

REVISED, AMENDED AND RESTATED BY-LAWS

GOVERNING  
GARDEN APARTMENTS,

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RECORDED FOR GARDEN VILLA APT HOMES

A Condominium Project (Provo, Utah)

These revised, amended and restated By-Laws for GARDEN APARTMENTS, a Condominium Project, Provo, Utah, and a Utah Corporation, are made and entered by the unit owners of said project.

W I T N E S S E T H:

WHEREAS, various documents, hereinafter described, have been made, entered and recorded in the Office of the Country Recorder of Utah County, State of Utah creating and controlling said Condominium Project, variously known as GARDEN VILLA APARTMENT HOMES and GARDEN APARTMENTS, and

WHEREAS, the unit owners now desire to modify, amend and restate the previous and existing By-Laws pertaining to said project so as to clarify and more nearly reflect the interests and desires of the present unit owners,

NOW, THEREFORE, it is hereby agreed, submitted and declared as follows:

1. PROPERTY AFFECTED.

The property affected by this instrument is known as GARDEN APARTMENTS, a Condominium Project, Provo City, Utah County, Utah, more particularly described as follows, to-wit:

Beginning at a point on the South side of 2100 North Street, said point being North 189.99 feet, East 253.71 feet, and North 86° 10' East 119.56 feet from the Southwest corner of Section 30, Township 6 South, Range 3 East, Salt Lake Base and Meridian; running thence North 86° 10' East 353.54 feet to a point on a 245.03 foot radius curve to the left; thence Northeasterly 93.56 feet along the arc of said curve to a point of tangency on the West boundary of Pleasant Village Subdivision; thence along said boundary South 4° 56' East

169.44 feet; thence South 60° 20' West 61.00 feet, thence South 77° 31' West 84.91 feet; thence South 28.00 feet to a point on the South line of Section 30, Township 6 South, Range 3 East, Salt Lake Base and Meridian; thence West 238.25 feet along said section line; thence North 44° 30' West 118.61 feet, thence North 113.38 feet to the point of beginning.

ALSO: Beginning at a point which is North 240.15 feet and East 254.46 feet from the Southwest corner of Section 30, Township 6 South, Range 3 East, Salt Lake Base and Meridian; and running thence North 0° 50' East 337.43 feet; thence South 89° 10' East 4.00 feet; thence North 0° 50' East 223.79 feet; thence South 89° 10' East 209.28 feet; thence North 0° 50' East 76.5 feet to the South line of Rock Canyon Road; thence East along said South line of road 153.10 feet; thence South 153.74 feet; thence North 84° 55' East 143.71 feet; thence South 4° 56' East 428.23 feet to a point on the North line of 2100 North Street, thence Southwesterly along a curve to the right having a radius of 268.45 feet for an arc length of 17.21 feet; thence South 68° 01' 20" West 41.88 feet to point of a 176.29 foot radius curve to the right; thence Southwesterly along the arc of said curve 55.83 feet; thence South 86° 10' West 158.94 feet; thence North 3° 50' West 115.00 feet; thence South 86° 10' West 80.00 feet; thence South 3° 50' East 115.00 feet; thence South 86° 10' West 209.37 feet to the point of beginning.

2. PRIOR DOCUMENTS SUPERSEDED.

The following described documents pertaining to GARDEN APARTMENTS, a Condominium Project, Provo, Utah and any other matters, whether of record or not, in conflict herewith, except the Declaration, the Utah Condominium Ownership Act, Utah Code Anno. Sec. 57-8-1 et. seq. (1953), as amended, and rules and regulations promulgated by Housing and Urban Development (HUD) are hereby superseded, to-wit:

- (a) By-Laws dated February 28, 1964, and recorded February 28, 1964, as Entry No. 3158, in Book 964, at page 574.
- (b) By-Laws dated February 11, 1976, and recorded February 17, 1976, as Entry No. 3558, in Book 1459, at page 608.

3. EXISTING OWNERSHIP, LIENS AND SECURITY INTERESTS RECOGNIZED.

These revised, amended and restated By-Laws are declared to revise and replace the previously existing By-Laws controlling the operation of the project known as GARDEN APARTMENTS, but are not intended to disturb pre-existing

ownerships, liens or security interests within the project.

4. EFFECTIVE DATE.

The effective date of this instrument shall be the date on which such document is filed for record in the Office of the County Recorder of Utah County, State of Utah.

5. DEFINITIONS.

For the purposes of these By-Laws, all words, terms and phrases used herein shall be construed and defined the same as are used and defined in Utah Condominium Ownership Act, Utah Code Anno. § 57-8-3 (1953), as amended, to the extent applicable and unless otherwise stated below:

- (a) "Project" means Garden Apartments, a condominium project, Provo, Utah.
- (b) "Act" means the Condominium Ownership Act, Utah Code Anno. § 57-8-1 et. seq. (1953), as amended.
- (c) "Map" shall mean and refer to the records of survey map of Garden Apartments, A Condominium Project (Provo, Utah) filed for record herewith by declarant.
- (d) "Unit" shall mean and refer to a part of the property intended for any type of independent use as defined in the Act and as designated in the Map.
- (e) "Unit Owner" shall mean and refer to the legal owner of a condominium unit and a proportionate share of the Common Areas and Facilities as those terms are defined herein:
  - (i) The above-described land;
  - (ii) Those Common Areas and Facilities specifically set forth and designated as such in the map;
  - (iii) The part of the condominium project not specifically included in the respective units as hereinafter defined;
  - (iv) All foundations, columns, girders, beams, supports, main walls, roof exterior walkways, parking areas, service streets, stalls, the Recreation Center, pool, recreational installations of power, light and other utilities to the outlets, and in general all other apparatus, installations and other parts of the property

necessary or convenience to the existence, maintenance and safety of the Common Areas or normally in common use;

- (v) All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein;
- (f) "Condominium unit" means a unit together with the undivided interest in the common areas and facilities appertaining to that unit. Any reference to condominium unit includes both a physical unit together with its appurtenant undivided interest in the common areas and facilities and a time period unit together with its appurtenant undivided interest, unless the reference is specifically limited to a time period unit. See Utah Code Ann. § 57-8-3(8).
- (g) "Limited Common Areas and Facilities" (or sometimes as "Limited Common Areas") mean and include those reserved for use of a certain Unit to the exclusion of the other Units.
- (h) "Common Expenses" shall mean and refer 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, the Declaration, the By-Laws, such rules and regulations pertaining to the condominium project as the Management Committee may from time to time adopt, and such other determinations and agreements lawfully made and/or entered into by the Management Committee.
- (i) "Management Committee" shall mean and refer to those persons duly elected thereto by the Unit Owners as provided by the Declaration of the Garden Apartments, A Condominium Project, and future phases as may be developed by Declarant.
- (j) "Manager" shall mean and refer to the person, persons, or corporation engaged by the Management Committee to manage the affairs of the Condominium Project.
- (k) "Property" shall mean and refer to the land, the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

6. TYPE OF CONDOMINIUM.

GARDEN APARTMENTS, being fully constructed and occupied shall not be further expanded nor contracted, and the terms and concepts "time period unit", "contractible condominium", "convertible land", "convertible space", "expandable condominium", or "leasehold condominium" as used in said Act shall have no

application to this condominium project or be undertaken in connection therewith.

7. AMENDED BY-LAWS GOVERNING GARDEN APARTMENTS.

ARTICLE I

MANAGEMENT COMMITTEE

Section 1. General Responsibility.

The business and property comprising GARDEN APARTMENTS, a condominium project shall be managed by a Management Committee consisting of seven (7) unit owners to be selected or removed by the unit owners as hereinafter provided in Article II. Such Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by law, the Amended Declaration filed contemporaneously herewith and any amendments subsequently filed thereto, and these By-Laws as the same may from time to time be altered and amended.

Section 2. Operation and Maintenance.

The Management Committee shall be responsible for the control, operation and management of the project in accordance with the provisions of the Utah Condominium Ownership Act, the Declaration whereby the project is established and submitted to the provisions of said Act, these By-Laws, and such administrative, management and operational rules and regulations as the Committee may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the Management Committee. The Committee shall, in this connection, provide for the proper and reasonable control, operation and management of the project and of the maintenance and repair of the common areas and facilities appurtenant thereto. As such, the Committee may engage the services of a manager and fix and pay a reasonable fee or compensation therefor, with the consent of a majority percent of the common area ownership interest of the unit owners.

Section 3. Committee Vacancies.

In case of any vacancy in the Management Committee, the remaining members thereof may elect a successor to hold office until the next duly constituted meeting of the unit owners.

Section 4. Officers.

The Management Committee shall appoint or elect from among its membership a chairman, vice-chairman, secretary, and a treasurer, who shall hold office at the pleasure of the committee. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Committee and at all meetings of the unit owners. The secretary shall take and keep minutes of all meetings.

He/She shall perform such other services as the Committee may impose and shall receive such compensation as the Committee may fix or approve. The treasurer shall have the custody and control of the funds of the Committee, subject to the action of the Committee, and shall, when requested by the chairman so to do, report the state of the finances of the Committee at each annual meeting of the unit owners and at any meeting of the Committee. The treasurer shall perform such other services as the Committee may require. The offices of secretary and treasurer may at the option of the Committee be held by the same person. Officers shall not receive compensation for their services as officers but may be reimbursed for their actual expenses.

Section 5. Regular Meetings.

A regular meeting of the Management Committee shall be held immediately after the adjournment of each annual unit owners meeting at the place at which such unit owners meeting was held. Regular meetings, other than the annual meeting, shall be held at regular intervals and at such places and at such times as the Committee may from time to time by resolution provide. No notice need be given of regular meetings of the Committee.

Section 6. Special Meetings.

Special meetings shall be held whenever called by the chairman, vice-chairman, or by a majority of the Management Committee. Either written or oral notice of such special meeting shall be given not less than twenty-four (24) hours in advance of said meeting; provided, however, that by unanimous consent of the Committee, special meetings may be held without call or notice.

Section 7. Quorum.

A quorum for the transaction of business at any meeting of the Management Committee shall consist of the majority of the Committee then in office. In the absence of a quorum, the chairman may adjourn the meeting until a quorum shall be present for any formal action by the Committee.

Section 8. Special Committees.

The Management Committee, by resolution, may designate one or more Special Committees, each Special Committee to consist of two (2) or more of the unit owners, which, to the extent provided in said resolution, shall have and may exercise the powers in said resolution set forth. Such Special Committee or Committees shall have such name or names as may be determined from time to time by the Management Committee. Such Special Committees shall keep regular minutes of their proceedings and report the same to the Management Committee when required. The Management Committee may appoint persons to fill vacancies on each of said Special Committees occasioned by death, resignation, removal or inability to act for any extended period of time. Any member of any such Special Committee shall be subject to removal, with or without cause, at any time by the affirmative vote of a majority of the Management Committee.

Section 9. Additional Facilities.

The Management Committee shall have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the interest of the members up to a cost of \$2,500. Any additional facility costing more than \$2,500 shall require that the proposed Committee action is approved by at least 67 percent of the common area ownership interest of the unit owners.

## ARTICLE II

### MEETING OF UNIT OWNERS

#### Section 1. Annual Meeting.

The annual meeting of all unit owners shall be held at 7:00 o'clock p.m. on the second Wednesday in February of each year at such place as shall be stated in the notice of meeting or in a duly executed waiver of notice; provided, however, that whenever such date falls upon a legal holiday, the meeting shall be held on the next succeeding business day, and provided further, that the management committee may, by resolution, fix the date of the annual meeting at such other date as it shall deem appropriate.

At such meeting reports will be given concerning the operation of the condominium during the past year as deemed necessary and desirable by the management committee and including a financial report by the treasurer. Before the close of said meeting, the currently serving chairman of the management committee shall announce the results of the election of members to serve on the management committee. Upon this announcement the terms of those members stepping down end and the terms of those newly elected begin, provided that the term of any duly elected or appointed committee member shall not expire until his successor is elected and qualifies.

The call and notice of the annual meeting shall be at least ten (10) days, inclusive of the date of meeting, before the date of any annual meeting of the unit owners. The secretary shall cause a written notice, setting forth the time and place, to be delivered personally or deposited in the mail, with postage prepaid, addressed to each unit owner at his last post office address as it then appears on the records of management committee.

#### Section 2. Special Meeting of Unit Owners.

Special meetings of the unit owners may be called by the management committee, or by thirty-three-and-one-third percent of the common area ownership interest of the unit owners, and notice of such meeting shall be given to each unit owner in writing at least five (5) days before the time fixed for the meeting, and such notice shall advise each unit owner as to the time, place and general purpose of the meeting and shall be delivered personally, or mailed, postage prepaid, to each unit owner at his last post office address as it appears on the books of the management committee. Whenever all of the members shall meet in person, such meeting shall be valid for all purposes without call or notice, or waiver of call of notice. No call or notice of any meeting of members shall be necessary if waiver of call and notice be signed by all of the

members.

Section 3. Election to Management Committee.

Election to membership on the Management Committee shall be by secret ballot for a term of two (2) years by the procedure described in Section 3 of the By-Laws. For the purpose of maintaining continuity in the management of the condominium, three (3) of the seven members of the Management Committee shall be elected in even-numbered years and four (4) in odd-numbered years. The term of any duly elected or appointed Committee Member shall not expire until his or her successor is elected or appointed. Any member of the Committee may be removed from membership on the Committee at any time by a vote of unit owners constituting two-thirds of the common area ownership interest represented by all the unit owners who are present at a meeting specially called and noticed for such purpose as long as those present constitute at least sixty-seven-and-two-thirds percent of the common area ownership interest, anything hereinbefore to the contrary notwithstanding, or may be removed by the Management Committee, if the member fails to attend three (3) consecutive monthly meetings, or is no longer a unit owner.

The Nominating Committee shall consist of three (3) unit owners currently residing in the condominium. The Nominating Committee shall be appointed by the current Management Committee, and one (1) member shall be designated as Committee Chairman by the Management Committee. The Nominating Committee shall endeavor to select two (2) candidates for each Management Committee member that is or will become vacant due to expiration of the term of office of a current member. Each candidate for election to the Management Committee must confirm a willingness to serve, if elected.

The report of the Nominating Committee shall be mailed or handed to each unit owner at least five (5) weeks preceding the annual meeting. Additional candidates for the Committee may be placed in nomination by a petition signed by at least six (6) unit owners. The petition shall be filed with the Chairman of the Nominating Committee at least three (3) weeks before the election. The management Committee shall prepare a ballot of all candidates placed in nomination. A packet containing voting instructions, a ballot, a ballot envelope, and a pre-addressed return envelope shall be mailed or delivered (one for each unit) to the unit owners at least two (2) weeks before the date of the annual meeting. Each unit owner will be given a vote according to their respective percentage of ownership in the common area.

To vote, the owner must mark the ballot according to the instructions received with the packet, seal the ballot in the ballot envelope, sign the return envelope in the upper left-hand corner and indicate the unit owned, seal the ballot envelope in the return envelope, and return it to the Nominating Committee so as to be received at least twenty-four (24) hours before the annual meeting. The Nominating Committee shall act as election judges. Before the return envelopes are opened, the Condominium Committee shall prepare a roster of owners to be used by the Nominating Committee to certify those return envelopes bearing valid signatures and unit numbers. Ballot envelopes shall be removed only from those return envelopes that have been certified. The ballot envelopes shall then be opened in a manner such as to preserve strict secrecy



in the voting. After counting and recording the ballots, said Committee shall place the names of those elected in a sealed envelope and the sealed envelope shall be given to the Chairman of the Management Committee to be opened and announced at the end of the annual meeting. At the time of this announcement, the term of the outgoing members shall expire and those newly elected shall assume membership on the Committee.

Section 4. Voting requirements.

Only unit owners will be permitted to vote. The vote attributable to and exercisable in connection with each unit shall be the percent of common area ownership interest ascribed to that unit. 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 or election 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 other owner(s) of the same unit. In the event such objection is made, the vote involved shall be cancelled and shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

When a quorum is present at any meeting, the vote of the majority percent of the common area ownership interest of the unit owners voting shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the Act, the Declaration, these By-Laws, or Federal Agency or Lending Corporation, a different percentage is required, in which case such express provisions shall govern and control the decision of such questions.

Section 5. Quorum.

At any meeting of the unit owners, more than 50 percent of the common area ownership interest of the total unit owners constitutes a quorum. In the absence of a quorum, the chairman of the meeting may adjourn the meeting from time to time, without notice other than by announcement at the meeting, until unit owners requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.

Section 6. Waiver of Irregularities.

All inaccuracies and/or irregularities in calls, notices of meeting and in the matter of voting, and method or ascertaining those present, shall be deemed waived if no objection is made at the meeting.

ARTICLE III

TRANSFER OR LEASE OF APARTMENT UNITS

Section 1. General.

Each unit, together with its undivided interest in the common areas and facilities, shall, for all purposes, constitute real property and may be individually conveyed, leased and encumbered and may be inherited or devised by will and be subject to all types of juridic acts inter vivos or mortis causa as if it were sole and entirely independent of all other units, and the separate units shall have the same incidents as real property, and the corresponding individual titles and interests therein shall be recordable.

Section 2. Application.

The management committee shall be given written application for approval of any intended sale, lease, or sublease, and the terms and conditions thereof. The committee may further require the applicant to deliver to the committee a copy of the contract sale, lease, or sublease of which approval is requested. No such sale, lease, or sublease shall take effect for any purpose, unless and until the following requirements have been completed and satisfied:

- a. All assessments and other charges due from the owner must be paid to the committee.
- b. A written statement must be submitted to the committee to the effect that the sale, lease, or sublease is not for the purpose of unlawful discrimination and must not impair the marketability of the units, nor may such sale, lease, or sublease impair the exercise of a mortgage holder's right to foreclose, exercise a power of sale or lease of a unit acquired by the mortgage holder as a result of any default.
- c. A written consent to such sale, lease, or sublease must be signed by the management committee or by the chairman thereof at the direction of the committee. The management committee shall not unreasonably withhold its consent.
- d. The new owner or tenant shall execute in writing an agreement to perform and comply with all the provisions of the Amendments to the Amended Declaration, By-Laws, Utah Condominium Ownership Act, and rules and regulations promulgated pursuant thereto.
- e. Any sale, lease, or sublease must follow any requirements established by any Federal Agency or Lending Corporation that has an interest in the said unit.

Section 3. Transfer of Liabilities.

Whenever an owner shall be permitted to sell and shall sell a unit upon compliance with the provisions and conditions stated herein, any liabilities of the former owner to the committee shall thereupon transfer to the new owner unless otherwise stated in the Amendments to the Amended Declaration, By-Law, or Utah Condominium Ownership Act.

ARTICLE IV

GENERAL RESPONSIBILITIES OF MANAGEMENT COMMITTEE

Section 1. Repairs and Maintenance.

a. The management committee shall keep in good order, condition and repair the foundation, sidewalks, walls, (except ceilings, floors and interior walls of apartments), supports, beams, roofs, gutters, fences, windows (excluding glass), and all pipes and conduits for carrying water and electricity through the buildings, swimming pool, parking areas, and private driveways, except those portions of any of the foregoing which it is the duty of the owner to maintain and keep in good repair. The owner shall give the management committee prompt notice of any accident or defect known to the owner and requiring repairs to be made. All costs incident to such repairs required to be made by the management committee shall be a common expense unless the same shall have been rendered necessary by the act, negligence or carelessness of the owner, or any of the owner's family, guests, employees, tenants, or subtenants, in which case the expense is to be borne by the owner.

b. The management committee shall maintain and manage the buildings, parking areas, roadways, swimming pool and all common areas in a first-class manner, and shall have the power to provide the number of attendants requisite, in the judgment of the management committee, for the proper care and service of the building and other areas listed above.

c. The management committee, as a common expense, shall pay water and sewer charges in connection with the project. The owners shall pay for all other utilities used by them.

d. The management committee shall not be responsible nor liable for the repairs and maintenance of the limited common areas as described in the Amendments to the Amended Declaration.

Section 2. Records of Account.

The management committee shall keep complete and correct books of account, records and financial statements which shall be made available to each unit owner, prospective unit owners, lenders and the holders and insurers of the first mortgage on any unit, or a duly authorized representative thereof at such reasonable times as may be fixed by the committee. The management committee shall annually prepare a budget to assist in the operational control of their

financial responsibilities and shall present at each annual meeting of the owners a financial statement of the business and condition of the management committee and the project.

ARTICLE V

PAYMENT OF EXPENSES

Section 1. Assessments.

a. Each unit owner or occupant shall pay the management committee his pro rata portion of the cash requirements deemed necessary by the committee to manage and operate GARDEN APARTMENTS upon the terms, at the times, and in the manner herein provided without any deduction on account of any set-off or claim which the owner may have against management, and if the owner shall fail to pay any installment within twenty (20) days from the time when the same becomes due, the owner shall pay interest thereon at the rate of 1.5% per month from the date when such installment shall become due to the date of the payment thereof.

b. The cash requirements above referred to for each year, or portion of the year, are hereby defined, and shall be deemed to be such aggregate sum as the management committee from time to time shall determine, in its judgment, is to be paid by all the owners or occupants of GARDEN APARTMENTS then in existence to enable the committee to pay all estimated expenses and outlays of the committee to the close of such year, growing out of or connected with the maintenance and operation of such land and buildings and improvements, which sum may include, among other things, the cost of management, special assessments, fire, casualty, and public liability insurance premiums, common lighting and heating, pool expenses, landscaping and care of grounds, repairs and renovations to common areas and facilities, wages, water charges, legal and accounting fees, management fees, expenses and liabilities incurred by the management committee under or by reason of the Declaration, these By-Laws, or any occupancy agreements, the payment of any deficit remaining from a previous period, the creation of a reasonable contingency or other reserve or surplus fund, as well as all other costs and expenses relating to the GARDEN APARTMENTS. The management committee may, from time to time, up to the close of the year for which such cash requirements have been so fixed or determined, increase or diminish the amount previously fixed or determined for such year. The committee may include in the cash requirements for any year any liabilities or items of expense which accrued or became payable in a previous year, but were not included therein; and also any sums which the management committee may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

c. The pro rata portion payable by the owner in and for each year or portion of year shall be a sum (within the limits and on the conditions hereinabove provided) bearing to the aggregate amount of such cash requirements for the year, or portion of year, determined as aforesaid, the same ratio as that which the number of square feet above ground in the owner's individual apartment home, to which he has exclusive right of possession, bears to the

aggregate of the square feet above ground in all the individual apartment homes in the GARDEN APARTMENTS at the time of the fixing and determination of such cash requirements, and such assessments, together with any additional sums accruing under this agreement, shall be payable monthly in advance, or in such payments or installments as shall be required by the management committee, and at such times as shall be provided by the management committee.

d. The management committee shall have discretionary powers to prescribe the manner of maintaining and operating GARDEN APARTMENTS and to determine the cash requirements of the management committee to be paid as aforesaid by the owners under the Declaration and these By-Laws. Every such reasonable determination by the committee, within the bounds of the Condominium Ownership Act, the Declaration and these By-Laws, shall be final and conclusive as to the owners, and any expenditures made by the committee, within the bounds of the Condominium Ownership act, the Declaration, and these By-Laws, shall as against the owner, be deemed necessary and properly made for such purpose.

e. If the owner shall at any time let or sublet the apartment, and shall default for a period of one (1) month in the payment of any management assessments, the management committee may, at its option, so long as such default shall continue, demand and receive from any tenant or sub-tenant of the owner occupying the apartment the rent due or becoming due from such tenant or sub-tenant to the owner up to an amount sufficient to pay all sums due from the owner to the management committee, and any such payment of such rent to the committee shall be sufficient payment and discharge of such tenant or sub-tenant as between such tenant or sub-tenant and the owner to the extent of the amount so paid. In the event of default in payment of assessments as herein provided, the management committee, in addition to all other remedies herein and in the Declaration provided, shall have the right to discontinue all services to such unit in default as the committee may provide until such default is cured in full.

f. To facilitate the operation and management of the project, the committee shall annually prepare a proposed budget of income and expenses and shall present the same to the unit owners at each annual meeting for discussion and recommendations. The committee shall thereupon, after considering any recommendations from the unit owners, adopt a budget for the ensuing assessment year and shall, to the greatest extent possible, operate within the limits thereof. The committee shall nevertheless, in order to perform its management responsibilities, have the authority to deviate from such budget, both as to expense and assessment items, as unforeseen or necessary circumstances may require.

Section 2. No Waiver.

Anything herein contained to the contrary notwithstanding, the omission of the management committee before the expiration of any year to fix the management assessments hereunder for that or the next year shall not be deemed a waiver or modification in any respect of the covenants, conditions, or restrictions of the Declaration and these By-Laws, or a release of the owner from the obligation to pay the assessments, or any installment thereof for that

or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment shall be fixed.

Section 3. Collection of Common Expenses.

The amount of common expenses assessed against each unit shall be a debt of the owner at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. In the event of such a suit, the unit owner shall in addition to the assessment due, pay all costs of collecting the same, including reasonable attorney fees.

Section 4. Lien for Non-Payment of Common Expenses.

If any unit owner shall fail or refuse to make any payment of the common expenses when due, the amount thereof shall constitute a lien on the interest of the owner in the property, and, upon the recording in the office of the county recorder of Utah County, Utah, of notice thereof by the manager or management committee, shall be a lien upon the unit owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded, except only:

1. Tax and special assessment liens on the unit in favor of any assessing unit, and special district, and
2. Encumbrances on the interest of the unit owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

The management committee shall, upon the written request of any unit owner or any encumbrancer or prospective encumbrancer of a unit, upon the payment of a reasonable fee not to exceed \$10.00, issue to a person or persons requesting, a written statement setting forth the unpaid common expenses with respect to the unit covered by the request, which shall be conclusive upon the remaining unit owners and upon the management committee in favor of all persons who rely thereon in good faith. Unless the request for a statement of indebtedness shall be complied with within ten (10) days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien held by the person requesting the statement. Any encumbrancer holding a lien on a unit may pay any unpaid common expenses payable with respect to such unit and upon such payment, such encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrance.

The lien for nonpayment of common expenses may be enforced by sale or foreclosure of the unit owner's interest by the management committee, such sale or foreclosure to be conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the unit owner shall be required to pay the costs and expenses of such proceedings and reasonable attorney's fees. In the case of foreclosure, the owner shall be required to pay a reasonable rental for the unit during any redemption period, and the Plaintiff in the foreclosure action shall be entitled

to the appointment of a receiver to collect the rental without regard to the value of the unit subject to such lien.

The management committee shall have the power to bid in the unit at foreclosure or other sale and to hold, lease, mortgage and convey the unit.

#### ARTICLE VI

##### ADMINISTRATIVE RULES AND REGULATIONS

The committee shall have the power to establish by resolution, such building, management, and operational rules as the committee 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 thereof has been furnished to the owners they shall be taken to be a part hereof. 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 and be binding upon all unit owners and/or occupants of the project, including the family, guests, employees, tenants and subtenants of any owner.

The management committee shall exercise all reasonable effort to see that all persons comply with such rules and regulations, but the committee shall not be liable to any unit owner for the non-observance in violation of such rules by any other owner or person.

#### ARTICLE VII

##### TAXES AND INSURANCE

###### Section 1. Taxes.

It is acknowledged that under the Utah Condominium Ownership Act each of said units and each of said units percentage of the undivided interest in the common areas and facilities of the project are subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, and that as a result thereof, no taxes will be assessed or payable against the project as such. Each owner shall, therefore, pay and discharge any and all taxes which may be assessed against any of said units of which he is the owner, against the percentage of undivided interests in the common areas and facilities of any such unit, and/or against any items of personal property located in or upon any unit of which he is the owner.

Section 2. Insurance.

The committee shall secure and maintain the following insurance coverage on the project:

a. Fire and Extended Coverage. The management committee shall secure and at all times maintain in its name as trustee for the owners a policy or policies of fire and extended coverage insurance, excluding glass coverage, on the project in an amount which shall be equal to its maximum insurance replacement value, excluding foundation and excavation costs, or in such greater sum as the committee may from time to time determine to be necessary, proper and adequate. As between unit owners, participation in any proceeds realized by the committee from said insurance policy or policies will be on the basis of any damage sustained. In the event such unit owners cannot agree on the amount of damage sustained by each, the decision of the committee respecting the appraisal of such damage shall be conclusive. Each unit owner shall be responsible for securing and maintaining such glass coverage as he may require for his own protection. The unit owners may agree to be charged and pay for fire and extended coverage insurance on a pro rata basis determined with reference to the replacement value of any particular unit as compared with the other units in the project.

Such policy must provide that it may not be cancelled or substantially modified without at least 10 days prior written notice to the management committee and to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policy. Further, the policy must provide:

- i) A recognition of any Insurance Trust Agreement;
- ii) A waiver of the right of subrogation against unit owners individually;
- iii) That the insurance is not prejudiced by any act or neglect of individual unit owners which is not in the control of such owners collectively; and
- iv) That the policy is primary in the event the unit owner has other insurance covering the same loss.

Policies are unacceptable where:

- i) Under terms of the insurance carrier's charter, by-laws, or policy, contributions or assessments may be made against borrowers, FNMA, FHLNC, or the designee of FNMA or FHLNC; or
- ii) 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, policyholders or members, or
- iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLNC, or the borrowers from collecting insurance proceeds.

Finally, if prospectively dealing with the FNMA, any such policy must include an "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement".



b. Public Liability Coverage. The committee shall secure and at all times maintain, in its own name, a policy covering at least \$1,000,000 for bodily injury, including deaths and property damage arising out of a single occurrence. Said minimum coverage limit may be increased by the committee from time to time as it may deem to be in the interest of the unit owners.

It is intended that the insurance policies herein provided for include coverage for any act or omission of the committee, its officers, agents and employees, or of the occupants of any office unit in the project, respecting the ordinary and anticipated use, occupancy, operation and/or maintenance of the project. It is not intended, however, that said insurance policies include any coverage or recognize any liability with respect to any act or omission on the part of any unit owner or occupant, or their employees, respecting acts or omissions other than those arising out of the ordinary and anticipated use, occupancy, operation and/or maintenance of the project or of any of said units.

#### ARTICLE VIII

##### RIGHT OF ENTRY

###### Section 1. By the Committee.

This committee and its duly authorized agents shall have the right to enter any and all of the said units in case of an emergency originating in or threatening such unit or any other part of the project, whether the owner or occupant thereof is present at the time or not and to make such repairs or take such action as may be reasonably indicated. The committee and its duly authorized agents shall also have the right to enter 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. To facilitate making any such repairs or taking emergency action, the committee or its agents may remove such portions of the walk, floors and ceilings of any unit as may reasonably be required, but such unit shall as soon as possible thereafter be restored to its proper and usual condition by the committee or its agents, the cost of which shall be a common expense.

###### Section 2. By Unit Owners.

All unit owners and their duly authorized agents and representatives shall have the right to enter any of said units contained within the project for the purpose of performing emergency installations, alterations, or repairs to the mechanical or electrical devices 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.

ARTICLE IX

REIMBURSEMENT FOR DAMAGES

Each unit owner shall promptly perform or cause to be performed all maintenance and repair work within any of said units owned by him which, if omitted, will adversely affect the building in which said unit is located in its entirety, or any part of the project, and shall be liable in damages for any failure on his part so to do. In case of the refusal or neglect of the owner, within ten (10) days after notice in writing from the management committee, to make such repairs and restoration may be made by the management committee, who shall have the right through its officers or authorized agents, to enter the apartment for that purpose, and to thereafter collect the cost of such repairs or restoration as an additional maintenance assessment against such apartment. Each member shall also reimburse the committee for the full value of any repairs or replacements to the common areas and facilities made necessary through the negligence or fault of such unit owner or such unit owner's tenants.

ARTICLE X

USE AND OCCUPANCY

Section 1. Obstruction of Common Areas and Facilities.

No member shall cause or allow nor permit any person over whom he has or may exercise supervision or control to cause or allow any foyer, stairway, hallway, exit, entrance, breeze way, fire escape, roadway, driveway, or sidewalk in or on the project to be obstructed or to be used for any purpose other than for ingress to or egress from said units or the project.

Section 2. Use of Unit.

a. No owner or occupant of any of said units, shall without the prior written consent of the committee, occupy or use any of said units, nor permit any person over whom such owner or occupant has or may exercise supervision and control to occupy or use the same for any purpose other than a private dwelling, or to permit or suffer anything to be done or kept in or upon any of said units which would constitute a nuisance or a violation of any law, ordinance, or regulation, which would increase the rate of fire insurance on the project or which might otherwise interfere with the rights of other owners or occupants of the project. No sign, signal, advertisement, or illumination except as approved by the management committee by regulation duly adopted, shall be inscribed or exposed on or at any window or outside wall of the project. If by reason of any use of a unit by any occupant the rate for fire insurance is increased over what otherwise would be the case, the owner of such unit shall be liable for such increase and the committee shall have the right to collect the same as an additional assessment against any such unit.

b. No unit shall be occupied or used for anything other than a single-family dwelling. For the purpose hereof, "family" shall mean an individual or two or more persons related by blood, marriage, or legal adoption, living together. Provided, that a family may have one additional non-related person living in connection therewith. the provisions hereof shall apply whether such unit is occupied by the owner, leased, or under any other arrangement.

c. No boat, trailer, camper, automobile or other vehicle shall be parked on or in any common area in the project for longer than 72 hours during any 60-day period.

Section 3. Maintenance of Units.

Each unit owner at his own expense shall keep 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, painting and varnishing which may at any time be necessary to maintain the good appearance of his unit. The owner shall repair all injury or damage to the building or buildings caused by the act, negligence or carelessness of the owner or that of any lessee or sublessee or any member of the owner's family or of the family of any lessee or sublessee or of any guest, employee or agent of the owner or his lessee or sublessees, and all such repairs, redecorating, painting and varnishing 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 owner shall be responsible for the maintenance or replacement of any plumbing fixtures, refrigerators, air conditioning equipment, dishwashers, disposals, ranges, etc., that may be in or connected with the apartment unit. The unit owners in each building shall further be liable for any repair or damage due to any clogging of the sewer line servicing such building. If specific responsibility cannot be determined for any such condition, the owners of each units in such building shall share equally the cost of such repair or damage on a pro rata basis by dividing such cost or damage expense by the number of units in said building. Each owner shall be entitled to the exclusive use and possession of the patio and storage areas attached to his unit and shall be responsible for the maintenance and upkeep of said patio and storage areas; provided, however, that without the written permission of the management committee first had and obtained, the owner shall not make or permit to be made any structural alteration, improvement or addition in or to the apartment unit, patio areas 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.

No radio, T.V. antenna or aerial, and Satellite Dish shall be installed on the outside of any building contained within the project without prior written consent of the management committee. Consent will only be given if the proposed installation is to be located in the individual unit's limited common area and is not offensive to other unit owners or tenants.

Section 4. Pets.

No animal shall be kept or harbored in the project unless the same in each instance be expressly permitted by the management committee. In no event shall

dogs be permitted in any of the common areas and facilities of the project unless carried on a leash. The owner shall indemnify the committee and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having an animal or pet in the project. The committee, for reasonable cause, shall, however, have the right to revoke any permit or consent previously given to any unit owner for keeping or harboring any animal within the limits of the project.

Section 5. No Waiver of Strict Performance.

The failure of the management committee to insist, in any one or more instances, upon a strict performance of any of the terms, covenants, or conditions of these By-Laws, the Act, as may be adopted, or to exercise any right or option therein contained, or to serve any notice or to institute any action or proceeding, shall not be construed as a waiver or a relinquishment for the future of such covenant, condition, or option or right shall continue and remain in full force and effect. The receipt by the management committee of assessments, with knowledge of the breach of any such covenant shall not be deemed to be a waiver of such breach, and no waiver by the management committee of any such provision shall be deemed to have been made unless expressed in writing and signed by the committee, and even though a consent to lease or sublease be given, no further lease or sublease shall be made without express consent in writing given as hereinabove provided.

**ARTICLE XI**

**FIRST LIEN HOLDERS' RIGHTS**

Section 1. Notices of Action.

A holder, insurer or guarantor of a first mortgage, upon written request to the management committee, (stating its name, address, insurer or guarantor, and unit number) will be entitled to timely written notice of:

- a. Any proposed amendment to the condominium instruments effecting a change in boundaries or easement rights, general or limited common areas, the percentage of votes appertaining to any unit, or the purposes to which any unit or common elements are restricted;
- b. Any proposed termination of the condominium regime;
- c. Any condemnation loss or any casualty loss which affects a material portion of the condominium or which affects any unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;
- d. Any delinquency in the payment of assessments owed by an unit owner subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days; or

- e. Any lapse, cancellation or material modification of any insurance policy maintained by the management committee.

Section 2. Other Provisions for First Lien Holders.

To the extent possible under applicable law, the following protections for the benefit of first mortgage holders must be legally binding with respect to the condominium by virtue of the constituent documents, applicable law or otherwise:

- a. Any restoration or repair of the condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Amendments to the Amended Declaration, unless approval to do otherwise is obtained from the eligible holders of first mortgages on units to which at least 51 percent of the common area ownership interest of units subject to mortgages held by such eligible holders is allocated.
- b. Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the condominium property requires the approval of the eligible holders of first mortgages on units to which at least 51 percent of the common area ownership interest of units subject to mortgages held by such eligible holders is allocated.

As used in this section, "eligible holder, insurer or guarantor" shall mean a holder, insurer or guarantor of a first mortgage on a unit which has requested notice in accordance with the provisions under Section 1 above.

ARTICLE XII

NOTICES

Any notice by the management committee to an owner shall be deemed to be duly given, and any demand by the management committee upon an owner shall be deemed to have been duly made if personally served in writing or if enclosed in a postpaid envelope addressed to the owner at his apartment mailing address at GARDEN APARTMENTS, Provo, Utah, or such other address as may be designated by the owner, and mailed by registered mail in any general or branch post office. Any notice by an owner to the management committee shall be deemed to be duly given and any demand by an owner upon the management committee shall be deemed to be duly made if personally served in writing on a member of the committee or if enclosed in postpaid envelope addressed to the person herein designated to receive service of process, or to such other address as may be designated by the management committee and mailed by registered mail in any general or branch post office.

**ARTICLE XIII**

**ENFORCEMENT AND COSTS THEREOF**

If an owner shall at any time be in default under the provisions of these By-Laws or the Amendments to the Amended Declaration, and the management committee shall institute and action or proceeding against such owner based upon such default, that owner shall reimburse the management committee for the expense of attorney's fees and disbursements thereby incurred by the committee, so far as the same are reasonable in amount, and the management committee shall have the right to collect the same as an additional management assessment. In the event of a breach or threatened breach by an owner of any of the covenants or provisions hereof, the management committee shall have the right to injunction, and the right to invoke any remedy allowed at law or in equity.

If an owner shall at any time be in default under the provisions of these By-Laws or the Amendments to the Amended Declaration for more than 60 days, the management committee has the authority to prohibit said owner or tenant of said owner use and enjoyment of any or all of the common areas of GARDEN APARTMENTS.

**ARTICLE XIV**

**PERSONS BOUND**

All references herein to an owner or an occupant shall be deemed to include the executors, administrators, legal representatives, legatees, distributees and assigns thereof; and the comments and conditions herein contained shall apply to and bind each owner and occupant and the executors and administrators, legal representatives, legatees, distributees, and assigns thereof.

In the application of any provision of these By-Laws or Amendments to the Amended Declaration, the use of any gender shall include all other genders, the singular shall include the plural, and the plural shall include the singular.

**ARTICLE XV**

**SAVING CLAUSE**

If any clause of provision herein contained shall be adjudged invalid, the same shall not affect the validity of any other clause or provision of these By-Laws.

ARTICLE XVI

AMENDMENTS

These By-Laws may be altered, amended, or repealed by the affirmative vote of owners representing at least 67 percent of the common area ownership interest in GARDEN APARTMENTS.

ADOPTED AND APPROVED this 15 day of Feb., 1990, by affirmative vote of unit owners owning more than 67 percent of the common area ownership interest in GARDEN APARTMENTS, a Condominium Project, Provo, Utah.

GARDEN APARTMENTS  
MANAGEMENT COMMITTEE

Coran L. Cluff  
Chairman

ATTEST:

Lucile T. Moncur  
Secretary

STATE OF UTAH        )  
                          | SS,  
COUNTY OF UTAH    )

On the 15 day of Feb., 1990, \_\_\_\_\_ and \_\_\_\_\_  
Coran L. Cluff and Lucile T. Moncur personally appeared before  
me, each being by me first duly sworn, and did say that

Coran L. Cluff is the chairman of the Management Committee of GARDEN APARTMENTS, a Condominium Project, Provo, Utah, and a Utah Corporation; that

Lucile T. Moncur is the secretary of the Management Committee of GARDEN APARTMENTS; that the foregoing Revised, Amended and Restated By-Laws for GARDEN APARTMENTS were duly approved and adopted by unit owners owning more than 67 percent of the common area ownership interest in said project; that the foregoing instrument was signed in behalf of said unit owners and said management committee by authority of the By-Laws of GARDEN APARTMENTS and in conformity with the powers conferred by the Utah Condominium Ownership Act; and the said chairman and secretary of GARDEN APARTMENTS management committee duly acknowledge to me that they executed the same.

SUBSCRIBED AND SWORN to before me this 15 day of

Feb, 1990.

Wayne C. Close  
Notary Public

Residing At: Provo, Utah

My Commission Expires: May 18, 1993

