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Date ..... JUL 19 1979 ..... at *11*<sup>46</sup> ..... M CAROL DEAN PAGE Recorder- Davis County  
By ..... *La Dell Manning* ..... Deputy Book *780* ..... Page *993*.

538681

DECLARATION AND BY-LAWS

of the

LEMON TREE CONDOMINIUM

A Condominium Project  
Created Pursuant to the  
Utah Condominium Ownership Act

☐ Abstracted  
☐ Indexed  
☒ Entered  
  
☐ Platted  
☐ On Margin  
☐ Compared

*Properties Ltd*  
*214 meters Ely*  
*431 & 300 E*  
*SLC 8411*

HIGGINS, JENSEN & BRASHER

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EXHIBITS:

- A. RECORD OF SURVEY MAP
- B. UNIT NUMBER AND PERCENT OF UNDIVIDED INTEREST IN COMMON AREAS AND FACILITIES
- C. ARTICLES OF INCORPORATION OF LEMON TREE ASSOCIATION, A UTAH NON-PROFIT CORPORATION
- D. BY-LAWS OF LEMON TREE ASSOCIATION

*For purposes of recording, Exhibit "B" is the only attachment.*

*July 19, 1979*

*Burt K. Besh*

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## DECLARATION

OF

LEMON TREE

THIS DECLARATION is made and executed by Properties Limited, a Utah Corporation, ("declarant"), pursuant to the provisions of the Utah Condominium Ownership Act, as amended, Utah Code Annotated, Sections 57-8-1 through 57-8-36 (Repl. Vol. 1963), hereinafter referred to as the "act."

1. Recitals

(1.1) Declarant, and the persons joining in this declaration are the owners of the real property and improvements ("Property") located at 1100 North 200 East, Bountiful, Davis County, Utah, hereinafter more particularly described.

(1.2) Declarant, by recording this declaration, intends that the provisions of the act shall apply to the property.

(1.3) The covenants, conditions, and restrictions contained in this declaration and in the exhibits hereto shall be enforceable equitable servitudes and shall run with the land.

(1.4) Declarant has filed simultaneously herewith a Record of Survey Map ("map"), as required by Section 57-8-13(1) of the act, (hereinafter referred to as "map" and Exhibit A).

(1.5) The administration of the property shall be governed by by-laws which are embodied in a separate instrument, a true copy of which are appended to and recorded with this declaration as Exhibit D.

(1.6) All terms used in this declaration and the appended by-laws shall have the same definition as the terms defined in the act, unless the act allows for a variation of the terms and such variation is contained herein.

(1.7) The property shall be known as Lemon Tree. The mailing address of the property is 1100 North 200 East, Bountiful, Utah 84010.

## 2. Description of the Land

The land on which the buildings and improvements are located are particularly described as follows:

Tract No. 1: Beg. at a pt. which is E. 923.34 ft. & N. 303.60 ft. & S. 89°38' E. 190.00 ft. and N. 176.55 ft. & S. 89°38' E. 231.16 ft. from the S.W. corner of the S.E. quarter of Sec. 18, Township 2 N., Range 1 E., S.L. Base & Meridian, & running th. S. 89°38' E. 190.00 ft.; th. S. 0°14' E. 147.38 ft.; th. N. 89°38' W. 190.0 ft.; th. N. 0°14' W. 147.38 ft. to the pt. of beg.

Tract No. 2: Beg. 923.34 ft. E. & N. 303.60 ft. along the E. line of a County rd. & S. 89°38' E. 190.00 ft. and N. 0.70 ft. from the S.W. corner of the S.E. quarter of Sec. 18, Township 2 N. Range 1 E., S.L. Base & Meridian, & running th. along the arc of a curve to the left (radius 68.03 ft. bearing N. 0°22' E.) 37.44 ft. to a pt. of tangency of a curve to the right (radius 127.03 ft. bearing S. 31°10' E.) 69.91 ft.; th. S. 89°38' E. 129.49 ft.; th. N. 0°14' W. 147.38 ft.; th. N. 89°38' W. 231.16 ft.; th. S. 175.85 ft. to the pt. of beg.

## 3. Description of the Building

(3.1) The buildings have two full floors each.

(3.2) There are 30 units.

(3.3) The buildings are constructed of concrete and brick. The interior units and hallway floors are concrete over which is laid carpet or other floor coverings. The ceilings are approximately eight feet high. The interior partitions are made up of wood, partitions, and drywall. The buildings are supplied with electricity, water, sewage service. Each unit in the buildings are individually heated and air conditioned. The buildings are more fully depicted on the map.

## 4. Description of Units

(4.1) Exhibit B hereto contains a table setting forth the number designation of each unit. The units are more particularly described in the map.

(4.2) The boundary lines of each unit are the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, all window panes, interior surfaces of doors, window frames and door frames, and trim. Each unit shall include both the portions of the building that are not common areas and facilities within such boundary lines and the space so encompassed. Without limitation, a unit shall include any

finishing material applied or affixed to the interior surfaces of the walls, floors, and ceilings, non-supporting interior walls and all utility pipes, lines, systems, fixtures, or appliances found within the boundary lines of the unit and servicing only that unit.

#### 5. Description of Common Areas and Facilities

The common areas and facilities shall mean and include: the land on which the buildings are located, and all portions of the property not contained within any unit, including, but not by way of limitation: the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, and entrances and exits of the building; the areas used for storage of janitorial supplies, maintenance equipment and materials; installations of all central services, including power, light, water, heating, and garbage collection; pumps, motors, fans, ducts, and in general all apparatus and installations existing for common use; any utility pipes, lines, or systems servicing more than a single unit and all ducts, flues, chutes, wires, conduits, and other accessories and utility installations to the outlets used therewith; all other parts of the property necessary or common in use, or which have been designated as common areas and facilities in the map; and all repairs and replacements of any of the foregoing.

#### 6. Percentages of Undivided Interest in Common Areas and Facilities

The percentage of undivided interest in the common areas and facilities appurtenant to each unit and its owner for all purposes, including voting, is set forth in Exhibit B. Such percentages have been computed on the basis of the initial estimated value of each unit.

#### 7. Purpose of the Property

(7.1) The purpose of the property is to provide residential housing for the unit owners, their respective families, lessees, guests, and servants.

(7.2) The units and common areas and facilities shall be occupied and used as follows:

7.2.1. A unit owner shall not permit his unit to be occupied or used other than as a private residence, without the express approval of the management committee or its designee.

7.2.2. A unit owner shall not obstruct the common areas and facilities. A unit owner shall not place or store

anything within the common areas and facilities without the prior written consent of the management committee or its designee.

7.2.3. Without the prior written consent of the management committee or its designee, a unit owner shall not permit anything to be done or kept in his unit and facilities appurtenant to his unit that would result in an increase in the cost of insurance on the property, or that would result in the cancellation of insurance with respect to all or any part of the property, or that would be in violation of any governmental law, ordinance, or regulation.

7.2.4. The management committee or its designee, shall approve all signs of any kind that will be displayed to the public view from a unit.

7.2.5. A unit owner shall not permit any animals of any kind to be raised, bred, or kept in his unit or in the limited common areas and facilities appurtenant to his unit, except that the management committee may provide in its rules and regulations that dogs, cats, and other household pets may be kept in units subject to the rules and regulations adopted by the management committee.

7.2.6. A unit owner shall not permit any obnoxious, illegal, or offensive activity, or nuisance to be carried on in his unit or in the common areas and facilities or limited common areas appurtenant to his unit.

7.2.7. A unit owner shall not alter, construct in, or remove anything from the common areas and facilities, except with the prior written consent of the management committee or its designee.

7.2.8. A unit owner shall not violate any of the rules and regulations for the use of units, common areas, and facilities, or limited common areas and facilities adopted by the management committee and furnished in writing to the unit owners.

#### 8. Agent for Service of Process

(8.1) The name and address of the person in Davis County, State of Utah, appointed as first agent to receive service of process in matters pertaining to the property is: Richard A. Higgins, 431 South 300 East, Salt Lake City, Utah 84111.

(8.2). The agent for service of process may be changed from time to time by the management committee by recording an appropriate affidavit.



9. Association of Unit Owners: Management Committee

(9.1) The persons or entities who are at the time of reference the unit owners constitute an unincorporated association, the characteristics and nature of which are determined by the act, the declaration, and the by-laws. The name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and disposed of, bank accounts shall be opened and suits shall be brought and defended by the management committee or officers thereof on behalf of and agents for the unit owners in the manner specified by the act, this declaration, or the by-laws, is: "The Lemon Tree Association, an association of unit owners under the Utah Condominium Ownership Act."

(9.2) The management and maintenance of the business, property and affairs of the Lemon Tree Association ("association") shall be managed by a management committee, consisting of an odd number of three (3) or more, who need not be unit owners. The management committee shall be elected as provided by the by-laws. All agreements and determinations with respect to the property lawfully made or entered into by the management committee shall be binding upon all of the unit owners and their successors and assigns.

(9.3) The management committee shall have all the powers, duties, and responsibilities as are now or may hereafter be provided by the act, this declaration and by-laws, including, but not limited to, the following:

9.3.1. To make and enforce all house rules and administrative rules and regulations covering the operation and maintenance of the property.

9.3.2. To engage the services of a manager or managing company, accountants, attorneys, or other employees or agents and to pay to said persons a reasonable compensation therefore; provided, however, that any management agreement may be terminable by the management committee for cause upon thirty (30) days written notice and that the term of any said management agreement may not exceed one year, renewable by agreement for successive one-year periods.

9.3.3. To operate, maintain, repair, improve, and replace the common areas and facilities.

9.3.4. To determine and pay the common expenses.

9.3.5. To assess and collect the proportionate share of common expenses for the unit owners.



9.3.6. To enter into contracts, deeds, leases, and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

9.3.7. To open bank accounts on behalf of the association and to designate the signatures therefore.

9.3.8. To purchase, hold, sell, convey, mortgage, or lease any one or more units in the name of the association or its designee.

9.3.9. To bring, prosecute, and settle litigation for itself, the association and the property, provided that it shall make no settlement which results in a liability against the management committee, the association, or the property in excess of \$5,000 without prior approval of a majority of unit owners.

9.3.10. To obtain insurance for the association with respect to the units and the common areas and facilities, as well as workmen's compensation insurance.

9.3.11. To repair or restore the property following damage or destruction, or a permanent taking by any power in the nature of eminent domain or by an action or deed in lieu of condemnation, not resulting in the removal of the property from the provisions of the act.

9.3.12. To own, purchase, or lease, hold and sell or otherwise dispose of, on behalf of the unit owners, items of personal property necessary to or convenient in the management of the business and affairs of the association and the management committee and in the operations of the property, including, without limitation, furniture, furnishings, fixtures, maintenance equipment, appliances, and office supplies.

9.3.13. To keep adequate books and records.

9.3.14. To do all other acts necessary for the operation and maintenance of the property, including the maintenance and repair of any unit if the same is necessary to protect or preserve the property.

(9.4) The management committee may employ professional management to manage the project.

(9.5) The management committee may delegate to a manager or managing company all of its foregoing powers, duties, and responsibilities referred to in paragraph (9.3) above except: the final determination of common expenses,

budgets, and assessments based thereon; the promulgation of house rules and administrative rules and regulations; the power to enter into any contract involving more than \$1,000 in any one fiscal year; the opening of bank accounts; the power to purchase, hold, sell, convey, mortgage, or lease any units in the name of the association or to bring, prosecute, and settle litigation.

(9.6) Members of the management committee, the officers and any assistant officer, agents, and employees of the association: (i) shall not be liable to the unit owners as a result of their activities as such for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to a unit owner or any other person or entity under any agreement, instrument, or transaction entered into by them on behalf of the association in their capacity as such; (iii) shall have no personal liability in tort to any unit owner or any person or entity, direct or imputed, by virtue of acts performed by them; except for their own willful misconduct or bad faith, or acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse, or condition of the property, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

(9.7) The unit owners shall indemnify and hold harmless, any person, his heirs and personal representatives, from and against all personal liability and all expenses including counsel fees, incurred or imposed, or arising out or in settlement of any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative instituted by any one or more unit owners, or any other persons or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was a member of the management committee or an officer or assistant officer, agent, or employee of the association, other than to the extent, if any, that such liability or expense shall be attributable to his willful misconduct or bad faith; provided, in the case of any settlement, that the management committee shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or vote of unit owners or of the management committee, or otherwise. The indemnification by the unit owners as contained herein shall be paid by the management committee on behalf of the unit owners and shall constitute a common expense and shall be assessed and collectible as such.

10. Maintenance, Alteration, and Improvement

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(10.1) The maintenance, alteration, replacement, and repair of the common areas and facilities shall be the responsibility of the management committee and the costs thereof shall be a common expense. The management committee shall also maintain, alter, replace, and repair all conduits, ducts, plumbing, and wiring and other facilities for the furnishing of heat, light, power, water, and sewer contained in the portions of the units that service part or parts of the property other than the unit in which they are contained. All incidental damages caused to a unit by the maintenance, alteration, replacement, and repair of the common areas and facilities or utility service shall be repaired promptly at the expense of the management committee.

(10.2) The unit owners shall have the responsibility to maintain, repair, replace, and keep in a clean and sanitary condition, at the unit owner's expense, all portions of the owner's unit, except those portions to be maintained, altered, repaired, and replaced by the management committee. The management committee shall be responsible for cleaning and general maintenance of all parking areas.

(10.3) The management committee or manager shall have the right, subject to prior notice in the absence of an emergency, to have access of each unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities or for making emergency repairs necessary to prevent damage to the common areas and facilities or to another unit or units. Each unit occupant shall deposit a key to the unit with the management committee or manager to be used for emergency access to the unit.

11. Insurance

(11.1) The management committee shall obtain and maintain at all times insurance of the type and kind as provided herein and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other properties similar to the property in construction, design, and use. The management committee shall make every reasonable effort to obtain insurance with the following provisions or endorsements.

11.1.1. Exclusive authority to adjust losses shall be vested in the management committee as insurance trustee or any successor trustee as designated by the management committee;

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

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

11.1.4. The insurer waives its right of subrogation as to any and all claims against the association, each unit owner, and/or their respective agents, employees or tenants, and of all defenses based upon co-insurance or upon invalidity arising from the acts of the insured;

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

11.1.6. 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 then only if the defect is not cured within fifteen (15) days;

11.1.7. Such policies shall provide that coverage shall not be prejudiced by (a) any act or neglect of the owners of condominium units when such act or neglect is not within the control of the owners association or (b) by failure of the owners association to comply with any warranty or condition with regard to any portion of the premises over which the owners association has no control; and

11.1.8. The insurance coverage shall provide that 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 thereon, including all mortgagees of the units.

(11.2) The management committee, for the benefit of the property and the unit owners, shall maintain a "master" or "blanket" policy of property insurance in an amount equal to the full replacement value (i.e., 100% of current "replacement cost" exclusive of land, foundation, excavations, and other items normally excluded from coverage) of the entire condominium project (including all units, all common areas and facilities, all building service equipment and the like and any fixtures or equipment within the units) with an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and, if necessary, an "Increased Cost of Construction Endorsement"; or "Contingent Liability from Operation of Building Laws Endorsement": or the equivalent, payable to the insurance trustee to be this declaration. Such insurance will afford protection against at least the loss or damage by fire and other hazards

covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage. The limits and coverage of said insurance shall be reviewed at least annually by the management committee and shall include an appraisal of the property. Said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees, if any, of each unit.

(11.3) The management committee shall obtain a policy or policies of insurance insuring the management committee, the unit owners and their respective lessees, servants, agents, or guests against any liability to the public or to the owners of units, members of the households of unit owners, and their respective invitees or tenants, incident to the ownership and/or use of the property, and including the personal liability exposure to the unit owners, incident to the ownership and/or use of the property. Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) for any one person injured in any one occurrence, and shall not be less than One Hundred Thousand Dollars (\$100,000) for property damage in each occurrence. The limits in coverage of said liability policy or policies shall be reviewed at least annually by the management committee and increased at its discretion. Said policy or policies shall be issued on a comprehensive liability basis and, if possible, shall provide cross-liability endorsements for possible claims of any one or more group of injureds against any one or more group of insureds, without prejudice to the right of a named insured under the policies to maintain an action against another named insured. Such coverage will include protection against water damage liability, liability for nonowned and hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.

(11.4) All policies of property insurance shall provide that, notwithstanding any provisions of which give the insurer 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 management committee (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the association may be a party, or any requirement of law.



(11.5) Each unit owner shall be required to notify the management committee of, and shall be liable for, any increased insurance premium for insurance maintained by the management committee occasioned by, all improvements made by the unit owner to his unit, the value of which is in excess of One Thousand Dollars (\$1,000). Each unit owner shall bear the risk of loss for all improvements made to his unit that were not the subject of notice to the management committee.

(11.6) Any unit owner who obtains individual insurance coverage covering any portion of the property, other than personal property belonging to such unit owner, shall be required to file a copy of such individual policy or policies with the management committee within thirty (30) days after obtaining such insurance coverage.

(11.7) No unit owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount that the management committee, on behalf of all of the unit owners, may realize under any insurance policy that the management committee may have in force covering the property or any part thereof at any time.

(11.8) The management committee shall maintain adequate fidelity coverage to protect against dishonest acts on the part of members of the management committee, officers, and employees of the association, and all others who handle or are responsible for handling funds of the association, including professional managers and their employees. Such fidelity bonds shall meet the following requirements:

11.8.1. All such fidelity bonds shall name the association as an obligee;

11.8.2. Such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the association, including reserves;

11.8.3. Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve with compensation from any definitions of "employee" or similar expression; and

11.8.4. Such bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the mortgagees of the units.

12. Destruction or Damage

(12.1) In case of fire or any other disaster which causes damage or destruction to all or part of the property, the management committee, with the help of an independent appraisal, shall determine the percentage of the building that was destroyed or substantially damaged. If less than seventy-five percent (75%) of the building was destroyed or substantially damaged, the management committee shall arrange for the prompt repair and restoration of the building using the proceeds of insurance on the building for that purpose, and the unit owners shall be liable for assessment for any deficiency, if any, in proportion to their respective percentages of undivided interest in the common areas and facilities. Reconstruction of the building shall mean the restoring of the building to substantially the same condition in which it existed prior to the damage or destruction, with each unit and the common areas and facilities having the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of paragraph 14 hereof shall apply.

(12.2) If seventy-five (75%) or more of the building is destroyed or substantially damaged, the management committee shall within one hundred (100) days after such destruction or damage, call a special meeting of the unit owners for the purpose of deciding whether or not the building shall be repaired and restored. If at least three-fourths (3/4) of the unit owners, in person or by proxy, vote to repair or restore the building, the management committee shall promptly arrange for the reconstruction of the building, using the proceeds of insurance on the building for that purpose, and the unit owners shall be liable for assessment for any deficiency, if any, in proportion to their respective percentage of undivided interest in the common areas and facilities. If the destruction or damage is by reason of eminent domain, the provisions of paragraph 14 hereof shall apply. However, if at least three-fourths (3/4) of the unit owners vote not to make provision for reconstruction, the management committee shall record, with the County Recorder, a notice setting forth such facts, and upon the recording of such notice: (i) the property shall be deemed to be owned in common by the unit owners; (ii) the undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of areas and facilities; (iii) any liens affecting any of the units shall be deemed to be transferred in accordance with the existing property; and (iv) the property shall be subject to an action for partition at the suit of any unit owner, in which even the net proceeds of sale, together with the net



proceeds of the insurance on the property, shall be considered as one fund and shall be divided among all unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the unit owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the property owned by each unit owner. 1008

(12.3) For purposes of this paragraph 12, the terms "disaster", "destruction", or "substantial damage" shall also include a temporary or permanent taking, injury, or 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.

(12.4) The management committee shall timely notify in writing each mortgagee of a unit whenever damage to a unit exceed \$1,000 and damage to the common areas and facilities exceeds \$10,000.

### 13. Termination

(13.1) In the event three-fourths (3/4) of the building is destroyed or substantially damaged and if the unit owners vote not to reconstruct the building, the property shall be removed from the provisions of the act without further agreement one hundred and one (101) days after such destruction or damage.

(13.2) All of the unit owners may remove the property from the provisions of the act by an instrument duly recorded to that effect, provided that 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.

(13.3) After removal of the property from the act, the unit owners shall own the property and all assets of the association of 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 interests of the unit owners shall be the same as the percentage of undivided interest in the common areas and facilities appurtenant to the owners' units prior to removal from the act.

(13.4) Any change in the status of the property which would result in the removal of the land or any part thereof from the act or would alter the use of the property must receive the prior approval of Bountiful City after the change is submitted to the City Planning and Zoning Commission.

(13.5) This paragraph 13 cannot be amended without the consent of all unit owners and all record owners of mortgages on units.

#### 14. Eminent Domain

(14.1) Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury, or destruction of all or part of the common areas and facilities of 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 (all of which shall be defined as "eminent domain"), the management committee, each unit owner, and every holder of all liens affecting the units, shall be entitled to timely written notice thereof and the management committee shall and the units owners at their respective expense may participate in the proceedings incident thereto.

(14.2) The procedures governing the allocation of awards by reason of eminent domain shall be determined in accordance with Section 57-8-32.5 of the act; provided, that the priority of any mortgages lien shall remain undisturbed.

#### 15. Mortgage Protection

(15.1) The term "mortgage" as used in this declaration and by-laws shall mean any recorded mortgage having priority over other mortgages and shall include a recorded deed of trust. The term "mortgagee" shall mean the owner and holder of a mortgage and shall include a beneficiary under a deed of trust.

(15.2) 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, the management committee shall maintain another roster which shall contain the name and address of each mortgagee of a unit. Each notice shall consist of a certified copy of the recorded 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 be given to the mortgagee unless the removal is requested by the mortgagee.

(15.3) Any mortgage on any unit is entitled to written notification from the management committee of any default by the mortgagor of such unit in the performance of such mortgagor's obligation under the declaration which is not cured within thirty (30) days.

(15.4) Any mortgagee shall have the right to examine the books and records of the association during normal business hours and shall be entitled to receive copies of annual reports and other financial data within ninety (90) days following the end of any fiscal year and shall be entitled to receive notice of all meetings of the association and may designate a representative to attend all such meetings.

(15.5) A mortgagee of any unit who comes into possession of the unit pursuant to the remedies provided in the mortgage, foreclosure of 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 the unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all units, including the mortgaged unit).

(15.6) The liens created under the act or pursuant to this declaration or by-laws upon any unit shall be subject and subordinate to, and shall not affect the rights of a mortgagee upon such interest made in good faith and for value, provided that after the foreclosure sale, any such liens thereafter arising, shall have the same effect and be enforced in the same manner as provided herein.

(15.7) No unit may be partitioned or subdivided without the prior written approval of the mortgagee of the affected unit.

(15.8) No amendment to this paragraph shall affect the rights of a mortgagee recorded prior to the recordation of any such amendment not otherwise entitled thereto.

#### 16. Leasing of Units

(16.1) All lessees of units shall be reported and listed with the management committee. All lessees shall be subject in all respects to the provisions of the declaration and by-laws and that failure of the lessee to comply with the terms of said documents shall be a default under the lease or tenancy. The management committee may maintain an action of law, separate and apart from the owner, for eviction and/or damages against a lessee in violation of this Declaration, the By-Laws, or rules of the association.

(16.2) Each lessee shall, at the lessee's option, have the right to vote at the meetings of the owner in place of the owner, except with respect to votes for capital expenditures.

(16.3) No unit owner shall lease less than the entire unit.

(16.4) The provisions of this paragraph shall not apply to a lender in possession of a unit following a default in a first mortgage.

#### 17. Encroachments

(17.1) None of the rights and obligations of any unit owners created by this declaration, by-laws, or by any deed conveying a unit shall be affected in any way by an encroachment: (i) by any portion of the common areas and facilities upon any unit; (ii) by any unit upon any portion of the common areas and facilities; or (iii) by any unit upon another unit due to settling or shifting of the building or other structure, including the rebuilding of the building and other structure after fire or other casualty or an eminent domain taking or delivery of a deed in lieu of condemnation, unless there occurs an encroachment that results from the willful or negligent act or omission of the unit owner of the encroaching unit, or of the owners of the units to which the use of the encroaching limited common areas and facilities is appurtenant, or of the management committee in the event of an encroachment by any portion of the common areas and facilities other than the limited common areas and facilities.

(17.2) There are hereby created valid easements for the maintenance of any encroachments permitted by this paragraph 17 of this declaration so long as such encroachments exist.

#### 18. Conveyances, Easements

(18.1) Every deed, lease, mortgage, or other instrument may describe a unit by its identity number and 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 tenant-in-common, as set forth in Exhibit B even though the same is not exactly mentioned or described.

(18.2) Every deed, lease, mortgage, or other similar instrument shall be deemed to:

18.2.1. 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.

18.2.2. Include with respect to a unit nonexclusive easements for ingress and support of said unit through the common areas and facilities, for the repair of said unit through all other units and through the common areas and facilities, and for the use of the parking spaces as indicated in Exhibit B and the map.

18.2.3. Except and reserve, with respect to the undivided percentage interest in the common areas and facilities, nonexclusive easements appurtenant to all units for ingress, egress, support, and repair and exclusive easements appurtenant to each unit for the use of the parking spaces as set forth in Exhibit B and the map.

18.2.4. Include, with respect to the undivided percentage interest in the common areas and facilities, nonexclusive easements through each unit for support and repair of the common areas and facilities and nonexclusive 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.

#### 19. Sale or Lease

(19.1) Any purchaser or lessee shall automatically be subject to all of the terms, conditions, limitations, rights, and obligations placed upon an owner or lessee by this Declaration, with or without actual notice of this Declaration.

(19.2) The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the unit owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

#### 20. Combination of Units

(20.1) An owner of two or more adjoining units shall have the right upon approval of the management committee and the mortgagees of said units, to combine one or more adjoining units or portions thereof and to alter or amend the declaration and map to reflect such combination.



(20.2) Such amendments may be accomplished by the unit owner, subsequent to approval by the management committee, recording an amendment or amendments to this declaration, together with an amended map or maps containing the same information with respect to the altered units as required in the initial declaration and map with respect to the initial units. All costs and expenses required in such amendments shall be borne by the unit owner desiring such combination.

(20.3) All such amendments to the declaration and map must be approved by attorneys employed by the management committee to insure the continuing legality of the declaration and the map. The cost of such review by the attorneys shall be borne by the person wishing to combine the units.

(20.4) Any amendment of the declaration or map pursuant to this paragraph 20 shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the common areas and facilities which are appurtenant to the units involved in the alterations. The remaining combined unit, if two or more units are totally combined, will acquire the total of the percentage of undivided interest in the common areas and facilities appurtenant to the units that are combined as set forth in Exhibit B. If a portion of one unit is combined with another, the resulting units shall acquire a proportionate percentage of the total undivided interest in the common areas and facilities of the units involved in the combined units. The percentage of undivided interest in the common areas and facilities appurtenant to all other units shall not be changed. All such amendments must, in all instances, be consented to by the management committee and also all other persons holding interest in the units affected. The consent of other unit owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the common areas and facilities of the other unit owners remain unchanged.

## 21. Amendment

(21.1) Except as otherwise provided in this declaration except as prohibited by the act, the provisions of this declaration may be amended by an instrument in writing signed and acknowledged by unit owners who own three-fourths (3/4) in the aggregate of ownership interest in the common areas and facilities, which amendment shall be effective upon recording.

## 22. Assessments

The making and collection of assessments from unit owners for their share of common expense shall be pursuant to the by-laws and subject to the following provisions:

(22.1) Each owner shall be liable for a proportionate share of the common expenses and shall share in the common profits, such shares being the same as the percentage of undivided interest in the common areas and facilities appurtenant to the unit owned by the unit owner as set forth in Exhibit B.

(22.2) 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 twelve percent (12%) 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.

(22.3) A lien for unpaid assessments shall also secure reasonable attorneys' 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.

(22.4) In any foreclosure of a lien for assessments, the unit owner subject to the lien shall be required to pay a reasonable rental for the unit, and the management committee shall be entitled to the appointment of a receiver to collect the same.

(22.5) The management committee may include in the monthly assessments amounts representing contributions to the capital of the association to be used for the replacement of or additions to capital items or improvements in the property. Said amounts shall be set up as capital accounts for each unit. In the event of transfer of a unit, the capital account shall be deemed transferred to the unit transferee.

(22.6) In assessing the unit owners for capital improvements to the common areas and facilities, for which there are not sufficient amounts in the respective capital accounts, there shall be no single improvement exceeding the sum of Twelve Thousand Dollars (\$12,000) made by the management committee without the same having been first voted on and approved by two-thirds (2/3) majority of those present in person or by proxy of 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 12 hereof or to such structural alterations, capital additions to, or capital 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 of the property.



(22.7) 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 in 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.

### 23. Taxes

It is understood that under the Act each unit, together with its limited common areas and its percentage of undivided interest in the Common Areas and Facilities in the Project, is deemed a parcel and subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law. Each unit owner will, accordingly, pay and discharge any and all taxes which may be assessed against his condominium unit, together with his pro-rata share of common areas. If, for any reason, any tax or other assessment is necessarily made as to the condominium development as a whole the percentage share of each unit owner shall be assessed in accordance with Exhibit "B".

### 24. Voting

At any meeting of the Association of Unit Owners, each unit owner, including declarant, either in person or by proxy, shall be entitled to the same number of votes as the percentage of undivided interest of the common areas and facilities assigned to his unit in Exhibit B to this declaration. If there is more than one unit owner with respect to a particular unit, any or all of such unit owners may attend any meeting of the association, but it shall be necessary for all such unit owners present to act unanimously in order to cast the votes pertaining to their unit.

### 25. Notices

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 twenty-four (24) hours after a copy of the same has been deposited in the U. S. Postal Service, 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 of such notice or to the unit of such unit owner if no such address has been given 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: Richard A. Higgins, Management Committee, Lemon Tree Condominiums, 431 South 300 East, Salt Lake City, UT 84111.

26. No Waiver

1016

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 the by-laws, 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 of 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.

27. Enforcement

Each unit owner shall strictly comply with the provisions of the declaration, the by-laws, the house rules and administrative rules and regulations, and decisions issued pursuant thereto. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the management committee or its designee on behalf of the unit owners, or in an appropriate case, by an aggrieved unit owner.

28. Declarant's Use

Declarant and persons it may select from time to time shall have the right of ingress and egress over, upon, and across the common areas and facilities and limited common areas and facilities and the right to store materials therein and to make such other use thereof as may be reasonably necessary incident to the refurbishing, development, and sale of all the units.

29. Severability

The provisions of this declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

30. Captions

The captions in this declaration are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this declaration or the intent of any provision hereof.

31. Law Controlling

This declaration, the map, and the by-laws shall be construed and controlled by and under the laws of the state of Utah.

32. Effective Date

IN WITNESS WHEREOF, the undersigned has executed this instrument this 18<sup>th</sup> day of July, 1979.

By Richard A. Higgins  
Its President

By Adrian D. Simmons  
Its Corporate Secretary

On the 18<sup>th</sup> day of July, 1979, A.D. Seventy -  
Nine, personally appeared before me Richard A. Higgins and  
Ardeen D. Simmons who, being by me duly sworn, did say, that  
they were the President and Corporate Secretary, res-  
pectively of Properties Limited, Inc., and that said instru-  
ment was signed in behalf of said corporation by resolution  
of its board of directors and said Richard A. Higgins  
and Ardeen D. Simmons, acknowledged to me that said corpora-  
tion executed the same.

John S. Buchanan  
Notary Public

2-22-82

Residing At:

Salt Lake County, Utah  
-22-

EXHIBIT B

1018

	<u>Unit Designation</u>	<u>Number of Bedrooms</u>	<u>Percentage of Undivided Interest in the Common Areas and Facilities</u>
Bldg. 1	1	2	.0325
	2	2	.0342
	3	2	.0325
	4	2	.0342
	5	2	.0325
	6	2	.0342
Bldg. 2	7	2	.0325
	8	2	.0342
	9	2	.0325
	10	2	.0342
Bldg. 3	11	2	.0325
	12	2	.0342
	13	2	.0325
	14	2	.0342
Bldg. 4	15	2	.0325
	16	2	.0342
	17	2	.0325
	18	2	.0342
Bldg. 5	19	2	.0325
	20	2	.0342
	21	2	.0325
	22	2	.0342
Bldg. 6	23	2	.0325
	24	2	.0342
	25	2	.0325
	26	2	.0342
Bldg. 7	27	2	.0325
	28	2	.0342
	29	2	.0325
	30	2	.0342

See Affidavit in 134.813 Pg. 604

See Amendment 1006-472

Platted ☐ Abstracted ☐ ☒  
On Margin ☐ Indexed ☐  
Compared ☐ Entered ☐

538681

Recorded at request of *Properties Limited* Fee Paid \$ *44.*  
Date *JUL 19 1979* at *11:46* M CAROL DEAN PAGE Recorder- Davis County  
By *La Dell Manning* Deputy Book *780* Page *993*

DECLARATION AND BY-LAWS

of the

LEMON TREE CONDOMINIUM

A Condominium Project  
Created Pursuant to the  
Utah Condominium Ownership Act

*Properties Ltd*  
*214 Metro Bldg*  
*4312 300 E*  
*SLC 8411*

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EXHIBITS:

- A. RECORD OF SURVEY MAP
- B. UNIT NUMBER AND PERCENT OF UNDIVIDED INTEREST IN COMMON AREAS AND FACILITIES
- C. ARTICLES OF INCORPORATION OF LEMON TREE ASSOCIATION, A UTAH NON-PROFIT CORPORATION
- D. BY-LAWS OF LEMON TREE ASSOCIATION

*For purposes of recording, Exhibit "B" is the only attachment.*

*July 19, 1979*

*Burt K. Besh*

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## DECLARATION

OF

LEMON TREE

THIS DECLARATION is made and executed by Properties Limited, a Utah Corporation, ("declarant"), pursuant to the provisions of the Utah Condominium Ownership Act, as amended, Utah Code Annotated, Sections 57-8-1 through 57-8-36 (Repl. Vol. 1963), hereinafter referred to as the "act."

1. Recitals

(1.1) Declarant, and the persons joining in this declaration are the owners of the real property and improvements ("Property") located at 1100 North 200 East, Bountiful, Davis County, Utah, hereinafter more particularly described.

(1.2) Declarant, by recording this declaration, intends that the provisions of the act shall apply to the property.

(1.3) The covenants, conditions, and restrictions contained in this declaration and in the exhibits hereto shall be enforceable equitable servitudes and shall run with the land.

(1.4) Declarant has filed simultaneously herewith a Record of Survey Map ("map"), as required by Section 57-8-13(1) of the act, (hereinafter referred to as "map" and Exhibit A).

(1.5) The administration of the property shall be governed by by-laws which are embodied in a separate instrument, a true copy of which are appended to and recorded with this declaration as Exhibit D.

(1.6) All terms used in this declaration and the appended by-laws shall have the same definition as the terms defined in the act, unless the act allows for a variation of the terms and such variation is contained herein.

(1.7) The property shall be known as Lemon Tree. The mailing address of the property is 1100 North 200 East, Bountiful, Utah 84010.

## 2. Description of the Land

The land on which the buildings and improvements are located are particularly described as follows:

Tract No. 1: Beg. at a pt. which is E. 923.34 ft. & N. 303.60 ft. & S. 89°38' E. 190.00 ft. and N. 176.55 ft. & S. 89°38' E. 231.16 ft. from the S.W. corner of the S.E. quarter of Sec. 18, Township 2 N., Range 1 E., S.L. Base & Meridian, & running th. S. 89°38' E. 190.00 ft.; th. S. 0°14' E. 147.38 ft.; th. N. 89°38' W. 190.0 ft.; th. N. 0°14' W. 147.38 ft. to the pt. of beg.

Tract No. 2: Beg. 923.34 ft. E. & N. 303.60 ft. along the E. line of a County rd. & S. 89°38' E. 190.00 ft. and N. 0.70 ft. from the S.W. corner of the S.E. quarter of Sec. 18, Township 2 N. Range 1 E., S.L. Base & Meridian, & running th. along the arc of a curve to the left (radius 68.03 ft. bearing N. 0°22' E.) 37.44 ft. to a pt. of tangency of a curve to the right (radius 127.03 ft. bearing S. 31°10' E.) 69.91 ft.; th. S. 89°38' E. 129.49 ft.; th. N. 0°14' W. 147.38 ft.; th. N. 89°38' W. 231.16 ft.; th. S. 175.85 ft. to the pt. of beg.

## 3. Description of the Building

(3.1) The buildings have two full floors each.

(3.2) There are 30 units.

(3.3) The buildings are constructed of concrete and brick. The interior units and hallway floors are concrete over which is laid carpet or other floor coverings. The ceilings are approximately eight feet high. The interior partitions are made up of wood, partitions, and drywall. The buildings are supplied with electricity, water, sewage service. Each unit in the buildings are individually heated and air conditioned. The buildings are more fully depicted on the map.

## 4. Description of Units

(4.1) Exhibit B hereto contains a table setting forth the number designation of each unit. The units are more particularly described in the map.

(4.2) The boundary lines of each unit are the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, all window panes, interior surfaces of doors, window frames and door frames, and trim. Each unit shall include both the portions of the building that are not common areas and facilities within such boundary lines and the space so encompassed. Without limitation, a unit shall include any

finishing material applied or affixed to the interior surfaces of the walls, floors, and ceilings, non-supporting interior walls and all utility pipes, lines, systems, fixtures, or appliances found within the boundary lines of the unit and servicing only that unit.

#### 5. Description of Common Areas and Facilities

The common areas and facilities shall mean and include: the land on which the buildings are located, and all portions of the property not contained within any unit, including, but not by way of limitation: the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, and entrances and exits of the building; the areas used for storage of janitorial supplies, maintenance equipment and materials; installations of all central services, including power, light, water, heating, and garbage collection; pumps, motors, fans, ducts, and in general all apparatus and installations existing for common use; any utility pipes, lines, or systems servicing more than a single unit and all ducts, flues, chutes, wires, conduits, and other accessories and utility installations to the outlets used therewith; all other parts of the property necessary or common in use, or which have been designated as common areas and facilities in the map; and all repairs and replacements of any of the foregoing.

#### 6. Percentages of Undivided Interest in Common Areas and Facilities

The percentage of undivided interest in the common areas and facilities appurtenant to each unit and its owner for all purposes, including voting, is set forth in Exhibit B. Such percentages have been computed on the basis of the initial estimated value of each unit.

#### 7. Purpose of the Property

(7.1) The purpose of the property is to provide residential housing for the unit owners, their respective families, lessees, guests, and servants.

(7.2) The units and common areas and facilities shall be occupied and used as follows:

7.2.1. A unit owner shall not permit his unit to be occupied or used other than as a private residence, without the express approval of the management committee or its designee.

7.2.2. A unit owner shall not obstruct the common areas and facilities. A unit owner shall not place or store

anything within the common areas and facilities without the prior written consent of the management committee or its designee.

7.2.3. Without the prior written consent of the management committee or its designee, a unit owner shall not permit anything to be done or kept in his unit and facilities appurtenant to his unit that would result in an increase in the cost of insurance on the property, or that would result in the cancellation of insurance with respect to all or any part of the property, or that would be in violation of any governmental law, ordinance, or regulation.

7.2.4. The management committee or its designee, shall approve all signs of any kind that will be displayed to the public view from a unit.

7.2.5. A unit owner shall not permit any animals of any kind to be raised, bred, or kept in his unit or in the limited common areas and facilities appurtenant to his unit, except that the management committee may provide in its rules and regulations that dogs, cats, and other household pets may be kept in units subject to the rules and regulations adopted by the management committee.

7.2.6. A unit owner shall not permit any obnoxious, illegal, or offensive activity, or nuisance to be carried on in his unit or in the common areas and facilities or limited common areas appurtenant to his unit.

7.2.7. A unit owner shall not alter, construct in, or remove anything from the common areas and facilities, except with the prior written consent of the management committee or its designee.

7.2.8. A unit owner shall not violate any of the rules and regulations for the use of units, common areas, and facilities, or limited common areas and facilities adopted by the management committee and furnished in writing to the unit owners.

#### 8. Agent for Service of Process

(8.1) The name and address of the person in Davis County, State of Utah, appointed as first agent to receive service of process in matters pertaining to the property is: Richard A. Higgins, 431 South 300 East, Salt Lake City, Utah 84111.

(8.2). The agent for service of process may be changed from time to time by the management committee by recording an appropriate affidavit.

9. Association of Unit Owners: Management Committee

(9.1) The persons or entities who are at the time of reference the unit owners constitute an unincorporated association, the characteristics and nature of which are determined by the act, the declaration, and the by-laws. The name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and disposed of, bank accounts shall be opened and suits shall be brought and defended by the management committee or officers thereof on behalf of and agents for the unit owners in the manner specified by the act, this declaration, or the by-laws, is: "The Lemon Tree Association, an association of unit owners under the Utah Condominium Ownership Act."

(9.2) The management and maintenance of the business, property and affairs of the Lemon Tree Association ("association") shall be managed by a management committee, consisting of an odd number of three (3) or more, who need not be unit owners. The management committee shall be elected as provided by the by-laws. All agreements and determinations with respect to the property lawfully made or entered into by the management committee shall be binding upon all of the unit owners and their successors and assigns.

(9.3) The management committee shall have all the powers, duties, and responsibilities as are now or may hereafter be provided by the act, this declaration and by-laws, including, but not limited to, the following:

9.3.1. To make and enforce all house rules and administrative rules and regulations covering the operation and maintenance of the property.

9.3.2. To engage the services of a manager or managing company, accountants, attorneys, or other employees or agents and to pay to said persons a reasonable compensation therefore; provided, however, that any management agreement may be terminable by the management committee for cause upon thirty (30) days written notice and that the term of any said management agreement may not exceed one year, renewable by agreement for successive one-year periods.

9.3.3. To operate, maintain, repair, improve, and replace the common areas and facilities.

9.3.4. To determine and pay the common expenses.

9.3.5. To assess and collect the proportionate share of common expenses for the unit owners.

9.3.6. To enter into contracts, deeds, leases, and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

9.3.7. To open bank accounts on behalf of the association and to designate the signatures therefore.

9.3.8. To purchase, hold, sell, convey, mortgage, or lease any one or more units in the name of the association or its designee.

9.3.9. To bring, prosecute, and settle litigation for itself, the association and the property, provided that it shall make no settlement which results in a liability against the management committee, the association, or the property in excess of \$5,000 without prior approval of a majority of unit owners.

9.3.10. To obtain insurance for the association with respect to the units and the common areas and facilities, as well as workmen's compensation insurance.

9.3.11. To repair or restore the property following damage or destruction, or a permanent taking by any power in the nature of eminent domain or by an action or deed in lieu of condemnation, not resulting in the removal of the property from the provisions of the act.

9.3.12. To own, purchase, or lease, hold and sell or otherwise dispose of, on behalf of the unit owners, items of personal property necessary to or convenient in the management of the business and affairs of the association and the management committee and in the operations of the property, including, without limitation, furniture, furnishings, fixtures, maintenance equipment, appliances, and office supplies.

9.3.13. To keep adequate books and records.

9.3.14. To do all other acts necessary for the operation and maintenance of the property, including the maintenance and repair of any unit if the same is necessary to protect or preserve the property.

(9.4) The management committee may employ professional management to manage the project.

(9.5) The management committee may delegate to a manager or managing company all of its foregoing powers, duties, and responsibilities referred to in paragraph (9.3) above except: the final determination of common expenses,

budgets, and assessments based thereon; the promulgation of house rules and administrative rules and regulations; the power to enter into any contract involving more than \$1,000 in any one fiscal year; the opening of bank accounts; the power to purchase, hold, sell, convey, mortgage, or lease any units in the name of the association or to bring, prosecute, and settle litigation.

(9.6) Members of the management committee, the officers and any assistant officer, agents, and employees of the association: (i) shall not be liable to the unit owners as a result of their activities as such for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to a unit owner or any other person or entity under any agreement, instrument, or transaction entered into by them on behalf of the association in their capacity as such; (iii) shall have no personal liability in tort to any unit owner or any person or entity, direct or imputed, by virtue of acts performed by them; except for their own willful misconduct or bad faith, or acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse, or condition of the property, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

(9.7) The unit owners shall indemnify and hold harmless, any person, his heirs and personal representatives, from and against all personal liability and all expenses including counsel fees, incurred or imposed, or arising out or in settlement of any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative instituted by any one or more unit owners, or any other persons or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was a member of the management committee or an officer or assistant officer, agent, or employee of the association, other than to the extent, if any, that such liability or expense shall be attributable to his willful misconduct or bad faith; provided, in the case of any settlement, that the management committee shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or vote of unit owners or of the management committee, or otherwise. The indemnification by the unit owners as contained herein shall be paid by the management committee on behalf of the unit owners and shall constitute a common expense and shall be assessed and collectible as such.



10. Maintenance, Alteration, and Improvement

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(10.1) The maintenance, alteration, replacement, and repair of the common areas and facilities shall be the responsibility of the management committee and the costs thereof shall be a common expense. The management committee shall also maintain, alter, replace, and repair all conduits, ducts, plumbing, and wiring and other facilities for the furnishing of heat, light, power, water, and sewer contained in the portions of the units that service part or parts of the property other than the unit in which they are contained. All incidental damages caused to a unit by the maintenance, alteration, replacement, and repair of the common areas and facilities or utility service shall be repaired promptly at the expense of the management committee.

(10.2) The unit owners shall have the responsibility to maintain, repair, replace, and keep in a clean and sanitary condition, at the unit owner's expense, all portions of the owner's unit, except those portions to be maintained, altered, repaired, and replaced by the management committee. The management committee shall be responsible for cleaning and general maintenance of all parking areas.

(10.3) The management committee or manager shall have the right, subject to prior notice in the absence of an emergency, to have access of each unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities or for making emergency repairs necessary to prevent damage to the common areas and facilities or to another unit or units. Each unit occupant shall deposit a key to the unit with the management committee or manager to be used for emergency access to the unit.

11. Insurance

(11.1) The management committee shall obtain and maintain at all times insurance of the type and kind as provided herein and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other properties similar to the property in construction, design, and use. The management committee shall make every reasonable effort to obtain insurance with the following provisions or endorsements.

11.1.1. Exclusive authority to adjust losses shall be vested in the management committee as insurance trustee or any successor trustee as designated by the management committee;

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

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

11.1.4. The insurer waives its right of subrogation as to any and all claims against the association, each unit owner, and/or their respective agents, employees or tenants, and of all defenses based upon co-insurance or upon invalidity arising from the acts of the insured;

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

11.1.6. 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 then only if the defect is not cured within fifteen (15) days;

11.1.7. Such policies shall provide that coverage shall not be prejudiced by (a) any act or neglect of the owners of condominium units when such act or neglect is not within the control of the owners association or (b) by failure of the owners association to comply with any warranty or condition with regard to any portion of the premises over which the owners association has no control; and

11.1.8. The insurance coverage shall provide that 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 thereon, including all mortgagees of the units.

(11.2) The management committee, for the benefit of the property and the unit owners, shall maintain a "master" or "blanket" policy of property insurance in an amount equal to the full replacement value (i.e., 100% of current "replacement cost" exclusive of land, foundation, excavations, and other items normally excluded from coverage) of the entire condominium project (including all units, all common areas and facilities, all building service equipment and the like and any fixtures or equipment within the units) with an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and, if necessary, an "Increased Cost of Construction Endorsement"; or "Contingent Liability from Operation of Building Laws Endorsement": or the equivalent, payable to the insurance trustee to be this declaration. Such insurance will afford protection against at least the loss or damage by fire and other hazards

covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage. The limits and coverage of said insurance shall be reviewed at least annually by the management committee and shall include an appraisal of the property. Said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees, if any, of each unit.

(11.3) The management committee shall obtain a policy or policies of insurance insuring the management committee, the unit owners and their respective lessees, servants, agents, or guests against any liability to the public or to the owners of units, members of the households of unit owners, and their respective invitees or tenants, incident to the ownership and/or use of the property, and including the personal liability exposure to the unit owners, incident to the ownership and/or use of the property. Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) for any one person injured in any one occurrence, and shall not be less than One Hundred Thousand Dollars (\$100,000) for property damage in each occurrence. The limits in coverage of said liability policy or policies shall be reviewed at least annually by the management committee and increased at its discretion. Said policy or policies shall be issued on a comprehensive liability basis and, if possible, shall provide cross-liability endorsements for possible claims of any one or more or group of injureds against any one or more group of insureds, without prejudice to the right of a named insured under the policies to maintain an action against another named insured. Such coverage will include protection against water damage liability, liability for nonowned and hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.

(11.4) All policies of property insurance shall provide that, notwithstanding any provisions of which give the insurer 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 management committee (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the association may be a party, or any requirement of law.

(11.5) Each unit owner shall be required to notify the management committee of, and shall be liable for, any increased insurance premium for insurance maintained by the management committee occasioned by, all improvements made by the unit owner to his unit, the value of which is in excess of One Thousand Dollars (\$1,000). Each unit owner shall bear the risk of loss for all improvements made to his unit that were not the subject of notice to the management committee.

(11.6) Any unit owner who obtains individual insurance coverage covering any portion of the property, other than personal property belonging to such unit owner, shall be required to file a copy of such individual policy or policies with the management committee within thirty (30) days after obtaining such insurance coverage.

(11.7) No unit owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount that the management committee, on behalf of all of the unit owners, may realize under any insurance policy that the management committee may have in force covering the property or any part thereof at any time.

(11.8) The management committee shall maintain adequate fidelity coverage to protect against dishonest acts on the part of members of the management committee, officers, and employees of the association, and all others who handle or are responsible for handling funds of the association, including professional managers and their employees. Such fidelity bonds shall meet the following requirements:

11.8.1. All such fidelity bonds shall name the association as an obligee;

11.8.2. Such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the association, including reserves;

11.8.3. Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve with compensation from any definitions of "employee" or similar expression; and

11.8.4. Such bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the mortgagees of the units.

12. Destruction or Damage

(12.1) In case of fire or any other disaster which causes damage or destruction to all or part of the property, the management committee, with the help of an independent appraisal, shall determine the percentage of the building that was destroyed or substantially damaged. If less than seventy-five percent (75%) of the building was destroyed or substantially damaged, the management committee shall arrange for the prompt repair and restoration of the building using the proceeds of insurance on the building for that purpose, and the unit owners shall be liable for assessment for any deficiency, if any, in proportion to their respective percentages of undivided interest in the common areas and facilities. Reconstruction of the building shall mean the restoring of the building to substantially the same condition in which it existed prior to the damage or destruction, with each unit and the common areas and facilities having the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of paragraph 14 hereof shall apply.

(12.2) If seventy-five (75%) or more of the building is destroyed or substantially damaged, the management committee shall within one hundred (100) days after such destruction or damage, call a special meeting of the unit owners for the purpose of deciding whether or not the building shall be repaired and restored. If at least three-fourths (3/4) of the unit owners, in person or by proxy, vote to repair or restore the building, the management committee shall promptly arrange for the reconstruction of the building, using the proceeds of insurance on the building for that purpose, and the unit owners shall be liable for assessment for any deficiency, if any, in proportion to their respective percentage of undivided interest in the common areas and facilities. If the destruction or damage is by reason of eminent domain, the provisions of paragraph 14 hereof shall apply. However, if at least three-fourths (3/4) of the unit owners vote not to make provision for reconstruction, the management committee shall record, with the County Recorder, a notice setting forth such facts, and upon the recording of such notice: (i) the property shall be deemed to be owned in common by the unit owners; (ii) the undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of areas and facilities; (iii) any liens affecting any of the units shall be deemed to be transferred in accordance with the existing property; and (iv) the property shall be subject to an action for partition at the suit of any unit owner, in which even the net proceeds of sale, together with the net

proceeds of the insurance on the property, shall be considered as one fund and shall be divided among all unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the unit owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the property owned by each unit owner.

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(12.3) For purposes of this paragraph 12, the terms "disaster", "destruction", or "substantial damage" shall also include a temporary or permanent taking, injury, or 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.

(12.4) The management committee shall timely notify in writing each mortgagee of a unit whenever damage to a unit exceeds \$1,000 and damage to the common areas and facilities exceeds \$10,000.

### 13. Termination

(13.1) In the event three-fourths (3/4) of the building is destroyed or substantially damaged and if the unit owners vote not to reconstruct the building, the property shall be removed from the provisions of the act without further agreement one hundred and one (101) days after such destruction or damage.

(13.2) All of the unit owners may remove the property from the provisions of the act by an instrument duly recorded to that effect, provided that 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.

(13.3) After removal of the property from the act, the unit owners shall own the property and all assets of the association of 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 interests of the unit owners shall be the same as the percentage of undivided interest in the common areas and facilities appurtenant to the owners' units prior to removal from the act.

(13.4) Any change in the status of the property which would result in the removal of the land or any part thereof from the act or would alter the use of the property must receive the prior approval of Bountiful City after the change is submitted to the City Planning and Zoning Commission.

(13.5) This paragraph 13 cannot be amended without the consent of all unit owners and all record owners of mortgages on units.

#### 14. Eminent Domain

(14.1) Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury, or destruction of all or part of the common areas and facilities of 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 (all of which shall be defined as "eminent domain"), the management committee, each unit owner, and every holder of all liens affecting the units, shall be entitled to timely written notice thereof and the management committee shall and the units owners at their respective expense may participate in the proceedings incident thereto.

(14.2) The procedures governing the allocation of awards by reason of eminent domain shall be determined in accordance with Section 57-8-32.5 of the act; provided, that the priority of any mortgages lien shall remain undisturbed.

#### 15. Mortgage Protection

(15.1) The term "mortgage" as used in this declaration and by-laws shall mean any recorded mortgage having priority over other mortgages and shall include a recorded deed of trust. The term "mortgagee" shall mean the owner and holder of a mortgage and shall include a beneficiary under a deed of trust.

(15.2) 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, the management committee shall maintain another roster which shall contain the name and address of each mortgagee of a unit. Each notice shall consist of a certified copy of the recorded 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 be given to the mortgagee unless the removal is requested by the mortgagee.

(15.3) Any mortgage on any unit is entitled to written notification from the management committee of any default by the mortgagor of such unit in the performance of such mortgagor's obligation under the declaration which is not cured within thirty (30) days.

(15.4) Any mortgagee shall have the right to examine the books and records of the association during normal business hours and shall be entitled to receive copies of annual reports and other financial data within ninety (90) days following the end of any fiscal year and shall be entitled to receive notice of all meetings of the association and may designate a representative to attend all such meetings.

(15.5) A mortgagee of any unit who comes into possession of the unit pursuant to the remedies provided in the mortgage, foreclosure of 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 the unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all units, including the mortgaged unit).

(15.6) The liens created under the act or pursuant to this declaration or by-laws upon any unit shall be subject and subordinate to, and shall not affect the rights of a mortgagee upon such interest made in good faith and for value, provided that after the foreclosure sale, any such liens thereafter arising, shall have the same effect and be enforced in the same manner as provided herein.

(15.7) No unit may be partitioned or subdivided without the prior written approval of the mortgagee of the affected unit.

(15.8) No amendment to this paragraph shall affect the rights of a mortgagee recorded prior to the recordation of any such amendment not otherwise entitled thereto.

#### 16. Leasing of Units

(16.1) All lessees of units shall be reported and listed with the management committee. All lessees shall be subject in all respects to the provisions of the declaration and by-laws and that failure of the lessee to comply with the terms of said documents shall be a default under the lease or tenancy. The management committee may maintain an action of law, separate and apart from the owner, for eviction and/or damages against a lessee in violation of this Declaration, the By-Laws, or rules of the association.



(16.2) Each lessee shall, at the lessee's option, have the right to vote at the meetings of the owner in place of the owner, except with respect to votes for capital expenditures.

(16.3) No unit owner shall lease less than the entire unit.

(16.4) The provisions of this paragraph shall not apply to a lender in possession of a unit following a default in a first mortgage.

#### 17. Encroachments

(17.1) None of the rights and obligations of any unit owners created by this declaration, by-laws, or by any deed conveying a unit shall be affected in any way by an encroachment: (i) by any portion of the common areas and facilities upon any unit; (ii) by any unit upon any portion of the common areas and facilities; or (iii) by any unit upon another unit due to settling or shifting of the building or other structure, including the rebuilding of the building and other structure after fire or other casualty or an eminent domain taking or delivery of a deed in lieu of condemnation, unless there occurs an encroachment that results from the willful or negligent act or omission of the unit owner of the encroaching unit, or of the owners of the units to which the use of the encroaching limited common areas and facilities is appurtenant, or of the management committee in the event of an encroachment by any portion of the common areas and facilities other than the limited common areas and facilities.

(17.2) There are hereby created valid easements for the maintenance of any encroachments permitted by this paragraph 17 of this declaration so long as such encroachments exist.

#### 18. Conveyances, Easements

(18.1) Every deed, lease, mortgage, or other instrument may describe a unit by its identity number and 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 tenant-in-common, as set forth in Exhibit B even though the same is not exactly mentioned or described.

(18.2) Every deed, lease, mortgage, or other similar instrument shall be deemed to:

18.2.1. 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.

18.2.2. Include with respect to a unit nonexclusive easements for ingress and support of said unit through the common areas and facilities, for the repair of said unit through all other units and through the common areas and facilities, and for the use of the parking spaces as indicated in Exhibit B and the map.

18.2.3. Except and reserve, with respect to the undivided percentage interest in the common areas and facilities, nonexclusive easements appurtenant to all units for ingress, egress, support, and repair and exclusive easements appurtenant to each unit for the use of the parking spaces as set forth in Exhibit B and the map.

18.2.4. Include, with respect to the undivided percentage interest in the common areas and facilities, nonexclusive easements through each unit for support and repair of the common areas and facilities and nonexclusive 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.

#### 19. Sale or Lease

(19.1) Any purchaser or lessee shall automatically be subject to all of the terms, conditions, limitations, rights, and obligations placed upon an owner or lessee by this Declaration, with or without actual notice of this Declaration.

(19.2) The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the unit owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

#### 20. Combination of Units

(20.1) An owner of two or more adjoining units shall have the right upon approval of the management committee and the mortgagees of said units, to combine one or more adjoining units or portions thereof and to alter or amend the declaration and map to reflect such combination.

(20.2) Such amendments may be accomplished by the unit owner, subsequent to approval by the management committee, recording an amendment or amendments to this declaration, together with an amended map or maps containing the same information with respect to the altered units as required in the initial declaration and map with respect to the initial units. All costs and expenses required in such amendments shall be borne by the unit owner desiring such combination.

(20.3) All such amendments to the declaration and map must be approved by attorneys employed by the management committee to insure the continuing legality of the declaration and the map. The cost of such review by the attorneys shall be borne by the person wishing to combine the units.

(20.4) Any amendment of the declaration or map pursuant to this paragraph 20 shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the common areas and facilities which are appurtenant to the units involved in the alterations. The remaining combined unit, if two or more units are totally combined, will acquire the total of the percentage of undivided interest in the common areas and facilities appurtenant to the units that are combined as set forth in Exhibit B. If a portion of one unit is combined with another, the resulting units shall acquire a proportionate percentage of the total undivided interest in the common areas and facilities of the units involved in the combined units. The percentage of undivided interest in the common areas and facilities appurtenant to all other units shall not be changed. All such amendments must, in all instances, be consented to by the management committee and also all other persons holding interest in the units affected. The consent of other unit owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the common areas and facilities of the other unit owners remain unchanged.

## 21. Amendment

(21.1) Except as otherwise provided in this declaration except as prohibited by the act, the provisions of this declaration may be amended by an instrument in writing signed and acknowledged by unit owners who own three-fourths (3/4) in the aggregate of ownership interest in the common areas and facilities, which amendment shall be effective upon recording.

## 22. Assessments

The making and collection of assessments from unit owners for their share of common expense shall be pursuant to the by-laws and subject to the following provisions:

(22.1) Each owner shall be liable for a proportionate share of the common expenses and shall share in the common profits, such shares being the same as the percentage of undivided interest in the common areas and facilities appurtenant to the unit owned by the unit owner as set forth in Exhibit B.

(22.2) 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 twelve percent (12%) 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.

(22.3) A lien for unpaid assessments shall also secure reasonable attorneys' 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.

(22.4) In any foreclosure of a lien for assessments, the unit owner subject to the lien shall be required to pay a reasonable rental for the unit, and the management committee shall be entitled to the appointment of a receiver to collect the same.

(22.5) The management committee may include in the monthly assessments amounts representing contributions to the capital of the association to be used for the replacement of or additions to capital items or improvements in the property. Said amounts shall be set up as capital accounts for each unit. In the event of transfer of a unit, the capital account shall be deemed transferred to the unit transferee.

(22.6) In assessing the unit owners for capital improvements to the common areas and facilities, for which there are not sufficient amounts in the respective capital accounts, there shall be no single improvement exceeding the sum of Twelve Thousand Dollars (\$12,000) made by the management committee without the same having been first voted on and approved by two-thirds (2/3) majority of those present in person or by proxy of 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 12 hereof or to such structural alterations, capital additions to, or capital 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 of the property.

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(22.7) 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 in 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.

#### 23. Taxes

It is understood that under the Act each unit, together with its limited common areas and its percentage of undivided interest in the Common Areas and Facilities in the Project, is deemed a parcel and subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law. Each unit owner will, accordingly, pay and discharge any and all taxes which may be assessed against his condominium unit, together with his pro-rata share of common areas. If, for any reason, any tax or other assessment is necessarily made as to the condominium development as a whole the percentage share of each unit owner shall be assessed in accordance with Exhibit "B".

#### 24. Voting

At any meeting of the Association of Unit Owners, each unit owner, including declarant, either in person or by proxy, shall be entitled to the same number of votes as the percentage of undivided interest of the common areas and facilities assigned to his unit in Exhibit B to this declaration. If there is more than one unit owner with respect to a particular unit, any or all of such unit owners may attend any meeting of the association, but it shall be necessary for all such unit owners present to act unanimously in order to cast the votes pertaining to their unit.

#### 25. Notices

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 twenty-four (24) hours after a copy of the same has been deposited in the U. S. Postal Service, 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 of such notice or to the unit of such unit owner if no such address has been given 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: Richard A. Higgins, Management Committee, Lemon Tree Condominiums, 431 South 300 East, Salt Lake City, UT 84111.

26. No Waiver

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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 the by-laws, 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 of 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.

27. Enforcement

Each unit owner shall strictly comply with the provisions of the declaration, the by-laws, the house rules and administrative rules and regulations, and decisions issued pursuant thereto. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the management committee or its designee on behalf of the unit owners, or in an appropriate case, by an aggrieved unit owner.

28. Declarant's Use

Declarant and persons it may select from time to time shall have the right of ingress and egress over, upon, and across the common areas and facilities and limited common areas and facilities and the right to store materials therein and to make such other use thereof as may be reasonably necessary incident to the refurbishing, development, and sale of all the units.

29. Severability

The provisions of this declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

30. Captions

The captions in this declaration are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this declaration or the intent of any provision hereof.

31. Law Controlling

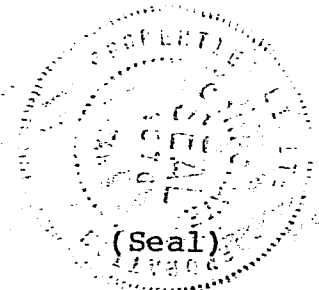
This declaration, the map, and the by-laws shall be construed and controlled by and under the laws of the state of Utah.

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32. Effective Date

This declaration shall take effect when recorded.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 18<sup>th</sup> day of July, 1979.



PROPERTIES LIMITED, INC.

By Richard A. Higgins  
Its President

ATTEST:

Arden D. Simmons  
Its Corporate Secretary

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

On the 18<sup>th</sup> day of July, 1979, A.D. Seventy-Nine, personally appeared before me Richard A. Higgins and Arden D. Simmons who, being by me duly sworn, did say, that they were the President and Corporate Secretary, respectively of Properties Limited, Inc., and that said instrument was signed in behalf of said corporation by resolution of its board of directors and said Richard A. Higgins and Arden D. Simmons, acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Kate J. Buchanan  
Notary Public

My Commission Expires:

2-22-82

Residing At:

Salt Lake County, Utah  
-22-

EXHIBIT B

1018

	<u>Unit Designation</u>	<u>Number of Bedrooms</u>	<u>Percentage of Undivided Interest in the Common Areas and Facilities</u>
Bldg. 1	1	2	.0325
	2	2	.0342
	3	2	.0325
	4	2	.0342
	5	2	.0325
	6	2	.0342
Bldg. 2	7	2	.0325
	8	2	.0342
	9	2	.0325
	10	2	.0342
Bldg. 3	11	2	.0325
	12	2	.0342
	13	2	.0325
	14	2	.0342
Bldg. 4	15	2	.0325
	16	2	.0342
	17	2	.0325
	18	2	.0342
Bldg. 5	19	2	.0325
	20	2	.0342
	21	2	.0325
	22	2	.0342
Bldg. 6	23	2	.0325
	24	2	.0342
	25	2	.0325
	26	2	.0342
Bldg. 7	27	2	.0325
	28	2	.0342
	29	2	.0325
	30	2	.0342