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Recorded at request of *David Willey* Fee Paid \$ *32.00*  
Date *AUG 30 1979* at *3:56* P.M. CAROL DEAN PAGE, Recorder Davis County  
By *Grace Van Dyke* Deputy Book *788* Page *783*

543060

DECLARATION OF COMMERCIAL CONDOMINIUM

OF

VAN DYKE & WILLEY

*Van Dyke & Willey Cond*  
*Units A-G incl.*

The undersigned, David P. Willey Company, Milton W. Van Dyke and Kathryn W. Van Dyke, do hereby declare:

1. Submission of Property. The undersigned hereby establish a commercial condominium project according to the Condominium Ownership Act, Utah Code Annotated, Section 57-8 as amended, and submit the land hereinafter described, owned by the undersigned in fee simple absolute, together with the buildings and improvements thereon to the provisions of the Utah Condominium Ownership Act as a commercial condominium project. The property and buildings are located at 600 North 500 West Bountiful, Davis County, Utah, more particularly described as follows:

- Abstracted
- Indexed
- Entered
- Platted
- On Margin
- Compared

BEGIN at a point on the East line of 500 West Street, said point being South 89°55'10" West 98.41 feet and North 0°20'57" East 897.724 feet from the Southwest corner of the Northwest Quarter of Section 19, Township 2 North, Range 1 East, Salt Lake Base and Meridian, (basis of beginning is Davis County Reference Plat dated September 28, 1972) and running thence South 89°39'03" East 448.14 feet; thence North 0°20'57" East 132.00 feet to a point 1.47 feet South of an existing fence, thence North 89°39'03" West parallel to said fence 448.14 to East line of said street, thence South 0°20'57" West along said street 132.00 feet to the point of Beginning. Containing 1.358 acres.

2. Buildings. There is one building included in the Property. Said building is situated as shown on the Condominium Map filed in the Davis County Recorder's Office simultaneously with the Declaration. The building has one story and contains 7 units. It is constructed principally of reinforced concrete, steel and glass.

3. Name. The Commercial Condominium Project shall be known as Van Dyke and Willey Condominiums.

*38.01*

*David Willey*  
*Van Dyke*  
*Units A-G*

4. Condominium Units. Each unit contains 2279.86 square feet and is allocated an equal undivided interest in the common areas and facilities and one vote in the management of the Condominium Project. Unit A is on the West end of the building and Units B, C, D, E, F, and G run consecutively East with unit G on the East end of the building. Units A, B, C, D, E, and F consist of warehouse and office space. Unit G contains warehouse space only. There is no partitioning wall between Unit F and G. Ownership of Unit G shall include fee title ownership of the parking area immediately east of Unit G consisting of approximately 4300 square feet, bordered on the west by the east wall of the building, bordered on the north and east by the property line of the condominium project and bordered on the south by an imaginary line running along the exterior south wall of the building and extending east to the east property line of the project, all as indicated on the Record of Survey Map labeled "G Parking". Said "G Parking" area is not conveyable in whole or in part separately from conveyance of Unit G.

5. Dimensions of Condominium Units. Each unit consists of that part of the building containing the unit which lies within the boundaries of the unit, exclusive of interior load-bearing walls and pillars, and any pipes, wires, conduits, ducts, vents and other service and utility lines which are utilized for or serve more than one condominium unit. The vertical boundaries of each unit shall be the boundaries as shown on said condominium map. Where the unit is bounded by a wall, the wall shall be considered to include any door, window or other closure therein in the closed position, and the boundary shall be the unfinished surface of such wall on the unit side, to the effect that the unit shall include the paint, wallpaper, enamel, stain or other furnishings on such surface. Where the unit consists in whole or in part of unenclosed space, the boundary defining such space is the boundary as shown on said condominium map. The horizontal boundaries of each unit shall be the unfinished surface of the top of the concrete floor and the unfinished surface of the bottom of the ceiling.

6. Use of Units. The buildings and each of the units are intended and restricted as to use, and shall be used only for purposes which are consistent with and appropriate to the design of the buildings and for which adequate ventilation, plumbing and similar facilities exist. In addition to and without limitation of the foregoing:

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(a) Units are to be used for light manufacturing, commercial warehousing and shop facilities in accordance with such reasonable regulations as shall be established by the Board of Directors from time to time.

(b) No unit shall be used for the purpose of operating therein a public restaurant, bar or cabaret, or otherwise for the sale to the public for consumption on the premises of food or drink, except as the Board of Directors shall approve.

(c) No owner of a unit shall do, or suffer or permit to be done, anything in any unit which would impair the soundness or safety of the Property, or which would increase the rate or result in the cancellation of insurance applicable to the Property, or which would be noxious or offensive or an interference with the peaceful possession and proper use of other units, or which would require any alteration of or addition to any of the common elements to be in compliance with any applicable law or regulation, or which would otherwise be in violation of law.

(d) No owner of a unit shall, without the written approval and consent of the Board of Directors, place or suffer to be placed or maintained (i) on any exterior door, wall or window of the unit, or upon any door, wall or window of the common elements, any sign, awning or canopy, or advertising matter or other thing of any kind, or (ii) any decoration, lettering or advertising matter on the glass of any window or door of the unit or (iii) any advertising matter within the unit which shall be visible from the exterior thereof; provided, that the Board of Directors shall establish reasonable and uniform regulations permitting the placement and maintenance by each owner of identifying signs and insignia of such sizes and materials and in such locations as shall be architecturally suitable and appropriate to the design and function of the Property.

(e) The parking area east of Unit G to be conveyed with Unit G shall be used exclusively for parking and storing vehicles and equipment in an orderly and neat manner unless written approval for a varying use is obtained from the Board of Directors. It may not be used to store vehicles and equipment in a state of abandonment or continuous disuse. No structure may be constructed in this area without the written consent of the Board of Directors and in compliance with local building and zoning regulations.

7. Common Elements. The common elements consist of all parts of the Property other than the units, and parking area conveyed with Unit G, including, without limitation, the limited common elements and the following:

- (a) Said land in fee simple;
- (b) The foundations, columns, girders, beams, supports, main walls, interior loadbearing walls, pillars, roofs, flat roofs, and entrances and exits of the building;
- (c) Central and appurtenant installations for power, light, and ventilation, and all pipes, wires, conduits, ducts, vents, and other service and utility lines which are utilized for or serve more than one condominium unit;
- (d) The tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;
- (e) The sidewalk areas surrounding the building;
- (f) Parking areas other than the parking area to be conveyed with Unit G as indicated on the Condominium Map;
- (g) All other spaces and facilities shown as common elements on said condominium map; and
- (h) All other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use, except to the extent specifically included in the units;
- (i) All Common Areas and Facilities as defined in the Condominium Ownership Act, whether or not expressly listed herein.

Each owner of a unit may use the common elements in accordance with the purposes for which they were intended without hindering or encroaching upon the lawful rights of the other unit owners, subject always to the exclusive use of the limited common elements as provided in this Declaration.

8. Limited Common Elements. Restrooms, air-conditioning equipment, and hot and cold water systems shall be limited common elements reserved for the use of the units respectively served thereby. Unit A has its own restroom facility. Units B and C share a double restroom. Units D and E share a double restroom. Units F and G share a double

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restroom. The costs of operation of the limited common elements shall be charged to the owners of the units served thereby as condominium unit expenses in the manner provided by the Bylaws.

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

10. No Partition. The common Areas shall be owned in common by all the Owners of Units, and no Unit Owner may bring action for partition thereof.

11. Use of Common Areas and Limited Common Areas. Subject to the limitations contained in the Declaration, any Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas and shall have the exclusive right or joint exclusive right to use and enjoy the Limited Common Areas designated herein (and on the Map) for exclusive or joint use by Unit Owners.

12. Unit Maintenance. Each Unit Owner shall at his own cost and expense maintain, repair, paint, re-paint, or otherwise refinish the interior surfaces of the walls, ceilings, floors, windows and doors forming the boundaries of his Unit and all walls, ceilings, floors, windows and doors within such boundaries. In addition, he shall be responsible for the maintenance repair and replacement of any fixtures that may be in, or connected with his unit.

13. Maintenance of Limited Common Areas. Each Owner shall at his own cost keep the Limited Common Areas designed for use in connection with his Unit in a clean, sanitary and attractive condition at all times.

14. Insurance. The board of Directors on behalf of the owners at their common expense shall at all times keep project improvements insured against loss or damage by fire with extended coverage in an insurance company authorized

to do business in Utah in an amount as near as practicable to the full replacement cost thereof without deduction for depreciation, in the name of the Board as trustee for all unit owners according to the loss or damage to their respective units and appurtenant common interests and easements and payable in case of loss to such bank or trust company authorized to do business in Utah as the Board shall designate for the custody and disposition as herein provided of all proceeds of insurance, and from time to time upon receipt thereof cause to be deposited promptly with the fee owner true copies of such insurance policies or current certificates thereof, without prejudice to the right of each unit owner to insure his unit for his own benefit. In every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Board, on behalf of the unit owners for rebuilding, repairing, or otherwise reinstating the buildings in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved as herein provided, and the unit owners at their common expense shall make up any deficiency in such insurance proceeds.

The Board on behalf of the unit owners at their common expense shall also procure and maintain at all times comprehensive general liability insurance, covering all unit owners and the Board of Directors, officers, and employees with respect to the project and naming the fee owner as an additional assured without any cost to the fee owner, in an insurance company authorized to do business in Utah with minimum limits of not less than \$500,000 for injury to one person and \$1 million for injury to more than one person in any one accident or occurrence and \$500,000 for property damage, or a single limit policy of not less than \$1 million and from time to time upon receipt thereof deposit promptly with the fee owner current certificates of such insurance, without prejudice to the right of any apartment owner to maintain additional liability insurance for his unit.

15. Parking. Each unit owner shall be assigned the parking areas immediately south of their units but shall not make any alterations to the lot or set up any barriers or place any markings on this designated common area, except as the Board of Directors shall approve. The assigned parking area of Unit G shall include the common parking area immediately south of Unit G Parking Area owned in common with Unit G.

16. Encroachments. If any portion of the common elements now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common elements, as a result of the construction of the buildings, or if any such encroachment shall occur hereafter as a result of the construction of the buildings, or if any such encroachment shall occur hereafter as a result of settling or shifting of any building, a valid easement shall exist for the encroachment and for the maintenance of the same so long as the building stands in which the unit is situated. In the event such building, the unit, any adjoining unit, or any adjoining common element shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the common elements upon any unit, or of any unit upon any other unit or upon any portion of the common elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such buildings shall stand.

17. Access for Repair of Common Areas. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable right, to be exercised by the Board of Directors, as its agent, to have access to each Unit and to all Common Areas from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units. The Board of Directors shall also have such rights independent of the agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the instance of the Board of Directors or of the Unit Owners; provided, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Board of Directors by assessment.

18. Right of Ingress, Egress, Lateral Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and to the Limited Common Areas designated for use

in connection with his Unit, and each Owner shall have the right to the horizontal and lateral support of a Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

19. Easement to Board of Directors. The Board of Directors shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

20. Easement for Utility Services. There is hereby created a blanket easement upon, across, over and under the above described land for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephones, electricity, and other utility services. The Board of Directors shall be authorized to give, convey, transfer, cancel, relocate, and otherwise deal with utility and other easements located on or affecting the Property.

21. Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines and Other Common Elements Located Inside of Units. Each unit owner shall have an easement in common with the owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines, and other common elements located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common elements serving such other units and located in such unit. The Board of Directors shall have a right to access to each unit to inspect the same, to remove violations therefrom and to maintain, repair, or replace the common elements contained therein or elsewhere in any of the buildings.

22. Legal Description of a Unit. Every conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the letter shown on the Map with the appropriate reference to the Map and to this Declaration, as each shall appear on the records of the County Recorder of Davis County, Utah, and in substantially the following form:

Unit \_\_\_\_\_ as shown in the Record of Survey Map for Van Dyke & Willey Condominium appearing in the Records of the County Recorder of Davis County, Utah, in Book \_\_\_\_\_ Page \_\_\_\_\_ of Plats,



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as defined and described in that Declaration of Commercial Condominium of Van Dyke & Willey appearing in such records in Book \_\_\_\_\_, Page \_\_\_\_\_ of Records.

This conveyance is subject to the provisions of the aforesaid Declaration of Commercial Condominium of Van Dyke & Willey.

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

23. Persons to Receive Service. David P. Willey, whose business address is 600 North 500 West, Bountiful, Utah, 84010 is hereby designated to receive notice of process in the cases provided in the Condominium Ownership Act, Utah Code Annotated, Section 57-8 (1953) as amended.

24. Units Subject to Declaration and Bylaws. All present and future owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and the Bylaws as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into a lease or occupancy of any unit shall constitute an agreement that the provisions of this Declaration and the Bylaws as they may be amended from time to time are accepted and ratified by such owner, tenant, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit, as though such provision were recited and stipulated at length in each and every deed or conveyance or lease thereof.

25. Alteration of Common Elements. Subject to such reasonable regulations as shall be established by the Board of Directors, the owner of any two units which shall be separated only by a common element which is a wall may alter or remove all or portions of the intervening wall, if the structural integrity of the building is not thereby affected and if the finish of the common element then remaining is restored to a condition substantially comparable to that of the common element prior to such alteration. Upon termination of the common ownership of such adjacent units, if the intervening wall shall have been altered or removed pursuant to the foregoing provisions, each of the owners of such units shall be obligated to

restore such intervening wall or floor to substantially the condition in which the same existed prior to such alteration or removal.

26. Amendment of Declaration. This Declaration may be amended by an instrument recorded in the Davis County Recorder's Office, and executed by not less than seventy (70%) percent of the owners of units: provided, that the common interest appurtenant to each unit as expressed in this Declaration shall have a permanent character and shall not be altered without the consent of all of the unit owners affected, expressed in an amended Declaration duly recorded, and provided further that until 5 of the 7 units have been sold or until the lapse of 3 years from the date of Declaration, Declarants shall have and are hereby vested with the right to amend this Declaration or the Record of Survey Map. Such right shall obtain without regard to the subject matter of amendment, so long as the amendment involved is consistent with law.

27. Damage or Destruction. If the common elements shall suffer substantial damage or destruction and not less than seventy-five (75%) percent of the owners of units shall determine, by a vote at a meeting of the unit owners or by execution of an instrument expressing such determination, that such damage or destruction shall not be rebuilt, repaired, or restored, such action shall be determinative of whether to rebuild, repair, or restore the Property and the Property shall be subject to an action for partition as provided by law.

28. Determination of Percentage of Owners. Any percentage specified herein of the owners of units means the owners of units and undivided interests in units, or either or both thereof, to which units and undivided interests in units there are appurtenant percentages of the common interests aggregating such specified percentage. There shall be deemed to be appurtenant to each undivided interest, expressed as a fraction, in a condominium unit the same fraction of the common interest appurtenant to such unit.

29. Consent Equivalent to Vote. In those cases in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for the authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the necessary percentage of undivided ownership interests.

30. Bylaws. The Bylaws of the Association of Owners of the Van Dyke & Willey Condominiums, a true copy of which is annexed hereto as Exhibit A, is made a part of this Declaration.

31. Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included herein.

32. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

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

IN WITNESS WHEREOF, this Declaration has been executed this 7<sup>th</sup> day of August, 1979.

Milton W. Van Dyke  
Milton W. Van Dyke

Kathryn W. Van Dyke  
Kathryn W. Van Dyke

David P. Willey  
David P. Willey Company  
By David P. Willey

David P. Willey

STATE OF UTAH :  
COUNTY OF SALT LAKE :

Personally appeared before me Milton W. Van Dyke, Kathryn W. Van Dyke, and David P. Willey (being the person authorized to sign on behalf of David P. Willey Company), and executed the foregoing this 7<sup>th</sup> day of August, 1979.



Dennis R. Jones  
Notary Public  
Residing at: SLC, UT

My commission expires:  
4-16-1983

BYLAWS OF ASSOCIATION OF OWNERS  
OF THE VAN DYKE AND WILLEY CONDOMINIUMS

## ARTICLE I

Introductory Provisions

Section 1. Definitions. Unless clearly repugnant to the context, the following terms, whenever used in these Bylaws, shall be given the following meanings:

- (a) "Declaration" shall mean and refer to the instrument entitled "Declaration of Commercial Condominium of Van Dyke & Willey" executed and acknowledged by Declarants on the \_\_\_\_\_ day of \_\_\_\_\_, 1979, recorded in the office of the Davis County Recorder, as amended from time to time.
- (b) "Condominium project" or "project" means all of the land, buildings, and other property with respect to which a commercial condominium project shall exist from time to time pursuant to the Declaration.
- (c) "Common elements" means and includes the parts of the project designated in the Declaration as common elements.
- (d) "Limited common elements" means and includes the parts of the project designated in the Declaration as limited common elements.
- (e) "Condominium unit" means a unit in the condominium project, within the meaning of the Condominium Ownership Act, as designated and described in the Declaration.
- (f) "Common interest" means the percentage of undivided interest in the common elements appertaining to each condominium unit, as expressed in the Declaration.
- (g) "Common expenses" means and includes the expenses defined in Section 1 of Article VI.
- (h) "Condominium unit expenses" means and includes the expenses defined in Section 2 of Article VI.
- (i) "Association" or "Association of Owners" means all owners of the condominium units acting as a group in accordance with these Bylaws and the Declaration.

(j) "Owner" means a person owning all or any interest in a condominium unit and the common interest appertaining thereto, to the extent of such interest so owned; provided that to such intent and for such purposes, including the exercise of voting rights, as shall be provided by lease filed with the Board of Directors, a lessee of a condominium unit or interest therein shall be deemed to be the owner of such condominium unit or interest therein.

(k) "Operation of the condominium project" means and includes the administration, management, and operation of the condominium project and the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements.

(l) All pronouns used herein shall include the male, female, and neuter genders and shall include the singular or plural numbers, as the case may be.

## ARTICLE II

### Association of Owners

Section 1. Composition and Powers. The Association shall be composed of all of the Owners. The Association shall have all of the powers with respect to the operation and regulation of the condominium project conferred upon the Association by, or which may be conferred upon the Association of unit Owners of a condominium project pursuant to the provisions of, the Condominium Ownership Act. Except as otherwise provided herein or in the Declaration or the Condominium Ownership Act, the acts, decisions, and resolutions of the Association shall be effective upon adoption by vote of a majority of the Owners.

Section 2. Meetings. All meetings of the Association shall be held at Van Dyke & Willey Condominiums Unit D or such other place as shall be stated in the notice of meeting. The first annual meeting of the Association shall be held at 10:00 a.m. on the first Tuesday after the date of the Declaration, without further notice. Thereafter, the annual meeting of the Association shall be held in the month of March on such date as the President may designate, or if the President shall fail to designate such date by the 1st day of February, then on the third Tuesday in March. Special meetings of the Association may be called at any time by the President or any two directors and shall be called upon the request of 40 percent of the Owners. At any special meeting only such business shall be transacted as shall have been indicated by a specific or general description in the notice of such meeting.

Section 3. Notice of Meetings. The Secretary shall, at least five (5) days before the date set for each annual and special meeting, give written or printed notice thereof to every Owner according to the Association's record of ownership, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting and the purpose thereof. The Secretary shall give a like notice to each holder of a duly recorded mortgage affecting any condominium unit whose name and address shall have been furnished to the Board in a written request to the Board for such notices. Any such notice may be given in any of the following ways:

(a) By leaving the same with the Owner or mortgagee personally, or if the Owner or mortgagee shall be a corporation with any officer thereof; or

(b) By leaving the same at the residence or usual place of business of the Owner or mortgagee; or

(c) By mailing the same, postage prepaid, addressed to the Owner at the address of such Owner as it appears on the record of ownership of the Association, or, in the case of a mortgagee, at the address of such mortgagee as stated in the request of such mortgagee for such notices.

If notice is given pursuant to the provisions of this section, the failure of any Owner or mortgagee to receive actual notice of such meeting shall in no way invalidate the meeting or any proceedings thereat. The presence of all Owners and mortgagees entitled to notice in person or by proxy at any meeting shall render it a valid meeting, notwithstanding that notice thereof was not given or was improper, unless an Owner or mortgagee shall at the opening thereof object to the holding of such meeting for noncompliance with the provisions of this section.

Section 4. Quorum and Adjournment. The presence at any meeting, in person or by proxy, of a majority of the Owners shall constitute a quorum. Any meeting of the Association, whether annual or special, may be adjourned from time to time, whether a quorum be present or not, without notice other than the announcement at the meeting, and such adjournment may be to such time and to such place as may be determined by a majority of the votes cast at such meeting. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the original meeting called and notified.

Section 5. Voting. (a) The percentage of undivided interests in the common elements appertaining to each condominium unit and its Owners for all purposes, including voting shall be the percentage specified in the Declaration. The total number of votes of all Owners shall be 7. The Owner of a condominium unit shall have one vote. Except as otherwise expressly provided herein or by law, the vote at any meeting of a majority of the Owners shall be necessary, and shall be sufficient, to adopt decisions and take action binding upon all of the Owners. As used in these Bylaws, "majority of the Owners" means Owners having a majority of the total number of votes, and any specified percentage of the Owners means Owners having the specified percentage of the total number of votes.

(b) Any Owner may empower any person to vote as the proxy of such Owner at any meeting of the Association by written proxy or authorization filed with the Secretary. Such written proxy or authorization, unless specifically limited by its terms, shall remain effective until there shall be filed with the Secretary a written revocation of the same or a written proxy or authorization of later date.

### ARTICLE III

#### Board of Directors

Section 1. Membership. There shall be a Board of Directors of the Association consisting of three directors who shall be elected at the annual meeting of the Association, or, in case of failure to act at said meeting, at a special meeting called for such purpose. Subject to the provisions of these Bylaws, directors shall hold office until the next annual meeting and thereafter until their successors are duly elected. Only unit owners and officers, directors, agents and employees of Owners shall be eligible for Board membership. At the annual meeting of the Association each Unit owner shall have one vote for each seat on the Board to be filled; provided, however, that until 5 of the 7 units have been sold or until the lapse of three years from the date of the Declaration, whichever occurs first, Declarants alone, at their option, shall select the Board of Directors or act as the Board of Directors. If Declarants elect to waive such option at any time prior to the sale of 5 of the 7 units or prior to the lapse of 3 years the Declarants may waive such option by recording a written notice of such waiver whereupon the control of the Unit Owners in the Board of Directors shall have become automatically vested thirty days thereafter. In the event a Board seat which was filled by Declarants becomes vacant, Declarants shall have the right to select a replacement mem-

ber to sit on the Board for the balance of the term associated with the vacated seat. In all other cases of vacancy the remaining Board members shall elect a replacement to sit on the Board until the expiration of the term for which the member being replaced was elected. Board members shall be reimbursed for all expenses reasonably incurred in connection with Board business.

Section 2. Removal. The entire Board of Directors, or any individual director or alternate director, may be removed from office by a vote of a majority of the Owners at any meeting called for such purpose. If any or all directors shall be so removed, new directors may be elected at the same meeting.

Section 3. Meetings. The Board of Directors shall hold a meeting at the place of the annual meeting of the Association and as soon as practicable thereafter, and no notice thereof shall be necessary. Other meetings may be held at such times and at such places as the business of the Association shall require according to resolution of the Board of Directors or upon call of the President or any two directors. The Board of Directors may establish regular meetings which may be held at such places and at such times as they may from time to time by vote determine, and when any such meeting or meetings shall be so determined no further notice shall be required. Notice of all meetings and other notices to the directors shall be given to each director by the Secretary or by the person or persons calling the meeting by advising him by telephone, by word of mouth, or by delivering written notice of such meeting to him not less than one day prior to the meeting or by leaving written notice of such meeting at his residence or usual place of business not later than five days before the meeting. Any director may waive notice of any meeting of directors in writing signed by himself or his duly authorized attorney-in-fact either before or at or after the meeting. The presence of any director or the alternate of such director at any meeting shall be the equivalent of a waiver of the requirement of the giving of notice of said meeting to such director.

Section 4. Quorum. A majority of the members of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of such Board, but no vote of the directors shall be valid unless concurred on by a majority of the entire number.

Section 5. Powers. The Board of Directors, for the benefit of the Owners, shall have the following powers and duties:



(a) To exercise all of the powers of the Association with respect to the operation and regulation of the condominium project which are conferred upon the Board by the Condominium Ownership Act or which may be conferred upon the Board by these Bylaws pursuant to the Condominium Ownership Act; provided, that no addition to or alteration of the common elements shall be made which is not consistent with the description thereof contained in the Declaration.

(b) To make contracts and incur liabilities in connection with the exercise of any of the powers and duties of the Board.

(c) To provide or cause to be provided all goods and services required by the Bylaws or by law, or which the Board, in its discretion, deems necessary for the proper operation of the condominium project, or which are used in common or jointly by the common elements and condominium units, in each case to the extent such goods and services shall not be otherwise provided.

(d) To render or cause to be rendered statements, when required by law, of any assessments which remain unpaid by any Owner.

(e) To bring action on behalf of two or more of the Owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one condominium unit, as the Board deems advisable.

(f) To elect the officers of the Association and otherwise exercise the powers regarding officers of the Association as set forth in these Bylaws.

(g) To determine who shall be authorized to make and sign all instruments on behalf of the Association and the Board.

(h) To engage in the services of managing agent to perform such duties and services as it shall authorize, to fix the compensation of such managing agent, and to delegate to such managing agent any or all of its powers and duties, as the Board deems advisable.

(i) To designate and remove personnel necessary for the maintenance, repair, and replacement of the common elements.

(j) To procure such fidelity bonds as the Board deems advisable covering officers and employees of the Association handling and responsible for the Association's funds and personal property, and to procure directors' and officers' liability insurance if the Board deems it advisable. The premiums of such bonds and insurance shall be paid by the Association as common expenses.

(k) To determine policies and to adopt administrative rules and regulations governing the details of the operation and use of the condominium project, including the common elements, and to amend such administrative rules and regulations from time to time as the Board deems advisable.

(l) To perform any and all duties imposed on the Board by applicable law.

Section 6. Compensation. There shall be no compensation paid to members of the Board for acting as such, except for a reasonable director's fee for attendance at the meetings of the Board, as established by the Association of Owners.

Section 7. Indemnity. The Association of Owners shall indemnify each present and future officer or director of the Association against all costs, expenses, and liabilities, including the amounts of judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses, which may be incurred by or imposed on him in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted or threatened in which he may be involved as a party or otherwise by reason of his being or having been such officer or director, or by reason of any past or future action taken or authorized or approved by him or any omission to act as such officer or director, whether or not he continues to be such officer or director at the time of the incurring or imposition of such costs, expenses, or liabilities, except such costs, expenses, or liabilities as shall relate to matters as to which he shall in such action, suit, or proceeding be finally adjudged to be, or shall be liable by reason of his negligence or willful misconduct toward the Association in the performance of his duties as such officer or director. As to whether or not an officer or director was liable by reason of negligence or willful misconduct toward the Association in the performance of his duties as such officer or director, in the absence of such final adjudication of the existence of such liability, the Board of Directors and each officer and director may conclusively rely upon an opinion of legal

counsel selected by or in the manner designated by the Board of Directors. The foregoing right of indemnification shall not be exclusive of other rights to which any such officer or director may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators, and assigns of each such officer or director.

#### ARTICLE IV

##### Officers

Section 1. Election of Officers. The officers of the Association shall be the President, Vice-President and Secretary and Treasurer and in addition thereto, in the discretion of the Board, such other officers with such duties as the Board shall from time to time determine. The President and Vice-President shall be elected annually by the Board from among the members of the Board, and all other officers shall be elected by the Board from among or outside the membership of the Board as the Board may determine, and all officers shall serve until their successors shall have been elected. All officers shall be subject to removal at any time by the affirmative vote of the majority of the Board. The Board may, in its discretion, elect acting or temporary officers and elect officers to fill vacancies occurring for any reason whatsoever, and may in its discretion, limit or enlarge the duties and powers of any officer elected by it.

Section 2. The President. The President shall preside at all meetings of the Association and of the Board and shall perform all other duties assigned by the Board.

Section 3. The Vice-President. The Vice-President shall perform all of the duties and exercise all of the powers and rights of the President provided by these Bylaws or otherwise during the absence or disability of the President, or whenever the office is vacant, and shall perform all other duties assigned by the Board.

Section 4. The Secretary. The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association in a minute book wherein all resolutions shall be recorded. the Secretary shall give notice, in conformity with these Bylaws, of any and all meetings and shall also perform all other duties assigned him by the Board.

Section 5. The Treasurer. the Treasurer shall keep the financial records and books of account of the Association; keep thorough and proper accounts of the financial transactions of the Association and render statements of the same in such form and at such times as the Board shall require; maintain a system of budgeting control; prepare and render, to such governmental officials as shall have the right to so require, tax returns and all exhibits, reports and other instruments required by law; have custody of all monies of the Association or in its charge or that of the Board and properly care for and distribute the same under the direction of the Board; except as some other officer or employee shall from time to time be expressly authorized so to do, receive and receipt for, either personally or by an employee authorized by him, all monies payable to the Association or the Board; and perform all other duties assigned to him by the Board.

Section 6. Any two or more offices may be held by the same person, except the offices of president and secretary shall not be held by the same person.

#### ARTICLE V

##### Use and Maintenance of Premises

Section 1. Use of Premises. The buildings and each of the units are intended and restricted as to use, and shall be used only, for purposes which are consistent with and appropriate to the design of the buildings and for which adequate ventilation, plumbing, and similar facilities exist. In addition to and without limitation of the foregoing:

(a) Units are to be used for light manufacturing commercial warehousing and shop facilities in accordance with such reasonable regulation as shall be established by the Board of Directors from time to time.

(b) No unit shall be used for the purpose of operating therein a public restaurant, bar or cabaret, or otherwise for the sale to the public for consumption on the premises of food or drink, except as the Board of Directors shall approve.

(c) No owner of a unit shall do, or suffer or permit to be done, anything in any unit which would impair the soundness or safety of the property, or which would increase the rate or result in the cancellation of insurance applicable to the property, or which would be noxious or offensive or an interference with the peaceful posses-

sion and proper use of other units, or which would require any alteration of or addition to any of the common elements to be in compliance with any applicable law or regulation, or which would otherwise be in violation of law.

(d) No owner of a unit shall, without the written approval and consent of the Board of Directors, place or suffer to be placed or maintained (i) on any exterior door, wall or window of the unit, or upon any door, wall or window of the common elements, any sign, awning or canopy, or advertising matter or other thing of any kind, or (ii) any decoration, lettering or advertising matter on the glass of any window or door of the unit or (iii) any advertising matter within the unit which shall be visible from the exterior thereof; provided, that the Board of Directors shall establish reasonable and uniform regulations permitting the placement and maintenance by each Owner of identifying signs and insignia of such sizes and materials and in such locations as shall be architecturally suitable and appropriate to the design and function of the property.

Section 2. Work and Maintenance by Owners. The Owner of a condominium unit shall keep the interior of such condominium unit from the boundary line thereof, and all plumbing, electrical, and other such fixtures and other appurtenances in the same in good order and repair and shall be responsible for any damage or loss caused by failure to do so. The Owner shall also be responsible for any damage caused to the common elements by the negligent use thereof. Each Owner shall have the right, at the sole cost and expense of such Owner, to install and remove partitions, to paint, paper, panel, plaster, tile, finish, and do other such work on the interior surfaces of the ceilings, floors, and walls of the condominium unit, to substitute new finished surfaces for the finished surfaces then existing on said ceilings, floors and walls, and to finish, alter, or substitute any plumbing, electrical or other such fixtures attached to said ceilings, floors, or walls; provided, however, that this section shall not be construed as permitting interference with or damage to the structural integrity of the building or interference with the use and enjoyment of the common elements by other Owners, nor shall it be construed to limit the intent expressed in Section 1 of this Article V.

Section 3. Entry for Repairs. The Board shall have the irrevocable right, on behalf of all Owners, to have access from time to time during reasonable hours to any condominium unit as may be necessary for the operation of the

condominium project or for making emergency repairs in such condominium unit necessary to prevent damage to the common elements or to another condominium unit or units. Such entry shall be made with as little inconvenience to the Owner of the condominium unit as is practicable.

## ARTICLE VI

### Common Expenses and Condominium Unit Expenses

Section 1. Common Expenses. Each Owner of a condominium unit or of an undivided interest in a condominium unit shall be liable for and pay a share, on the basis of the allocation made as provided in Section 3(b) of this Article VI, of the common expenses. Common expenses shall include all charges for taxes (except real property taxes and other such taxes assessed separately on each condominium unit and the common interest in the common elements appertaining thereto or on the personal property or any other interest of the Owner), assessments, insurance, including fire and other casualty and liability insurance, yard, janitorial and other similar services, wages, accounting and legal fees, management fees, and other expenses of upkeep, maintenance, and management actually incurred by the Board on or for the common elements (including limited common elements), the costs of operation of the common elements other than limited common elements, and the costs of and a reserve for maintenance and repair, reinstatement, rebuilding, and replacement of the common elements (including limited common elements). Without limitation of the generality of the foregoing, common expenses shall include all expenses of alterations in or additions to the common elements (including limited common elements) which may be required, from time to time, to cause such common elements as built and existing to be in conformity with the description of the common elements contained in the Declaration, as amended from time to time. Payments of common expenses shall be made to the Board, as agent of the Owners, and the Board shall transmit said payments on behalf of each Owner to the third person entitled to said payments from such Owner.

Section 2. Condominium Unit Expenses. Each Owner of a condominium unit or of an undivided interest in a condominium unit shall be liable for and pay a share, on the basis of the allocation made as provided in Section 3(c) of this Article VI, of the condominium unit expenses. "Condominium unit expenses" means and includes the expenses (other than common expenses) incurred by the Board in providing utility and other services to the condominium units,

and shall also include the costs of operation of the limited common elements, and all wages, accounting and legal fees, management fees, administrative expense, and other costs incidental thereto. Payment of condominium unit expenses shall be made to the Board, as agent of the Owners, and the Board shall transmit said payments on behalf of each Owner to the third person entitled to said payments from such Owner.

Section 3. Allocation of Common Expenses and Condominium Unit Expenses. For the purpose of fixing and determining the payments to be made as hereinabove provided in Sections 1 and 2 of this Article VI, the Board shall, on behalf of all Owners and as soon as practicable, determine for each year the estimated aggregate amount of the common expenses and condominium unit expenses for such year. For the purpose of such determinations, each year shall be the calendar year, except that the first year shall begin on the date upon which the condominium project was constituted a commercial condominium project and end on the 31st day of December of said year. The Board, on behalf of the Owners, may from time to time during each year make reasonable adjustments in said estimated aggregate amount of common expenses and condominium unit expenses on the basis of actual costs incurred. As soon as practicable after the end of each year, the actual aggregate amount of common expenses and condominium unit expenses for said year shall be determined by the Board. Said estimated and actual aggregate amounts of common expenses and condominium unit expenses for each year, as determined by the Board, shall be allocated as follows:

(a) The aggregate amount so estimated by the Board, and the actual aggregate amount so determined by the Board, shall be allocated from time to time to the common expenses and the condominium unit expenses, in accordance with the definitions set forth in Sections 1 and 2 of this Article VI.

(b) The amounts so allocated to the common expenses shall then be allocated by the Board among the Owners in the proportions among them of the common interests appurtenant to their condominium units and undivided interests in condominium units.

(c) The amounts so allocated to the condominium unit expenses shall be allocated by the Board among the Owners of condominium units in the proportions among them of the benefits of the related services provided to their

respective condominium units and undivided interests in condominium units, as determined in accordance with the definition set forth in Section 2 of this Article VI.

(d) The amounts of the estimated common expenses and condominium unit expenses for each year, so determined and allocated to each Owner from time to time, shall be payable by the Owner in monthly installments in advance on or before the 10th day of each month, each monthly installment to be the product of the division of the aggregate of said amounts then unpaid, divided by the number of months, including the then current month, remaining in such year. Each Owner shall pay any unpaid balance of the actual amount of said expenses as so determined and allocated by the Board, and any overpayment shall be refunded to the Owner, within 15 days after notice of such determination and allocation. Any omission or delay in determining and allocating said expenses for any year shall not relieve the Owners therefrom. In such event, the Owners, pending the determination and allocation thereof, shall pay monthly installments of common expenses and condominium unit expenses in accordance with the last determination and allocation of such expenses for the preceding year, and shall pay the deficiency, if any, upon the proper determination and allocation of the estimated common expenses and condominium unit expenses within 10 days after notice thereof. Each such payment transmitted to the Board, as agent of all Owners to the third person entitled to payment of same from each Owner.

(e) At all times, the most recent determination in relation to the allocation of said expenses, shall be effective and shall govern all allocations of said expenses until another such determination shall be made. Amounts allocated to any Owner of estimated or actual expenses of which payment shall have become due, shall not be subject to reallocation. Amounts allocated to any Owner of estimated or actual expenses, of which payment shall not have become due, shall be subject to reallocation in accordance with a later such determination in relation to such allocation.

Section 4. Payment as Agent. The Board shall pay or cause to be paid, on behalf of the Owners, all common expenses and condominium unit expenses. The Board, on behalf of all Owners, shall maintain or cause to be maintained separate books of account of common expenses and condominium unit expenses in accordance with recognized accounting practices, and shall have such books of account available for inspection by each Owner or his authorized representative at reasonable business hours. The Board



shall annually render or cause to be rendered a statement to each Owner of all receipts and disbursements during the preceding year. Each Owner, as principal, shall be liable for and pay a share, determined as herein provided, of all common expenses and condominium unit expenses and the Board shall be responsible, as agent for such Owner, only to transmit the payments made by such Owner to third persons entitled thereto.

Section 5. Taxes and Assessments. The Owner of each condominium unit shall be obligated to cause the real property taxes of such condominium unit and the common interest appertaining thereto to be assessed separately by the proper governmental authority and to pay all such real property taxes so determined directly to the proper governmental authority. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each condominium unit and the common interest in the common elements appertaining thereto or the personal property or any other interest of the Owner. Each Owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes, other taxes and assessments. Each Owner shall be obligated to pay, as a common expense, a proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire condominium project or any part of the common elements as a whole and not separately, such payment to be made as directed by the Board. If in the opinion of the Board, any taxes or assessments may be a lien on the entire condominium project or any part of the common elements, the Board may pay such taxes or assessments and shall assess the same to the Owners in their proportionate share as determined by the Board. Such assessments by the Board shall be secured by the lien created by Section 6 of this Article VI.

Section 6. Liens. (a) All sums assessed by the Association of Owners but unpaid for the share of the common expenses and condominium unit expenses chargeable to the Owner of, or of an undivided interest in, any condominium unit shall constitute a lien, with power of sale, on such condominium unit prior to all other liens, except only (i) liens for taxes and assessments lawfully imposed by governmental authority against such condominium unit, and (ii) all sums unpaid on mortgages of record. Such lien may be foreclosed by suit or by proceeding under the power of sale by the Board, acting on behalf of the condominium unit Owners, in like manner as a mortgage of real property. No action shall be brought to foreclose such lien or to pro-

ceed under the power of sale unless 20 days' notice of claim of lien is mailed to the Owner of, or such Owner of an undivided interest in, the condominium unit and any mortgagee of record thereof. The Board, acting on behalf of the Owners, shall have power to bid in the condominium unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses or condominium unit expenses shall be maintainable without foreclosing or waiving the lien securing the same. Reasonable attorneys' fees and expenses in connection with collection of the debt secured by such lien or foreclosure thereof shall be paid by the Owner against whom such action is brought and secured by the lien.

(b) Where the mortgagee of a mortgage of record or other purchaser of a condominium unit obtains title to the condominium unit as a result of foreclosure of the mortgage, such acquirer of title, his successors, and assigns, shall not be liable for the share of the common expenses or condominium unit expenses or assessments by the Association of Owners chargeable to such condominium unit which became due prior to the acquisition of title to such condominium unit by such acquirer. Such unpaid share of common expenses or condominium unit expenses or assessments shall be deemed to be common expenses collectible from all of the condominium Owners, including such acquirer, his successors, and assigns.

Section 7. Liability of Grantor and Grantee for Unpaid Common Expenses and Condominium Unit Expenses. In a voluntary conveyance, the grantee of a condominium unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses and condominium unit expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantor or grantee shall be entitled to a statement from the Board setting forth the amount of the unpaid assessments against the grantor, and neither such grantor nor such grantee shall be liable for, nor shall the condominium unit conveyed be subject to a lien for, any unpaid assessments for common expenses and condominium unit expenses against the grantor in excess of the amount therein set forth.

Section 8. Exemption by Conveyance to Board of Directors. With the prior written consent of all other Owners, and not otherwise, the Owner or Owners of a condominium unit may, by conveying the condominium unit and the common

interest appurtenant thereto to the Board on behalf of all other Owners, exempt himself or themselves from common expenses and condominium unit expenses thereafter accruing.

#### ARTICLE VII

##### Other Provisions

Section 1. Insurance. (a) The Board shall procure and maintain from a company or companies qualified to do business in Utah a policy or policies (herein called "the Policy") of fire insurance, with extended coverage endorsement, and shall in time of war procure and maintain governmental insurance against war damage to the extent such governmental insurance is obtainable at reasonable cost, insuring the common elements (other than land) for as nearly as practicable to 100 percent of the insurable replacement cost value of the common elements without deductions for depreciation (such value to be determined annually by the Board and to exclude property of every kind and description while underground (meaning thereby, below the level of contiguous ground and covered by earth) except underground conduit or wiring therein when beneath the buildings and/or structures which are covered herein) in the name of the Board as insured as trustee for each of the Owners of, or of undivided interests in, the condominium units in proportion to their respective common interests. If possible, such policy:

(i) shall contain no provision limiting or prohibiting other insurance by the Owner of any unit, such right being provided by statute, but if obtainable, shall provide that the liability of the insurer shall not be affected by, nor shall the insurer claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of, any such other insurance;

(ii) shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the building, whether or not within the control or knowledge of the Board, or if obtainable, shall contain no provision relieving the insurer from liability by reason of any breach of warranty or condition caused by the Board or the Owner or tenant of any unit, or by reason of any act or neglect of the Board or the Owner or tenant of any condominium unit.

(iii) shall provide that the policy may not be cancelled (whether or not requested by the Board) except by giving to the Board and to the Owner of each condomin-

ium unit who shall have requested such notice of the insurer in writing addressed to him at the premises, twenty (20) days' written notice of such cancellation;

(iv) shall contain a provision waiving any right of subrogation by the insurer to any right of the Board against the Owner or lessee of any condominium unit;

(v) shall contain a provision waiving any right of the insurer to repair, rebuild and replace, if a decision is made pursuant to Section 2(b) of this Article VII not to repair, reinstate, rebuild, or restore the damage or destruction;

(vi) shall contain a standard mortgagee clause which

(1) shall name the holder of any mortgage affecting any condominium unit whose name shall have been furnished to the Board;

(2) shall provide that the insurance as to the interest of the mortgagee shall not be invalidated by any act or neglect of the Board or the Owner or tenant of any condominium unit;

(3) Shall waive any requirement invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer or any hazardous use or vacancy, any requirement that the mortgagee pay any premium (provided, however, in case the Board shall fail to pay the premium due or to become due under the policy, the mortgagee may pay the same prior to the effective date of the termination of the policy), any contribution clause, and any right to be subrogated to the rights of any mortgagee against the Owner or lessee of any condominium unit or the Board or to require an assignment of any mortgage to the insurer, except that the insurer will have the right of subrogation to the extent of insurance proceeds received by and retained by the mortgagee if the insurer shall claim no liability as to the mortgagor or Owner, but without impairing mortgagee's right to sue;

(4) shall provide that without affecting the protection afforded to the mortgagee by such mortgage clause, any proceeds payable under such clause shall be payable to the Board; and

(5) shall provide that any reference to a mortgagee in the policy shall include all mortgagees on any unit, in order or preference.

(b) The Board shall procure and maintain from a company or companies qualified to do business in Utah a policy or policies (herein called the Policy) of Public Liability Insurance to insure the Board, each unit Owner

as the owner of the common interest, and the managing agent and other employees of the Association of Owners against claims for personal injury and property damage arising out of the existence of premises or operations or contractors of construction work under a Comprehensive General Liability form to include (1) coverage of Automobile Liability for owned-hired or nonowned automobiles, (2) Water Damage Legal Liability, and (3) Fire Damage Legal Liability. The insurance shall exclude coverage for the personal activities of Owners of the condominium units and employees as aforesaid, and for liability arising out of ownership of individual condominium units. Said insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried by properties of comparable character and usage in the City of Bountiful. If possible such policy:

(i) shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the building, whether or not within the control or knowledge of the Board, or by any breach of warranty or condition caused by the Owner of any condominium unit, or by any act or neglect of the Owner or tenant of any condominium unit.

(ii) shall provide that the policy may not be cancelled (whether or not requested by the Board) except by giving to the Board and to the Owner of each condominium unit who shall have requested such notice of the insurer in writing addressed to him at the premises, twenty (20) days' written notice of such cancellation.

(c) The Board may also procure insurance which shall insure the common elements against such additional risks as the Board may deem advisable for the protection of the condominium unit Owners of a character normally carried with respect to properties of comparable character and use in the City of Bountiful.

(d) The Board shall review not less frequently than annually, and whenever requested by 30 percent or more of the Owners, the adequacy of its insurance program and shall report in writing the Board's conclusions and action taken on such review to the Owner of each condominium unit, and to the holder of any mortgage on any condominium unit who shall have requested a copy of such report. At the request of any mortgagee of any condominium unit, the Board shall furnish to such mortgagee a copy of the Policy described in Subparagraph (a) of this Section 1 and of any policy to which a mortgagee endorsement shall have been attached.

Copies of every policy of insurance procured by the Board shall be available for inspection by any condominium unit Owner (or contract purchaser) at the office of the managing agent.

(e) Any such coverage procured by the Board shall be without prejudice to the right of the Owners of condominium units to insure such condominium units and the contents thereof for their own benefit at their own expense. The Board shall not be required or authorized to insure the property constituting the project except as provided by the Bylaws.

(f) Notwithstanding anything herein contained to the contrary, insurance coverages must be in such amounts and meet other requirements of the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation.

Section 2. Damage to Project. In the event of damage to or destruction of part or all of the improvements in the Project, the following procedures will apply:

(a) If proceeds of the insurance maintained by the Board of Directors are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

(b) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Board are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all the Unit Owners shall be assessed for any deficiency on the basis of their respective percentages of undivided interest in the Common Areas and Facilities.

(c) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Board of Directors are not alone sufficient to accomplish restoration, and if the Unit Owners within 100 days after the destruction or damage by a vote of at least 75% elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subparagraph (b) above. Upon the completion of the work and payment in full therefor, any proceeds of insurance then or thereafter in the hands of the Board shall be paid or credited to the Owners of the

condominium units (or to the holder of any mortgage on a unit if there be a mortgage) in proportion to their respective common interests.

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

Any reconstruction or repair which is required to be carried out by this Section 2 shall be accomplished at the instance and direction of the Board of Directors. Any determination which is required to be made by this Section 2 shall be accomplished at the instance and direction of the Board of Directors. Any determination which is required to be made by this Section 2 regarding the extent of damage to or destruction of Project Improvements shall be made by three MAI appraisers selected by the Board of Directors. The decision of any two such appraisers shall be conclusive.

(e) To the extent that any loss, damage, or destruction to the building or other property is covered by insurance procured by the Board, the Board shall have no claim or cause of action for such loss, damage, or destruction against any condominium unit Owner or lessee. To the extent that any loss, damage, or destruction to the property of any condominium unit Owner or lessee is covered by insurance procured by such Owner or lessee, such Owner or lessee shall have no claim or cause of action for such loss, damage, or destruction against the Board, the managing agent or the Association. All policies of insurance referred to in this Subparagraph (d) shall contain appropriate waivers of subrogation.

Section 3. Mortgagee Protection. Notwithstanding anything to the contrary contained in the Declaration or in the Bylaws:

(a) An adequate reserve fund for replacement of the Common Areas must be established and shall be funded by regular monthly payments rather than by special assessments.

(b) There shall be established a working capital fund for the initial months of operation of the Project

equal to a minimum amount of two months' estimated Common Area charge for each Unit.

(c) Any mortgage holder which comes into possession of the Unit pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage or deed (or assignment in lieu of foreclosure) shall be exempt from any "right of first refusal" or other provisions relating to sale or lease of the Units in the Project.

(d) Any management agreement for the Project shall be terminable by either party without cause or payment of termination fee upon ninety (90) days' written notice thereof and the term of any such agreement shall not exceed three years.

(e) In the event of substantial damage to or destruction of any Unit or any part of the Common Areas, the institutional holder of any first mortgage on a Unit shall be entitled to timely written notice to any such damage or destruction. No Unit Owner or other party shall be entitled to priority over such institutional holder with respect to the distribution to such Unit of any insurance proceeds.

(f) If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the institutional holder of any first mortgage of a Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition and not Unit Owner or other party shall have priority over such institutional holder with respect to the distribution to such Unit of the proceeds of any award or settlement.

(g) With the exception of a lender in possession of a Unit following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Unit Owner shall be permitted to lease his unit for transient or hotel purposes. No Unit Owner may lease less than the entire unit. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing.

(h) Each holder of a first mortgage lien on a unit who comes into possession of a Unit by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale,



shall take the Unit free of any unpaid claims or assessments and charges against the Unit which accrue prior to the time such holder comes into 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 in the Project, including the mortgaged Unit.)

(i) Any holder of the Mortgage is entitled to written notification from the Board of Directors 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.

(j) Any lien which the Board of Directors may have on any unit in the Project for the payment of Common Expense assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any first mortgage on the Unit recorded prior to the date of any such Common Expense assessments become due.

(k) Unless at least 75% of the first Mortgagees (based on one vote for each Mortgage owned) of Units have given their prior written approval neither the Board of Directors nor the Association of Unit Owners shall:

(1) By act or omission, seek to abandon or terminate the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

(2) Change the pro-rata interest or obligations of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro-rata share of ownership of each Unit in the appurtenant Common Areas.

(3) Partition or subdivide any Unit.

(4) Make any material amendment to the Declaration or to the Bylaws, including, but not limited to, any amendment which would change the percentage interests of the Unit Owners in the Common Areas except as provided in Section 5 of this Article.

(5) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer, the Common Areas. (The granting of easements for public utilities

or for other public purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this subparagraph.)

(6) Use hazard insurance proceeds for losses to any condominium property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or the Common Areas of the Project.

(7) Terminate professional management and assume self-management of the Project.

Section 4. Covenant to Obey Laws, etc. (a) Each Owner shall be subject to the Condominium Ownership Act and the Declaration and shall abide by the Bylaws and Rules and Regulations as the same are or may from time to time be established by the Board, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board of Directors or the President on behalf of the Unit Owners, or in a proper case by an aggrieved Unit Owner.

(b) Each Owner shall observe, comply with, and perform all rules, regulations, ordinances, and laws made by the Board of Health and any other governmental authority of the municipal, state and federal government applicable to the project.

Section 5. Amendment. These Bylaws may be modified or amended from time to time by a vote of not less than 70 percent of the Owners at any annual meeting or at any special meeting called for such purpose, provided that all particulars required by law to be set forth in the bylaws shall be embodied in these Bylaws and all modifications or amendments shall be set forth in an amendment to the Declaration and duly recorded as part of the Declaration.

Section 6. Consent Equivalent to Vote. In those cases in which the Act or these Bylaws require the vote of a stated percentage of the Project's undivided ownership interest for the authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the necessary percentage of undivided ownership interest.

Section 7. Severability. If any of the provisions of these Bylaws or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstance be

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invalidated, such invalidity shall not affect the validity of the remainder of the Bylaws, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

Section 8. Topical Headings. The headings appearing at the beginning of the paragraphs of these Bylaws are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning or intent of these Bylaws or any paragraph or provision hereof.

782

Recorded at request of *David Willey* Fee Paid \$ *38.00*  
Date *AUG. 30. 1979* at *3:56* P.M. CAROL DEAN PAGE, Recorder Davis County  
By *Grace Van Sweden* Deputy Book *788* Page *783*

543060

DECLARATION OF COMMERCIAL CONDOMINIUM

OF

VAN DYKE & WILLEY

*Van Dyke & Willey Cond*  
*Units A-G incl.*

The undersigned, David P. Willey Company, Milton W. Van Dyke and Kathryn W. Van Dyke, do hereby declare:

1. Submission of Property. The undersigned hereby establish a commercial condominium project according to the Condominium Ownership Act, Utah Code Annotated, Section 57-8 as amended, and submit the land hereinafter described, owned by the undersigned in fee simple absolute, together with the buildings and improvements thereon to the provisions of the Utah Condominium Ownership Act as a commercial condominium project. The property and buildings are located at 600 North 500 West Bountiful, Davis County, Utah, more particularly described as follows:

Abstracted  
 Indexed  
 Entered  
  
 Platted  
 On Margin  
 Compared

BEGIN at a point on the East line of 500 West Street, said point being South 89°55'10" West 98.41 feet and North 0°20'57" East 897.724 feet from the Southwest corner of the Northwest Quarter of Section 19, Township 2 North, Range 1 East, Salt Lake Base and Meridian, (basis of beginning is Davis County Reference Plat dated September 28, 1972) and running thence South 89°39'03" East 448.14 feet; thence North 0°20'57" East 132.00 feet to a point 1.47 feet South of an existing fence, thence North 89°39'03" West parallel to said fence 448.14 to East line of said street, thence South 0°20'57" West along said street 132.00 feet to the point of Beginning. Containing 1.358 acres.

2. Buildings. There is one building included in the Property. Said building is situated as shown on the Condominium Map filed in the Davis County Recorder's Office simultaneously with the Declaration. The building has one story and contains 7 units. It is constructed principally of reinforced concrete, steel and glass.

3. Name. The Commercial Condominium Project shall be known as Van Dyke and Willey Condominiums.

38.00

*David Willey*  
*Ms. 515*  
*Unit C 171*  
*6/11/79*

4. Condominium Units. Each unit contains 2279.86 square feet and is allocated an equal undivided interest in the common areas and facilities and one vote in the management of the Condominium Project. Unit A is on the West end of the building and Units B, C, D, E, F, and G run consecutively East with unit G on the East end of the building. Units A, B, C, D, E, and F consist of warehouse and office space. Unit G contains warehouse space only. There is no partitioning wall between Unit F and G. Ownership of Unit G shall include fee title ownership of the parking area immediately east of Unit G consisting of approximately 4300 square feet, bordered on the west by the east wall of the building, bordered on the north and east by the property line of the condominium project and bordered on the south by an imaginary line running along the exterior south wall of the building and extending east to the east property line of the project, all as indicated on the Record of Survey Map labeled "G Parking". Said "G Parking" area is not conveyable in whole or in part separately from conveyance of Unit G.

5. Dimensions of Condominium Units. Each unit consists of that part of the building containing the unit which lies within the boundaries of the unit, exclusive of interior load-bearing walls and pillars, and any pipes, wires, conduits, ducts, vents and other service and utility lines which are utilized for or serve more than one condominium unit. The vertical boundaries of each unit shall be the boundaries as shown on said condominium map. Where the unit is bounded by a wall, the wall shall be considered to include any door, window or other closure therein in the closed position, and the boundary shall be the unfinished surface of such wall on the unit side, to the effect that the unit shall include the paint, wallpaper, enamel, stain or other furnishings on such surface. Where the unit consists in whole or in part of unenclosed space, the boundary defining such space is the boundary as shown on said condominium map. The horizontal boundaries of each unit shall be the unfinished surface of the top of the concrete floor and the unfinished surface of the bottom of the ceiling.

6. Use of Units. The buildings and each of the units are intended and restricted as to use, and shall be used only for purposes which are consistent with and appropriate to the design of the buildings and for which adequate ventilation, plumbing and similar facilities exist. In addition to and without limitation of the foregoing:

(a) Units are to be used for light manufacturing, commercial warehousing and shop facilities in accordance with such reasonable regulations as shall be established by the Board of Directors from time to time.

(b) No unit shall be used for the purpose of operating therein a public restaurant, bar or cabaret, or otherwise for the sale to the public for consumption on the premises of food or drink, except as the Board of Directors shall approve.

(c) No owner of a unit shall do, or suffer or permit to be done, anything in any unit which would impair the soundness or safety of the Property, or which would increase the rate or result in the cancellation of insurance applicable to the Property, or which would be noxious or offensive or an interference with the peaceful possession and proper use of other units, or which would require any alteration of or addition to any of the common elements to be in compliance with any applicable law or regulation, or which would otherwise be in violation of law.

(d) No owner of a unit shall, without the written approval and consent of the Board of Directors, place or suffer to be placed or maintained (i) on any exterior door, wall or window of the unit, or upon any door, wall or window of the common elements, any sign, awning or canopy, or advertising matter or other thing of any kind, or (ii) any decoration, lettering or advertising matter on the glass of any window or door of the unit or (iii) any advertising matter within the unit which shall be visible from the exterior thereof; provided, that the Board of Directors shall establish reasonable and uniform regulations permitting the placement and maintenance by each owner of identifying signs and insignia of such sizes and materials and in such locations as shall be architecturally suitable and appropriate to the design and function of the Property.

(e) The parking area east of Unit G to be conveyed with Unit G shall be used exclusively for parking and storing vehicles and equipment in an orderly and neat manner unless written approval for a varying use is obtained from the Board of Directors. It may not be used to store vehicles and equipment in a state of abandonment or continuous disuse. No structure may be constructed in this area without the written consent of the Board of Directors and in compliance with local building and zoning regulations.

7. Common Elements. The common elements consist of all parts of the Property other than the units, and parking area conveyed with Unit G, including, without limitation, the limited common elements and the following:

- (a) Said land in fee simple;
- (b) The foundations, columns, girders, beams, supports, main walls, interior loadbearing walls, pillars, roofs, flat roofs, and entrances and exits of the building;
- (c) Central and appurtenant installations for power, light, and ventilation, and all pipes, wires, conduits, ducts, vents, and other service and utility lines which are utilized for or serve more than one condominium unit;
- (d) The tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;
- (e) The sidewalk areas surrounding the building;
- (f) Parking areas other than the parking area to be conveyed with Unit G as indicated on the Condominium Map;
- (g) All other spaces and facilities shown as common elements on said condominium map; and
- (h) All other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use, except to the extent specifically included in the units;
- (i) All Common Areas and Facilities as defined in the Condominium Ownership Act, whether or not expressly listed herein.

Each owner of a unit may use the common elements in accordance with the purposes for which they were intended without hindering or encroaching upon the lawful rights of the other unit owners, subject always to the exclusive use of the limited common elements as provided in this Declaration.

8. Limited Common Elements. Restrooms, air-conditioning equipment, and hot and cold water systems shall be limited common elements reserved for the use of the units respectively served thereby. Unit A has its own restroom facility. Units B and C share a double restroom. Units D and E share a double restroom. Units F and G share a double

restroom. The costs of operation of the limited common elements shall be charged to the owners of the units served thereby as condominium unit expenses in the manner provided by the Bylaws.

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

10. No Partition. The common Areas shall be owned in common by all the Owners of Units, and no Unit Owner may bring action for partition thereof.

11. Use of Common Areas and Limited Common Areas. Subject to the limitations contained in the Declaration, any Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas and shall have the exclusive right or joint exclusive right to use and enjoy the Limited Common Areas designated herein (and on the Map) for exclusive or joint use by Unit Owners.

12. Unit Maintenance. Each Unit Owner shall at his own cost and expense maintain, repair, paint, re-paint, or otherwise refinish the interior surfaces of the walls, ceilings, floors, windows and doors forming the boundaries of his Unit and all walls, ceilings, floors, windows and doors within such boundaries. In addition, he shall be responsible for the maintenance repair and replacement of any fixtures that may be in, or connected with his unit.

13. Maintenance of Limited Common Areas. Each Owner shall at his own cost keep the Limited Common Areas designed for use in connection with his Unit in a clean, sanitary and attractive condition at all times.

14. Insurance. The board of Directors on behalf of the owners at their common expense shall at all times keep project improvements insured against loss or damage by fire with extended coverage in an insurance company authorized



to do business in Utah in an amount as near as practicable to the full replacement cost thereof without deduction for depreciation, in the name of the Board as trustee for all unit owners according to the loss or damage to their respective units and appurtenant common interests and easements and payable in case of loss to such bank or trust company authorized to do business in Utah as the Board shall designate for the custody and disposition as herein provided of all proceeds of insurance, and from time to time upon receipt thereof cause to be deposited promptly with the fee owner true copies of such insurance policies or current certificates thereof, without prejudice to the right of each unit owner to insure his unit for his own benefit. In every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Board, on behalf of the unit owners for rebuilding, repairing, or otherwise reinstating the buildings in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved as herein provided, and the unit owners at their common expense shall make up any deficiency in such insurance proceeds.

The Board on behalf of the unit owners at their common expense shall also procure and maintain at all times comprehensive general liability insurance, covering all unit owners and the Board of Directors, officers, and employees with respect to the project and naming the fee owner as an additional assured without any cost to the fee owner, in an insurance company authorized to do business in Utah with minimum limits of not less than \$500,000 for injury to one person and \$1 million for injury to more than one person in any one accident or occurrence and \$500,000 for property damage, or a single limit policy of not less than \$1 million and from time to time upon receipt thereof deposit promptly with the fee owner current certificates of such insurance, without prejudice to the right of any apartment owner to maintain additional liability insurance for his unit.

15. Parking. Each unit owner shall be assigned the parking areas immediately south of their units but shall not make any alterations to the lot or set up any barriers or place any markings on this designated common area, except as the Board of Directors shall approve. The assigned parking area of Unit G shall include the common parking area immediately south of Unit G Parking Area owned in common with Unit G.

16. Encroachments. If any portion of the common elements now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common elements, as a result of the construction of the buildings, or if any such encroachment shall occur hereafter as a result of the construction of the buildings, or if any such encroachment shall occur hereafter as a result of settling or shifting of any building, a valid easement shall exist for the encroachment and for the maintenance of the same so long as the building stands in which the unit is situated. In the event such building, the unit, any adjoining unit, or any adjoining common element shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the common elements upon any unit, or of any unit upon any other unit or upon any portion of the common elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such buildings shall stand.

17. Access for Repair of Common Areas. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable right, to be exercised by the Board of Directors, as its agent, to have access to each Unit and to all Common Areas from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units. The Board of Directors shall also have such rights independent of the agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the instance of the Board of Directors or of the Unit Owners; provided, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Board of Directors by assessment.

18. Right of Ingress, Egress, Lateral Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and to the Limited Common Areas designated for use

in connection with his Unit, and each Owner shall have the right to the horizontal and lateral support of a Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

19. Easement to Board of Directors. The Board of Directors shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

20. Easement for Utility Services. There is hereby created a blanket easement upon, across, over and under the above described land for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephones, electricity, and other utility services. The Board of Directors shall be authorized to give, convey, transfer, cancel, relocate, and otherwise deal with utility and other easements located on or affecting the Property.

21. Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines and Other Common Elements Located Inside of Units. Each unit owner shall have an easement in common with the owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines, and other common elements located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common elements serving such other units and located in such unit. The Board of Directors shall have a right to access to each unit to inspect the same, to remove violations therefrom and to maintain, repair, or replace the common elements contained therein or elsewhere in any of the buildings.

22. Legal Description of a Unit. Every conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the letter shown on the Map with the appropriate reference to the Map and to this Declaration, as each shall appear on the records of the County Recorder of Davis County, Utah, and in substantially the following form:

Unit \_\_\_\_\_ as shown in the Record of Survey Map for Van Dyke & Willey Condominium appearing in the Records of the County Recorder of Davis County, Utah, in Book \_\_\_\_\_ Page \_\_\_\_\_ of Plats,

as defined and described in that Declaration of Commercial Condominium of Van Dyke & Willey appearing in such records in Book \_\_\_\_\_, Page \_\_\_\_\_ of Records.

This conveyance is subject to the provisions of the aforesaid Declaration of Commercial Condominium of Van Dyke & Willey.

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

23. Persons to Receive Service. David P. Willey, whose business address is 600 North 500 West, Bountiful, Utah, 84010 is hereby designated to receive notice of process in the cases provided in the Condominium Ownership Act, Utah Code Annotated, Section 57-8 (1953) as amended.

24. Units Subject to Declaration and Bylaws. All present and future owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and the Bylaws as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into a lease or occupancy of any unit shall constitute an agreement that the provisions of this Declaration and the Bylaws as they may be amended from time to time are accepted and ratified by such owner, tenant, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit, as though such provision were recited and stipulated at length in each and every deed or conveyance or lease thereof.

25. Alteration of Common Elements. Subject to such reasonable regulations as shall be established by the Board of Directors, the owner of any two units which shall be separated only by a common element which is a wall may alter or remove all or portions of the intervening wall, if the structural integrity of the building is not thereby affected and if the finish of the common element then remaining is restored to a condition substantially comparable to that of the common element prior to such alteration. Upon termination of the common ownership of such adjacent units, if the intervening wall shall have been altered or removed pursuant to the foregoing provisions, each of the owners of such units shall be obligated to

restore such intervening wall or floor to substantially the condition in which the same existed prior to such alteration or removal.

26. Amendment of Declaration. This Declaration may be amended by an instrument recorded in the Davis County Recorder's Office, and executed by not less than seventy (70%) percent of the owners of units: provided, that the common interest appurtenant to each unit as expressed in this Declaration shall have a permanent character and shall not be altered without the consent of all of the unit owners affected, expressed in an amended Declaration duly recorded, and provided further that until 5 of the 7 units have been sold or until the lapse of 3 years from the date of Declaration, Declarants shall have and are hereby vested with the right to amend this Declaration or the Record of Survey Map. Such right shall obtain without regard to the subject matter of amendment, so long as the amendment involved is consistent with law.

27. Damage or Destruction. If the common elements shall suffer substantial damage or destruction and not less than seventy-five (75%) percent of the owners of units shall determine, by a vote at a meeting of the unit owners or by execution of an instrument expressing such determination, that such damage or destruction shall not be rebuilt, repaired, or restored, such action shall be determinative of whether to rebuild, repair, or restore the Property and the Property shall be subject to an action for partition as provided by law.

28. Determination of Percentage of Owners. Any percentage specified herein of the owners of units means the owners of units and undivided interests in units, or either or both thereof, to which units and undivided interests in units there are appurtenant percentages of the common interests aggregating such specified percentage. There shall be deemed to be appurtenant to each undivided interest, expressed as a fraction, in a condominium unit the same fraction of the common interest appurtenant to such unit.

29. Consent Equivalent to Vote. In those cases in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for the authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the necessary percentage of undivided ownership interests.

30. Bylaws. The Bylaws of the Association of Owners of the Van Dyke & Willey Condominiums, a true copy of which is annexed hereto as Exhibit A, is made a part of this Declaration.

31. Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included herein.

32. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

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

IN WITNESS WHEREOF, this Declaration has been executed this 7<sup>th</sup> day of August, 1979.

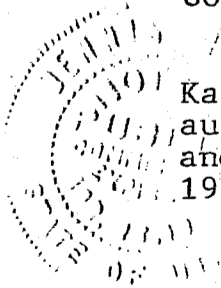
Milton W. Van Dyke  
Milton W. Van Dyke

Kathryn W. Van Dyke  
Kathryn W. Van Dyke

David P. Willey  
David P. Willey Company  
By David P. Willey

David P. Willey

STATE OF UTAH :  
COUNTY OF SALT LAKE :



Personally appeared before me Milton W. Van Dyke, Kathryn W. Van Dyke, and David P. Willey (being the person authorized to sign on behalf of David P. Willey Company), and executed the foregoing this 7<sup>th</sup> day of August, 1979.

Dennis R. James  
Notary Public  
Residing at: SLC, UT

My commission expires:  
Apr 16, 1983

BYLAWS OF ASSOCIATION OF OWNERS  
OF THE VAN DYKE AND WILLEY CONDOMINIUMS

## ARTICLE I

Introductory Provisions

Section 1. Definitions. Unless clearly repugnant to the context, the following terms, whenever used in these Bylaws, shall be given the following meanings:

- (a) "Declaration" shall mean and refer to the instrument entitled "Declaration of Commercial Condominium of Van Dyke & Willey" executed and acknowledged by Declarants on the \_\_\_\_\_ day of \_\_\_\_\_, 1979, recorded in the office of the Davis County Recorder, as amended from time to time.
- (b) "Condominium project" or "project" means all of the land, buildings, and other property with respect to which a commercial condominium project shall exist from time to time pursuant to the Declaration.
- (c) "Common elements" means and includes the parts of the project designated in the Declaration as common elements.
- (d) "Limited common elements" means and includes the parts of the project designated in the Declaration as limited common elements.
- (e) "Condominium unit" means a unit in the condominium project, within the meaning of the Condominium Ownership Act, as designated and described in the Declaration.
- (f) "Common interest" means the percentage of undivided interest in the common elements appertaining to each condominium unit, as expressed in the Declaration.
- (g) "Common expenses" means and includes the expenses defined in Section 1 of Article VI.
- (h) "Condominium unit expenses" means and includes the expenses defined in Section 2 of Article VI.
- (i) "Association" or "Association of Owners" means all owners of the condominium units acting as a group in accordance with these Bylaws and the Declaration.

(j) "Owner" means a person owning all or any interest in a condominium unit and the common interest appertaining thereto, to the extent of such interest so owned; provided that to such intent and for such purposes, including the exercise of voting rights, as shall be provided by lease filed with the Board of Directors, a lessee of a condominium unit or interest therein shall be deemed to be the owner of such condominium unit or interest therein.

(k) "Operation of the condominium project" means and includes the administration, management, and operation of the condominium project and the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements.

(l) All pronouns used herein shall include the male, female, and neuter genders and shall include the singular or plural numbers, as the case may be.

## ARTICLE II

### Association of Owners

Section 1. Composition and Powers. The Association shall be composed of all of the Owners. The Association shall have all of the powers with respect to the operation and regulation of the condominium project conferred upon the Association by, or which may be conferred upon the Association of unit Owners of a condominium project pursuant to the provisions of, the Condominium Ownership Act. Except as otherwise provided herein or in the Declaration or the Condominium Ownership Act, the acts, decisions, and resolutions of the Association shall be effective upon adoption by vote of a majority of the Owners.

Section 2. Meetings. All meetings of the Association shall be held at Van Dyke & Willey Condominiums Unit D or such other place as shall be stated in the notice of meeting. The first annual meeting of the Association shall be held at 10:00 a.m. on the first Tuesday after the date of the Declaration, without further notice. Thereafter, the annual meeting of the Association shall be held in the month of March on such date as the President may designate, or if the President shall fail to designate such date by the 1st day of February, then on the third Tuesday in March. Special meetings of the Association may be called at any time by the President or any two directors and shall be called upon the request of 40 percent of the Owners. At any special meeting only such business shall be transacted as shall have been indicated by a specific or general description in the notice of such meeting.



Section 3. Notice of Meetings. The Secretary shall, at least five (5) days before the date set for each annual and special meeting, give written or printed notice thereof to every Owner according to the Association's record of ownership, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting and the purpose thereof. The Secretary shall give a like notice to each holder of a duly recorded mortgage affecting any condominium unit whose name and address shall have been furnished to the Board in a written request to the Board for such notices. Any such notice may be given in any of the following ways:

(a) By leaving the same with the Owner or mortgagee personally, or if the Owner or mortgagee shall be a corporation with any officer thereof; or

(b) By leaving the same at the residence or usual place of business of the Owner or mortgagee; or

(c) By mailing the same, postage prepaid, addressed to the Owner at the address of such Owner as it appears on the record of ownership of the Association, or, in the case of a mortgagee, at the address of such mortgagee as stated in the request of such mortgagee for such notices.

If notice is given pursuant to the provisions of this section, the failure of any Owner or mortgagee to receive actual notice of such meeting shall in no way invalidate the meeting or any proceedings thereat. The presence of all Owners and mortgagees entitled to notice in person or by proxy at any meeting shall render it a valid meeting, notwithstanding that notice thereof was not given or was improper, unless an Owner or mortgagee shall at the opening thereof object to the holding of such meeting for noncompliance with the provisions of this section.

Section 4. Quorum and Adjournment. The presence at any meeting, in person or by proxy, of a majority of the Owners shall constitute a quorum. Any meeting of the Association, whether annual or special, may be adjourned from time to time, whether a quorum be present or not, without notice other than the announcement at the meeting, and such adjournment may be to such time and to such place as may be determined by a majority of the votes cast at such meeting. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the original meeting called and notified.

Section 5. Voting. (a) The percentage of undivided interests in the common elements appertaining to each condominium unit and its Owners for all purposes, including voting shall be the percentage specified in the Declaration. The total number of votes of all Owners shall be 7. The Owner of a condominium unit shall have one vote. Except as otherwise expressly provided herein or by law, the vote at any meeting of a majority of the Owners shall be necessary, and shall be sufficient, to adopt decisions and take action binding upon all of the Owners. As used in these Bylaws, "majority of the Owners" means Owners having a majority of the total number of votes, and any specified percentage of the Owners means Owners having the specified percentage of the total number of votes.

(b) Any Owner may empower any person to vote as the proxy of such Owner at any meeting of the Association by written proxy or authorization filed with the Secretary. Such written proxy or authorization, unless specifically limited by its terms, shall remain effective until there shall be filed with the Secretary a written revocation of the same or a written proxy or authorization of later date.

### ARTICLE III

#### Board of Directors

Section 1. Membership. There shall be a Board of Directors of the Association consisting of three directors who shall be elected at the annual meeting of the Association, or, in case of failure to act at said meeting, at a special meeting called for such purpose. Subject to the provisions of these Bylaws, directors shall hold office until the next annual meeting and thereafter until their successors are duly elected. Only unit owners and officers, directors, agents and employees of Owners shall be eligible for Board membership. At the annual meeting of the Association each Unit owner shall have one vote for each seat on the Board to be filled; provided, however, that until 5 of the 7 units have been sold or until the lapse of three years from the date of the Declaration, whichever occurs first, Declarants alone, at their option, shall select the Board of Directors or act as the Board of Directors. If Declarants elect to waive such option at any time prior to the sale of 5 of the 7 units or prior to the lapse of 3 years the Declarants may waive such option by recording a written notice of such waiver whereupon the control of the Unit Owners in the Board of Directors shall have become automatically vested thirty days thereafter. In the event a Board seat which was filled by Declarants becomes vacant, Declarants shall have the right to select a replacement mem-

ber to sit on the Board for the balance of the term associated with the vacated seat. In all other cases of vacancy the remaining Board members shall elect a replacement to sit on the Board until the expiration of the term for which the member being replaced was elected. Board members shall be reimbursed for all expenses reasonably incurred in connection with Board business.

Section 2. Removal. The entire Board of Directors, or any individual director or alternate director, may be removed from office by a vote of a majority of the Owners at any meeting called for such purpose. If any or all directors shall be so removed, new directors may be elected at the same meeting.

Section 3. Meetings. The Board of Directors shall hold a meeting at the place of the annual meeting of the Association and as soon as practicable thereafter, and no notice thereof shall be necessary. Other meetings may be held at such times and at such places as the business of the Association shall require according to resolution of the Board of Directors or upon call of the President or any two directors. The Board of Directors may establish regular meetings which may be held at such places and at such times as they may from time to time by vote determine, and when any such meeting or meetings shall be so determined no further notice shall be required. Notice of all meetings and other notices to the directors shall be given to each director by the Secretary or by the person or persons calling the meeting by advising him by telephone, by word of mouth, or by delivering written notice of such meeting to him not less than one day prior to the meeting or by leaving written notice of such meeting at his residence or usual place of business not later than five days before the meeting. Any director may waive notice of any meeting of directors in writing signed by himself or his duly authorized attorney-in-fact either before or at or after the meeting. The presence of any director or the alternate of such director at any meeting shall be the equivalent of a waiver of the requirement of the giving of notice of said meeting to such director.

Section 4. Quorum. A majority of the members of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of such Board, but no vote of the directors shall be valid unless concurred on by a majority of the entire number.

Section 5. Powers. The Board of Directors, for the benefit of the Owners, shall have the following powers and duties:

(a) To exercise all of the powers of the Association with respect to the operation and regulation of the condominium project which are conferred upon the Board by the Condominium Ownership Act or which may be conferred upon the Board by these Bylaws pursuant to the Condominium Ownership Act; provided, that no addition to or alteration of the common elements shall be made which is not consistent with the description thereof contained in the Declaration.

(b) To make contracts and incur liabilities in connection with the exercise of any of the powers and duties of the Board.

(c) To provide or cause to be provided all goods and services required by the Bylaws or by law, or which the Board, in its discretion, deems necessary for the proper operation of the condominium project, or which are used in common or jointly by the common elements and condominium units, in each case to the extent such goods and services shall not be otherwise provided.

(d) To render or cause to be rendered statements, when required by law, of any assessments which remain unpaid by any Owner.

(e) To bring action on behalf of two or more of the Owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one condominium unit, as the Board deems advisable.

(f) To elect the officers of the Association and otherwise exercise the powers regarding officers of the Association as set forth in these Bylaws.

(g) To determine who shall be authorized to make and sign all instruments on behalf of the Association and the Board.

(h) To engage in the services of managing agent to perform such duties and services as it shall authorize, to fix the compensation of such managing agent, and to delegate to such managing agent any or all of its powers and duties, as the Board deems advisable.

(i) To designate and remove personnel necessary for the maintenance, repair, and replacement of the common elements.

(j) To procure such fidelity bonds as the Board deems advisable covering officers and employees of the Association handling and responsible for the Association's funds and personal property, and to procure directors' and officers' liability insurance if the Board deems it advisable. The premiums of such bonds and insurance shall be paid by the Association as common expenses.

(k) To determine policies and to adopt administrative rules and regulations governing the details of the operation and use of the condominium project, including the common elements, and to amend such administrative rules and regulations from time to time as the Board deems advisable.

(l) To perform any and all duties imposed on the Board by applicable law.

Section 6. Compensation. There shall be no compensation paid to members of the Board for acting as such, except for a reasonable director's fee for attendance at the meetings of the Board, as established by the Association of Owners.

Section 7. Indemnity. The Association of Owners shall indemnify each present and future officer or director of the Association against all costs, expenses, and liabilities, including the amounts of judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses, which may be incurred by or imposed on him in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted or threatened in which he may be involved as a party or otherwise by reason of his being or having been such officer or director, or by reason of any past or future action taken or authorized or approved by him or any omission to act as such officer or director, whether or not he continues to be such officer or director at the time of the incurring or imposition of such costs, expenses, or liabilities, except such costs, expenses, or liabilities as shall relate to matters as to which he shall in such action, suit, or proceeding be finally adjudged to be, or shall be liable by reason of his negligence or willful misconduct toward the Association in the performance of his duties as such officer or director. As to whether or not an officer or director was liable by reason of negligence or willful misconduct toward the Association in the performance of his duties as such officer or director, in the absence of such final adjudication of the existence of such liability, the Board of Directors and each officer and director may conclusively rely upon an opinion of legal

counsel selected by or in the manner designated by the Board of Directors. The foregoing right of indemnification shall not be exclusive of other rights to which any such officer or director may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators, and assigns of each such officer or director.

#### ARTICLE IV

##### Officers

Section 1. Election of Officers. The officers of the Association shall be the President, Vice-President and Secretary and Treasurer and in addition thereto, in the discretion of the Board, such other officers with such duties as the Board shall from time to time determine. The President and Vice-President shall be elected annually by the Board from among the members of the Board, and all other officers shall be elected by the Board from among or outside the membership of the Board as the Board may determine, and all officers shall serve until their successors shall have been elected. All officers shall be subject to removal at any time by the affirmative vote of the majority of the Board. The Board may, in its discretion, elect acting or temporary officers and elect officers to fill vacancies occurring for any reason whatsoever, and may in its discretion, limit or enlarge the duties and powers of any officer elected by it.

Section 2. The President. The President shall preside at all meetings of the Association and of the Board and shall perform all other duties assigned by the Board.

Section 3. The Vice-President. The Vice-President shall perform all of the duties and exercise all of the powers and rights of the President provided by these Bylaws or otherwise during the absence or disability of the President, or whenever the office is vacant, and shall perform all other duties assigned by the Board.

Section 4. The Secretary. The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association in a minute book wherein all resolutions shall be recorded. the Secretary shall give notice, in conformity with these Bylaws, of any and all meetings and shall also perform all other duties assigned him by the Board.

Section 5. The Treasurer. the Treasurer shall keep the financial records and books of account of the Association; keep thorough and proper accounts of the financial transactions of the Association and render statements of the same in such form and at such times as the Board shall require; maintain a system of budgeting control; prepare and render, to such governmental officials as shall have the right to so require, tax returns and all exhibits, reports and other instruments required by law; have custody of all monies of the Association or in its charge or that of the Board and properly care for and distribute the same under the direction of the Board; except as some other officer or employee shall from time to time be expressly authorized so to do, receive and receipt for, either personally or by an employee authorized by him, all monies payable to the Association or the Board; and perform all other duties assigned to him by the Board.

Section 6. Any two or more offices may be held by the same person, except the offices of president and secretary shall not be held by the same person.

## ARTICLE V

### Use and Maintenance of Premises

Section 1. Use of Premises. The buildings and each of the units are intended and restricted as to use, and shall be used only, for purposes which are consistent with and appropriate to the design of the buildings and for which adequate ventilation, plumbing, and similar facilities exist. In addition to and without limitation of the foregoing:

(a) Units are to be used for light manufacturing commercial warehousing and shop facilities in accordance with such reasonable regulation as shall be established by the Board of Directors from time to time.

(b) No unit shall be used for the purpose of operating therein a public restaurant, bar or cabaret, or otherwise for the sale to the public for consumption on the premises of food or drink, except as the Board of Directors shall approve.

(c) No owner of a unit shall do, or suffer or permit to be done, anything in any unit which would impair the soundness or safety of the property, or which would increase the rate or result in the cancellation of insurance applicable to the property, or which would be noxious or offensive or an interference with the peaceful posses-

sion and proper use of other units, or which would require any alteration of or addition to any of the common elements to be in compliance with any applicable law or regulation, or which would otherwise be in violation of law.

(d) No owner of a unit shall, without the written approval and consent of the Board of Directors, place or suffer to be placed or maintained (i) on any exterior door, wall or window of the unit, or upon any door, wall or window of the common elements, any sign, awning or canopy, or advertising matter or other thing of any kind, or (ii) any decoration, lettering or advertising matter on the glass of any window or door of the unit or (iii) any advertising matter within the unit which shall be visible from the exterior thereof; provided, that the Board of Directors shall establish reasonable and uniform regulations permitting the placement and maintenance by each Owner of identifying signs and insignia of such sizes and materials and in such locations as shall be architecturally suitable and appropriate to the design and function of the property.

Section 2. Work and Maintenance by Owners. The Owner of a condominium unit shall keep the interior of such condominium unit from the boundary line thereof, and all plumbing, electrical, and other such fixtures and other appurtenances in the same in good order and repair and shall be responsible for any damage or loss caused by failure to do so. The Owner shall also be responsible for any damage caused to the common elements by the negligent use thereof. Each Owner shall have the right, at the sole cost and expense of such Owner, to install and remove partitions, to paint, paper, panel, plaster, tile, finish, and do other such work on the interior surfaces of the ceilings, floors, and walls of the condominium unit, to substitute new finished surfaces for the finished surfaces then existing on said ceilings, floors and walls, and to finish, alter, or substitute any plumbing, electrical or other such fixtures attached to said ceilings, floors, or walls; provided, however, that this section shall not be construed as permitting interference with or damage to the structural integrity of the building or interference with the use and enjoyment of the common elements by other Owners, nor shall it be construed to limit the intent expressed in Section 1 of this Article V.

Section 3. Entry for Repairs. The Board shall have the irrevocable right, on behalf of all Owners, to have access from time to time during reasonable hours to any condominium unit as may be necessary for the operation of the



condominium project or for making emergency repairs in such condominium unit necessary to prevent damage to the common elements or to another condominium unit or units. Such entry shall be made with as little inconvenience to the Owner of the condominium unit as is practicable.

## ARTICLE VI

### Common Expenses and Condominium Unit Expenses

Section 1. Common Expenses. Each Owner of a condominium unit or of an undivided interest in a condominium unit shall be liable for and pay a share, on the basis of the allocation made as provided in Section 3(b) of this Article VI, of the common expenses. Common expenses shall include all charges for taxes (except real property taxes and other such taxes assessed separately on each condominium unit and the common interest in the common elements appertaining thereto or on the personal property or any other interest of the Owner), assessments, insurance, including fire and other casualty and liability insurance, yard, janitorial and other similar services, wages, accounting and legal fees, management fees, and other expenses of upkeep, maintenance, and management actually incurred by the Board on or for the common elements (including limited common elements), the costs of operation of the common elements other than limited common elements, and the costs of and a reserve for maintenance and repair, reinstatement, rebuilding, and replacement of the common elements (including limited common elements). Without limitation of the generality of the foregoing, common expenses shall include all expenses of alterations in or additions to the common elements (including limited common elements) which may be required, from time to time, to cause such common elements as built and existing to be in conformity with the description of the common elements contained in the Declaration, as amended from time to time. Payments of common expenses shall be made to the Board, as agent of the Owners, and the Board shall transmit said payments on behalf of each Owner to the third person entitled to said payments from such Owner.

Section 2. Condominium Unit Expenses. Each Owner of a condominium unit or of an undivided interest in a condominium unit shall be liable for and pay a share, on the basis of the allocation made as provided in Section 3(c) of this Article VI, of the condominium unit expenses. "Condominium unit expenses" means and includes the expenses (other than common expenses) incurred by the Board in providing utility and other services to the condominium units,

and shall also include the costs of operation of the limited common elements, and all wages, accounting and legal fees, management fees, administrative expense, and other costs incidental thereto. Payment of condominium unit expenses shall be made to the Board, as agent of the Owners, and the Board shall transmit said payments on behalf of each Owner to the third person entitled to said payments from such Owner.

Section 3. Allocation of Common Expenses and Condominium Unit Expenses. For the purpose of fixing and determining the payments to be made as hereinabove provided in Sections 1 and 2 of this Article VI, the Board shall, on behalf of all Owners and as soon as practicable, determine for each year the estimated aggregate amount of the common expenses and condominium unit expenses for such year. For the purpose of such determinations, each year shall be the calendar year, except that the first year shall begin on the date upon which the condominium project was constituted a commercial condominium project and end on the 31st day of December of said year. The Board, on behalf of the Owners, may from time to time during each year make reasonable adjustments in said estimated aggregate amount of common expenses and condominium unit expenses on the basis of actual costs incurred. As soon as practicable after the end of each year, the actual aggregate amount of common expenses and condominium unit expenses for said year shall be determined by the Board. Said estimated and actual aggregate amounts of common expenses and condominium unit expenses for each year, as determined by the Board, shall be allocated as follows:

(a) The aggregate amount so estimated by the Board, and the actual aggregate amount so determined by the Board, shall be allocated from time to time to the common expenses and the condominium unit expenses, in accordance with the definitions set forth in Sections 1 and 2 of this Article VI.

(b) The amounts so allocated to the common expenses shall then be allocated by the Board among the Owners in the proportions among them of the common interests appurtenant to their condominium units and undivided interests in condominium units.

(c) The amounts so allocated to the condominium unit expenses shall be allocated by the Board among the Owners of condominium units in the proportions among them of the benefits of the related services provided to their

respective condominium units and undivided interests in condominium units, as determined in accordance with the definition set forth in Section 2 of this Article VI.

(d) The amounts of the estimated common expenses and condominium unit expenses for each year, so determined and allocated to each Owner from time to time, shall be payable by the Owner in monthly installments in advance on or before the 10th day of each month, each monthly installment to be the product of the division of the aggregate of said amounts then unpaid, divided by the number of months, including the then current month, remaining in such year. Each Owner shall pay any unpaid balance of the actual amount of said expenses as so determined and allocated by the Board, and any overpayment shall be refunded to the Owner, within 15 days after notice of such determination and allocation. Any omission or delay in determining and allocating said expenses for any year shall not relieve the Owners therefrom. In such event, the Owners, pending the determination and allocation thereof, shall pay monthly installments of common expenses and condominium unit expenses in accordance with the last determination and allocation of such expenses for the preceding year, and shall pay the deficiency, if any, upon the proper determination and allocation of the estimated common expenses and condominium unit expenses within 10 days after notice thereof. Each such payment transmitted to the Board, as agent of all Owners to the third person entitled to payment of same from each Owner.

(e) At all times, the most recent determination in relation to the allocation of said expenses, shall be effective and shall govern all allocations of said expenses until another such determination shall be made. Amounts allocated to any Owner of estimated or actual expenses of which payment shall have become due, shall not be subject to reallocation. Amounts allocated to any Owner of estimated or actual expenses, of which payment shall not have become due, shall be subject to reallocation in accordance with a later such determination in relation to such allocation.

Section 4. Payment as Agent. The Board shall pay or cause to be paid, on behalf of the Owners, all common expenses and condominium unit expenses. The Board, on behalf of all Owners, shall maintain or cause to be maintained separate books of account of common expenses and condominium unit expenses in accordance with recognized accounting practices, and shall have such books of account available for inspection by each Owner or his authorized representative at reasonable business hours. The Board

shall annually render or cause to be rendered a statement to each Owner of all receipts and disbursements during the preceding year. Each Owner, as principal, shall be liable for and pay a share, determined as herein provided, of all common expenses and condominium unit expenses and the Board shall be responsible, as agent for such Owner, only to transmit the payments made by such Owner to third persons entitled thereto.

Section 5. Taxes and Assessments. The Owner of each condominium unit shall be obligated to cause the real property taxes of such condominium unit and the common interest appertaining thereto to be assessed separately by the proper governmental authority and to pay all such real property taxes so determined directly to the proper governmental authority. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each condominium unit and the common interest in the common elements appertaining thereto or the personal property or any other interest of the Owner. Each Owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes, other taxes and assessments. Each Owner shall be obligated to pay, as a common expense, a proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire condominium project or any part of the common elements as a whole and not separately, such payment to be made as directed by the Board. If in the opinion of the Board, any taxes or assessments may be a lien on the entire condominium project or any part of the common elements, the Board may pay such taxes or assessments and shall assess the same to the Owners in their proportionate share as determined by the Board. Such assessments by the Board shall be secured by the lien created by Section 6 of this Article VI.

Section 6. Liens. (a) All sums assessed by the Association of Owners but unpaid for the share of the common expenses and condominium unit expenses chargeable to the Owner of, or of an undivided interest in, any condominium unit shall constitute a lien, with power of sale, on such condominium unit prior to all other liens, except only (i) liens for taxes and assessments lawfully imposed by governmental authority against such condominium unit, and (ii) all sums unpaid on mortgages of record. Such lien may be foreclosed by suit or by proceeding under the power of sale by the Board, acting on behalf of the condominium unit Owners, in like manner as a mortgage of real property. No action shall be brought to foreclose such lien or to pro-

ceed under the power of sale unless 20 days' notice of claim of lien is mailed to the Owner of, or such Owner of an undivided interest in, the condominium unit and any mortgagee of record thereof. The Board, acting on behalf of the Owners, shall have power to bid in the condominium unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses or condominium unit expenses shall be maintainable without foreclosing or waiving the lien securing the same. Reasonable attorneys' fees and expenses in connection with collection of the debt secured by such lien or foreclosure thereof shall be paid by the Owner against whom such action is brought and secured by the lien.

(b) Where the mortgagee of a mortgage of record or other purchaser of a condominium unit obtains title to the condominium unit as a result of foreclosure of the mortgage, such acquirer of title, his successors, and assigns, shall not be liable for the share of the common expenses or condominium unit expenses or assessments by the Association of Owners chargeable to such condominium unit which became due prior to the acquisition of title to such condominium unit by such acquirer. Such unpaid share of common expenses or condominium unit expenses or assessments shall be deemed to be common expenses collectible from all of the condominium Owners, including such acquirer, his successors, and assigns.

Section 7. Liability of Grantor and Grantee for Unpaid Common Expenses and Condominium Unit Expenses. In a voluntary conveyance, the grantee of a condominium unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses and condominium unit expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantor or grantee shall be entitled to a statement from the Board setting forth the amount of the unpaid assessments against the grantor, and neither such grantor nor such grantee shall be liable for, nor shall the condominium unit conveyed be subject to a lien for, any unpaid assessments for common expenses and condominium unit expenses against the grantor in excess of the amount therein set forth.

Section 8. Exemption by Conveyance to Board of Directors. With the prior written consent of all other Owners, and not otherwise, the Owner or Owners of a condominium unit may, by conveying the condominium unit and the common

interest appurtenant thereto to the Board on behalf of all other Owners, exempt himself or themselves from common expenses and condominium unit expenses thereafter accruing.

## ARTICLE VII

### Other Provisions

Section 1. Insurance. (a) The Board shall procure and maintain from a company or companies qualified to do business in Utah a policy or policies (herein called "the Policy") of fire insurance, with extended coverage endorsement, and shall in time of war procure and maintain governmental insurance against war damage to the extent such governmental insurance is obtainable at reasonable cost, insuring the common elements (other than land) for as nearly as practicable to 100 percent of the insurable replacement cost value of the common elements without deductions for depreciation (such value to be determined annually by the Board and to exclude property of every kind and description while underground (meaning thereby, below the level of contiguous ground and covered by earth) except underground conduit or wiring therein when beneath the buildings and/or structures which are covered herein) in the name of the Board as insured as trustee for each of the Owners of, or of undivided interests in, the condominium units in proportion to their respective common interests. If possible, such policy:

(i) shall contain no provision limiting or prohibiting other insurance by the Owner of any unit, such right being provided by statute, but if obtainable, shall provide that the liability of the insurer shall not be affected by, nor shall the insurer claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of, any such other insurance;

(ii) shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the building, whether or not within the control or knowledge of the Board, or if obtainable, shall contain no provision relieving the insurer from liability by reason of any breach of warranty or condition caused by the Board or the Owner or tenant of any unit, or by reason of any act or neglect of the Board or the Owner or tenant of any condominium unit.

(iii) shall provide that the policy may not be cancelled (whether or not requested by the Board) except by giving to the Board and to the Owner of each condominium

ium unit who shall have requested such notice of the insurer in writing addressed to him at the premises, twenty (20) days' written notice of such cancellation;

(iv) shall contain a provision waiving any right of subrogation by the insurer to any right of the Board against the Owner or lessee of any condominium unit;

(v) shall contain a provision waiving any right of the insurer to repair, rebuild and replace, if a decision is made pursuant to Section 2(b) of this Article VII not to repair, reinstate, rebuild, or restore the damage or destruction;

(vi) shall contain a standard mortgagee clause which

(1) shall name the holder of any mortgage affecting any condominium unit whose name shall have been furnished to the Board;

(2) shall provide that the insurance as to the interest of the mortgagee shall not be invalidated by any act or neglect of the Board or the Owner or tenant of any condominium unit;

(3) Shall waive any requirement invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer or any hazardous use or vacancy, any requirement that the mortgagee pay any premium (provided, however, in case the Board shall fail to pay the premium due or to become due under the policy, the mortgagee may pay the same prior to the effective date of the termination of the policy), any contribution clause, and any right to be subrogated to the rights of any mortgagee against the Owner or lessee of any condominium unit or the Board or to require an assignment of any mortgage to the insurer, except that the insurer will have the right of subrogation to the extent of insurance proceeds received by and retained by the mortgagee if the insurer shall claim no liability as to the mortgagor or Owner, but without impairing mortgagee's right to sue;

(4) shall provide that without affecting the protection afforded to the mortgagee by such mortgage clause, any proceeds payable under such clause shall be payable to the Board; and

(5) shall provide that any reference to a mortgagee in the policy shall include all mortgagees on any unit, in order or preference.

(b) The Board shall procure and maintain from a company or companies qualified to do business in Utah a policy or policies (herein called the Policy) of Public Liability Insurance to insure the Board, each unit Owner

as the owner of the common interest, and the managing agent and other employees of the Association of Owners against claims for personal injury and property damage arising out of the existence of premises or operations or contractors of construction work under a Comprehensive General Liability form to include (1) coverage of Automobile Liability for owned-hired or nonowned automobiles, (2) Water Damage Legal Liability, and (3) Fire Damage Legal Liability. The insurance shall exclude coverage for the personal activities of Owners of the condominium units and employees as aforesaid, and for liability arising out of ownership of individual condominium units. Said insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried by properties of comparable character and usage in the City of Bountiful. If possible such policy:

(i) shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the building, whether or not within the control or knowledge of the Board, or by any breach of warranty or condition caused by the Owner of any condominium unit, or by any act or neglect of the Owner or tenant of any condominium unit.

(ii) shall provide that the policy may not be cancelled (whether or not requested by the Board) except by giving to the Board and to the Owner of each condominium unit who shall have requested such notice of the insurer in writing addressed to him at the premises, twenty (20) days' written notice of such cancellation.

(c) The Board may also procure insurance which shall insure the common elements against such additional risks as the Board may deem advisable for the protection of the condominium unit Owners of a character normally carried with respect to properties of comparable character and use in the City of Bountiful.

(d) The Board shall review not less frequently than annually, and whenever requested by 30 percent or more of the Owners, the adequacy of its insurance program and shall report in writing the Board's conclusions and action taken on such review to the Owner of each condominium unit, and to the holder of any mortgage on any condominium unit who shall have requested a copy of such report. At the request of any mortgagee of any condominium unit, the Board shall furnish to such mortgagee a copy of the Policy described in Subparagraph (a) of this Section 1 and of any policy to which a mortgagee endorsement shall have been attached.



Copies of every policy of insurance procured by the Board shall be available for inspection by any condominium unit Owner (or contract purchaser) at the office of the managing agent.

(e) Any such coverage procured by the Board shall be without prejudice to the right of the Owners of condominium units to insure such condominium units and the contents thereof for their own benefit at their own expense. The Board shall not be required or authorized to insure the property constituting the project except as provided by the Bylaws.

(f) Notwithstanding anything herein contained to the contrary, insurance coverages must be in such amounts and meet other requirements of the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation.

Section 2. Damage to Project. In the event of damage to or destruction of part or all of the improvements in the Project, the following procedures will apply:

(a) If proceeds of the insurance maintained by the Board of Directors are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

(b) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Board are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all the Unit Owners shall be assessed for any deficiency on the basis of their respective percentages of undivided interest in the Common Areas and Facilities.

(c) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Board of Directors are not alone sufficient to accomplish restoration, and if the Unit Owners within 100 days after the destruction or damage by a vote of at least 75% elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subparagraph (b) above. Upon the completion of the work and payment in full therefor, any proceeds of insurance then or thereafter in the hands of the Board shall be paid or credited to the Owners of the

condominium units (or to the holder of any mortgage on a unit if there be a mortgage) in proportion to their respective common interests.

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

Any reconstruction or repair which is required to be carried out by this Section 2 shall be accomplished at the instance and direction of the Board of Directors. Any determination which is required to be made by this Section 2 shall be accomplished at the instance and direction of the Board of Directors. Any determination which is required to be made by this Section 2 regarding the extent of damage to or destruction of Project Improvements shall be made by three MAI appraisers selected by the Board of Directors. The decision of any two such appraisers shall be conclusive.

(e) To the extent that any loss, damage, or destruction to the building or other property is covered by insurance procured by the Board, the Board shall have no claim or cause of action for such loss, damage, or destruction against any condominium unit Owner or lessee. To the extent that any loss, damage, or destruction to the property of any condominium unit Owner or lessee is covered by insurance procured by such Owner or lessee, such Owner or lessee shall have no claim or cause of action for such loss, damage, or destruction against the Board, the managing agent or the Association. All policies of insurance referred to in this Subparagraph (d) shall contain appropriate waivers of subrogation.

Section 3. Mortgagee Protection. Notwithstanding anything to the contrary contained in the Declaration or in the Bylaws:

(a) An adequate reserve fund for replacement of the Common Areas must be established and shall be funded by regular monthly payments rather than by special assessments.

(b) There shall be established a working capital fund for the initial months of operation of the Project

equal to a minimum amount of two months' estimated Common Area charge for each Unit.

(c) Any mortgage holder which comes into possession of the Unit pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage or deed (or assignment in lieu of foreclosure) shall be exempt from any "right of first refusal" or other provisions relating to sale or lease of the Units in the Project.

(d) Any management agreement for the Project shall be terminable by either party without cause or payment of termination fee upon ninety (90) days' written notice thereof and the term of any such agreement shall not exceed three years.

(e) In the event of substantial damage to or destruction of any Unit or any part of the Common Areas, the institutional holder of any first mortgage on a Unit shall be entitled to timely written notice to any such damage or destruction. No Unit Owner or other party shall be entitled to priority over such institutional holder with respect to the distribution to such Unit of any insurance proceeds.

(f) If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the institutional holder of any first mortgage of a Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition and not Unit Owner or other party shall have priority over such institutional holder with respect to the distribution to such Unit of the proceeds of any award or settlement.

(g) With the exception of a lender in possession of a Unit following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Unit Owner shall be permitted to lease his unit for transient or hotel purposes. No Unit Owner may lease less than the entire unit. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing.

(h) Each holder of a first mortgage lien on a unit who comes into possession of a Unit by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale,

shall take the Unit free of any unpaid claims or assessments and charges against the Unit which accrue prior to the time such holder comes into 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 in the Project, including the mortgaged Unit.)

(i) Any holder of the Mortgage is entitled to written notification from the Board of Directors 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.

(j) Any lien which the Board of Directors may have on any unit in the Project for the payment of Common Expense assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any first mortgage on the Unit recorded prior to the date of any such Common Expense assessments become due.

(k) Unless at least 75% of the first Mortgagees (based on one vote for each Mortgage owned) of Units have given their prior written approval neither the Board of Directors nor the Association of Unit Owners shall:

(1) By act or omission, seek to abandon or terminate the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

(2) Change the pro-rata interest or obligations of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro-rata share of ownership of each Unit in the appurtenant Common Areas.

(3) Partition or subdivide any Unit.

(4) Make any material amendment to the Declaration or to the Bylaws, including, but not limited to, any amendment which would change the percentage interests of the Unit Owners in the Common Areas except as provided in Section 5 of this Article.

(5) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer, the Common Areas. (The granting of easements for public utilities

or for other public purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this subparagraph.)

(6) Use hazard insurance proceeds for losses to any condominium property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or the Common Areas of the Project.

(7) Terminate professional management and assume self-management of the Project.

Section 4. Covenant to Obey Laws, etc. (a) Each Owner shall be subject to the Condominium Ownership Act and the Declaration and shall abide by the Bylaws and Rules and Regulations as the same are or may from time to time be established by the Board, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board of Directors or the President on behalf of the Unit Owners, or in a proper case by an aggrieved Unit Owner.

(b) Each Owner shall observe, comply with, and perform all rules, regulations, ordinances, and laws made by the Board of Health and any other governmental authority of the municipal, state and federal government applicable to the project.

Section 5. Amendment. These Bylaws may be modified or amended from time to time by a vote of not less than 70 percent of the Owners at any annual meeting or at any special meeting called for such purpose, provided that all particulars required by law to be set forth in the bylaws shall be embodied in these Bylaws and all modifications or amendments shall be set forth in an amendment to the Declaration and duly recorded as part of the Declaration.

Section 6. Consent Equivalent to Vote. In those cases in which the Act or these Bylaws require the vote of a stated percentage of the Project's undivided ownership interest for the authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the necessary percentage of undivided ownership interest.

Section 7. Severability. If any of the provisions of these Bylaws or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstance be

invalidated, such invalidity shall not affect the validity of the remainder of the Bylaws, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

Section 8. Topical Headings. The headings appearing at the beginning of the paragraphs of these Bylaws are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning or intent of these Bylaws or any paragraph or provision hereof.