

JAMESTOWN VILLA CONDOMINIUMS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, hereinafter called "Declaration" and the By-Laws, which are attached hereto as Appendix "B" and made a part hereof, are made and executed in Salt Lake County, Utah, this 4th day of August, 1997, by JAMESTOWNE INVESTMENT COMPANY, L.C., a Utah limited liability company, hereinafter referred to as "Declarant" for themselves and their successors, grantees and assigns, pursuant to the provisions of the Utah Condominium Ownership Act, Utah Code Annotated, Section 57-8-1, et seq. 1953 (as amended), hereinafter referred to as the "Act."

WITNESSETH:

WHEREAS, Declarant is the owner of certain land located in Salt Lake County, Utah, hereinafter referred to as the "land" and more particularly described in Appendix "A" of this Declaration which is attached hereto and made a part hereof; and,

WHEREAS, the land is improved with twelve (12) residential dwelling units and other improvements described and depicted in the plans and drawings set forth in the Record of Survey Map filed concurrently herewith, consisting of 3 sheets prepared and certified by RICHARD K. JOHNSON, a duly registered Utah Land Surveyor; and,

WHEREAS, Declarant desires, by filing this Declaration and the aforesaid Record of Survey Map, to submit the land, the buildings, and other improvements constructed thereon to the provisions of the Utah Condominium Ownership Act as a residential condominium project (the "Project") known as "JAMESTOWN" VILLA CONDOMINIUMS"; and,

WHEREAS, Declarant desires and intends to sell and convey the fee title to the individual units contained in the Project, together with an undivided ownership interest in the common areas and facilities appurtenant thereto, to various purchasers, subject to the covenants, conditions and restrictions herein reserved to be kept and observed by the unit purchasers and their successors for the benefit of the Project and the unit owners thereof.

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NOW, THEREFORE, for such purposes, Declarant hereby makes this Declaration containing covenants, conditions and restrictions for the Project which, pursuant to the provisions of Utah Code Annotated, Section 57-8-10, 1953 (as amended), shall be enforceable equitable servitudes where reasonable and shall run with the land:

1. **PROJECT NAME.** The name by which the Project and property shall be known is "JAMESTOWN VILLA CONDOMINIUMS".

2. **DEFINITIONS.** The terms used herein shall have the meaning stated in the Utah Condominium Ownership Act and shall apply to this Declaration and the By-Laws as follows:

A. "**Declarant**" shall mean JAMESTOWNE INVESTMENT COMPANY, L.C., a Utah limited liability company, who has made and executed this Declaration.

B. The term "**Act**" shall mean and refer to the Utah Condominium Ownership Act, Utah Code Annotated, Section 57-8-1, et seq., 1953 (as amended).

C. The term "**Condominium**" shall mean and refer to the Ownership of a single unit in this Project, together with an undivided interest in the common areas and facilities of the property.

D. The term "**Declaration**" shall mean and refer to this instrument by which the Project is established.

E. The term "**Property**" shall mean and include the land, the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto and all articles of personal property for use in connection therewith.

F. The term "**Project**" or "**Condominium Project**" shall mean and refer to the entire real estate referred to in this Declaration and to the plan of ownership, use and operation of the Property.

G. The term "**Map**" shall mean and refer to the Record of Survey Map of the JAMESTOWN VILLA CONDOMINIUMS recorded herewith by Declarant in accordance with Utah Code Annotated, Section 57-8-13, 1953 (as amended).

H. The term "**Unit**" shall mean and refer to one of the twelve (12) physical portions of a building designed and intended for use and occupancy as a single family residential dwelling Unit designated on the Record of Survey Map filed herewith. Each Unit consists of the area measured horizontally from the Unit side of the exterior walls of the building to the Unit side of other exterior walls and to the center line of

walls separating such Unit from another Unit. Each Unit consists vertically of the space between the top of the floor to the underside of the ceiling. A Unit shall not include pipes, wires, conduits or other utility lines running through it which are utilized for or which serve more than one Unit, nor the structural portion of interior walls providing support to another Unit. Additional clarification is provided under "Description of Units".

I. The term "**Unit Owner**" shall mean and refer to the person or persons owning a Unit in fee simple and an undivided interest in the fee simple estate of the common areas and facilities in the percentage specified and established in this Declaration, which shall include the original purchasers and any other person who may subsequently acquire a Unit.

J. The term "**Association of Unit Owners**" shall mean and refer to all of the Unit Owners collectively and as members of JAMESTOWN VILLA CONDOMINIUMS HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation organized in conjunction herewith, and to any action taken by them as a group or quorum of members of the corporation in accordance with the Act, the Declaration and the By-Laws.

K. The term "**Unit Number**" shall mean and refer to the number designating the Unit in the Declaration and in the Record of Survey Map.

L. The terms "**Majority**" or "**Majority of the Unit Owners**" shall mean the Owners of more than fifty (50%) of an undivided interest in the common areas and facilities.

M. The term "**Management Committee**" shall mean and refer to a committee which shall be the Governing Board of Trustees of the JAMESTOWN VILLA CONDOMINIUMS HOMEOWNERS ASSOCIATION nonprofit corporation, composed of persons duly elected thereto by the Association of Unit Owners, as provided by this Declaration or the Act in accordance with the By-Laws attached hereto as Appendix "B". Said committee is charged with and shall have the responsibility and authority to make and enforce all of the reasonable rules and regulations pertaining to the operation and maintenance of the Project.

N. The term "**Manager**" shall mean and refer to one person, persons, corporation, or other entity selected by the Management Committee to manage the affairs of the Project.

O. The term "**Common Area**" refers to and consists of the entire Project, other than the Units, including, without limitation, the land on which the buildings are erected, the driveways for ingress and egress to all Units and parking areas, all foundations, columns, girders and building structural supporting members, all central and appurtenant installations for services, such as power, light, telephone, gas, water, heat, flood control improvements, or other installations serving more than one Unit, whether situated within the boundaries of a Unit or without, and other items set forth under "Description of Common Area and Facilities".

P. The term "**Common Expense**" shall mean and refer to all expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities, to all items, things and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration, the By-Laws, such rules and regulations pertaining to the Project as the Association of Unit Owners or the Management Committee may from time to time adopt, and such determinations and agreements lawfully made or entered into by the Management Committee.

Q. The term "**Limited Common Area**" shall mean and refer to those Common Areas and facilities designated in this Declaration and the Map reserved for the exclusive use of a certain Unit to the exclusion of the other Units.

R. The term "**Reconstruction of the Building(s)**" shall mean restoring the building to substantially the same condition in which it existed prior to the fire or other disaster, with each Unit and the common elements having approximately the same vertical and horizontal boundaries as before.

S. Those **definitions contained in the Act** to the extent they are applicable to and not inconsistent herewith, shall be and are hereby incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

3. DESCRIPTION OF PROPERTY.

A. **Description of Land:**

The tract of land located in Salt Lake County, Utah, is more fully described in Appendix "A", and is subject to all easements, encroachments,

boundary discrepancies, shortages in area and other matters revealed by the Map or enforceable in law or equity, including adverse possessory rights.

The land is improved with an existing building consisting of twelve residential dwellings (12 Units) primarily of wood frame construction with some brick veneer and with other improvements, including concrete porches, walkways, landscaping, etc., and a parking area with carports (a covered parking structure) for twenty-one (21) parking spaces for automobiles for Unit Owners, such carport parking spaces constitute limited common areas.

All other detail involving the description and location of the building and improvements, the number of stories, and a statement of the number of Units and their identification are set forth in the Map, filed with this Declaration and made a part hereof.

B. Description of Units and Form of Conveyance:

(1) The Record of Survey Map filed for record in the Salt Lake County Recorder's Office with this Declaration, depicts and describes each Unit's location, approximate area, vertical elevation, and provides a description of the Common Areas, including Limited Common Areas.

(2) Each residential Unit shall include:

(a) The space enclosed within the undecorated interior surface of its perimeter walls, floors and ceilings where appropriate to form a complete enclosure of space, including pipes, ducts, wires, conduits or structural divisions in intervening interior walls or partitions, which provide support or benefit solely to the Unit or structural support solely to the Unit.

(b) Any finishing material applied or affixed to the interior surfaces of the perimeter walls, floors and ceilings, including without limitation paint, lacquer, varnish, wall paper, tile, carpeting and paneling.

(c) Non-supporting interior walls.

(d) Windows and doors (excluding the exterior surface of doors in the perimeter walls), whether located within the boundaries of a Unit or

not, but not including any space occupied thereby to the extent located outside the boundaries of the Unit.

(3) Each Unit has immediate access to the Common Areas and Facilities. Any contract for the sale of a Unit and any other instrument affecting title to a Unit may describe that Unit by its identifying number or symbol as designated in the Map with the appropriate reference to the Map and to this Declaration, as each Unit shall appear on the record of the County Recorder of Salt Lake County, Utah, and may be in substantially the following form:

Unit ____, as shown on the Record of Survey Map for JAMESTOWN VILLA CONDOMINIUMS appearing in the records of the County Recorder of Salt Lake County, State of Utah, in Book ____ at Page ____, of Plats, and as defined and described in the Declaration of Covenants, Conditions and Restrictions appearing in such records, in Book ____, Page ____, of Records, together with 8.33% percent of the undivided interest in the Common Areas and Facilities.

Such description will be construed to described the Unit, together with the appurtenant undivided interest in the Common Areas and Facilities and to incorporate all of the rights incident to Ownership of a Unit and all appurtenant undivided interest and all rights and limitations arising as a result of any amendment to the Project.

C. Description of Common Areas and Facilities:

Except as otherwise provided in this Declaration or as inconsistent with the purpose and intent of this Declaration, and the Project or with the Act, the Common Areas and Facilities shall consist of all parts of the Condominium Property, except the Units. Without limiting the generalities of the foregoing, the Common Areas and Facilities shall include the following, whether located within the bounds of the Unit or not:

- (1) All structural parts of the building, including, without limitation, foundations, supporting walls, ceilings and roofs to the extent of the structural support;
- (2) Patios, yards, courts, driveways, parking areas, access ways;
- (3) All central and appurtenant installations for services, such as power, light, telephone, gas, water, flood control improvements and other installations

serving more than one Unit, whether situated within the boundaries of a Unit or without.

(4) Any utility pipe or line or systems servicing more than a single Unit, and all ducts, wires, conduits and other accessories used therewith, but excluding any pipe or line or accessory connecting a single Unit to a main or central pipe or line or system or to a pipe or line or system servicing more than a single Unit.

(5) All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas or Facilities in the Map;

(6) All repairs, replacements or improvements of the foregoing Common Areas and Facilities; and

(7) The Limited Common Areas hereinafter described.

D. Description of Limited Common Areas and Facilities:

Each Unit Owner is hereby granted an irrevocable license to use and occupy the Limited Common Area and Facilities reserved exclusively for the use of his Unit, which shall consist of the areas of the Common Area appurtenant to a Unit which are only reasonably accessible by the Owner or occupants of a Unit and those other areas that are intended for the exclusive use and benefit of a particular Unit, including the carports and parking spaces enclosed by such carports as shown in the Map which are intended for the exclusive service, use and benefit of the designated Unit and are limited to the use and benefit of the Owners of such Unit and their permitted occupants.

4. **SUBMISSION TO CONDOMINIUM OWNERSHIP.** Declarant hereby submits the Property, tract of land, and all improvements constructed thereon or hereafter to be constructed, together with all appurtenances thereto, to the provisions of the Act as a residential Condominium Project and this Declaration is submitted in accordance with the terms and the provisions of the Act and shall be construed and interpreted in accordance therewith.

5. **COVENANTS TO RUN WITH THE LAND.** This Declaration containing covenants, conditions and restrictions relating to the Project shall be enforceable equitable

servitudes and shall run with the land, and this Declaration and servitudes shall be binding upon Declarant, its successors and assigns and upon all Unit Owners or subsequent Unit Owners of all or any part of the Project and upon their grantees, mortgagees, successors, heirs, executors, administrators, leasees, devisees and assigns.

6. STATEMENT OF USES, PURPOSES AND RESTRICTIONS.

A. **Purposes.** The purpose of this Project is to provide residential housing for the Unit Owners and their respective families, tenants, guests and servants in accordance with the provisions of the Act.

B. **Restrictions on Use.** The Units and Common Areas and Facilities shall be used and occupied only as follows:

(1) No part of the Project shall be used for other than housing and customary related uses thereto.

(2) There shall be no obstruction of the Common Areas or Facilities nor shall anything be stored in the Common Areas and Facilities without the prior written consent of the Management Committee, except as is otherwise provided herein.

(3) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rates of insurance on the buildings or Units or contents thereof beyond that customarily kept for residential use, without the prior written consent of the Management Committee. No Unit Owner shall permit anything to be done or kept on or in his Unit or in the Common Areas and Facilities which is likely to or will result in the cancellation of insurance on the buildings, or the contents thereof, or which would be in violation of any law or regulation or any governmental authority. No waste shall be committed in the Common Areas or Facilities.

(4) No Unit Owner shall cause or permit anything (including, without limiting the generality of the foregoing, any sign, awning, canopy, shutter, storm door, screen door, radio or television antenna) to hang, be displayed, or otherwise, attached to or placed on the Unit or exterior walls or roof of a Unit or any part thereof, or the outside of doors, or on windows, if any such object or thing is visible from the outside of the Unit, without prior written consent of

the Management Committee or in compliance with the rules promulgated by the Committee.

(5) No animals or birds of any kind shall be kept in any Unit or in the Common Areas and Facilities by Unit Owners, except that dogs, cats and other generally recognized household pets may be kept in Units, subject to the rules adopted by the Management Committee and provided further that any such pet which shall create a disturbance or be a nuisance shall be permanently removed from the Project within ten (10) days after notice from the Management Committee.

(6) No noxious or offensive activity of any kind shall be carried on in any Unit or in the Common Areas or Facilities, nor shall anything be done therein, either willfully or intentionally, which may be or is likely to become an annoyance or nuisance to the other Unit Owners or occupants.

(7) Except as otherwise provided herein, nothing shall be done to or in any Unit, to or on any Common Area and Facility which will impair the structural integrity of the building or any part thereof or which would structurally change the building or any part thereof.

(8) No industry, business, trade, occupation or profession of any kind, whether for commercial, religious, educational, charitable, or any other purpose shall be conducted, maintained or permitted on any part of the Project, except as may be permitted by the Management Committee and subject to its rules, nor shall "For Sale" or "For Rent" signs or other window display or advertising be maintained or permitted by any Unit Owner on any part of the Project or in any Unit therein, except that:

(a) The Declarant may perform or cause to be performed such work as is incident to the sale, repair or alteration of the Property, or to the sale or lease of Units owned by the Declarant, including advertising and signs showing the location of model units and the like.

(b) The Declarant or its agents may place "For Sale" or "For Rent" signs on any unsold or unoccupied Units and may place such other

signs on the Property for the purpose of facilitating the sale or lease of Units owned by it.

(c) Subject to reasonable rules adopted by the Management Committee on behalf of the Association of Unit Owners, any Unit Owner or mortgagee shall have the right to place a temporary "For Sale" or "For Rent" sign on a Unit for the purpose of facilitating the sale or lease of such Unit.

(9) Boats, campers, recreational vehicles and extra automobiles shall be subject to the rules and regulations promulgated by the Management Committee. The Management Committee shall have the power to preclude them from the Project or take whatever action is deemed reasonable and necessary to maintain a high quality residential community. The Management Committee shall also have the power to designate visitors and/or reserved parking areas for Unit Owners in accordance with rules and regulations adopted by the Management Committee.

7. OWNERSHIP AND USE.

A. **Ownership of a Unit.** Except with respect to any of the Common Areas and Facilities located within the bounds of a Unit, each Unit Owner shall be entitled to the exclusive Ownership and possession of his Unit and to the Ownership and a percentage undivided interest in the Common Areas and Facilities.

B. **Prohibition against Subdivision of a Unit.** No Unit Owner shall by deed, plat or otherwise, subdivide or in any manner, cause his Unit to be separated into tracts or parcels smaller than the Unit shown on the Map.

C. **Ownership of Common Areas and Facilities.** The Common Areas and Facilities shall be owned by the Unit Owners as tenants in common and Ownership thereof shall remain undivided. No action for partition of any part of the Common Areas and Facilities shall be maintainable, except as specifically provided in the Act, nor may any Unit Owner otherwise waive or release any rights in the Common Areas and Facilities.

D. **Use of Common Areas and Facilities.** Except with respect to common pipes, utility services and flood control facilities, each Unit Owner may use the

Common Areas and Facilities in accordance with the purposes for which they are intended, provided such use shall also be consistent with this Declaration and the By-Laws, which right of use shall be appurtenant to and run with the Unit.

E. **Interest in Common Areas and Facilities.** The percentage of undivided interest in the Common Areas and Facilities has been determined to be: Equal for all Units, i.e. one-twelfth or 8.33% per Unit. All common expenses and income, if any, shall be allocated accordingly.

F. **Use and Maintenance of Limited Common Areas and Facilities.** A Unit Owner's use and occupancy of the Limited Common Areas and Facilities reserved for his exclusive use shall be subject to and in accordance with the provisions of this Declaration and By-Laws. The Management Committee shall have responsibilities for the maintenance and repair of the Limited Common Area. The Management Committee provide insurance for or otherwise take such measures as it may deem appropriate for the maintenance, repair and protection of such Limited Common Areas.

8. **REGISTERED AGENT.** The name and address of the person in the State of Utah, appointed as first agent to receive service of process for all matters pertaining to the Project under the Utah Condominium Ownership Act is:

Glen A. Linnebach
1094 Loch Lomond Way
Salt Lake City, Utah 84117-4975

The agent shall be the registered agent for the nonprofit corporation, appointed by the Management Committee, and may be changed from time to time by filing appropriate reports with the Utah Division of Corporations.

9. **VOTING.** The Ownership in the Common Areas and Facilities of the Condominium is set forth in Section 7E. and voting shall be in the same proportion as Ownership in the Common Areas and Facilities.

10. **EASEMENTS.**

A. The Management Committee may hereafter grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wire equipment and electrical conduits and wires over, under, along and through any portion of the Common Areas and Facilities.

B. Declarant shall have a transferable easement over and on the Common Areas and Facilities for the purpose of making improvements on the land within the Project or on any additional land under this Declaration and the Act and for the purpose of doing all things reasonably necessary and proper in connection with the same.

C. Declarant and their duly authorized agents, representatives and employees shall have the right to maintain sales offices and model Units on the land within the Project. Declarant may use no more than two (2) unoccupied Units for model Units at any one time.

D. To the extent that any damage is inflicted on any part of the Project by any person or persons utilizing the easements reserved to Declarant by Subsections "B" and "C" of this Section, the Declarant, together with such person or persons causing the same, shall be jointly and severally liable for the prompt repair of the damage and for the restoration of the same to a condition compatible with the remainder of the Project.

E. Each Unit shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any Common Areas and Facilities located within the boundaries of such Unit.

F. The County of Salt Lake and any other governmental or quasi-governmental body having jurisdiction over the Property shall have access and rights of ingress and egress over and across any street, parking area, walkway, or open areas contained within the Property for purposes of inspection of and access to flood control facilities or emergency repair of such facilities without releasing the Association from the responsibility for such repairs and maintenance or the costs thereof, or providing police and fire protection, transporting school children, bus services and providing any other governmental or municipal services.

G. In the event that, by reason of the construction, reconstruction, settlement or shifting of a building, any part of the Common Areas and Facilities encroach or shall hereafter encroach upon any part of any Unit or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Areas and Facilities or any other Unit, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and

the Common Areas and Facilities, as the case may be, so long as all or any part of the building containing any such Unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Unit Owner or Owners of the Common Areas and Facilities if such encroachment occurred due to the willful conduct of such Unit Owner or Owners.

11. **EXCLUSION OF WARRANTIES.** Each Unit and all Common Areas and Limited Common Areas are sold by Declarant in an "as is" condition. The Declarant does not warrant the merchantability of any part of the Units or the Common Areas or Limited Common Areas and Facilities. The Declarant does not warrant that any part of any Unit or the Common Areas and Facilities are fit for any particular purpose. Anyone purchasing a Unit waives any right he may have to bring an action against Declarant for breach of warranty. No suit, whether in equity or at law, shall be maintainable against Declarant by a Unit Owner, individually, or by the Association of Unit Owners, by reason of any alleged breach of an express or implied warranty.

12. **OPERATION AND MAINTENANCE.**

A. **Maintenance of Units.** Each Unit shall be maintained by the Owner thereof, as often as necessary to maintain an attractive condition, so as not to detract from the appearance of the Property and so as not to adversely affect the value, use or enjoyment of any other Unit. The Association shall have no obligation for the maintenance or care of any Unit, except for Common Area or Facilities within the boundaries of a Unit, however, the Association shall have the right to enforce the covenants herein and in the By-Laws respecting a Unit Owner's obligation to maintain his Unit.

B. **Operation and Maintenance by Association.** The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them reasonably clean, functional, attractive and generally in good condition and repair. The organization and procedural methods are provided in the By-Laws.

C. **Assessments.** The Owner of each Unit shall be assessed a share of the expenses determined by the Association to be necessary to maintain the common areas

and facilities in the Project. The form, manner and other related matters respecting assessments are covered in more detail in the By-Laws.

13. MORTGAGE PROTECTION.

A. Any "right of first refusal" contained in the Condominium documents shall not impair the rights of a first mortgagee to:

- (1) Foreclose or take title to a Unit, pursuant to the remedies provided in the mortgage, or
- (2) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or
- (3) Sell or lease a Unit acquired by the mortgagee.

B. Any first mortgagee who obtains title to a Unit, pursuant to the standard remedies provided in the mortgage or by foreclosure of the mortgage, will not be liable for such Unit's unpaid dues or charges which accrue prior to the acquisition of title to such Unit by the mortgagee.

C. Unless at least two-thirds (2/3) of the first mortgagees (based on one vote for each first mortgage owned) and Owners (other than the sponsor, developer or builder) of the individual Units have given their prior written approval, the Association shall not be entitled to:

- (1) By act or omission, seek to abandon or terminate the Project;
- (2) Change the prorata interest or obligations of any individual Unit for the purpose of:
 - (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or
 - (b) determining the prorata share of Ownership of each Unit in the common elements.
- (3) Partition or subdivide any Unit;
- (4) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the Project shall not be deemed a transfer within the meaning of this clause);

(5) If there is a steam boiler in operation in connection with the Mortgage Premises, there must be in force boiler protection insurance evidenced by the standard form of boiler and machinery insurance policy and providing as a minimum \$50,000 per accident per location.

(6) If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Project must be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the Units comprising the Project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be stated to be the "Association of Unit Owners of JAMESTOWN Villa Condominiums."

(7) Use hazard insurance proceeds for losses to any Property (whether to Units or to common elements) for other than the repair, replacement or reconstruction of such Property, except as provided by statute in case of substantial loss to the Unit and/or common elements in the Project.

D. Any proposal or plan pursuant to which the Project is subject to phasing or add-ons complies with the following limitations:

(1) Unit Owner's undivided interest in the common elements must be stated in the Declaration; and the conditions whereby any change in such percentage of undivided interest in common elements may take place are fully described in such Declaration, together with a description of the real Property which will become subject to the Project if such alternative percentage interest becomes effective; and

(2) No change in the percentage interests in the common elements may be affected pursuant to such phasing or add-on plan more than seven (7) years after the Declaration becomes effective.

E. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Units and not to the Project as a whole.

F. Notwithstanding anything contained herein to the contrary, no provision of the constituent documents gives a Unit Owner, or any other party priority over any rights of the first mortgagee of the Unit, pursuant to its mortgage, in the case of a distribution to such Unit Owners of insurance proceeds or condemnation awards for losses to or for a taking of Units and/or Common Areas and Facilities.

G. For all purposes in this Section and otherwise in this Declaration and the By-Laws, the terms "first mortgage" or "first mortgagee" shall also mean a first trust deed and the beneficiary under a first trust deed respectively.

14. **AMENDMENT.** Except for the provisions herein for the benefit of any first mortgagee, these Declarations and/or the Map may be modified or amended by the vote of fifty-one percent (51%) of all Unit Owners (holders of the common interests) at a meeting of Unit Owners duly held for such purposes. Amendments affecting the interest of a first mortgagee can only be made with the written approval of those mortgagees holding mortgages constituting first liens upon two-thirds (2/3) of the Units. Any amendment shall be effective by the recording of an instrument wherein the Management Committee certifies that not less than fifty-one percent (51%) of all Unit Owners and when required that not less than two-thirds (2/3) of the mortgagees holding mortgages which constitute first liens upon any of the Units, have approved and consented to any such amendment.

15. **SEVERABILITY.** The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of the instrument or any part hereof, all of which are inserted subject to their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid or should operate to render this Agreement invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, section or sections had not been inserted.

16. **TOPICAL HEADINGS.** The topical headings of the paragraphs contained in this Declaration are for convenience only and do not define, limit or control the interpretation of the paragraphs of this Declaration.

17. **GENDER.** The singular, whenever used herein, shall be construed to mean the plural whenever applicable and the necessary changes required to make the provisions hereof

17. **GENDER.** The singular, whenever used herein, shall be construed to mean the plural whenever applicable and the necessary changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

18. **EFFECTIVE DATE.** This Declaration shall take effect upon recordation.

DECLARANT:

JAMESTOWNE INVESTMENT COMPANY, L.C.,
a Utah limited company,

By: Glen A. Linnebach
GLEN A. LINNEBACH, Manager

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

On the 4th day of August, 1997, personally appeared before me GLEN A. LINNEBACH, who being by me duly sworn did say that he is Manager of the above named Declarant and that said instrument was signed on its behalf and he is properly authorized to sign and executed the same.

[Signature]
Notary Public
Tercia V. Jarvis



APPENDIX "B"
BY-LAWS OF
JAMESTOWN VILLA CONDOMINIUMS

ARTICLE I

Plan of Condominium Unit Ownership

Section 1. **Unit Ownership.** The property located in Salt Lake County, Utah, and more particularly described in Appendix "A", hereinafter called the Project, has been submitted to the provisions of the Utah Condominium Ownership Act, by the Declaration recorded in the office of the County Recorder, Salt Lake County, simultaneously herewith.

Section 2. **Applicability of By-Laws.** The provisions of these By-Laws are applicable to the Project and to the use and occupancy thereof. The term "Property" as used herein shall include the land, the buildings and all other improvements thereon, all easements, rights and appurtenances belonging thereto, and all other property personal or mixed, intended for use in connection therewith, all of which are intended to be submitted to the provisions of the Utah Condominium Ownership Act.

Section 3. **Application.** All present and future owners, mortgagees, lessees and occupants of Units and their employees, and any other persons who may use the facilities of the Project in any manner are subject to these By-Laws, the Declaration and the rules and regulations pertaining to the use and operation of the Property. The acceptance of a deed or conveyance, or the entering into of a lease, or the act of occupancy of a Unit shall constitute an acceptance of the provisions of these instruments and an agreement to comply therewith.

Section 4. **Office.** The Management Committee may maintain an office. Correspondence should be mailed to the attention of the Management Committee, JAMESTOWNE VILLA CONDOMINIUMS, at the address of the office established or at the President's address, which addresses may change from time to time.

ARTICLE II

Management Committee

Section 1. **Number and Qualification.** The affairs of the Project shall be governed by the Management Committee. Until thirty-six (36) months have elapsed from the time the

Declaration and By-Laws have been recorded or until three-fourths (3/4) of the Units are conveyed to individual owners, whichever occurs first, the Declarant in its sole discretion may determine, and shall have the right to select the Management Committee to hold office thereafter until their successors shall have been elected by the Unit Owners. The Management Committee shall consist of such of the officers and agents of the Declarant as shall have been designated by the Declarant until said thirty-six months have elapsed or until three-fourths of the Units are conveyed. Thereafter the Management Committee shall be composed of three (3) persons, all of whom shall be the owners, spouses of owners or mortgagees of the Units; or, in the case of partnership owners or mortgagees, members or employees of such partnership; or in the case of corporate owners or mortgagees, officers, shareholders, or employees of such corporations; or in the case of fiduciary owners or mortgagees, fiduciaries or officers or employees of such fiduciaries.

Section 2. **Powers and Duties.** The Management Committee shall have the powers and duties necessary for the administration of the affairs of the Project, except as such powers and duties by law or by the Declaration or by these By-Laws may not be delegated to the Management Committee by the Unit Owners. The powers and duties to be exercised by the Management Committee shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the common elements;
- (b) Determination of the amounts required for operation, maintenance and other affairs of the Project;
- (c) Collection of the common charges from the Unit Owners;
- (d) Employment and dismissal of personnel as necessary for the efficient maintenance and operation of the Project;
- (e) Adoption and amendment of rules and regulations covering the details of the operation and use of the Property;
- (f) Opening of bank accounts on behalf of the Project and designating the signatories required therefor;
- (g) Obtaining insurance for the Property, including the Units, pursuant to the provisions contained in the Declaration and these By-Laws;
- (h) Making repairs, additions and improvements to, or alterations of, the Property, and repairs to and reconstruction of the Property in accordance with the provisions of the

Declaration and By-Laws after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;

(i) Acquiring by purchase or lease such equipment as may be necessary for the management of the Project; and

(j) Taking all steps necessary to incorporate the association of Unit Owners or to continue such corporation under the provisions of the Utah Non-Profit Corporation Act, Section 16-6-18, et seq., Utah Code Annotated, 1953 (as amended).

Section 3. **Managing Agents and Manager.** The Management Committee may employ for the Project, a managing agent or a manager at the compensation established by the Management Committee to perform such duties and services as the Management Committee shall authorize, including, but not limited to, the duties listed in subdivisions (a), (c), (d), (g) and (h) of Section 2 of this Article II. The Management Committee may delegate to the manager or managing agent all of the powers granted to the Management Committee by these By-Laws other than the powers set forth in subdivisions (b), (e), (f), (i) and (j) of Section 2 of this Article II. Any agreement for professional management of the Project, or any other contract providing for services of the developer, sponsor or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

Section 4. **Election and Term of Office.** At the first annual meeting of the Unit Owners, the term of office of the three (3) members of the Management Committee shall be fixed at one (1) year. At the expiration of the initial term of office of each respective member of the Management Committee, his successor shall be elected to serve for a term of one (1) year. The members of the Management Committee shall hold office until their respective successors shall have been elected by the Unit Owners.

Section 5. **Removal of Members of Management Committee.** At any regular or special meeting of Unit Owners, after the Unit Owners have assumed the management responsibility, any one or more of the members of the Management Committee may be removed with or without cause by a majority of the Unit Owners and a successor may then and there or thereafter be elected to fill the vacancy thus created. Any member of the Management Committee whose removal has been proposed by the Unit Owners shall be given an opportunity to be heard at the time of the meeting.

Section 6. **Vacancies.** Vacancies in the Management Committee caused by any reason other than the removal of a member thereof by a vote of the Unit Owners, shall be filled by a vote of a majority of the remaining members at a special meeting of the Management Committee held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Management Committee for the remainder of the term of the member so removed and until a successor shall be elected at the next annual meeting of the Unit Owners.

Section 7. **Organization Meeting.** The first meeting of the members of the Management Committee following the annual meeting of the Unit Owners shall be held within ten (10) days thereafter at such time and such place as shall be fixed by the Unit Owners at the meeting at which such Management Committee shall have been elected, and no notice shall be necessary to the newly elected members of the Management Committee in order to legally constitute such meeting, providing a majority of the whole Management Committee shall be present thereat.

Section 8. **Regular Meetings.** Regular meetings of the Management Committee may be held at such time and such place as shall be determined from time to time by a majority of the members of the Management Committee, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Management Committee shall be given to each member of the Management Committee, by mail or telephone at least seven (7) business days prior to the day named for such meeting.

Section 9. **Special Meetings.** Special Meetings of the Management Committee may be called by the President on three (3) business days notice to each member of the Management Committee, given by mail or telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Management Committee shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) members of the Management Committee.

Section 10. **Waiver of Notice.** Any member of the Management Committee may, at any time, waive notice of any meeting of the Management Committee in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Management Committee at any meeting of the Management Committee shall constitute a waiver of notice by him of the time and place thereof. If all of the members of the

Management Committee are present at any meeting of the Management Committee, no notice shall be required and any business may be transacted at such meeting.

Section 11. **Quorum of Management Committee.** At all meetings of the Management Committee, a majority of the members thereof shall constitute a quorum for the transaction of business, and the vote of a majority of the members of the Management Committee present at a meeting in which a quorum is present shall constitute the decision of the Management Committee. If at any meeting of the Management Committee there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called, may be transacted without further notice.

Section 12. **Fidelity Bonds.** If the Unit Owners by majority vote so require, the Management Committee shall obtain adequate fidelity bonds for all officers, directors, managers, trustees, volunteers and employees of the Project handling or responsible for Project funds, which fidelity bond shall be in an amount of one and one-half (1-1/2) times the estimated annual operating expenses and reserves for each year, with the owners association of the Project being the named insured thereon. The premiums on such bonds shall constitute a common expense.

Section 13. **Compensation.** No member of the Management Committee shall receive any compensation from the Project as such. However, a member may be reimbursed for expenses necessarily incurred on behalf of the Association.

Section 14. **Liability of Management Committee.** The members of the Management Committee, including Declarant, shall not be liable to the Unit Owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each member of the Management Committee, including Declarant, against all contractual liability to others arising out of contracts made by the Management Committee on behalf of the Project, unless such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these By-Laws. The members of the Management Committee, including Declarant, shall have no personal liability with respect to any contract made by them on behalf of the Association of Unit Owners. It is intended that the liability of any Unit Owner arising out of any contract made by the Management Committee or out of the indemnity in favor of the members of the

Management Committee shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interest of all the Unit Owners in the common elements. Every agreement made by the Management Committee or by the managing agent or by the manager on behalf of the Project shall provide that the members of the Management Committee or the managing agent or the manager, as the case may be, are acting only as agents for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interests of all Unit Owners in the common elements.

Section 15. **Right of Entry.** The Management Committee or its duly authorized agents shall have the right to enter any or all Units in the case of an emergency originating in or threatening such Unit or any part of the Project, whether or not the Unit Owner or occupant thereof is present at the time. The Committee or its duly authorized agent shall also have the right to enter into any and all of said Units at all reasonable times as required for the purpose of performing emergency installations, alterations or repairs to the mechanical, electrical or other utility devices or installations located therein or thereon; provided, however, that such emergency installation, alteration or repair is necessary to prevent damage or threatened damage to such Unit or Units in the Project; and further provided, that the Unit Owners affected by entry shall first be notified thereof if available and if time and circumstances shall permit.

Section 16. **Administrative Rules and Regulations.** The Management Committee shall have the power to adopt, establish and amend by resolution, such building management and operational rules as it may deem necessary for the maintenance, operation, management and control of the Project and the Committee may from time to time by resolution, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the Unit Owners, such amendment, alteration or repeal shall be deemed to be a part of such rules. Unit Owners shall at all times, obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply to and be binding upon all Unit Owners and occupants of any Unit.

Section 17. **Obligation to Comply with Rules.** Each Unit Owner, tenant or occupant of a Unit shall comply with the provisions of the Act, Declaration, By-Laws, the rules and

regulations, all agreements and determinations lawfully made and/or entered into by the Management Committee or Associate of Unit Owners, when acting within the scope of their authority and any failure to comply with any of the provisions thereof shall be grounds for an action by the Management Committee for injunctive relief and/or to recover for any loss or damage resulting therefrom.

ARTICLE III

Unit Owners

Section 1. **Annual Meetings.** Promptly after three-quarters (3/4) of the Units are conveyed to individual owners, or thirty-six (36) months after recordation of the Declaration has elapsed, whichever occurs first, the Declarant shall notify all Unit Owners of the first annual meeting of the Unit Owners which shall be held within thirty (30) days thereafter on a call issued by the President. At such meeting, the principals or officers and directors of the Declarant shall resign as members of the Management Committee and all responsibility and obligations Declarant may have shall cease, and all Unit Owners, including the Declarant, shall elect a new Management Committee which shall immediately assume all such responsibilities and obligations on behalf of the Unit Owners. Thereafter, the annual meetings of the Unit Owners shall be held on the 15th day of January of each succeeding year, unless such date shall occur on a Saturday or Sunday, in which event the meeting shall be held on the succeeding Monday. At such meetings the Management Committee shall be elected by ballot of the Unit Owners in accordance with the requirements of Section 4 of Article II of these By-Laws. So long as the Declarant shall own one or more Units, the Declarant shall be entitled to elect at least one (1) member of the Management Committee who shall serve for a term of one (1) year. The right shall expire three (3) years from the date of recording the Declaration. The Unit Owners may transact such other business at such meetings as may properly come before them.

Section 2. **Place of Meetings.** Meetings of the Unit Owners shall be held at such suitable place convenient to the Owners as may be designated by the Management Committee.

Section 3. **Special Meetings.** It shall be the duty of the President to call a special meeting of the Unit Owners if so directed by resolution or the Management Committee or upon a petition signed and presented to the Secretary by the Unit Owners owning a total of at

least 25% of the common interest. The notice of any special meeting shall state the time, place and purpose of the meeting. No business shall be transacted at a special meeting, except as stated in the notice.

Section 4. **Notice of Meetings.** The Secretary shall mail to each Unit Owner of record a notice of each annual or special meeting of the Unit Owners, at least ten (10) days, but not more than twenty (20) days, prior to such meeting, stating the purpose thereof as well as the time and place where it is to be held, at the project or at such other address as such Unit Owner shall have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

Section 5. **Adjournment of Meetings.** If any meeting of Unit Owners cannot be held because a quorum has not attended, a majority in common interest of the Unit Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 6. **Order of Business.** The order of business at all meetings of the Unit Owners shall be as follows:

- (a) Role call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Report of officers;
- (e) Report of Management Committee
- (f) Report of committees;
- (g) Election of inspectors of election (when so required);
- (h) Election of members of the Management Committee (when so required);
- (i) Unfinished business; and
- (j) New business.

Section 7. **Title to Units.** Title to Units may be taken in the name of an individual or in the names of two (2) or more persons, as tenants in common or as joint tenants, or in the name of a corporation or partnership, or in the name of a fiduciary.

Section 8. **Voting.** The Owner or Owners of each Unit, or some person designated by such Owner or Owners to act as proxy on his or their behalf and who need not be an Owner, shall be entitled to cast the vote appurtenant to such Unit at all meetings of Unit Owners. The Owners of a Unit may only act in person or by proxy with unanimity and if any

disagreement among the Owners of a Unit occurs then their vote for their Unit shall be excluded. The designation of any proxy shall be made in writing to the Secretary and shall be revocable at any time by written notice to the Secretary by the Owner or Owners so designating. The total number of votes of all Unit Owners shall be twelve (12) and each Unit Owner shall be entitled to cast one (1) vote at all meetings of the Unit Owners. A fiduciary shall be the voting member with respect to any Unit owned in a fiduciary capacity.

Section 9. **Majority of Unit Owners.** As used in these By-Laws, the term "majority of unit owners" shall mean those Unit Owners holding more than fifty percent (50%) of the total authorized votes of all Unit Owners present in person or by proxy and voting at any meeting of the Unit Owners.

Section 10. **Quorum.** Except as otherwise provided in these By-Laws or Declaration, the presence in person or by proxy of Unit Owners having thirty-five percent (35%) of the total authorized votes of all Unit Owners shall constitute a quorum at all meetings of the Unit Owners.

Section 11. **Majority Vote.** The vote of a majority of Unit Owners at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where a higher percentage vote is required by law or by the Declaration and By-Laws.

ARTICLE IV

Officers

Section 1. **Designation.** The principal officers of the Project shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Management Committee. The Management Committee may appoint an Assistant Treasurer and Assistant Secretary and such other officers as in its judgment may be necessary. The President and Secretary must be different persons and the President must be a member of the Management Committee.

Section 2. **Election of Officers.** Officers shall be elected annually by the Management Committee at the organizational meeting of each new Management Committee and shall hold office at the pleasure of the Management Committee.

Section 3. **Removal of Officers.** Upon the affirmative vote of a majority of the members of the Management Committee any officer may be removed, either with or without

cause, and his successor may be elected at any regular meeting of the Management Committee or at any special meeting of the Management Committee called for that purpose.

Section 4. **President.** The President shall be the chief executive officer of the Project. He shall preside at all meetings of the Unit Owners and the Management Committee. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the Business Corporation Act of the State of Utah, including, but not limited to, the power to appoint from among the Unit Owners any committee which he decides is appropriate to assist in the conduct of the affairs of the Project.

Section 5. **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Management Committee shall appoint some other member of the Management Committee to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Management Committee or by the President.

Section 6. **Secretary.** The Secretary shall keep the minutes of all meetings of the Unit Owners and of the Management Committee. He shall have charge of such books and papers as the Management Committee may direct and he shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the Business Corporation Act of the State of Utah.

Section 7. **Treasurer.** The Treasurer shall have the responsibility for Project funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial statements. He shall be responsible for the deposit of all monies and other valuable effects in the name of the Management Committee or the managing agent in such depositories as may from time to time be designated by the Management Committee and he shall, in general, perform all the duties incident to the office of Treasurer of a corporation organized under the Business Corporation Act of the State of Utah.

Section 8. **Agreements, Contracts, Deeds, Checks, Etc.** All agreements, contracts, deeds, leases, checks and other instruments of the Project shall be executed by any two (2) officers of the Project or by such other person or persons as may be designated by the Management Committee.

Section 9. **Compensation for Officers.** No officer shall receive any compensation from the Project for acting as such, unless the Management Committee determines otherwise.

ARTICLE V

Operating of the Property

Section 1. **Determination of Common Expenses and Common Charges.** The Management Committee shall from time to time, and at least annually, prepare a budget for the Project, determine the amount of the common charges required to meet the common expenses of the Project and allocate and assess such common charges against the Unit Owners according to their respective common interests. The common expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Management Committee, pursuant to the provisions of Section 2 of this Article V and the fees and disbursements of the Management Committee. The common expenses may also include such amounts as the Management Committee may deem proper for the operation and maintenance of the Property, including, without limitation, an amount for working capital of the Project, a general operating reserve and shall include a reserve fund for replacements, maintenance and repairs and to make up any deficit in the common expenses for any prior year. The Management Committee shall advise each Unit Owner in writing of the amount of common charges payable by him and shall furnish copies of each budget on which such common charges are based to all Unit Owners and upon request to their mortgagees. In the event that such assessment shall result in any excess for any one year, the Management Committee may refund the excess to the Unit Owners or apply such excess to assessments for the succeeding year.

That portion of the common assessments payable by each Unit Owner in and for each year or for a portion of a year shall be a sum equal to the same percentage as each Unit owns in the Common Areas of the aggregate amount of such cash requirements for each year, or portion of a year, together with any additional sums accruing under the Declaration on these By-Laws, or the Act, and shall be payable monthly, in advance, or by such payments and installments as shall be required by the Management Committee and at such times as shall be provided by the Management Committee.

An adequate reserve fund for replacement of common element components must be established, which must be funded by monthly payments rather than by extraordinary special

assessments. In addition, there must be a working capital fund for the initial months of operation of the Project equal to at least two (2) months' estimated Common Area charge for each Unit.

Subject to any express limitations in the Act, Declaration or By-Laws, the Management Committee shall have absolute discretionary authority to prescribe the manner of maintaining and operating the Property and to determine the cash requirements of the Management Committee to be paid as aforesaid by the Owners under this Declaration and By-Laws. Any such determination by the Management Committee shall be final and conclusive on the Unit Owners, and any expenditures made by the Management Committee shall be deemed necessary and proper for such purposes as against the Unit Owners.

Section 2. **Insurance.** The Management Committee shall be required to obtain and maintain, to the extent reasonably obtainable, the following insurance:

(a) Fire and casualty insurance with extended coverage, vandalism and malicious mischief endorsements, insuring the entire building and all improvements on the Property, including the Units, fixtures and equipment attached thereto, but not including furniture, furnishings or other personal property supplied or installed by Unit Owners. Such insurance shall cover the Project, the Management Committee and all Unit Owners and their mortgagees, as their interests may appear, in an amount equal to the full replacement value of the buildings and related improvements, without deduction for depreciation. Each policy shall contain a standard mortgagee clause in favor of each mortgagee of a Unit which shall provide that proceeds shall be payable to such mortgagee as its interest may appear subject, however, to payment provisions in favor of the Management Committee hereinafter set forth; and,

(b) Such other insurance (e.g., water damage, workmen's compensation, etc.) as the Management Committee may designate.

All such policies shall provide that adjustment of loss shall be made by the Management Committee and the net proceeds thereof shall be payable to the Management Committee.

All policies of physical damage insurance shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insured, including all mortgagees of Units. Duplicate originals of all policies of physical damage insurance and of

all renewals thereof, together with proof of payment premiums, shall be delivered to all mortgagees of Units at least ten (10) days prior to expiration of the then current policies. Hazard insurance shall be written by a carrier which has a financial rating by Best's Insurance Reports of Class VI or better.

The Management Committee shall also be required to obtain and maintain, to the extent obtainable, public liability insurance in such amounts as the Management Committee may from time to time determine, covering each member of the Management Committee, the managing agent, the manager and each Unit Owner. Such public liability coverage shall also cover cross liability claims of one insured against another. The Management Committee shall review such limits once each year; however, the minimum coverage shall be one million dollars (\$1,000,000.00) for all claims for personal injury/or property damage arising from a single occurrence.

Unit Owners shall be permitted to and are encouraged to obtain and carry insurance for their own benefit and at their own cost, insuring against fire, casualty or loss of use of their own Unit and loss or damage to their personal property or contents contained therein, and any such additional liability coverage as is reasonable for protection of the Unit Owner respecting the use and operation of his own Unit; provided however that insurance secured and maintained by the Committee shall not be brought into contribution with insurance held by individual Unit Owners or their mortgages to reduce the amount or benefit the Committee would otherwise receive and all policies held by Unit Owners shall contain waivers of subrogation and further provide that the liability of the carriers issuing insurance obtained by the Management Committee shall not be affected or diminished by reason of any such additional or other insurance carried by any Unit Owner.

Section 3. **Repair or Reconstruction After Damage.** In the event of damage or destruction of any building as a result of fire or other casualty (unless seventy-five percent (75%) or more of the buildings containing Units are destroyed or substantially damaged and seventy-five percent (75%) or more of the Unit Owners do not duly and promptly vote to proceed with repair or restoration), the Management Committee shall arrange for the prompt repair and reconstruction of the buildings (including any damaged Condominium Units, but excluding any furniture or furnishings or personal property therein and excluding any fixtures or equipment installed by Unit Owners in the Condominium Units that are not covered by insurance maintained by the Committee) and the Management Committee shall disburse the

proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute a common expense and the Management Committee may assess all the Unit Owners for such deficit as part of the common charges.

If seventy-five percent (75%) or more of the buildings are destroyed or substantially damaged and seventy-five percent (75%) or more of the Unit Owners do not duly and promptly vote to proceed with repair or reconstruction, the Condominium Property shall be subject to an action for partition by any Unit Owner or lienor, as if owned in common, in which event the net proceeds of sale, together with the net proceeds of insurance policies (or if there shall be have been a repair or restoration pursuant to the first paragraph of Section 3. and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration then the excess of such insurance proceeds) shall be divided by the Management Committee among all of the Unit Owners in proportion to their respective common interests, after first paying out of the share of each Unit Owner the amount of any unpaid liens on his Unit, in order of the priority of such liens.

Section 4. **Payment of Common Charges.** All Unit Owners shall be obligated to pay the common charges assessed by the Management Committee, pursuant to the provisions of Section 1 of Article V, at such time or times as the Management Committee shall determine.

No Unit Owner shall be liable for the payment of any part of the common charges assessed against his Unit subsequent to a sale, transfer or other conveyance by him thereof (made in accordance with the provisions of Section 1 of Article VII of these By-Laws). Joint purchasers of a Unit shall be jointly and severally liable for the payment of common charges assessed against a Unit subsequent to the acquisition by them of such Unit. Except as expressly provided otherwise in the Declaration or herein, a mortgagee or other purchaser of a Unit shall be subject to a lien for the payment of common charges assessed prior to the foreclosure sale.

Section 5. **Collection of Assessments.** The Management Committee shall assess common charges against the Unit Owners from time to time and at least annually and shall take prompt action to collect from a Unit Owner any common charge due which remains unpaid by him for more than thirty (30) days from the due date of its payment.

Section 6. **Default in Payment of Common Charges.**

(a) If any Unit Owner shall fail or refuse to make any payment of the common expenses when due, the amount thereof shall constitute a lien on the interest of the Owner of the Property and upon the recording of a notice thereof by the Management Committee, shall be a lien upon the Unit Owner's interest in the Property prior to all other liens and encumbrances, recorded and unrecorded except only:

(1) tax and special assessment liens; and

(2) prior recorded encumbrances which are superior as a matter of law.

(b) In the event of a default by any Unit Owner in paying to the Management Committee the assessed common charges, such Unit Owner shall be obligated to pay interest at the rate of eighteen percent (18%) per annum on such common charges from the date due thereof, together with all expenses, including attorney's fees incurred by the Management Committee in any proceeding brought to collect such unpaid common charges. The Management Committee shall have the right and duty to attempt to recover such common charges, together with interest thereon, and the expenses of the proceeding, including attorney's fees, in an action brought against such Unit Owner or by a foreclosure of the lien on such Unit.

(c) Upon payment of a delinquent assessment the Management Committee shall cause a satisfaction of lien to be filed in cases where a notice of lien has been filed.

(d) If a Unit Owner shall at any time let or sublet the Unit and shall be in default for a period of one (1) month in the payment of any assessments, the Management Committee may, at its option and so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner occupying the Unit the rent due or becoming due and payment of such rent to the Management Committee shall be payment and discharge of such tenant or subtenant and the Owner of the Unit to the extent of the amount so paid. No action on the part of the Management Committee under this Section shall have the effect of relieving its Unit Owner of primary liability.

Section 7. **Foreclosure of Liens for Unpaid Charges.** In any action brought by the Management Committee to foreclose a lien on a Unit because of unpaid common charges, the Unit Owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect such rental. The Management Committee, acting on behalf of all Unit Owners, shall have power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote

the votes appurtenant, convey or otherwise deal with the same. A suit to recover money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien securing the same.

Section 8. **Statement of Common Charges.** The Management Committee shall promptly provide any Unit Owner who makes a request in writing with a written statement of his common charges.

Section 9. **Abatement and Enjoining of Violation.** The violation of any rule or regulation adopted by the Management Committee, or the breach of any By-Laws contained herein, or the Act, shall give the Management Committee the right, in addition to any other rights available at law or set forth in these By-Laws:

(a) to enter the Unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Management Committee shall not thereby be deemed guilty in any manner of trespass; or

(b) to enjoin, abate or remedy such thing or condition by appropriate legal proceeding.

Section 10. **Maintenance and Repair.**

(a) All maintenance of and repairs to any Unit, structural or non-structural, ordinary or extraordinary (other than maintenance of and repairs to any common elements contained therein not necessitated by the negligence, misuse or neglect of the Owner of such Unit) shall be made by the Owner of such Unit. Each Unit Owner shall be responsible for damage to any other Unit and to the common elements resulting from his failure to effect such maintenance and repairs.

(b) All maintenance, repairs and replacements of the common elements, whether located inside or outside of the Units (unless necessitated by the negligence, misuse or neglect of the Unit Owner, in which case such expense shall be charged to the Unit Owner) shall be made by the Management Committee and be charged to all the Unit Owners as a common expense.

Section 11. **Use of Units.** In order to provide for congenial occupancy of the Property and for the protection of the values of the Units, the use of the Property shall be subject to the following limitations:

(a) The Units shall be used for residences only, except as the Association may choose to use a portion of a Unit as a management office or for any other lawful purpose not repugnant to a residential development.

(b) The common elements shall be used only for the furnishing of the services and facilities for which they are reasonably suited and which are incidental to the use and occupancy of Units.

(c) No nuisances shall be allowed on the Property nor shall any use or practice be allowed which is a source of annoyance to its residents or which interferes with the peaceful possession or proper use of the Property by its residents.

(d) No offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be complied with. Such compliance shall be accomplished at the sole expense of the Unit Owners or the Management Committee, whichever shall have the obligation to maintain or repair such portion of the Property.

(e) No portion of a Unit (other than the entire Condominium Unit) may be rented and no transient tenants may be accommodated therein. A Unit may not be occupied for temporary or permanent living accommodations by more than four (4) adults, nor more than five (5) total occupants (adults and children combined) at any time.

Section 12. **Additions, Alterations or Improvements by Unit Owners.** No Unit Owner shall make any structural addition, alteration or improvement in or to his Unit, without the prior written consent thereto of the Management Committee. The Management Committee shall have the obligation to answer any written request by an Unit Owner for approval of a proposed structural addition, alteration or improvement in such Unit Owner's Unit within thirty (30) days of such request, and failure to do so within the stipulated time shall constitute a consent by the Management Committee to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any Condominium Unit shall be executed by the Management Committee. The Management Committee shall not be liable to any contractor, subcontractor, materialman or to any person sustaining personal injury or property damage, for any claim arising in connection with such addition, alteration or improvement. The provisions of this Section shall not apply to Units owned by the Declarant until such Units shall have been initially sold by the Declarant and paid for by the purchaser.

Section 13. **Water and Sewer.** Water for customary household consumption and use shall be supplied to all of the Units and the common elements through one or more building meters and the Management Committee shall pay, as a common expense, all charges for water consumed on the Property, together with all related sewer charges arising therefrom, promptly after the bills therefore are rendered. The Committee shall contract for routine garbage and waste disposal services for the Project and assess the charges as part of the common expense. In the event of a proposed sale of a Unit by the Owner thereof, the Management Committee, on request of the selling Unit Owner, shall execute and deliver to the purchaser of such Unit or to the purchaser's title insurance company or lender, a letter agreeing to pay all charges for water, sewer and garbage services affecting the Property as of the date of closing of title to such Unit promptly after such charges shall have been billed.

Section 14. **Electricity and Natural Gas.** Electricity and natural gas serving the common elements, if any, shall be separately metered, and the Management Committee shall pay all bills for electricity and natural gas consumed in such portions of the common elements as a common expense.

Section 15. **Taxes.** Each Unit and its percentage of undivided interest in Common Areas and Facilities shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing Unit and special district for all types of taxes authorized by law, including but not limited to, advalorem liens and special assessments.

ARTICLE VI

Mortgages

Section 1. **Mortgage of Units.** No Unit Owner shall mortgage his Unit except by a mortgage or trust deed made to a bank, trust company, insurance company, federal savings and loan association, pension fund, other institutional lender or any other mortgage company or individual. Any such mortgage or trust deed shall be substantially in the form on file with the Management Committee, except for such form changes or additions as may be required in order to permit the particular lender to make the mortgage loan. This Section shall apply only after Declarant's first conveyance by deed to each Unit Owner.

Section 2. **Notice to Management Committee.** A Unit Owner who mortgages his Unit shall notify the Management Committee of the name and address of his mortgagee and shall file a conformed copy of the note and mortgage or trust deed with the Management

Committee. The Management Committee shall maintain such information in a book entitled "Mortgages of Units."

Section 3. **Notice of Unpaid Common Charges.** The Management Committee, whenever so requested in writing by a mortgagee of a Unit, shall promptly report any then unpaid common charges or other default by the Owner of the mortgaged Unit.

Section 4. **Notice of Default.** The Management Committee when giving notice to a Unit Owner of a default in paying common charges or other default, shall send a copy of such notice to each holder of a mortgage covering such Unit whose name and address has theretofore been furnished to the Management Committee.

Section 5. **Examination of Books.** Each Unit Owner and each mortgagee of a Unit shall be permitted to examine the books of account of the Project at reasonable times on business days, but not more often than twice monthly.

ARTICLE VII

Sales and Leases of Units

Section 1. **Sales and Leases.** No Unit Owner may sell or lease his Unit or any interest therein except by complying with the provisions of this Section. A Unit Owner's sale of his Unit shall include the sale of:

- (a) the undivided interest in the common elements appurtenant thereto; and
- (b) the interest of such Unit Owner in any other assets of the Project, hereinafter collectively called the appurtenant interests.

Section 2. **No Severance of Ownership.** No Unit Owner shall execute any deed, mortgage or other instrument conveying or mortgaging title to his Unit without including therein the appurtenant interest, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage or other instrument purporting to effect one or more of such interests, without including all such interests, shall be deemed to be taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the appurtenant interests of any Unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Unit to which such interests are appurtenant or as part of a sale, transfer or other disposition of such part of the appurtenant interests of all Units.

Section 3. **Gifts and Devises, Etc.** Any Unit Owner shall be free to convey or transfer his Unit by gift or to devise his Unit by will or to pass the same by intestacy, without restriction.

Section 4. **Payment of Assessments.** No Unit Owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease his Unit unless and until he shall have paid in full to the Management Committee all unpaid common charges theretofore assessed by the Management Committee against his Unit and until he shall have satisfied all unpaid liens against such Unit, except as permitted by mortgagees.

ARTICLE VIII

Condemnation

Section 1. **Condemnation.** In the event of a taking in condemnation or by eminent domain of any of the Common Areas, the award made for such taking shall be payable to the Management Committee. If seventy-five percent (75%) or more of the Unit Owners duly and promptly approve the repair and reconstruction of such Common Areas, the Management Committee shall disburse the proceeds of such award to the contractors engaged in such repair and reconstruction in appropriate progress payments. In the event that seventy-five percent (75%) or more of the Unit Owners do not duly and promptly approve the repair and reconstruction of such Common Areas, the Management Committee shall disburse the net proceeds of such award in the same manner as they are required to distribute insurance proceeds where there is no repair or reconstruction of the damage as hereinbefore provided in these By-Laws.

ARTICLE IX

Records

Section 1. **Records and Audits.** The Management Committee or the managing agent shall keep detailed records of the actions of the Management Committee and the managing agent, minutes of the meetings of the Unit Owners, and financial records and books of account of the Project, including a chronological listing of receipts and expenditures, as well as a separate account of each Unit which, among other things, shall contain the amount of each assessment of the common charges against such Unit, the date when due, the amounts

paid thereon and the balance remaining unpaid. A written report summarizing all receipts and expenditures of the Project shall be rendered by the Management Committee to all Unit Owners at least quarter-annually. In addition, an annual report of the receipts and expenditures of the Project shall be rendered by the Management Committee to all Unit Owners and to all mortgagees of Units who have requested the same, promptly after the end of the fiscal year.

ARTICLE X

Miscellaneous

Section 1. **Notices.** All notices to the Management Committee shall be sent by registered or certified mail in care of the managing agent or, if there is no managing agent, to the office of the Management Committee or to such other address as the Management Committee may hereafter designate from time to time. All notices to any Unit Owner shall be sent by registered or certified mail to the building or to such other address as may have been designated by him from time to time. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

Section 2. **Invalidity.** The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these By-Laws.

Section 3. **Captions.** The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of these By-Laws or the intent of any provision hereof.

Section 4. **Gender.** The use of the masculine gender in these By-Laws shall be deemed to include the feminine and neuter and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 5. **Waiver.** No restriction, condition, obligation or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

ARTICLE XI

Amendments to By-Laws

Section 1. **Amendments to By-Laws**. Except as provided otherwise herein and except for the provisions herein for the benefit of any first mortgagee, these By-Laws may be modified or amended by the vote of fifty-one percent (51%) of all Unit Owners (holders of the common interests) at a meeting of Unit Owners duly held for such purposes. Amendments, other than minor administrative matters or others not affecting the rights or interests of first mortgagees, can only be made with the written approval of those mortgagees holding mortgages constituting first liens upon two-thirds (2/3) of the Units; however, Section 1 of Article III, insofar as it provides that the Declarant (so long as it is the Owner of one or more Units) shall be entitled to elect at least one (1) member of the Management Committee; and Section 8 of Article II, insofar as it provides that the Declarant (so long as it is the Owner of one or more Units) may vote the votes appurtenant thereto; and this Section 1 of Article XI may not be amended without the consent in writing of the Declarant (so long as the Declarant shall be the Owner of one or more Units).

ARTICLE XII

Conflicts

Section 1. **Conflicts**. These By-Laws are set forth to comply with the requirements of the Condominium Ownership Act of the State of Utah. In case any of these By-Laws conflict with the provisions of such statute or of the Declaration, the provisions of such statute or of the Declaration, as the case may be, shall control.

APPENDIX "A"

JAMESTOWN VILLA CONDOMINIUMS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Beginning at a point in the center of 1300 East Street, said point being North 89 degrees 57'03" West 358.61 feet, North 00 degrees 07'00" East 678.23 feet, and North 00 degrees 56'30" East 670.32 feet from the East quarter corner of Section 8, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence North 88 degrees 52'39" West 40.00 feet to an existing wood fence line; thence along said wood fence North 88 degrees 52'39" West 161.22 feet to an existing chain link fence; thence along said chain link fence North 01 degrees 26'42" East 117.18 feet to a chain link fence set in concrete; thence along said chain link fence in concrete North 88 degrees 48'16" East 160.30 feet to the end of said fence; thence North 88 degrees 48'16" East 40.03 feet to the center of 1300 East Street; thence along the centerline of 1300 East Street South 00 degrees 56'30" West 125.28 feet to the point of beginning.

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11/04/97 12:46 PM 99-00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
MERIDIAN TITLE
REC BY: P ANDERSON , DEPUTY - WI

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