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**SECOND AMENDED DECLARATION OF
CONDOMINIUM FOR
ARLINGTON PLACE CONDOMINIUMS
(A Utah Condominium Project)**

This Second Amended Declaration of Condominium is made and executed this 30th day of August, 1996 by The Arlington Place Homeowners Association, Inc. (hereinafter referred to as "Declarant").

RECITALS

WHEREAS, on August 19, 1983, Hill-Mangum Investment Co., a Utah partnership, caused to be recorded the Declaration of Condominium for Arlington Place Condominiums in the office of the Salt Lake County Recorder, State of Utah, as Entry No. 3833483 in Book 5484 at Page 1087; and

WHEREAS, on December 4, 1984, First Security Bank of Utah, N.A. and Arlington Place Homeowners Association, Inc. caused to be recorded the Amended Declaration of Condominium of Arlington Place Condominiums in the office of the Salt Lake County Recorder, State of Utah, as Entry No. 4024750 in Book 5612 at Page 2178; and

WHEREAS, under §6 and §26 of the Declaration, Declarant, its successors and assigns, reserved the right to amend the Declaration; and

WHEREAS, the purpose and intention of filing this Second Amended Declaration is to assure that the Declaration complies in all respect with regulation and policy statements issued by the United States Office of Housing and Urban Development, together with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and/or the Veterans Administration for purposes of loaning funds from one or more of the said agencies to be secured by a unit or units of the condominium project; and

WHEREAS, Article 15.1 of the Amended Declaration sets forth the procedures for further amending the Declaration; and

WHEREAS, §15.1 of the Amended Declaration requires the vote of at least 67% of the percentage interest in the common areas to authorize a further amendment of the Declaration; and

WHEREAS, in any such further amended declaration, the committee shall certify that the vote required by §15.1 for amendment has occurred; and

WHEREAS, this Second Amended Declaration is, in all respects, subject to and incorporated in the Declaration and the Amended Declaration, except insofar as specifically identified and amended hereafter;

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NOW, THEREFORE, with full authority of the committee and at least 67% of the percentage interest in the common areas as defined in the Declaration; Declarant hereby creates the following:

SECOND AMENDED DECLARATION

ARTICLE IV (NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP) shall be amended to include the following:

4.14 No Right of First Refusal. The Association retains no right of first refusal to purchase any unit that may otherwise be sold or transferred, consistent with the terms and conditions of this Declaration and the Bylaws, by its legal owner.

ARTICLE VIII (ASSESSMENTS) shall amended to read as follows:

8.9 Personal Obligation of Owner. The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association 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 this Unit. Owner shall be liable for all costs, expenses and legal fees incurred in any action to recover any judgment for such personal obligation incurred by Owner. The obligation for delinquent assessments under this Article 8, while constituting a lien against the Unit or lot, shall nevertheless shall not pass as a personal obligation to any successor in title or interest unless specifically assumed or required by applicable law.

8.11 Personal Liability of Purchaser for Assessments. [deleted]

8.13 Rights of Action. The owners association and any aggrieved unit owner shall be granted a right of action against unit owners for failure to comply with the provisions of the declaration, by-laws, or equivalent documents, or with decisions of the owners association which are made pursuant to authority granted the owners association in such documents. Unit owners shall have similar rights of action against the owners association.

ARTICLE IX (INSURANCE) shall be amended to read as follows:

9.1 The Association shall secure and at all times maintain the following insurance coverage:

- (a) **Hazard Coverage.** A multi-peril policy or policies of fire and other hazard insurance covering the entire Project (both Units and Common Areas), with extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors, and as required by FNMA, FHLMC and VA, for projects similar in construction,

location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost). Each such policy shall contain the standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear. The assured shall be the Association as a trustee for the Unit Owners, or their authorized representative. Such insurance must provide protection against at least the following: loss by fire and other hazards covered by the standard extended coverage.

- 9.2 (b) All insurance policies shall be written by a company holding a financial rating of Class VI or better as designated in Best's Insurance Reports. Each insurer must be specifically licensed to transact business within the State of Utah. Policies are unacceptable where (i) under the terms of the insurance carrier's charter, by-laws, or policy, contributions or assessments may be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC; (ii) by the terms of the carrier's charter, by-laws or policy, loss payments area contingent upon action by the carrier's board of directors, policyholders, or members or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds.

9.3 **Name of Insured.** The name of the insured under all policies referenced in this Article IX shall be identified substantially as follows: "Association of owners of the Arlington Place Condominium for use and benefit of the individual owners."

ARTICLE X (DAMAGE OR DESTRUCTION) shall be amended to add the following provision:

10.3 Notwithstanding the provisions of 10.1 above, no termination of the condominium project may be effected by the Association without approval by no less than 51 % of the existing first mortgagees, their successors or assigns.

ARTICLE XIV (MORTGAGEE PROTECTION) shall be amended to read as follows:

14.1 From and after the time a Mortgagee makes written request to Association therefor, the Association shall notify such Mortgagee in writing in event that the Owner of the Unit encumbered by the Mortgage held by such Mortgagee neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

14.2 The lien or claim against a Unit or unpaid assessments or charges levied by the Association pursuant to this Declaration or the Act shall be subordinate to the Mortgage affecting such Unit, and the mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessments or charges, but only to the extent of a power of sale available thereunder, or deed or assignment in lieu of

foreclosure (except for claims for a pro rata share of such prior assessments or charges resulting from a pro rata reallocation thereof to all Units including the Unit in which the Mortgagee is interested). No assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not to burden a Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a Mortgagee, a successor in title to a Mortgagee, or the Unit affected or previously affected by the Mortgage concerned.

14.3 Unless at least fifty-one percent (51%) of the Mortgagees (based on the vote for each Mortgage) have given their prior written approval, the Association shall not be entitled, by act, omission, or otherwise:

- (a) To abandon or terminate the Project or to abandon or terminate the arrangement which is established by this Declaration and the Map.
- (b) To partition or subdivide any Unit.
- (c) To abandon, partition, subdivide, encumber, sell, or transfer all or any part of the Common Areas (except for the granting of easements for utilities and similar purposes consistent with the intended use of the Common Areas, and except as such matters which might result from Declarant's conversion of Convertible Spaces pursuant to the provisions of Article VI.
- (d) To use hazard insurance proceeds resulting from damage to any part of the Project (whether to Units or to the Common Areas) for purposes other than the repair, replacement, or reconstruction of such improvements, except as provided in Article XI.
- (e) To change the pro rata interests or obligations of any Unit which apply 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 to each Unit in the Common Areas, except as such changes may occur as a result of Declarant's conversion of the Convertible Spaces pursuant to the provisions of Article VI.

14.4 The Association shall not: (i) alter the provisions of Article X in such a way as to diminish the insurance protection required to be afforded to the parties designed to be protected thereby or (ii) fail to maintain the insurance coverage described in said Article.

14.5 Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association. The Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs, maintenance and replacements of the Common Areas and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Units rather than by special assessment.

14.6 From and after the time a Mortgagee makes written request to the Association therefor, the Committee or the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to or taking or anticipated condemnation of: (i) the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand Dollars (\$10,000.00); or (ii) any Unit encumbered the Mortgage held by such Mortgagee, if the amount involved in such damage, loss, or taking is in excess of, or reasonably estimated to be in excess of, One Thousand Dollars (\$1,000.00). Said notice shall be given within ten (10) days after the Association learns of such damage, loss, taking or anticipated condemnation.

14.7 No provision of this Declaration gives or may give a Unit Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution of Unit Owners of insurance proceeds or condemnation awards for loss to or taking of Units and/or the Common Areas.

14.8 Any Mortgagee which obtains title to the Unit encumbered by its Mortgage pursuant to the remedies provided for in said Mortgage, pursuant to foreclosure of said Mortgage, pursuant to exercise of a power of sale available under said Mortgage, or pursuant to deed or assignment in lieu of foreclosure, shall be exempt from and shall in no way be governed by or subject to any "right of first refusal" which may be contained in or provided for in this Declaration.

14.9 In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article XV, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

14.10 No amendment to this Declaration which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effected unless all of the Mortgagees of the individual Units have given their prior written approval to such amendment. Any amendment to this Article XV shall be accomplished by an instrument executed by the Association and filed for record in the office of the Salt Lake County Recorder. In any such instrument an officer of the Association shall certify that any prior written approval of Mortgagees required by this Article XV as a condition to amendment has been obtained.

14.11 A holder, insurer or guarantor of a first mortgage, upon written request to the owners association, (such request to state the name and address of such holder, insurer or guarantor and the unit number), will be entitled to timely written notice of:

- (a) Any proposed amendment of the condominium instruments effecting a change in (i) the boundaries of any unit or the exclusive easement rights appertaining thereto, (ii) the interests in the general or limited common elements appertaining to any unit or the liability for common expenses appertaining thereto, (iii) the number of votes in the owners association appertaining to any unit or (iv) the purposes to which any unit or the common elements are restricted;

- (b) Any proposed termination of the condominium regime;
- (c) Any condemnation loss or any casualty loss which affects a material portion of the condominium or which affects any unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;
- (d) Any delinquency in the payment of assessments or charges owned by an owner of a unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days;
- (e) Any lapse, cancellation or material modification of any insurance policy maintained by the owners association pursuant to paragraph 14(a)(i) and (ii).

14.12 Any restoration or repair of the condominium after a partial condemnation or damage due to an insurance hazard shall be substantially in accordance with the declaration and the original plans and specifications unless the approval of the eligible holders of first mortgage on units to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated, is obtained.

14.13 Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the condominium property must require the approval of the eligible holders of first mortgages on units to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated.

14.14 Unless the formula for reallocation of interests in the common elements after a partial condemnation or partial destruction of the condominium project is fixed by advance by the declaration or by applicable law, no reallocation of interests in the common elements resulting from a partial condemnation or partial destruction of the condominium project may be effected without the approval of the eligible holders of first mortgages on units to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated.

ARTICLE XV (AMENDMENT) shall be amended to read as follows:

- 15.1** (a) The consent of owners of units to which at least 67% of the votes in the owners association are allocated and the approval of the eligible holders of first mortgages on units to which at least 67% of the votes of units subject to a mortgage appertain, shall be required to terminate the condominium project.
- (c) The consent of owners of units to which at least 67% of the votes in the owners association are allocated and the approval of eligible holders of first mortgages on units to which at least 51% of the votes of units subject to a mortgage appertain, shall be required to materially amend any provisions of the declaration, by-laws or equivalent documents of the condominium,

or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

- (1) Voting;
 - (2) Assessments, assessment liens or subordination of such liens;
 - (3) Reserves for maintenance, repair and replacement of the common elements;
 - (4) Insurance or Fidelity Bonds;
 - (5) Rights to use of the common elements;
 - (6) Responsibility for maintenance and repair of the several portions of the condominium;
 - (7) Expansion or contraction of the condominium regime or the addition, annexation or withdrawal of property to or from the regime;
 - (8) Boundaries of any unit;
 - (9) The interests in the general or limited common elements;
 - (10) Convertibility of units into common elements or of common elements into units;
 - (11) Leasing of units;
 - (12) Imposition of any right of first refusal or similar restriction on the right of a unit owner to sell, transfer, or otherwise convey his or her unit in the condominium;
 - (13) Establishment of self-management by the condominium association where professional management has been required by any of the agencies or corporations.
- (c) For first mortgagees to be eligible holders under this Section, they must request notice in accordance with the provisions of Section 9(a).

ARLINGTON PLACE HOMEOWNERS
ASSOCIATION, INC.

By: *Jerry Saxton*
Jerry Saxton, President

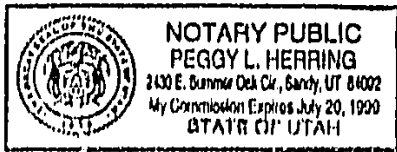
By: *Reesa Colman*
Reesa Colman, Secretary/Treasurer

APPROVED AND AGREED TO:

Jerry Saxton
Jerry Saxton, 67% Majority Owner

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

On this 30th day of August, 1996, personally appeared before me, Jerry Saxton as President and Reesa Colman as Secretary/Treasurer of the Arlington Place Homeowners Association, Inc., who duly acknowledged to me that they executed the foregoing instrument.



Peggy L. Herring
NOTARY PUBLIC

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4:44 PM
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
TIMOTHY COLMAN
115 S 1100 E #400
SLC UT 84102
REC BY: D BECKSTEAD , DEPUTY - WI

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