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RUTH EAMES OLSEN  
WEBER COUNTY RECORDER

*Rene Laughlin*

DECLARATION OF CONDOMINIUM  
OF

THREE FOUNTAINS NORTH OGDEN, PHASE I

THIS DECLARATION OF CONDOMINIUM OF THREE FOUNTAINS NORTH OGDEN, PHASE I, hereinafter called the "Declaration", is made by WAYNE GARFF CONSTRUCTION, INC., a Utah corporation, hereinafter referred to as the "Declarant", pursuant to the provisions of the Utah Condominium Ownership Act.

RECITALS

WHEREAS, Declarant is the owner of all that certain real property subject to this Declaration located in Weber County, Utah, and more particularly described as follows:

A part of Lot 49, Plat "B" North Ogden Survey in the Northeast Quarter of Section 32, Township 7 North, Range 1 West, Salt Lake Base and Meridian, U. S. Survey: Beginning at a point on the West line of Washington Boulevard South 0° 15' West 207.20 feet from the Northeast corner of said Lot 49; running thence South 0° 15' West 201.58 feet along the West line of said Washington Boulevard, thence South 61° 45' West 169.38 feet; thence North 28° 15' West 95.00 feet; thence South 61° 45' West 55.00 feet; thence North 28° 15' West 20.00 feet; thence South 61° 45' West 190.00 feet; thence North 28° 15' West 130.00 feet; thence North 89° 50' West 178.94 feet; thence North 0° 15' East 392.11 feet to the South line of 2550 North Street; thence South 89° 41' 30" East 451.30 feet along the South line of said 2550 North Street; thence South 0° 15' West 42.90 feet; thence North 89° 41' 30" West 3.00 feet; thence South 0° 15' West 61.45 feet; thence South 89° 41' 30" East 3.00 feet; thence South 0° 15' West 102.85 feet; thence South 89° 41' 30" East 208.70 feet to the point of beginning containing 5.574 acres.

hereinafter referred to as the "Real Property," and

WHEREAS, the Real Property consists of the land above described, together with certain residential buildings and certain other improvements heretofore constructed or hereafter to be constructed upon said premises, and

WHEREAS, Declarant has constructed or will construct residential buildings and other improvements upon the Real Property in accordance with the plans and drawings set forth in the Record of Survey Map filed for record concurrently herewith, consisting of three (3) sheets, prepared and certified by Lloyd J. Neuffer, Utah Registered Land Surveyor, and

WHEREAS, Declarant desires by filing this Declaration and the said Record of Survey Map to submit the Real Property and the buildings and other improvements constructed or to be constructed thereon to the provisions of the Utah Condominium Ownership Act as a condominium project known as the THREE FOUNTAINS NORTH OGDEN, PHASE I, and

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WHEREAS, Declarant desires and intends to sell the fee title to the individual units contained in such Condominium Project, together with an undivided ownership interest in the common areas and facilities appurtenant thereto, to various purchasers, subject to the covenants, limitations, easements and restrictions herein contained, and

WHEREAS, Declarant contemplates the construction of additional buildings of the same general type on adjacent property owned or to be acquired by it and wishes to provide for expansion of the Project to include such additional buildings and other improvements if and when constructed so that such additional buildings and other improvements and the initial project, hereinafter referred to as "Phase I", shall be treated as integral parts of a single Condominium Project.

#### DECLARATION

NOW, THEREFORE, the Declarant hereby declares and certifies as follows:

1. Definitions. The terms used herein and in the By-Laws (attached hereto as Exhibit "B") shall have the meaning stated in the Utah Condominium Ownership Act and as follows unless the context otherwise requires.

(a) The Act. The term the "Act" shall mean and refer to the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated, 1953) as the same may be amended from time to time;

(b) Condominium Project. The term the "Condominium Project", or sometimes the "Project" shall mean all of the Property, including all structures and other improvements thereon, subject to this Declaration;

(c) Map. The term "Map" shall mean and refer to the Record of Survey Map of this Condominium Project filed for record simultaneously herewith by the Declarant.

(d) Common Areas. The term "Common Areas and Facilities" or simply the "Common Areas", shall mean and refer to:

(1) The land on which the buildings and other improvements are constructed;

(2) Those Common Areas and Facilities specifically set forth and designated as such in the Map;

(3) That part of the Condominium Project not specifically included in the respective Units as hereinafter defined;

(4) All foundations, columns, girders, beams, supports, main walls, retaining walls, roofs, stairs, stairways, entrances and exits of the Buildings, exterior walkways, streets, yards, (except as otherwise specified on the Map), gardens, fences, picnic area, club house, swimming pool, open parking spaces (except as otherwise specified on the Map), installations of central services such as power, light, water, gas, all apparatuses and installations existing for common use, such recreational and community facilities as may be provided for, and all other parts of the Real Property necessary or convenient to its existence, maintenance and safety of the Common Areas or normally in common use;

(5) All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein;

(e) Unit Owner. The term "Unit Owner" or "Owner"

shall mean and refer to any person or entity, including the Declarant, at any time owning a condominium unit including a proportionate share of the Common Areas as defined herein. The term "Unit Owner" or "Owner" shall not refer to any mortgagee as herein defined, unless such mortgagee has acquired title pursuant to foreclosure, or any proceeding in lieu of foreclosure;

(f) Property. The term "Property" shall mean and refer to the land above-described, the buildings, all other improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith;

(g) Unit. The term "Unit" means that part of the Property owned in fee simple by Unit Owners intended for independent use as defined in the Act and as shown (single cross-hatched) on the Map. The boundary lines of each Unit are the interior surfaces of its perimeter walls, bearing walls, floors, ceiling, windows and window frames, doors and door frames, and trim, and includes both the portions of the Building so described and the air space so encompassed, together with all fixtures and appliances therein contained.

(h) Common Expenses. The term "Common Expenses" shall mean all items, things and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration, the By-Laws, such rules and regulations and other determinations and agreements pertaining to the Condominium Project as the Management Committee or the Unit Owners may from time to time adopt;

(i) Management Committee. The term "Management Committee" shall mean the governing body of the Project, elected or selected pursuant to paragraph 6 hereof;

(j) Manager. The term "Manager" shall mean the person, persons, corporation, or other entity engaged by the Management Committee to manage the affairs of the Project;

(k) Mortgage. The term "Mortgage" shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered;

(l) Mortgagee. The term "Mortgagee" shall mean any person named as a mortgagee or beneficiary under or holder of a deed of trust;

(m) Limited Common Areas. The words "Limited Common Areas and Facilities", or sometimes simply "Limited Common Areas", shall mean those common areas designated herein as reserved for the use of the particular Units to which they are adjacent, attached, appurtenant and/or as designated herein or on the Map to the exclusion of the other Units; and

(n) Incorporation of Act Definitions. To the extent applicable to the tenure hereof and not inconsistent herewith, the definitions contained in the Act are incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

2. Submission to Condominium Ownership. The Declarant hereby submits the above-described land, the buildings and other improvements and structures constructed thereon or hereafter to be constructed thereon, together with all appurtenances thereto, to the provisions of the Act as a Condominium Project to be known as the THREE FOUNTAINS NORTH OGDEN, PHASE I. Declarant hereby declares that the Project and every part thereof is held and shall be held, conveyed, devised, leased, granted, encumbered, used, occupied and otherwise affected in any manner, subject to provisions

of this Declaration and the Act. Each and all of the provisions hereof are hereby declared to be in furtherance of the general plan and scheme of condominium ownership, and are further declared to be for the benefit of the Project and every part thereof, and for the benefit of each Unit Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land, or as equitable servitude, as the case may be, and shall bind all persons hereafter acquiring or owning any interest in the Project however such interest may be obtained.

### 3. Development Plans.

(a) Buildings. The Project (in addition to recreational and other buildings and facilities provided therefor) includes nine (9) residential buildings (Buildings) as shown on the Map. Three of the Buildings are numbered P-1 to P-3, inclusive, and six of the Buildings are numbered E-8 and E-1 to E-5, inclusive.

Each of said nine Buildings contains eight Units in two levels (four Units per level).

All Buildings are structurally of wood frame construction with marble-crete panels.

(b) Other Details. All other details involving the respective descriptions and locations of the Buildings, Units, the number of stories, number of Units and other like details are shown on the Map which is filed of record simultaneously herewith.

(c) Designations. The Building designations and the Unit Number of each Unit are set forth in Exhibit "A" hereto attached and on Sheet 1 of the Map.

### 4. Nature and Incidents of Condominium Ownership.

(a) Nature of Ownership. The Project is hereby divided into 72 Units, each consisting of a fee simple interest in a Unit and an undivided fee simple interest in the Common Areas in accordance with the attached Exhibit "A" setting forth the respective undivided interest (subject to shifting as hereinafter set forth) in the Common Areas appurtenant to each Unit. Such undivided interest in the Common Areas are hereby declared to be appurtenant to the respective Units. The proportionate share of the Unit Owners in the Common Areas is based on the proportionate value that each of the Units bears to the total value of the Property. The percentage of ownership in the Common Areas shall be for all purposes including, but not limited to, voting and assessment for Common Expenses.

(b) Limited Common Areas. The Limited Common Areas shall consist of the following: fenced yard, numbered carports, numbered open parking spaces, and carports with storage.

Each of the Units on the first level of all Buildings has the exclusive right to use and occupy the fenced yard immediately adjacent thereto as shown on the Map.

Each Unit in the Project has one carport as Limited Common Area, identified on the Map with the same number by which the Unit is identified thereon.

Each of the Units on the second level of all Buildings has a patio balcony area connected thereto as Limited Common Area as shown on the Map.

Each of the seventy-two (72) other parking spaces (56 numbered open parking spaces, numbered 1 to 32 and 81 to 104,) and 16 carports with storage, designated by capital letters A to P, is subject to assignment by the Declarant, in its discretion, to the Unit concurrently with the sale thereof, which, after such

assignment, becomes Limited Common Area to the Unit to which it is assigned. Such assignment of said open parking spaces and carports may be included in the deed conveying the Unit or by any other duly recorded instrument, in the discretion of the Declarant.

As indicated on sheet No. 1 of the Map, some of the Limited Common Areas are double cross-hatched while other such Areas are otherwise designated thereon.

(c) Holding Title. Title to a Unit may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common.

(d) 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 condominium ownership prescribed 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 Area appurtenant to such Unit, shall always be conveyed, devised, encumbered and otherwise affected only together and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance, conveyance 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 right created by law or by this Declaration.

(e) No Partition. The Common Areas shall be owned in common by all the Owners of Units, and no Unit Owner may bring any action for partition thereof or subdivide any Unit.

(f) Use of Common Areas and Limited Common Areas. Subject to the limitations contained in this Declaration, any Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas and shall have the exclusive right to use and enjoy the Limited Common Areas designated herein for exclusive use by such Unit Owner.

(g) Unit Maintenance. Each Owner shall have the exclusive right at his sole cost and expense to maintain, repair, paint, re-paint, tile, wax, paper or otherwise refinish and decorate 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 to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair, or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in, or connected with, his Unit.

(h) Maintenance of Limited Common Areas. Each owner shall keep the Limited Common Areas designed for use in connection with his Unit in a clean, sanitary and attractive condition.

(i) Easement for Encroachment. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused

by error in the original construction of the building on the Property, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

(j) 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 Management Committee as their agent, to have access to each Unit and to all Common Areas from time to time during such 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 Management Committee shall also have such right 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 Management Committee or of Unit Owners shall be an expense of all the Unit Owners; provided, however, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the property shall be restored substantially to the same conditions as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Management Committee by assessments pursuant to paragraph 7 below.

(k) 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.

(l) Easement to Management Committee. The Management Committee shall have a non-exclusive easement 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.

(m) Easements for Utility Services. Easements are reserved through the Project as may be required for utility services.

(n) Reciprocal Easements. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give affect to subparagraphs (i), (j), (k), (l) and (m) above even though no specific reference to such easements or to those subparagraphs appears in any such conveyance.

5. 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 number 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 Weber County, Utah, in substantially the following fashion:

Unit \_\_\_\_\_ in Building \_\_\_\_\_ as shown in the Record of Survey Map for THREE FOUNTAINS NORTH OGDEN, PHASE I, appearing in the records of the County Recorder of Weber County, Utah, in Book \_\_\_\_\_, Page \_\_\_\_\_ of Plats, and as defined and described in the Declaration of Condominium for THREE FOUNTAINS NORTH OGDEN, PHASE I, appearing in such records in Book \_\_\_\_\_, Page \_\_\_\_\_ of Records.

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.

6. Management Committee, Rights and Obligations.

(a) Management Body. The business, property and affairs of the Project shall be managed by the Management Committee composed of five (5) members. At the first regular Owners' Meeting two Committee members shall be elected for a one-year term, two members for a two-year term, and one member for a three-year term. At each annual Owners Meeting thereafter any vacant seat on the Committee shall be filled with a member elected for a three-year term. Members shall serve on the Committee until their successors are elected and qualify. Only Unit Owners or spouses of Owners other than individuals shall be eligible for Committee membership. At the annual meeting each Unit Owner may vote his percentage of undivided ownership interest in favor of as many candidates for Committee membership as there are seats on the Committee to be filled; provided, however, that until title to all of the Units shall have been conveyed by the Declarant to the purchasers thereof, the Declarant alone, at its option, shall act as the Management Committee. In the event a Committee seat which was filled by Declarant becomes vacant, Declarant shall have the right to select a replacement member to sit on the Committee for the balance of the term associated with the vacated seat. In all other cases of vacancy the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected.

(b) Rights and Duties. The Management Committee, subject to the rights of the Owners set forth in Paragraph 4 hereof, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Management Committee shall be responsible for the maintenance and repair of exterior surfaces of the Buildings, including, without limitation, the painting of the same as often as necessary, the replacement of trim, the maintenance and repair of roofs, the maintenance and repair of other Common Areas and all other improvements or material located within or used in connection with the Common Areas. The Management Committee shall have the exclusive right to contract for all goods, services, and insurance payment of which is to be made from the Common expense fund, subject to the provisions of subparagraph (f) below. The specification of duties of the Management Committee with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas, as set forth in the first sentence in this paragraph. The cost of such management, operation, maintenance and repair by the Management Committee shall be borne as provided in paragraph 7 of this Declaration.

(c) Payment for Services, etc. The Management Committee may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Management Committee shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Management Committee or by any person or entity with whom or which it contracts. The Management Committee may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Management Committee may arrange with others to furnish lighting, water, snow removal, grounds maintenance and other common services to each Unit. The cost of such services shall be borne as provided

in Paragraph 7 of this Declaration.

(d) Personal Property Ownership and Use. The Management Committee may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in the Common Areas. Such interest shall not be transferable except with the transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto, and such beneficial interest may in no event be reserved by the transferor of a Unit. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

(e) Rules and Regulations. The Management Committee may make reasonable rules and regulations governing the use of the Units and of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Management Committee may suspend any Owner's voting rights in the meeting of Unit Owners during any period or periods during which such Owner fails to comply with such rules and regulations, or with any other obligations of such Owner under this Declaration. The Management Committee may also take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations or to obtain damages for noncompliance, all to the extent permitted by law.

(f) Capital Improvements. There shall be no structural alterations, capital additions to, or capital improvements of, the Common Areas requiring an expenditure in excess of \$3,000.00 without the prior approval of Unit Owners holding a majority of the voting power.

(g) Other Rights. The Management Committee may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## 7. Assessments.

(a) Agreement to Pay Assessments. Each Owner of any Unit by the acceptance of a deed or contract therefor, whether or not it be so expressed in the deed or contract, shall be deemed to covenant and agree with each other and with the Management Committee to pay to the Management Committee annual assessments made by the Management Committee for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided hereunder.

(b) Basis of Assessments. The total annual assessments against all Units shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas or furnishing utility services to the Units, which estimates may include, among other things, expenses of Management; grounds maintenance; taxes and special assessments levied by governmental authorities until the Units are separately assessed as provided herein; premiums



for all insurance which the Management Committee is required or permitted to maintain pursuant hereto; common lighting; water charges; repairs and maintenance; wages for Management Committee employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve; surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Management Committee for the benefit of the Owners under or by reason of this Declaration.

(c) Apportionment of Expenses. Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among all Units in proportion to their respective undivided interests in the Common Areas. For this purpose Declarant shall be considered to own only the undivided interest in Common Areas based upon Units not conveyed by Declarant.

(d) Method, Payment of Assessments, etc. Annual assessments shall be made on a calendar year basis. The Management Committee shall give written notice to each Owner as to the amount of the annual assessment with respect to his Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year, provided, however, that the first annual assessment shall be for the balance of the calendar year remaining after the date fixed by the Management Committee as the date of commencement of the Project. Each annual assessment shall be due and payable in monthly installments on the 1st day of each and every month and no separate notices of such monthly installments shall be required. Each monthly assessment shall bear interest at the rate of ten per cent (10%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

(e) Special Assessments. In addition to the annual assessments authorized hereunder, the Management Committee may levy in any assessment year a special assessment, subject to the provisions of Paragraph 6(f) above, payable over such a period as the Management Committee may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This paragraph shall not be construed as an independent source of authority for the Management Committee to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other paragraphs hereof which shall make specific reference to this paragraph. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interest in the Common Areas. Declarant's interest in Common Areas shall be determined on the same basis set forth in subparagraph (c). Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of ten per cent (10%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

(f) Lien for Unpaid Assessments. All sums assessed to any Unit pursuant to this section, together with interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Management Committee. Such lien shall be superior to all other liens and encumbrances on such Unit, except only for: (a) valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; and (b) encumbrances on the interest of the Unit Owner recorded prior to the date notice of the lien provided for herein is recorded which by law would be a lien prior to subsequently recorded encumbrances. All other lienors acquiring liens on any Unit after this Declar-

ation shall have been recorded in said records shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence a lien for sums assessed pursuant to this section, the Management Committee may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by the Management Committee and may be recorded in the office of the County Recorder of Weber County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Management Committee in the same manner in which mortgages on real property may be foreclosed in Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The lien shall also secure, and the Owner shall also be required to pay to the Management Committee any assessments against the Unit which shall become due during the period of foreclosure. The Management Committee shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

A release of notice of lien shall be executed by the Management Committee and recorded in the office of the County Recorder of Weber County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this section, and upon such payment such encumbrancer shall be subrogated to all rights of the Management Committee with respect to such lien, including priority.

The Management Committee shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for longer than ninety days after the same shall have become due; provided, however, that such encumbrancer first shall have furnished to the Management Committee written notice of such encumbrance.

(g) Personal Obligation of Assessments. The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Management Committee. Suit to recover a money judgment for such personal obligation shall be maintainable by the Management Committee without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit.

(h) Information Concerning Unpaid Assessments. Upon payment of a reasonable fee not to exceed ten dollars (\$10.00) and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Management Committee shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit; the amount of the current yearly assessment and the portion thereof which has theretofore been paid; credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums; and such statement shall be conclusive upon the Management Committee in favor of persons who rely

thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, all unpaid assessments which became due prior to the lien of a Mortgagee which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the ten (10) day period provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Unit.

(i) Purchaser's Obligation. Subject to the provisions of subparagraph (h), a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

#### 8. Use of Condominium Units.

(a) Single Family Housing Use. Each of the 72 Units in the Project is intended to be used for single family residential housing and is restricted to such use.

(b) Restrictions Concerning Common Areas. There shall be no obstruction of the Common Areas by the Owners and/or their guests without the prior written consent of the Management Committee. The Management Committee may by rules and regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Management Committee, except as specifically provided herein. Nothing shall be altered on, constructed in or removed from the Common Areas except upon the prior written consent of the Management Committee.

(c) Miscellaneous Restrictions. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Management Committee, but for such activity, would pay, without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Management Committee and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

(d) Animals. No livestock or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Areas, except that household pets may be kept in the Units, subject to strict observances of rules and regulations adopted by the Management Committee.

(e) No Violation of Rules and Regulations. No

Owner shall violate the rules and regulations for the use of the Units and of the Common Areas as adopted from time to time by the Management Committee.

(f) Restrictions on Alterations. No structural alterations to any Unit shall be made by any Owner without the prior written consent of the Management Committee.

(g) Declarant's Right To Sell Units. Notwithstanding anything to the contrary herein, until the Declarant has completed and sold all of the Units, including those of future phases of the Project, neither the Unit Owners who have purchased Units from the Declarant nor the Management Committee shall interfere with the completion of the contemplated improvements and sale of the remaining Units. The Declarant may make such use of the unsold Units and the Common Areas as may facilitate such completion and sale, including but not limited to, the maintenance of a sales office, the showing of the Units, and the display of signs.

## 9. Insurance.

(a) Insurance Coverages. The Management Committee shall obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Utah. The provisions of this section shall not be construed to limit the power or authority of the Management Committee to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Management Committee may deem appropriate from time to time.

(1) Casualty and Other Coverages. The Management Committee shall obtain insurance on the Project in such amounts as shall provide for full replacement thereof in the event of damage or destruction from the casualty against which such insurance is obtained, all in the manner in which a corporation owning similar multiple family residential buildings in the vicinity of the Project would, in the exercise of prudent business judgment, obtain such insurance. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, war risk insurance if available and if deemed appropriate by the Management Committee, and such other risks and hazards against which the Management Committee shall deem it appropriate to provide insurance protection. The Management Committee may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Management Committee's opinion are consistent with good business practice.

(2) Liability Protection. The Management Committee shall purchase broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Management Committee, and activities in connection with the ownership, operation, maintenance and other use of the Project.

(3) Workmen's Compensation Coverage. The Management Committee shall purchase workmen's compensation and employer's liability insurance and all other similar insurance in respect to employees of the Management Committee in the amounts and in the forms now or hereafter required by law.

(4) Fidelity Coverages. The Management Committee shall purchase, in such amounts and in such forms as it shall deem appropriate, coverage against dishonesty of employees, destruction or disappearance of money or securities and forgery.

(5) Other Coverages. The Management Committee may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including any personal property of the Management Committee located thereon.

(b) Discretionary Coverage. The Management Committee may in its discretion elect to obtain insurance on the personal property and furnishings initially placed in the Units of Owners by Declarant upon completion of construction of the Project in such amounts as shall provide for the full replacement thereof in the event of damage or destruction from casualty against which such insurance is obtained.

(c) Form of Insurance. Casualty insurance shall be carried in a form or forms naming the Management Committee the insured, as trustee for the Owners and for Declarant, whether or not it is an Owner, which policy or policies shall specify the interest of each Unit Owner (Owner's name, Unit number, the appurtenant undivided interest in the Common Areas), and which policy or policies shall provide a standard, noncontributory mortgage clause in favor of each first mortgagee which from time to time shall give notice to the Management Committee of such first Mortgage. Each policy also shall provide that it cannot be cancelled by either the insured or the insurance company until after ten days' prior written notice is first given to each Owner, to Declarant and to each first Mortgagee. All policies of insurance shall, if possible, provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall, if possible, provide further that the insurance under any such policy, as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Public liability and property damage insurance shall name the Management Committee the insured, as trustee for the Owners and for Declarant, whether or not they are Owners, and shall protect each Owner and Declarant against liability for acts of the Management Committee in connection with the ownership, operation, maintenance or other use of the Project. Such policies of insurance shall provide that all insureds (including, but without limitation, the Declarant, Owners, Management Committee, and officers of the Management Committee) shall be considered as separate insureds and coverage shall be afforded each such insured in the same manner as though separate policies had been issued to each such insured and the insurance afforded any person or organization as insured under this policy shall not in any way be prejudiced by the inclusion therein of more than one person and/or organization as insured, but the inclusion of more than one insured under the policy shall not operate to increase the limits of the company's total liability under the policy.

(d) Unit Owner's Insurance on Personal Property. Insurance coverage on the furnishings initially placed in the Unit by Declarant, except to the extent that the Management Committee pursuant to subparagraph (b) hereof elects to arrange for casualty insurance, and, regardless of the Management Committee's election, insurance coverage against loss from theft on all personal property placed in the Unit by Owners, and casualty and public liability insurance coverage within each individual Unit and for activities of the Owner, not acting by the Management Committee, with respect to the Common Areas shall be the responsibility of the

respective Owners.

(e) Insurance Proceeds to Management Committee.

The Management Committee shall receive the proceeds of any casualty insurance payment received under policies obtained and maintained pursuant to this section. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose.

(f) Right of Unit Owners to Obtain Insurance.

Notwithstanding the provisions of subparagraph (a) and (b) above, each Owner may obtain insurance at his own expense providing coverage upon his Unit, his personal property for his personal liability, and covering such other risks as he may deem appropriate, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Management Committee obtains pursuant to this section. All such insurance of the Owner's Unit shall waive the insurance company's right of subrogation against the Management Committee, the other Owners and the servants, agents, guests of any of them, if such insurance can be obtained in the normal practice without additional premium charge for the waiver of rights of subrogation.

10. Casualty Damage or Destruction.

(a) Binding Effect. Title to each Unit is hereby made subject to the terms and conditions hereof which bind the Declarant and all subsequent Owners, whether or not it be so expressed in the deed by which any Owner acquires his Unit.

(b) Management Committee As Agent of Owners. All of the Owners irrevocably constitute and appoint the Management Committee their true and lawful agent in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Owners shall constitute appointment of the attorney in fact herein provided.

(c) Authority of Management Committee. As attorney in fact, the Management Committee shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of a Unit Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs mean restoring the Project to substantially the same condition in which it existed prior to damage, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

(d) Management Committee's Duties re Mortgage Purchase. In the event any Mortgagee should not agree not to rebuild, the Management Committee shall have the option to purchase such Mortgage by payment in full of the amount secured thereby if 80% of the Owners are in agreement not to rebuild. The Management Committee shall obtain the funds for such purpose by special assessments under paragraph 7 of this Declaration.

(e) Repair or Reconstruction of Damages. As soon as practicable after receiving these estimates the Management Committee shall diligently pursue to completion the repair or reconstruction of the part of the Project damaged or destroyed if the Project is damaged or destroyed to the extent of 75% or less than the value thereof. The Management Committee may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be substantially in accordance with the original plans and specifications of the Project or may be in accordance with any other plans and specifications the Owners may approve, provided that in such latter event the number

of cubic feet and the number of square feet of any Unit may not vary by more than 5% from the number of cubic feet and the number of square feet for such Unit as originally constructed pursuant to such original plans and specifications, and the location of the building shall be substantially the same as prior to damage or destruction. The same easements for encroachments as declared in Section 4(h) (above) shall and do hereby apply under the provisions of this Section. In the event the Project is destroyed or damaged to the extent of more than 75% of the value thereof, the Unit Owners shall, at a meeting within 100 days after such damage or destruction duly called by the Management Committee for the purpose, determine whether or not said premises should be rebuilt, repaired or disposed of. Unless Owners representing not less than 80 percent of the undivided interests in the Common Areas agree to the withdrawal of the Project from the provisions of the Act and to its subsequent disposal, the premises shall be repaired, rebuilt or restored to substantially the same condition they were in immediately prior to such destruction or damage

(f) Purpose of Insurance Proceeds; Special Assessments. The proceeds of any insurance collected shall be available to the Management Committee for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Management Committee, pursuant to Paragraph 7 hereof, may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in that paragraph. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

(g) Disposition of Insurance Proceeds, etc. The insurance proceeds held by the Management Committee and the amounts received from the assessments provided for in Paragraph 10(f) above constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost or reconstruction or repair shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Unit Owners in proportion to the contributions each Owner made pursuant to the assessments the Management Committee made under Paragraph 10(f) of this Declaration.

(h) Withdrawal of the Project. If 80% of the Unit Owners and all holders of first mortgages on Units agree not to rebuild, as provided herein, the Project may be removed from the provisions of the Act as prescribed therein.

11. Duty of Owner to Pay Taxes on Unit Owned. It is understood that under the Act each Unit (and its percentage of interest in the Common Areas) in the Project is subject to separate assessment and taxation of each taxing authority and the special district(s) for all types of taxes and assessments authorized by law, and that as a result thereof no taxes will be assessed or levied against the Project as such. Accordingly, each Unit Owner will pay the discharge any and all taxes and assessments which may be assessed against him on his Unit.

12. Expansion of the Project.

(a) Reservation of Right to Expand. The Real Property (described on the first page of the Declaration) is all of the land upon which Phase I of the Project shall be developed. However, Declarant contemplates that it will develop and construct additional phases to the Project. Accordingly, Declarant hereby reserves the right to expand the Project to include additional Units of the same general type (or otherwise if circumstances warrant) and the Common Areas to be constructed on other real

property then owned by Declarant as more fully described on Exhibit "C" attached hereto, it being declared that Declarant has no title, legal, equitable, option or otherwise, as to Parcel B on said Schedule "C", and that the right herein reserved to expand the Project upon said Parcel B will be contingent upon Declarant being able to acquire such land in the future. The total number of Units in the Project, as expanded, shall not exceed 240. Upon completion of each phase of expansion of the Project, each Unit Owner's percentage of ownership of the Common Areas may be changed by the Declarant, but the ratio of the percentage ownership thereof among the Owners prior to such expansion shall remain the same. The maximum interest of an Owner in the Common Areas shall be the percentage for the Units in Phase I as set forth on Schedule "A". Such maximum interest shall be subject, as to each Unit, to diminution to a minimum of 0.30% of the Common Areas of the entire Project including Phase I and all subsequent phases. The expanded Project will be managed, treated and governed as one Condominium Project without regard to phases.

(b) Method of Expansion. Such expansion may be accomplished by the filing for record by Declarant in the Office of the County Recorder of Weber County, Utah, no later than seven (7) year from the date this Declaration is recorded in said County Recorder's Office, a supplement or supplements to the Declaration containing a legal description of the site or sites for new Units, together with a supplemental Map or Maps containing substantially the same information with respect to the new Units as was contained on the original Map with respect to the initial Units, and recording amendments to Exhibit "A" showing each Owner's new percentage of ownership in the expanded Project's Common Areas.

(c) Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded. E.g., "Real Property" shall mean the real property hereinabove described plus any additional real property added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Units after such expansion shall be effective to transfer rights in the Project, as expanded, by use of the form of description set forth in Paragraph 5 hereof, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the Office of the Weber County Recorder, Ogden, Utah, of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer and convey to then Owners of Units in the Project as it existed before such expansion the respective undivided interests set forth in Exhibit "A" hereto in the new Common Areas added to the Project as a result of such expansion. Such recordation shall also operate to vest in any then Mortgagee of any Unit in the Project as it existed interest so acquired by the Owner of the Unit encumbering the new Common Areas added to the Project as a result of such expansion.

(d) Declaration Operative on New Units. The new Units shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Units therein shall be subject to condominium ownership with all the incidents pertaining thereto as specified herein, upon placing the Supplemental Map and Supplemental Declaration in the said Office of the Weber County Recorder.

(e) Right of Declarant to Adjust Percentages of Common Areas. Each deed of a Unit shall be deemed to irrevocably reserve to the Declarant the power to appoint to Unit Owners, from time to time, the percentages in the Common Areas set forth in Supplemental or Amended Declarations. A power coupled with an interest is hereby reserved to Declarant, its successors and assigns, as attorney in fact to shift percentages of the Common Areas in accordance with Supplemental or Amended Declarations



recorded pursuant hereto and each deed of a Unit in the Project shall be deemed a grant of such power to said attorney in fact. Various provisions of this Declaration and deeds and mortgages of the Units may contain clauses designed to accomplish a shifting of the Common Areas. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the percentages of ownership of the Common Areas can be accomplished.

13. Service of Process. The name of the person to receive service of process in the cases contemplated by the Act and the place of his residence are:

Wayne B. Garff  
2200 East 17th South  
Salt Lake City, Utah

14. Transfer or Lease of Units. The Owner, or Owners, of any Unit in the Project who desires to sell his Unit, or to enter into any agreement for the occupancy of his Unit by another person or persons, shall give the Management Committee ten (10) days advance written notice thereof, which notice shall state the name and address of the proposed purchaser or occupant as the case may be, and the terms and conditions upon which said proposed purchaser or occupant agrees to purchase or occupy such Unit. The Management Committee shall have the right, exercisable at any time within ten (10) days after its receipt of such notice, to purchase or enter into an agreement for the occupancy of such Unit upon the same terms and conditions as those specified in that notice; provided, however, that in the event the Management Committee enters into an agreement hereunder for the occupancy of any Unit, it shall have the right to sublet such Unit to any person or persons reasonably suitable to the Management Committee. In the event the Management Committee determines that it desires to purchase, or enter into an agreement respecting the occupancy of a Unit as above provided, but concludes that the price or rental specified in the notice is unreasonable, the Management Committee shall give the Owner or Owners of such Unit written notice thereon within seven (7) days after its receipt of notice of the proposed sale or occupancy arrangement. The notice thus given by the Management Committee shall state that it has elected or thereby elects to purchase said Unit, or enter into an agreement for the occupancy of the same, and shall state further that the Management Committee believes the price or rental specified in the notice given to it is unreasonable. The Management Committee shall thereafter be obligated to purchase such Unit, or enter into an agreement for the occupancy of same, as the case may be, at a price or rental to be determined by a group of three M.A.I. Appraisers to be selected as follows: The Management Committee shall select one appraiser, the Unit Owner or Owners concerned shall select one appraiser, and the two appraisers thus selected shall select the third appraiser. In the event all three appraisers cannot agree on a price or rental to be paid, as the case may be, the decision of any two of the three shall be binding.

The Management Committee, upon written request of any prospective seller, buyer, lessor, tenant or mortgagee, shall furnish a duly acknowledged certificate of compliance with, or a waiver of, the provisions of the immediate preceding paragraph. Such a certificate shall be conclusive evidence of the facts stated therein.

The restrictions upon the sale or lease of Units hereinbefore set forth shall not apply to the Declarant or to any holder of the mortgage which comes into possession of the Units, pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, but any of such persons shall be exempt from said restrictions, hence shall be free to sell or lease without first notifying the Manage-

ment Committee as required for other Unit Owners.

A Unit Owner may sell or lease his Unit to his spouse or devise his Unit by will or have it pass by intestacy without any restriction.

15. Mortgage Protection. Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any Unit shall be subject and subordinate to, and shall not effect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage or a trust deed with first priority over other mortgages) upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Paragraph 7 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

(b) No amendment to this paragraph shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

(c) By subordination agreement executed by a majority of the Management Committee, the benefits of (a) and (b) above may be extended to mortgages not otherwise entitled thereto.

16. Boat Camper Storage Area; Easements; Restrictions.

(a) Identity of Property. Declarant is the owner in fee simple of the following described real property in Weber County, Utah, to-wit:

A part of Lot 49, Plat "B", North Ogden Survey in the Northeast Quarter of Section 32, Township 7 North, Range 1 West, Salt Lake Base and Meridian. Beginning at a point South  $0^{\circ} 15'$  West 657 feet and North  $89^{\circ} 45'$  West 570 feet from the Northeast corner of said Lot 49, and running thence North  $89^{\circ} 45'$  West 90 feet; thence North  $0^{\circ} 15'$  East 90 feet; thence South  $89^{\circ} 45'$  East 90 feet; thence South  $0^{\circ} 15'$  West 90 feet to the point of beginning containing 0.186 acre.

(which real property is located at the Southwest Corner of the contemplated Phase II Project and designated on the Map as "boat-camper storage area", hereinafter referred to as the "Storage Property"). The Storage Property will not be included as a part of the Project, present or future. Declarant, its successors and assigns, hereby irrevocably reserves a perpetual non-exclusive easement over, upon and across the streets of the Project for ingress and egress from the Storage Property.

(b) Use Restrictions of Storage Property, etc. With further reference to the Storage Property, Declarant does hereby irrevocably declare that the Storage Property shall be used after its completion as boat-camper storage area only for the purposes of storing boats and campers and other uses incidental thereto by the Unit Owners of the Project, subject to payment by Unit Owners using the same of such rental to Declarant as the Management Committee and Declarant may agree upon, and subject, also, to observance by such Unit Owners of the rules and regulations promulgated by the Management Committee with respect thereto. It

is further declared that such use restriction hereby imposed shall continue for so long as the Project shall exist as a condominium project under this Declaration or any amendment or amendments thereof, and further, that the same shall constitute covenants running with the said Storage Property, provided, however, that, if for any reason whatsoever, the Storage Property ceases to be used for the purposes above mentioned, then, and in that event, the said use restrictions hereby placed thereon shall thereupon immediately cease and determine, and the Declarant, its successors and assigns, may terminate of record such use restrictions by the filing of an affidavit certifying to such termination in the office of the County Recorder of Weber County, Utah. Moreover, a power coupled with an interest is hereby given or reserved to the Declarant, its successors and assigns, as attorney in fact to execute and file for record such affidavit in said office of the County Recorder. Notwithstanding anything to the contrary herein contained, Declarant reserves the right to erect a maintenance shed or building to house its equipment and to have access thereto and use the same for maintenance of the Storage Property and other uses incidental thereto.

17. Amendment. Until all of the Units in Phase No. 1 and 80% of the Units in subsequent phases of the Project have been sold by Declarant or until 7 years after the filing of this Declaration with the Weber County Recorder's Office, whichever occurs earlier, the Declarant shall have the right to amend this Declaration except that all amendments relating directly to subsequent Phases of the Project which are explicitly covered by Paragraph 12, shall be made pursuant thereto. Thereafter the Management Committee shall have the right to amend this Declaration upon a two-thirds vote of those in attendance at a duly called and constituted special meeting of the Unit Owners. Any amendment by the Declarant or by the Management Committee shall be recorded in the Weber County Recorder's Office, and if adopted by the Unit Owners shall be accompanied by a certificate of the Chairman or Vice Chairman and Secretary of the Management Committee certifying to the adoption of said amendment. Thereafter the amendment shall be binding upon every Owner, whether the burdens thereon are increased or decreased thereby or whether the Owner of a particular Unit consented thereto. Provided, however, unless all holders of mortgage liens and all Owners of Units have given their prior written approval, no amendment shall be made by Declarant except pursuant to Paragraph 12, or by the Unit Owners which changes the pro rata interest or obligation of any Unit for purposes of levying assessments and charges for common expenses and for purposes of determining ownership interest in the Common Areas and right to proceeds of the Project whatever the same may be.

18. Miscellaneous Provisions. Notwithstanding anything to the contrary herein contained, it is hereby declared, certified and agreed as follows:

(a) Mortgagee's Right of Notification of Default. Any holder of the Mortgage is entitled to written notification from the Management Committee of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under the Declaration which is not cured within thirty (30) days.

(b) Priority of Mortgagee Over Certain Assessments. Any holder of the Mortgage which comes into possession of the Unit pursuant to the remedies provided in the Mortgage, foreclosure of the Mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged 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 including the mortgaged Unit).

(c) Certain Prohibitions Imposed on Unit Owners.

Unless all holders of first mortgage liens on individual Units have given their prior written approval, the Unit Owners of the Project shall not:

(1) Change the pro rate interest (except as reserved to Declarant in Paragraph 12) or obligations of any Unit for purposes of levying assessments and charges and determining shares of the Common Areas and proceeds of the Project; nor

(2) By act or omission seek to abandon the condominium status of the Project except as provided by statute in case of substantial loss to the Units and Common Areas of the Project.

19. Enforcement. Each Unit Owner shall comply strictly with the provisions of this Declaration and with the administrative rules and regulations drafted pursuant thereto as the same may be lawfully amended from time to time and with the decisions adopted pursuant to this Declaration and the administrative rules and regulations, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee or Manager on behalf of the Unit Owners, or in a proper case, by an aggrieved Unit Owner.

20. Indemnification of Management Committee. Each member of the Management Committee shall be indemnified and held harmless by the Unit Owners against all cost, expenses, and liabilities whatsoever, including, without limitation, attorney's fees, reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Committee.

21. Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

22. Severability. If any of the provisions of this Declaration 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 Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

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

24. Effective Date. This Declaration shall take effect upon recording in the office of the County Recorder of Weber County, Utah.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has caused this instrument to be executed and its seal be affixed hereto this 17<sup>th</sup> day of July, 1973.

Attest:

Jeanette P. Garff  
Jeanette P. Garff, Secretary

WAYNE GARFF CONSTRUCTION, INC.

By Wayne B. Garff  
Wayne B. Garff, President

STATE OF UTAH )  
                  ) ss  
County of Weber)

On this 17<sup>th</sup> day of July, 1973, personally appeared before me WAYNE B. GARFF and JEANETTE P. GARFF, who being by me

duly sworn, did say that they are the President and Secretary, respectively, of WAYNE GARFF CONSTRUCTION, INC., a Utah corporation, and that the foregoing instrument was signed by them in behalf of said corporation by authority of a resolution of its Board of Directors and the said Wayne B. Garff and Jeanette P. Garff each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

*Mrs. [Signature]*  
Notary Public residing  
at Salt Lake City, Utah

My commission expires:

*June 28, 1976*

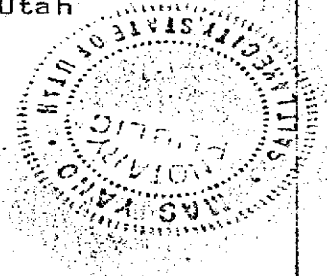


EXHIBIT "A"THREE FOUNTAINS NORTH OGDENPHASE I, CONDOMINIUM

<u>Building No.</u>	<u>Unit No.</u>	<u>% Ownership In Common Areas *</u>
P 1	89	1.2775
P 1	90	1.2775
P 1	93	1.2775
P 1	94	1.2775
P 1	91	1.2775
P 1	92	1.2775
P 1	95	1.2775
P 1	96	1.2775
P 2	17	1.2775
P 2	18	1.2775
P 2	21	1.2775
P 2	22	1.2775
P 2	19	1.2775
P 2	20	1.2775
P 2	23	1.2775
P 2	24	1.2775
P 3	25	1.2775
P 3	26	1.2775
P 3	29	1.2775
P 3	30	1.2775
P 3	27	1.2775
P 3	28	1.2775
P 3	31	1.2775
P 3	32	1.2775
E 1	97	1.4450
E 1	98	1.4450
E 1	101	1.4450
E 1	102	1.4450
E 1	99	1.4450
E 1	100	1.4450
E 1	103	1.4450
E 1	104	1.4450
E 2	105	1.4445
E 2	106	1.4445
E 2	109	1.4445
E 2	110	1.4445
E 2	107	1.4445
E 2	108	1.4445
E 2	111	1.4445
E 2	112	1.4445

<u>Building No.</u>	<u>Unit No.</u>	<u>% Ownership In Common Areas *</u>
E 3	113	1.4445
E 3	114	1.4445
E 3	117	1.4445
E 3	118	1.4445
E 3	115	1.4445
E 3	116	1.4445
E 3	119	1.4445
E 3	120	1.4445
E 4	1	1.4445
E 4	2	1.4445
E 4	5	1.4445
E 4	6	1.4445
E 4	3	1.4445
E 4	4	1.4445
E 4	7	1.4445
E 4	8	1.4445
E 5	9	1.4445
E 5	10	1.4445
E 5	13	1.4445
E 5	14	1.4445
E 5	11	1.4445
E 5	12	1.4445
E 5	15	1.4445
E 5	16	1.4445
E 8	81	1.4445
E 8	82	1.4445
E 8	85	1.4445
E 8	86	1.4445
E 8	83	1.4445
E 8	84	1.4445
E 8	87	1.4445
E 8	88	1.4445

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 100.0000%

EXHIBIT "B"

BY-LAWS  
OF  
THREE FOUNTAINS NORTH OGDEN

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I

IDENTITY

These are the By-Laws of the THREE FOUNTAINS NORTH OGDEN Condominium Project.

II

APPLICATION

All Unit Owners, tenants, or any other person(s) who might use the facilities of the THREE FOUNTAINS NORTH OGDEN Condominium Project in any manner are subject to the regulations set forth in these By-Laws. The mere acquisition or rental of any of the Units or the mere act of occupancy or use of any of said Units or the Common Areas will signify that these By-Laws are accepted, ratified, and will be complied with by such persons.

III

ADMINISTRATION

1. Place of Meetings. Meetings of the Unit Owners shall be held at such place within the State of Utah as the Management Committee may specify in the notice, except as herein otherwise specified.

2. Annual Meetings. The first regular meeting of the Unit Owners shall be held on the 6th day of October, 1974, at such place as the Management Committee shall specify. Thereafter, the annual meeting shall be held on such day of each succeeding year; provided, however, that whenever such date falls on a legal holiday, the meeting shall be held on the next succeeding business day, and provided further, that the Management Committee may by resolution fix the date of the annual meeting on such date and at such place as the Management Committee may deem appropriate.

3. Special Meetings. Special meetings of the Unit Owners may be called at any time by written notice served by the Management Committee, or by Unit Owners having 35 percent of the total votes, delivered not less than seven (7) days prior to the Project or such other place as the Management Committee may specify and the notice thereof shall state the place, date time and matters to be considered.

4. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have



been delivered 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Unit Owner at the address given by such person to the Management Committee or the Manager for the purpose of service of such notice or to the Unit of such person if no address has been given. Such address may be changed from time to time by notice in writing to the Management Committee or Manager.

5. Quorum. At any meeting of the Unit Owners, the Owners of forty (40) percent in the aggregate in interest of the undivided ownership of Common Areas shall constitute a quorum for any and all purposes, except where by express provisions a greater vote is required, in which event a quorum shall be the number required for such vote. In the absence of a quorum the Chairman of the meeting may adjourn the meeting from time to time, without notice other than by announcement at the meeting, until holders of the amount of interest requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.

6. Voting. When a quorum, as provided in the Utah Condominium Ownership Act is present at any meeting, the vote of Unit Owners representing more than fifty (50) percent of the undivided ownership of Common Areas and Facilities, present in person or represented by proxy, shall decide any question of business brought before such meeting, including the election of the Management Committee, unless the question is one upon which, by express provision of the statutes, the Declaration, or of these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question. All votes may be cast either in person or by proxy. All proxies shall be in writing, and in the case of proxies for the annual meeting, they shall be delivered to the Secretary at least five (5) days prior to said annual meeting. Proxies for special Unit Owners' meetings must be of record with the Secretary at least two (2) days prior to said special meeting.

7. Waivers of Notice. Any Unit Owner may at any time waive any notice required to be given under these By-Laws, or by statutes or otherwise. The presence of a Unit Owner in person at any meeting of the Unit Owners shall be deemed such waiver.

#### IV

#### MANAGEMENT COMMITTEE

1. Purpose and Powers. The business, property and affairs of the Condominium shall be managed and governed by the Management Committee pursuant to Paragraph 6 of the Declaration. The Management Committee, as it deems advisable, may enter into such management agreement or agreements with a third person, firm, or corporation to act as the Manager of the Project.

2. Regular Meetings. A regular annual meeting of the Management Committee shall be held immediately after the adjournment of each annual Unit Owners' meeting. Regular meetings, other than the annual meeting, shall or may be held at regular intervals at such places and at such times as either the Chairman of the Management Committee may from time to time designate.

3. Special Meetings. Special meeting of the Management Committee shall be held whenever called by the Chairman, the Vice Chairman, or by three or more members. By unanimous consent of the Management Committee, special meetings may be held without call or notice at any time or place.

4. Quorum. A quorum for the transaction of business at any meeting of the Management Committee shall consist of a majority of the Management Committee then in office.

5. Compensation. Members of the Management Committee, as such, shall not receive any stated salary or compensation; provided that nothing herein contained shall be construed to preclude any member of the Management Committee from serving the Project in any other capacity and receiving compensation therefor.

6. Waiver of Notice. Before or at any meeting of the Management Committee, any member thereof, may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Management Committee at any meeting thereof shall be a waiver of notice by him of the time and place thereof.

7. Adjournments. The Management Committee may adjourn any meeting from day to day or for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

8. Fidelity Bonds. The Management Committee may require that all officers and employees of the Management Committee handling or responsible for funds shall require adequate fidelity bonds. The premium on such fidelity bonds shall be paid by the Management Committee.

#### V

#### OFFICERS

1. Designation and Election. The principal officers of the Management Committee shall be a Chairman, a Vice Chairman, a Secretary, and a Treasurer, all of whom shall be elected by and from the Management Committee. The Management Committee may appoint an assistant secretary and an assistant treasurer and such other officers as in its judgment may be necessary or desirable. Such election or appointment shall regularly take place at the first meeting of the Management Committee immediately following the annual meeting of the Unit Owners; provided, however, that elections of officers may be held at any other meeting of the Management Committee.

2. Other Officers. The Management Committee may appoint such other officers, in addition to the officers hereinabove expressly named, as it shall deem necessary, who shall have authority to perform such duties as may be prescribed from time to time by the Management Committee.

3. Removal of Officers and Agents. All officers and agents shall be subject to removal, with or without cause, at any time by the affirmative vote of the majority of the then members of the Management Committee.

4. Chairman. The Chairman shall be the chief executive of the Management Committee, and shall exercise general supervision over its property and affairs. He shall sign on behalf of the Condominium Project all instruments and contracts of material importance to its business, shall do and perform all acts and things which the Management Committee may require of him. He shall preside at all meetings of the Unit Owners and the Management Committee. He shall have all of the general powers or duties which are normally vested in the office of the president of a corporation, including but not limited to the power to appoint committees from among the members from time to time as

he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Condominium Project.

5. Vice Chairman. The Vice Chairman shall take the place of the Chairman and perform his duties whenever the Chairman shall be absent, or unable to act. If neither the Chairman nor the Vice Chairman is able to act, the Management Committee shall appoint some other member thereof to do so on an interim basis. The Vice Chairman shall also perform such other duties as shall from time to time be prescribed by the Management Committee.

6. Secretary. The Secretary shall keep the minutes of all meetings of the Management Committee and of the Unit Owners; he shall have charge of the books and papers as the Management Committee may direct; and he shall in general, perform all the duties incident to the office of Secretary.

7. Treasurer. The Treasurer shall have the responsibility for the funds and securities of the Management Committee and shall be responsible for keeping full and accurate accounts of all receipts and of all disbursements in books belonging to the Management Committee. He shall be responsible for the deposit of all monies and all other valuable effects in the name, and to the credit of, the Management Committee in such depositories as may be from time to time designated by the Management Committee.

8. Compensation. No compensation shall be paid to the officers for their services as officers. No remuneration shall be paid to an officer for services performed by him for the Management Committee in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Management Committee before the services are undertaken.

## VI

### ACCOUNTING

1. Books and Accounts. The books and accounts of the Management Committee shall be kept under the direction of the Treasurer and in accordance with the reasonable standards of accounting procedures.

2. Report. At the close of each accounting year, the books and records of the Management Committee shall be reviewed by a person or firm approved by the Unit Owners. Report of such review shall be prepared and submitted to the Unit Owners at or before the annual meeting of the Unit Owners; provided, however, that a certified audit by a certified public accountant approved by the Unit Owners shall be made if at least 75 percent of the Owners of undivided interest in the Common Areas determine to do so.

3. Inspection of Books. Financial reports, such as are required to be furnished, shall be available at the principal office of the Management Committee or the Manager for inspection at reasonable times by any Unit Owner.

## VII

### BUILDING RULES

The Management Committee shall have the power to adopt and establish, by resolution, such building, management and operational rules and regulations as it may deem necessary for the

maintenance, operation, management and control of the Three Fountains North Ogden Condominium Project, and it may from time to time by resolution, alter, amend, and repeal such rules and regulations Unit Owners shall at all times obey such rules and regulations and use their best efforts to see that they are faithfully observed by their Lessees and the persons over whom they have or may exercise control or supervision, it being clearly understood that such rules and regulations shall be binding upon all Unit Owners of the Condominium Project. Provisions of the Act pertaining to rules and regulations are incorporated herein by reference and shall be deemed a part hereof.

VIII

AMENDMENT OF BY-LAWS

These By-Laws may be amended at any duly constituted meeting of the Unit Owners called for the purpose by the affirmative vote of at least two-thirds of the ownership in the Common Areas.

EXHIBIT "C"Parcel A

Land of Declarant for contemplated Phase II:

A part of Lot 49, Plat "B" North Ogden Survey in the Northeast Quarter of Section 32, Township 7 North, Range 1 West, Salt Lake Base and Meridian, U. S. Survey: Beginning at a point on the West line of Washington Boulevard South  $0^{\circ} 15'$  West 408.78 feet from the Northeast corner of said Lot 49; running thence South  $61^{\circ} 45'$  West 169.38 feet; thence North  $28^{\circ} 15'$  West 95 feet; thence South  $61^{\circ} 45'$  West 55 feet; thence North  $28^{\circ} 15'$  West 20 feet; thence South  $61^{\circ} 45'$  West 190 feet; thence North  $28^{\circ} 15'$  West 130 feet; thence North  $89^{\circ} 50'$  West 178.94 feet; thence South  $0^{\circ} 15'$  West 265.56 feet; thence South  $89^{\circ} 45'$  East 660 feet; North  $0^{\circ} 15'$  East 248.22 feet to the point of beginning containing 3.386 acres.

0200-0020-81

Parcel B

Land for possible expansion subsequent to Phase II: (as stated in paragraph 12(a) of the Declaration, Declarant has no title whatsoever in or to the same as of this date)

Part of Lot 49, Plat "B", North Ogden Survey: Beginning North  $89^{\circ} 41' 30''$  West 85 feet of the Northeast corner of the West half of said Lot 49 and running thence South 125 feet; thence East 85 feet; thence South to the Southeast corner of said West half of said Lot 49; thence North  $89^{\circ} 45'$  West 97 feet more or less to the West line of Central Weber Sewer Improvement District; thence North  $0^{\circ} 18'$  West 660.6 feet to North line of said Lot; thence South  $89^{\circ} 41' 30''$  East 12.17 feet to beginning. Containing 1.23 acres.

Part of Lots 49 and 50, Plat "B", North Ogden Survey, Weber County, Utah: Beginning 97.17 feet North  $89^{\circ} 41' 30''$  West from the Northeast corner of the West half of said Lot 49, on the West line of the Central Weber Sewer Improvement District, and running thence South  $0^{\circ} 18'$  East 660.6 feet to South line of said Lot 49, thence North  $89^{\circ} 45'$  West 563 feet to Southwest corner of said Lot 49, thence South  $0^{\circ} 15'$  West 495 feet, thence North  $89^{\circ} 45'$  West 363 feet, thence thence North  $0^{\circ} 15'$  East 1155 feet, thence South  $89^{\circ} 41' 30''$  East 925.83 feet to beginning. Containing 18.2 acres more or less.