of their respective lessees, employees, agents, contractors and guests.

E. The insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of any officer or employee of the Association or Management Committee or their employees, agents or contractors, without prior demand in writing that the Management Committee cure the defect, and lien only if the defect is not cured within 30 days.

F. Each unit owner shall be required to maintain both interior and exterior fire insurance, and home owners policies, premiums to be paid by the individual unit owner themselves. With coverage adequate to replace all structural developments of the unit.

14.2 Hazard Insurance: The Management Committee or Association of Unit owners shall at all times maintain in force hazard insurance meeting the following requirements:

A. A multi-peril type policy covering the entire Condominium Project (both units and Common Areas and Facilities) shall be maintained. Such policy shall provide coverage against loss or damage by fire and other hazards covered by the standard extended coverage endorsement and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and all other coverage of the kinds and in the amounts commonly required by private institutional mortgage investors with respect to condominium projects similar to the Planned Unit Development Project in construction, located and use. As a minimum, such policy shall provide coverage on replacement cost basis in an amount not less than that necessary to comply with any coinsurance percentage specified in the policy but not less than 100 percent of the full insurable value (based on replacement cost). Such policy shall include, if available at reasonable cost and appropriate, "Inflation Guard

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Endorsement" or its equivalent, (b) a "Demolition and Contingent Liability form Operation of Building Laws Endorsement" or its equivalent, and (c) an "increased Cost of Construction endorsement" or its equivalent

B. 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 National Flood Insurance Act 1968, as amended, a "blanket" policy or 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 limit of coverage 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 Insurers Association or in the form of a policy which meets the criteria established by the Flood Insurance Administration.

C. The named insured under each policy required to be maintained by the foregoing items A, B and C, shall be in form and substance essentially as follows: "Association of Unit Owners of Tanner Lane Condominium, for the use and benefit of the individual owners." The unit owners shall be designated by name, if required.

D. Each such policy shall include the standard mortgagee clause (without contribution) which either shall be endorsed to provide that any proceeds shall be paid to the Association or unit owners for the use and benefit of mortgagees as their interests may appear or shall be otherwise endorsed to fully protect the interests of mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each mortgagee at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

E. Each such policy shall provide that, notwithstanding any provision thereof which gives the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Association or if such option is in conflict with any requirement of law.

14.3 Fidelity Insurance. The Management Committee or Association may, in its discretion, maintain in force fidelity coverage against dishonest acts on the part of managers (and employees of managers), trustees, employees, officers, Committee members, or volunteers responsible for handling funds belonging

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to or administered by the Management Committee or Association of Unit owners. The fidelity bond or insurance shall name the 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 one and one half times (150%) the Condominium Project's estimated annual operating expenses and reserves. An appropriate endorsement to the policy shall be secured to cover persons who serve without compensation if the policy would not otherwise cover volunteers.

14.4 Liability Insurance. The Management Committee or Association of Unit Owners shall at all times maintain in force a comprehensive policy of public liability insurance covering all of the Common Areas and Facilities. Such insurance shall include a "Severability of Interest Endorsement" or its equivalent which shall preclude the insurer from denying the claim of a unit owner because of negligent acts of other owners, the Management Committee or the Association of Unit Owners. The coverage afforded by such public liability insurance shall include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and such other coverage of the kinds and in the amount commonly required by private institutional mortgage investors for condominium projects similar to the Condominium Project in construction, location and use. The limits of liability under such insurance shall not be less than \$1,000,000.00 for all claims for personal injury and/or property damage arising out of a single occurrence.

14.5 General Requirements Concerning Insurance. Each insurance policy maintained pursuant to this paragraph 14 shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a current rating by Best's Insurance Reports of Class B/VI or better, or which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policy holder's rating of at least A. No such policy shall be maintained where: (a) under the terms of the carrier's charter, by-laws or policy, contributions may be required from, or assessments may be made against, the unit owners, a mortgagee, the Management Committee, the Association of Unit Owners, a unit, the Common Areas, or the Project or contributions against others may become a lien on any part of the Project superior to any mortgage; (b) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policy-holders or members; (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds; or (d) the policy provides that the insurance thereunder shall be brought into contribution with insurance purchased by the

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individual unit owners or their mortgagees. Each such policy shall provide that: (i) coverage shall not be prejudiced by any act or neglect of the unit owners when such act or neglect is not within the control of the Association of Unit Owners or the Management Committee; (ii) coverage shall not be prejudiced by any failure by the Association or Committee to comply with any warranty or condition with regard to any portion of the Project over which the Association and Committee have no control; (iii) coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insureds named therein, including any mortgagee named as an insured; and (iv) the insurer waives any right of subrogation it might have as to any and all claims against the Association, the Management Committee, any unit owners, and/or their respective agents, employees or tenants, and any defense it might have based upon co-insurance or upon liability arising from acts of the insured.

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15. DESTRUCTION OR DAMAGE

15.1 In the event of damage to or destruction of part or all of the improvements on the Condominium Project, the following procedures shall apply:

A. If proceeds of one insurance maintained by the Management Committee are along sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

B. If less than 75 percent of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration for any deficiency on the basis of their respective percentages of undivided interest in the Common Areas and Facilities.

C. If 75 percent or more of the Project's improvement are destroyed or substantially damaged, if proceeds of the insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if the unit owners, within 100 days after destruction or damage, by a vote of at least 75 percent, elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subparagraph B above.

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

E. In the event of substantial damage to or destruction of any unit or to 75 percent or more of the Project's improvements, the mortgagee of any affected unit, and all mortgagees in the event 75 percent of the Project's improvements are damaged or destroyed, shall be given written notice within 30 days of such damage or destruction.

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F. No provision in the Declaration will entitle the owner of a unit or other party to priority over any rights of the first mortgagee pursuant to its mortgage in the case of a distribution to a unit owner of any insurance process or condemnation awards for losses to or taking of Planned Unit Development units and/or Common Areas.

15.2 Any reconstruction or repair which is required to be carried out by this paragraph 15 shall be accomplished at the instance and direction of the Management Committee. Any determination which is required to be made by this paragraph 14 regarding the extent of damage to or destruction of Project improvements shall be made as follows: The Management Committee shall select three MAI appraisers; each appraiser shall independently arrive at a figure representing the percentage of Project improvements which have been destroyed or substantially damaged; the percentage which governs the application of the provisions of this paragraph 15 shall be the average of the three appraisal figures.

#### 16. TERMINATION.

16.1 All of the owners may remove the property from the provisions of the Act by an instrument duly recorded to that effect, provided that (i) the holders of all liens affecting any of the units consent or agree by instruments duly recorded that their liens be transferred to the percentage of the undivided interest of the unit owners in the property; and (ii) Salt Lake County Flood Control first gives its approval in writing to the unit owners' proposal for on-site storm water detention.

16.2 Upon removal of the property from the provisions of the Act, the unit owners shall own the property and all assets of the Association as tenants in common, and the respective mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the unit owners. Such undivided interest of the unit owners shall be the same as the percentage of undivided interest in the Common Areas and Facilities appurtenant to the owner's units prior to removal from the Act.

#### 17. EMINENT DOMAIN.

17.1 Insofar as not inconsistent with S57-8-32.5, Utah Code Annotated, the provisions of this paragraph 17 shall apply.

17.2 Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or

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destruction of all or part of the Common Areas and Facilities or one or more units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Management Committee and each unit owner and each mortgagee of affected units shall be entitled to notice thereof, which notice shall be provided by the Management Committee, and the Management Committee shall act as agent for each unit owner, except for those unit owners who at their respective expense participate in the proceeding incident thereto. No provision herein will entitle the owner of a unit or other party to priority over a mortgagee of such unit with respect to the distribution to such unit of the proceeds of any award or settlement.

17.3 With respect to Common Areas and Facilities, any damages or awards shall be determined for such taking, injury, or destruction as a whole and not for each unit owner's interest therein. After such determination, each unit owner shall be entitled to a share of the damages in the same proportion as his percentage of undivided interest on the Common Areas and Facilities. This provision does not prohibit a majority of unit owners from authorizing the Management Committee to use such damages or awards for replacing or restoring the Common Areas and Facilities so taken on the remaining land or on other acquired land, provided that this Declaration and Map are duly amended.

17.4 With respect to one or more units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damage or destruction pursuant to paragraph 15 hereof and shall be deposited with the Management Committee as trustee. Even though the damages or awards may be payable to one or more unit owners, the unit owners shall deposit the damages or awards with the Management Committee as trustee, and in the event of failure to do so, at the option of the Management Committee, either a special assessment shall be made against a defaulting unit owner of a unit in the amount of this award, or the amount of such award shall be set off against the sums hereafter made payable to such unit owner. The proceeds of the damages or awards shall be distributed or used in a manner, and the unit owners of affected units shall have the rights provided in paragraph 15 for insurance proceeds, provided the property is removed from the provisions of the Act. If the property is not removed from the provisions of the Act and one or more units are taken, in whole or in part, the taking shall have the following effects:

A. If the taking reduces the size of a unit and the remaining portion of the unit may be made tenantable, the unit

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shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the owner of the unit. The balance of the award, if any, shall be distributed to the unit to the extent of the unpaid balance of its mortgage, and the excess, if any, shall be distributed to the unit owner. If there is a balance of the award distributed to the unit owner or a mortgagee, the unit owner's percentage of undivided interest in the Common Areas and Facilities shall be equitably reduced. This shall be done by reducing such interest in the proportion by which the floor area of the unit is reduced by the taking, and then recomputing the percentages of undivided interests of all unit owners in the Common Areas and Facilities.

B. If the taking destroys or so reduces the size of a unit that it cannot be made tenantable, the award shall be paid to the mortgagee of the unit to the extent of the unpaid balance of its mortgage, and the excess, if any, shall be paid to the unit owner, whereupon the owner shall cease to be a member of the Association of Unit Owners. The remaining portion of such unit, if any, shall become a part of the Common Areas and Facilities and shall be placed in condition for use by all unit owners in the manner approved by the Management Committee. If the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be done only if approved by a majority of the unit owners. The percentages of undivided interests in the Common Areas and Facilities appurtenant to the units that continue as part of the property shall be equitably adjusted to distribute the ownership of the Common Areas and Facilities among the reduced number of unit owners, and the Management Committee shall file an amendment to the Declaration and Map to reflect the changes in the property and the percentages of undivided interest of the remaining units. The Management Committee is authorized to record such amendment without approval of the Association of Unit Owners.

#### 18. MORTGAGE PROTECTION.

18.1 The Management Committee shall maintain a roster of unit owners from the evidence of change of ownership furnished to the Management Committee, which roster shall include the mailing addresses of unit owners. If the Management Committee has been given notice of the necessary information, the Management Committee shall maintain another roster which shall contain the name and address of each mortgagee or a unit. Each notice shall consist of a certified copy of the recorded

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instrument evidencing the title of the mortgagee. The mortgagee shall be stricken from the roster upon receipt by the Management Committee of a request from the mortgagee or of a certified copy of a recorded release or satisfaction of the mortgage. Notice of such removal shall not be given to the mortgagee unless the removal is requested by the mortgagee.

18.2 From and after the time a mortgagee makes request to the Management Committee or the Association of Unit Owners therefor, the Committee or Association shall notify such mortgagee in writing of any default by the mortgagor of such unit in the Declaration, by-laws or rules or regulations of the Association which is not cured within 60 days.

18.3 Any institutional holder of a first mortgage on a unit shall, upon prior written request, be entitled to (a) inspect the books and records of the Association of Unit Owners, (b) receive an annual financial statement of the Project within 90 days following the end of any fiscal year of the Association of Unit Owners, and (c) receive a copy of the minutes of any meeting of the Association of Unit Owners.

18.4 A mortgagee of any unit who comes into possession of or obtains title to a unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property, free of any claims or unpaid assessments or charges against the mortgage unit which accrued prior to the time such mortgagee comes into the possession of or obtains title to the unit.

18.5 The Management Committee and the Association shall establish an adequate reserve for maintenance, repairs and replacements of those Common Areas and Facilities that must be replaced on a periodic basis and shall cause such reserve to be funded by regular monthly assessments against the units rather than by special assessments.

18.6 From and after the time a mortgagee makes written request to the Management Committee or the Association of Unit Owners therefor, the Committee of the Association shall notify such mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of: (a) the common areas involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand Dollars (\$10,000); or (b) any unit involving an amount in excess of, or reasonably estimated to be in excess of, One Thousand Dollars (1,000). Said notice shall be given within ten (10) days after the Management Committee or said Association learns of such damage, loss, taking or anticipated condemnation.



18.7 In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or subparagraph of this paragraph 18, the provision or subparagraph which results in the greatest protection and security for a mortgagee shall control the rights, obligations or limits of authority, as the case may be, applicable to the Management Committee and the Association of Unit Owners with respect to the subject concerned.

18.8 No amendment to this Declaration which has the effect of diminishing the rights, protection or security afforded to mortgagees shall be accomplished or effective unless seventy-five percent (75%) of the mortgagees of the undivided units have given their prior written approval to such amendment.

Any amendment to this paragraph 18 shall be accomplished by an instrument executed by the Management Committee and filed for recorded in the office of the Salt Lake County Recorder. In any such instrument an officer of the Management Committee shall certify that any prior written approval of mortgagees required by this paragraph 18 as a condition to amendment has been obtained.

#### 19. CONVEYANCES, EASEMENTS.

19.1 Every deed, lease, mortgage or other instrument may describe a unit by its identifying number and letter designation set forth in Exhibit "B" and in the Map. Every such description shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber or otherwise affect the unit owner's corresponding percentage of undivided ownership in the Common Areas and Facilities, as a tenant in common, as set forth in Exhibit "B", even though the same is not exactly mentioned or described.

19.2 Every deed, lease, mortgage or other similar instrument shall be deemed to:

A. Except and reserve with respect to a unit: (i) any portion of the Common Areas and Facilities lying within said unit; (ii) easements through said unit, appurtenant to the Common Areas and Facilities and all other units, for support and repair of the Common Areas and Facilities and all other units; and (iii) easements appurtenant to the Common Areas and Facilities for encroachment upon the air space of said unit by those portions of the Common Areas and Facilities located within said unit.

B. Include with respect to a unit non-exclusive

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easements for ingress and egress of such unit through the Common Areas and Facilities, for the repair of said unit through the other unit and through the Common Areas and Facilities, and for the use of the Limited Common Areas as indicated in the Map.

C. Except and reserve, with respect to the undivided percentage interest in the Common Areas and Facilities, non-exclusive easements appurtenant to all units for ingress, egress, support and repair and exclusive easements appurtenant to each unit for the use of the Limited Common Areas as set forth in the Map.

D. Include, with respect to the undivided percentage interest in the Common Areas and Facilities, non-exclusive easements through said unit for support and repair of the Common Areas and Facilities and non-exclusive easements for encroachments upon the air space of all of the units by and for the portions of the Common Areas and Facilities lying within the units.

## 20. MAINTENANCE.

20.1 Each unit owner, at his own expense, shall keep the exterior and the interior of his unit and its equipment and appurtenances in good order, condition and repair, and in a clean and sanitary condition, and shall do all redecorating and painting which may at any time be necessary to maintain the good appearance of his unit. Except to the extent that the Management Committee is protected by insurance against such injury, the unit owner shall repair all injury or damages to the unit or Planned Unit Development Project caused by the act, negligence or carelessness of the unit owner or that of any lessee or sublessee or any member of the unit owners' family or of the family of any lessee or sublessee or any agent, employee or guest of the owner or his lessee or sublessee, and all such repairs, redecorating and painting shall be of a quality and kind equal to the original work. In addition to decorating and keeping the interior of the unit in good repair, the unit owner shall be responsible for the maintenance or replacement of any plumbing, fixtures, refrigerators, air conditioning and heating equipment, dishwashers, disposals, ranges, etc., that may be in or connected with unit. The Management Committee shall be responsible for maintenance and upkeep of all conduits, ducts, plumbing and wiring and other facilities for the furnishing of heat, gas, light, power, air conditioning, water and sewer contained in the portions of the units in which they are contained. Without the written permission of the Management Committee first had and obtained, the unit owner shall not make

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a permit to be made any structural alteration, improvement or addition in or to the unit, patios, garages, or in or to the exterior of the building, and shall not paint or decorate any portion of the exterior of the building in which his unit is located.

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20.2 Each unit owner, at his own expense, shall keep and maintain the Limited Common Area designated for his exclusive use, including without limitation, the rear and side yard (where applicable) areas pertaining to the use of his unit, and shall keep and maintain all shrubbery, trees, bushes, flowers, gardens, lawns and other landscaping elements as appear in said Limited Common Areas.

20.3 The Association shall provide for the maintenance and operation of the Common Areas and Facilities, as may be necessary or desirable to make and keep them appropriately usable in conjunction with the units and to keep said Common Areas and Facilities clean, functional, attractive and generally in good condition and repair. In recognition of the flood control requirements imposed on the Planned Unit Development Project and property, the Association shall maintain the storm water detention areas and ponds called for by Salt Lake County and designated on the Map recorded herewith, as well as the storm drain sediment trap also designated on said Map. Said maintenance shall include all steps reasonably necessary to prevent said detention areas and ponds from losing their capacity to retain storm run-off and ponds from losing their capacity to retain storm run-off water. In this regard, the Association shall maintain the contours of the earth in said detention areas in the configuration established and described on the Map, and shall not allow structures of any type to be placed or erected in said areas which may cause a significant reduction in the water detention capacity thereof. Notwithstanding anything contained in this Declaration to the contrary, Declarant, unit owners, or mortgagees shall not have the power or authority to change, by vote, or alienation, transfer, sale or otherwise, these of the detention areas designated on the Map unless the consent of the Salt Lake County Flood Control Division has first been obtained in writing. In connection with this covenant by the Association to maintain the storm water detention areas, Salt Lake County is hereby made a party to the covenants set forth in this paragraph 20 of the Declaration. The County shall have no vote in the affairs of the Association, but it shall have the right to protect, as a party to this Declaration, the use of the storm water detention areas for that purpose.

## 21. RIGHT OF ENTRY.

21.1 The Management Committee and its duly authorized agents shall have the right to enter any and all of the units in case of an emergency originating in or threatening such unit or

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any other part of the Project, whether or not the unit owner or occupant thereof is present at the time. The Committee and its duly authorized agents shall also have the right to enter into any and all of said units at all reasonable times as required for the purpose of making necessary repairs upon the Common Areas and Facilities of the Project for the Purpose of performing emergency installation, alterations or repairs to the mechanical or electrical devises or installations located therein or thereon; provided however, such emergency installations, alterations or repairs are necessary to prevent damage or threatened damage to other units in the Project; and provided further that the unit owner affected by such entry shall first be notified thereof if available and if time permits.

## 22. ADMINISTRATIVE RULES AND REGULATTONS.

22.1 The Management Committee shall have the power to adopt and establish by resolution such management and operational rules as it may deem necessary for the maintenance, operation, management and control of the Project, and the Committee may, from time to time by resolution, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the unit owners, such amendment, alteration and provision shall be taken to be a part of such rules. Unit owners shall at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply to and be binding upon all unit owners and/or occupants of the Project.

## 23. OBLIGATION OF COMPLIANCE.

23.1 Each unit owner, tenant or occupant of a unit shall comply with the provisions of the Act, this Declaration, the rules and regulations, all 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 an action by the Management Committee to recover any loss or damage resulting therefrom or injunctive relief.

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24. EASEMENT RIGHTS; SALES OFFICES AND MODEL UNITS.

24.1 The Declarant shall have a transferable easement over and on the Common Areas for the purpose of making improvements within the Project under the Declaration and the Act and for the purpose of doing all things reasonably necessary and proper in connection with the same.

24.2 Notwithstanding any other provision of this Declaration, Declarant shall have the following rights in furtherance of any sales, promotional or other activities designated to accomplish or facilitate the sale of all units owned by Declarant:

A. Declarant shall have the right to maintain at any one time up to four (4) sales offices and/or model units. Such offices and/or model units may be one or more units owned by it, for the purpose of aiding Declarant's sales effort.

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

Declarant shall have the right from time to time to locate or relocate any of its sales offices, model units and/or signs, banners or similar devices. Within a reasonable period of time after the expiration of the Declarant's rights under this paragraph, Declarant shall have the right to remove from the Project any signs, banners or similar devices which were placed on any portion of the Project for the purposes of aiding Declarant's sales efforts.

24.3 Declarant's rights under paragraph 24.2 shall terminate upon the first to occur of the following:

A. Declarant ceases to be a unit owner; or

B. The expiration of three (3) years after the date on which this Declaration is filed for record in the office of the Salt Lake County Recorder.

24.4 Notwithstanding the provisions of this Article 24 and Section 24.3 A and B allowing use of models or common facilities for initial sales, such units shall revert to use as residential units and may not be used after the periods referred to in Section 24.3 A and B for offices or non-residential units if prohibited by applicable zoning ordinances.

25. AMENDMENT.

25.1 Except as provided in paragraph 20.3 hereof, and as provided below, and not inconsistent with the Act, the unit owners shall have the right to amend this Declaration and/or the Map upon the approval and consent of unit owners representing not less than two-thirds of the undivided interests in the Common Areas and Facilities. Any amendment shall be accomplished by the recordation of an instrument wherein the Management Committee certifies that the unit owners representing at least two-thirds of the undivided interest in the Common Areas and Facilities have approved and consented to any such amendment.

25.2 Except as provided by statute in case of condemnation or substantial loss to the units and/or Common Areas and Facilities, unless at least two-thirds (2/3) of the mortgagees (based upon one vote for each mortgage owned), or owners (other than Declarant) of individual units have given their prior written approval, the Association of Unit Owners shall not, by act, omission or otherwise:

A. Change the prorata interest or obligations of any unit for purposes of (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (b) determining the pro rata share of ownership of each unit in the Common Areas and Facilities of the Project.

B. Partition or subdivide any unit or the Common Areas of the Project.

C. Abandon or terminate the Project or the Planned Unit Development status of the Project.

D. Abandon, partition, subdivide, encumber, sell or transfer the Common Areas, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas and Facilities by the Planned Unit Development Project shall not be deemed a transfer within the meaning of this clause.

E. Use hazard insurance process for losses to any Planned Unit Development property (whether to units or to Common Areas and Facilities) for other than the repair, replacement or reconstruction of such improvements.

25.3 This Declaration shall not be amended to include

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any right of first refusal or other term or provision which impairs the rights of a first mortgage to:

(a) Foreclose or take title to a unit pursuant to the remedies provided in the mortgage, or

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

(c) sell or lease a unit acquired by the mortgagee.

## 26. NOTICES.

26.1 Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to be delivered 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, return receipt requested. Notice to unit owners shall be addressed to each unit owner at the address given by such unit owner to the Management Committee for the purpose of service or to the Management Committee. Such address may be changed from time to time by notice in writing to the Management Committee. Notice to the Management Committee shall be addressed to: Management Committee, Planned Unit Development, Cottonwood Cove at Tanner Lane, Salt Lake City, Utah, or at such other place as may be designated by the Management Committee in writing and recorded in the office of the Salt Lake County Recorder.

## 27. NO WAIVER

27.1 The failure of the Management Committee or its contractors to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Management Committee or its contractor of the payment of any assessment from a unit owner, with knowledge or the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Management



Committee.

28. SEVERABILITY.

28.1 The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law, and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid or should operate to render this agreement invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, section or sections, has not been inserted.

29. GENDER.

29.1 The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

30. TOPICAL HEADINGS.

30.1 The topical headings of the paragraphs contained in the Declaration are for convenience only and do not define, limit or construe the contents of the paragraphs or of the Declaration.

31. EFFECTIVE DATE.

This Declaration shall take effect upon recording.

IN WITNESS WHEREOF, the undersigned has set his hand this 30<sup>th</sup> day of October, 1987.

Declarant |  
TRI-N CORPORATION

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EXHIBIT B TO DECLARATION OF COVENANTS  
 CONDITIONS AND RESTRICTIONS OF  
 COTTONWOOD COVE AT TANNER LANE, A DEMINIMUS  
 PLANNED UNIT DEVELOPMENT

UNIT NUMBER	% OWNERSHIP COMMON AREA
1	2.857143
2	2.857143
3	2.857143
4	2.857143
5	2.857143
6	2.857143
7	2.857143
8	2.857143
9	2.857143
10	2.857143
11	2.857143
12	2.857143
13	2.857143
14	2.857143
15	2.857143
16	2.857143
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31	2.857143
32	2.857143
33	2.857143
34	2.857143
35	2.857143
NO. UNIT	TOTALS:
35	100.000000

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By: Michael F. Nagle  
Its President

MANAGEMENT COMMITTEE

By: Tri-N Corporation

By Michael F. Nagle  
Gary Nagle  
Scott G. Nagle

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On the 30<sup>th</sup> day of October, 1987, personally appeared before my MICHAEL F. NAGLE ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ who being by me duly sworn did say that he is the President and Secretary, respectively, of THE TRI-N CORPORATION, and that the within and foregoing instrument was signed on behalf of said corporation by authority of a resolution of its Board of Directors, and they further duly acknowledged to me that said corporation executed the same.

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

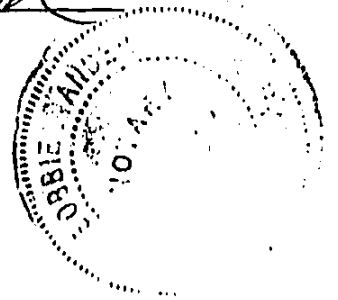
On the 30<sup>th</sup> day of October, 1987, before me personally appeared MICHAEL F. NAGLE, SCOTT G. NAGLE AND GARY NAGLE the signer(s) of the foregoing instrument, who duly acknowledged to me that (L)he(y) executed the same.

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My Commission Expires |  
8/27/88

*Bobbie Anderson*  
Notary Public

Residing at: SALT LAKE CITY, UTAH



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