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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

THE FIELDS AT DRAPER PHASE 2C CONDOMINIUMS

A RESIDENTIAL CONDOMINIUM PROJECT

IN

SALT LAKE COUNTY, UTAH

HOLMES & ASSOCIATES, L.C., A UTAH LIMITED LIABILITY COMPANY

AS DECLARANT

April 1998

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE FIELDS AT DRAPER PHASE 2C CONDOMINIUMS**

THIS DECLARATION is made as of this ____ day of April, 1998 by HOLMES & ASSOCIATES, L.C., a Utah Limited liability company (the "Declarant").

RECITALS

- A. Capitalized terms in this Declaration are defined in Article 1.
- B. Declarant is the fee owner of that certain real property situated in Draper City, Salt Lake County, Utah, described in Exhibit "A," attached hereto and hereby incorporated by reference (the "Parcel");
- C. Declarant desires to submit the Parcel, together with all buildings and improvements now or hereafter constructed on the Parcel, and all easements and rights appurtenant thereto (collectively, the "Property"), to a condominium project originally consisting of one hundred ninety-two (192) residential Units and related Common Area pursuant to Utah Code Ann. § 57-8-1 *et seq.* (the "Condominium Project");
- D. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners or Occupants of the Condominium Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein (collectively, the "Restrictions" which shall run with and be a burden upon the Property);
- E. Declarant intends that the Owners, Occupants, Lenders and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to, this Declaration, which is recorded in furtherance of establishing a general plan of condominium ownership for the Property; and for establishing rules for the use, occupancy, management and enjoyment thereof all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Condominium Project and the quality of life therein.

NOW, THEREFORE, Declarant, as owner of the Parcel and for the purposes above set forth, declares as follows:

ARTICLE 1. - DEFINITIONS

As used herein, unless the context otherwise requires:

1.1 **“Act”** shall mean the Condominium Ownership Act, codified at Sections 57-8-1 through 57-8-36, Utah Code Annotated, pertaining to the creation, ownership and management of a condominium project in the State of Utah, as the same may be amended.

1.2 **“Allocated Interest”** shall mean the undivided interest (expressed as a fraction or percentage in this Declaration) in the Common Areas, the Common Expense liability, and votes in the Association allocated to each Unit.

1.3 **“Articles”** shall mean the Articles of Incorporation by which the Association is formed under the Nonprofit Corporation and Co-operative Association Act, codified at Sections 16-6-18 through 16-6-112, Utah Code Annotated, as the same may be amended.

1.4 **“Assessments”** shall mean the charges against Owners to defray the Common Expenses as well as miscellaneous special Assessments, special Assessments for capital improvements, and special Assessments for the purpose of restoring and reconstructing the Condominium Project in the event of casualty, all as provided in this Declaration.

1.5 **“Association”** shall refer to THE FIELDS AT DRAPER PHASE 2C CONDOMINIUMS ASSOCIATION, whose membership shall include each Owner of a Unit in the Condominium Project, as required by the Act. The Association will be incorporated as a Utah nonprofit corporation prior to the conveyance of the first Unit in the Condominium Project by Declarant.

1.6 **“Association Rules”** shall mean and refer to the rules and regulations adopted by the Association pursuant to this Declaration and in furtherance of the Bylaws and Section 57-8-8 of the Act.

1.7 **“Board”** shall mean the Board of Trustees of the Association elected pursuant to the Bylaws and serving as the management body of the Association.

1.8 **“Bylaws”** shall mean the Bylaws adopted by the Association pursuant to Section 57-8-15 of the Act for the purpose of regulating the affairs of the Association, as the same may be amended from time to time. Attached as Exhibit “B” is the Bylaws, substantially in the form that the Association will adopt in accordance with the Act and this Declaration.

1.9 **“Common Area”** shall mean the entire Condominium Project (including all items listed in Section 57-8-3(3) of the Act, if applicable), excluding the Units.

1.10 **“Common Expenses”** shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area which is maintained by the Association; (b) deficiencies arising by reason of unpaid Assessments; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees; (d) utilities (other than separately metered utilities for the Units), extermination, security, gardening and other related services; (e) insurance and bonds required by this Declaration or any additional insurance and bonds obtained by the Board in its discretion; (f) the establishment of reasonable reserves as the Board shall deem appropriate in its discretion for the periodic maintenance, repair and replacement of the Common Area, which shall in no event be less than two (2) months of the estimated Assessments for each Unit; (g) expenses agreed upon as Common Expenses by the Association; and (h) other miscellaneous charges incurred by the Association or the Board pursuant to the Act, this Declaration, the Bylaws or Association Rules in furtherance of the purposes of the Association or in discharge of the duties and powers of the Association.

1.11 **“Condominium Project”** shall mean this real estate condominium project wherein fee simple title to single units in a multi-unit project, together with an undivided interest in the Common Area of the Property, are owned separately.

1.12 **“Declarant”** shall mean HOLMES & ASSOCIATES, L.C., a Utah limited liability company, and the successors and assigns of Declarant’s rights hereunder.

1.13 **“Declaration”** shall mean this Declaration, including all exhibits attached hereto which are hereby incorporated by reference, and any and all amendments hereof and supplements hereto.

1.14 **“Eligible Mortgagee”** shall mean and refer to a First Mortgagee which has requested notice of certain matters from the Association in accordance with Section 13.1 of this Declaration.

1.15 **“FNMA”** shall mean and refer to the Federal National Mortgage Association.

1.16 **“First Mortgage”** shall mean any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.17 **“First Mortgagee”** shall mean any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.18 **“Insurance Trustee”** shall mean any trustee with which the Association may enter into an Insurance Trust Agreement, and which shall have exclusive authority to negotiate losses under the policies of insurance in accordance with such agreement.

1.19 **“Lender”** shall mean a holder of a mortgage or deed of trust on a Unit.

1.20 **“Limited Common Area”** shall mean a portion of the Common Area specifically designated as a Limited Common Area in this Declaration or the Plat and allocated by this Declaration or the Plat for the exclusive use of one or more Units to the exclusion of other Units.

1.21 **“Occupant”** shall mean a Person or Persons, other than an Owner, in possession of, or using a Unit, including, without limitation, family members, tenants, guests, or invitees.

1.22 **“Owner”** shall mean the Person or Persons who are vested with record title of a Unit, and whose interest in the Unit is held in fee simple, according to the records of the County Recorder of Salt Lake County, Utah; however, Owner shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation. Declarant shall be considered the record Owner of any Unit prior to its initial conveyance by Declarant.

1.23 **“Parcel”** shall mean the real property legally described in Exhibit “A.”

1.24 **“Person”** shall mean a natural individual, corporation, estate, partnership, trustees, association, joint venture, government, governmental subdivision or agency or other legal entity capable of holding title to real property.

1.25 **“Plat”** shall mean the record of survey map of the Property submitted with respect to the Condominium Project recorded in the records of the County Recorder of Salt Lake County, Utah and all amendments thereto. “Plat” shall also refer to any additional plat which may be recorded with any Supplemental Declaration.

1.26 **“Property”** shall mean the Parcel, together with all the buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

1.27 **“Restrictions”** shall mean the covenants, conditions, assessments, easements, liens and restrictions set forth in this Declaration.

1.28 **“Supplemental Declarant Rights”** shall mean the rights granted to Declarant in this Declaration to do any of the following:

- (a) Construct any improvements provided for in this Declaration;
- (b) Maintain sales offices, models and signs advertising the Condominium Project;
- (c) Use easements upon the Common Area for the purpose of making improvements or marketing units within the Parcel; and

(d) Appoint or remove any Officer or Board member of the Association prior to the Turnover Date.

1.29 **“Supplemental Declaration”** shall mean a written instrument recorded in the records of the County Recorder of Salt Lake County, Utah, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

1.30 **“Turnover Date”** shall have the meaning set forth in Section 5.3 below.

1.31 **“Trustee”** shall mean a duly qualified and elected or appointed member of the Board.

1.32 **“Unit”** shall mean and refer to any of the separately numbered and individually described units now or hereafter shown on the Plat. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Allocated Interest in the Common Area appurtenant to such Unit.

1.33 **“Unit Number”** shall mean the number, symbol or address that identifies one Unit in the Condominium Project.

ARTICLE 2 - CREATION OF THE CONDOMINIUM PROJECT

2.1 **Submission.** Declarant hereby submits and subjects the Parcel to a Condominium Project pursuant to the Act, and in furtherance thereof, makes and declares the Restrictions contained in this Declaration, and Declarant hereby declares and agrees that the Condominium Project and all of the Units shall be held, conveyed, transferred, sold, leased, mortgaged, encumbered, occupied, used and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of Declarant, the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns.

2.2 **Name and Location.** The Condominium Project shall be named and known as THE FIELDS AT DRAPER PHASE 2C CONDOMINIUMS. The Condominium Project is located in Salt Lake County, Utah, and the legal description of the real estate included in the Condominium Project is the Parcel set forth in Exhibit “A.” The name of the Association is THE FIELDS AT DRAPER PHASE 2C CONDOMINIUMS ASSOCIATION.

2.3 **Interpretation of Declaration and Applicability of the Act.** Declarant intends that the Condominium Project shall be governed by the Act, except where (in compliance with the Act) Declarant has included specific provisions in this Declaration which legally vary, supersede or supplement the Act, in which event such specific provisions of this Declaration which are contrary to the Act shall govern the Condominium Project.

2.4 Agent for Service of Process. Patrick Holmes, located at 9345 South 1300 East, Sandy, Utah 84093, shall be the person to receive service of process for the Condominium Project pursuant to Section 57-8-10(2)(d)(iii) of the Act, until such time as the Board shall duly appoint a new agent and file a supplement hereto.

ARTICLE 3 - DESCRIPTION OF THE UNITS, LIMITED COMMON AREA, COMMON AREA, ALLOCATED INTERESTS AND PLAT

3.1 Description of Boundaries of Each Unit and Unit Number. The cubic content space and Unit Number of each of the Units within the Condominium are set forth on the Plat. The horizontal boundaries of each Unit shall be the underside of the finished but undecorated ceiling of the second floor of the Unit and the top of the finished but undecorated floor of the first floor of the Unit as shown on the Plat. The vertical boundaries of each Unit shall be the interior of the finished but undecorated walls located on the perimeter lines of the respective Units as shown on the Plat. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting any part of the finished surfaces are part of the Unit, and all other materials constituting any part of the finished surfaces are part of the Unit, and all other and structural portions of the walls, floors, columns, or ceilings are part of the Common Area. If any pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lies partially or wholly within or outside the designated boundaries of a Unit, any portion serving only that Unit is a Limited Common Area allocated solely to that Unit and any portion serving more than one Unit or any portion of the Common Area is part of the Common Area. Subject to the preceding sentence, each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries shall be part of the Unit. Conveyance of a Unit includes the use of the Limited Common Area appurtenant to the Unit.

3.2 Description of Limited Common Area for Parking. The parking space or spaces set forth on the Plat and designated for the respective Unit by corresponding number shall be an exclusive Limited Common Area for the Unit and such Owner. Such Limited Common Area shall be appurtenant to each respective Unit and may not be severed from the ownership of the Unit.

3.3 Description of Limited Common Area for Patios, Backyard, Balconies, Entryways, Fireplaces and Storage Areas. The patio, backyard, balcony (or balconies), exterior screens and shutters and entryway, if any, which are adjacent to each respective Unit as set forth and depicted on the Plat shall be exclusive Limited Common Areas for the Unit. These Limited Common Areas shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.

3.4 Description of Common Area. The Common Area shall consist of the entire Condominium Project, excluding the Units.

3.5 Undivided Interest of Each Unit in the Common Area. The designation of the undivided interest which each Unit has in the Common Area shall be equally divided between the Units; thus, each Unit has a one and one hundred ninety-two thousandths (1/192) undivided interest in the Common Area.

3.6 Allocated Interest of Each Unit in the Votes of the Association. The designation of the Allocated Interest which each Unit has in the votes of the Association is one vote for each Unit; thus, each Unit has a one and one hundred ninety-two thousandths (1/192) vote for all matters of the Association.

3.7 Allocated Interest of Each Unit in the Common Expenses of the Condominium Project. The designation of the Allocated Interest which each Unit bears in the Common Expenses of the Condominium Project is deemed to be equally divided; thus, each Unit has a one and one hundred ninety-two thousandths (1/192) Allocated Interest in the Common Expenses.

3.8 Plat. The Plat is hereby incorporated into, and made an integral part of, this Declaration and all requirements and specifications set forth on the Plat and which are required by the Act are deemed included in this Declaration.

ARTICLE 4 - MAINTENANCE AND UTILITIES

4.1 Maintenance of Units and Exclusive Limited Common Area. Each Owner shall furnish and be responsible for, at their own expense, all of the maintenance, repairs and replacements within the Owner's Unit and within any Limited Common Area appurtenant to the Owner's Unit, subject to Section 4.2(e) below. Such obligation shall include, without limitation: (a) the maintenance of all interior and exterior doors, including thresholds and door jams, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, fireboxes of fireplaces and any other materials constituting the finished surfaces of floors, ceilings, or interior walls (all other portions of the walls, floors, or ceilings are part of the Common Area); (b) repair and replacement of all windows, skylights, and door glass or equivalent materials and the interior and exterior cleaning of such windows and door glass; (c) the maintenance of, in an open and unobstructed condition, all sewer and drainage pipes, water and other utility lines serving an Owner's Unit between the points at which the same enter the Owner's Unit and the points where the same join the utility lines serving other Units; (d) maintenance, replacement, repair and restoration of all of the following which service an Owner's Unit exclusively: lighting fixtures (except exterior building mounted lights and walkway lights which are not located within patios and balconies), fans, plumbing fixtures, stoves, refrigerators, hot water heaters, air conditioning units (including compressors, condensers and forced air units), intercoms, security systems, and such other appliances, fixtures and decorations as an Owner may install; (e) the maintenance of the Unit and all exclusive Limited Common Areas, such as enclosed parking, patios, backyards, fencing and balconies (including all materials above or upon the support structure, and railings and

posts), exterior screens, shutters, and chimney flues, that are within an Owner's exclusive control in a clean and sanitary condition, free of pests and rodents, and in good order and repair; and (f) the maintenance of the backyard within an Owner's exclusive control. An Owner may make non-structural alterations within the Owner's Unit, but an Owner shall not make any structural or exterior alterations of the Common Areas or the Limited Common Areas without the prior written approval of the Board.

4.2 Maintenance of Common Areas and Non-exclusive Limited Common Areas. The Association, or its fully delegated representative, shall:

- (a) Maintain and otherwise manage the Common Areas and non-exclusive Limited Common Areas, including, but not limited to, Condominium Project building exteriors, the landscaping, open areas and recreational facilities, if any, located thereon and maintain all open areas and exterior building mounted lights not within enclosed parking areas, patios and balconies, walkway and landscape area lights (located outside enclosed parking areas, patios and balconies), the structural support components of patios and roofs and flashings and other materials on patios and roofs that were installed to exclusively function as a roof, however, excluding skylights;
- (b) Replace injured and diseased trees or other vegetation in any Common Areas, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil or for aesthetic purposes;
- (c) Place and maintain upon any Common Areas, such signs, markers and lights as the Board may deem appropriate for the proper identification use and regulation thereof, subject to the approval of the Board;
- (d) Pay all electrical, water, gas and other utility charges or fees for services furnished to the Common Areas as the same become due and payable;
- (e) Remove snow from sidewalks running throughout the Condominium Project and Limited Common Area driveways and walkways (whether exclusive or non-exclusive) immediately in front of each Unit.
- (f) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Areas and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall determine, in its sole discretion, the appropriate maintenance of the Common Areas. If the need for maintenance or repair is caused through the willful or negligent act of an Owner, the Owner's family, guests, licensees, lessees or invitees, the cost of such maintenance or repair shall be paid by such Owner, upon demand, to the Association, and the Association may enforce collection of such amounts as provided hereinbelow for the collection of Assessments.

4.3 Owner Default in Maintenance. If an Owner fails to so maintain the Owner's Unit or exclusive Limited Common Area pursuant to Section 4.1 above, or make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Condominium Project, or if an Owner fails to observe any Restrictions imposed on such Owner by the terms of this Declaration, then the Board or its authorized representative shall give written notice to such Owner stating with particularity the nature of the default and the corrective action which the Board determines to be required and requesting that the same be carried out within a period of fourteen (14) days after the giving of such written notice. If the Owner fails to carry out such action within the period specified by the notice, the Board may cause such action to be taken and may levy a special Assessment for the cost thereof on the Owner. The special Assessment shall be due and payable within thirty (30) days after the Board gives written notice thereof and to be secured by the Assessment lien created in Section 6.1 of this Declaration.

4.4 Utilities. All utilities for individual Units (except those utility costs which are metered collectively and paid by the Association as a Common Expense item) will be metered separately to each Unit and such utility charges shall be the responsibility of the respective Owners.

ARTICLE 5 - MANAGEMENT

5.1 Organization of Association. The Association will be organized no later than the date the first Unit in the Condominium Project is conveyed to an Owner other than Declarant. The Association shall serve as the governing body for all Owners. The Association shall make provision for the maintenance, repair, replacement, administration and operation of the Common Areas, assessment of expenses, payment of losses, division of profits, acquisition of hazard insurance and disposition of such hazard insurance proceeds, and other matters as provided in the Act, this Declaration and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles and Bylaws, including, without limitation, the right to assign its future income. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles and the Bylaws.

5.2 Membership. Membership in the Association shall at all times consist exclusively of the Unit Owners and each Owner shall be a member of the Association so long as such Owner owns a Unit and such membership shall automatically terminate when the Owner ceases to own a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held. The Association shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of this Declaration,

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Articles, Bylaws and other rules governing the Condominium Project and other books, records and financial statements of the Association. The term "available" as used in this Section 5.2 shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

5.3 **Voting.** The Association shall have two (2) classes of voting membership:

(a) **Class A.** Class A Members shall be all Owners (including Declarant). Class A Members shall be entitled to a percentage vote equal to the fraction listed in Section 3.6 for such Unit. When more than one Person owns an interest in a Unit, such Persons shall designate to the Association, in writing, a representative whom shall exercise the vote for such Unit on behalf of all Co-Owner's of the Unit. In no event shall fractional votes be exercised in respect to any Unit.

(b) **Class B.** The Class B Member shall be Declarant. Declarant, as the Class B Member, shall have the right to control the Association to the extent of having the exclusive right (either directly or through a person designated by Declarant) to elect, appoint and remove the members of the Board and the officers of the Association until the Turnover Date (as hereinafter defined). The special control rights of Declarant, as the Class B Member, shall cease and terminate upon the earlier of the following (the "Turnover Date"):

(1) The date immediately following the annual meeting after seventy-five percent (75%) of the Units have been conveyed by Declarant;

(2) The date which is the third anniversary of the first conveyance of a Unit by Declarant to an Owner other than Declarant.

Upon the Turnover Date, to the extent Declarant retains ownership of at least one Unit, Declarant shall retain the voting rights of a Class A Member even though the special voting and control rights of the Class B member have ceased and terminated. Declarant may voluntarily surrender the right to elect, appoint and remove the members of the Board and the officers prior to the Turnover Date, but, in that event, Declarant may require that specified actions of the Association or the Board taken prior to the Turnover Date, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Upon the Turnover Date, the process of transferring control of the Association from Declarant to the Owners shall commence and be completed within a reasonable period of time. This process shall include the Owners' election of the Board and shall be considered completed on the date of the initial meeting of the Board elected by the Owners. The Owners' election of the initial Board may be conducted at a regular or special meeting of the Association or by a mailed balloting procedure, within thirty (30) days following the Turnover Date.

5.4 Board of Trustees. The governing body of the Association shall be the Board elected pursuant to the Bylaws. Cumulative voting shall apply for the purpose of electing members of the Board. The Board shall consist of not less than three (3) members and not more than five (5) members. Except as otherwise provided in this Declaration, the Bylaws, or Association Rules, the Board may act in all instances on behalf of the Association. The Board may, as it deems appropriate, recommend amendments to the Bylaws and adopt, amend and repeal the Association Rules.

5.5 Qualification of Trustees. Except for Board members elected or appointed by Declarant, each Trustee shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership, limited liability company, or trust, a Trustee may be an officer, partner, member, manager, trustee or beneficiary of such Owner). If a Trustee ceases to meet such qualifications during the Trustee's term, such person will thereupon cease to be a Trustee and such person's place shall be filled by a replacement Trustee appointed by the remaining members of the Board for the remainder of that Trustee's term.

5.6 Action by Owners. Except as specifically provided herein, the Board may not act on behalf of the Association to amend or terminate this Declaration, to elect members of the Board, except in filling vacancies in its membership for the unexpired portion of any term, or to determine the qualifications, powers and duties or terms of the Board of Trustees.

5.7 Annual Meeting. The Association shall conduct an annual meeting as provided in the Bylaws.

5.8 Right of Association to Enter Units. The Association acting through the Board or its duly authorized agent shall have the right at all times upon reasonable notice (and at any time in case of an emergency) to enter upon or in any Unit to abate any infractions, to make repairs or correct any violation of any of the Restrictions herein set forth, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such assessment to be secured by the lien provided in Section 6.1.

5.9 Association Rules. The Board may adopt and administer Association Rules in furtherance of the Bylaws for the regulation and operation of the Condominium Project.

5.10 Working Capital Fund. Declarant shall establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services needed for the operation of the Condominium Project. The initial amount of the working capital fund shall be at least equal to two (2) months of estimated Common Expenses for each Unit. Declarant shall collect these charges from each Owner at the time the sale of each Unit is closed. Any amounts collected and paid into this fund shall not be considered advance payments of Assessments. This fund cannot be used by Declarant to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits; provided, however, to the extent Declarant has paid the Association for an unsold Unit's share of this fund, Declarant shall be entitled to a

reimbursement, to be paid at the time of disbursement out of the closing proceeds, for such amounts when such Unit is sold. Once the Declarant has transferred control to the Association, pursuant to Section 5.3, this fund shall be transferred to the Association.

5.11 Reserve Fund. The Association shall maintain an adequate reserve fund for maintenance, repair and replacement of the Common Area and non-exclusive Limited Common Area that must be replaced on a periodic basis, and such reserve shall be part of the monthly Assessments. To the extent the Board deems necessary, surplus monies of the Association may be retained as additional reserves rather than refunded to Unit Owners or being credited to future Assessments.

5.12 Availability of Condominium Project Documents. The Association will maintain current copies of this Declaration, the Articles, Bylaws and Association Rules concerning the Condominium Project and the Association's own books, records and financial statements available for inspection, upon request, during normal business hours by any Owner or Lender (or any insurer or guarantor of a Lender).

5.13 Managing Agent. The Board may contract with a professional management agent to assist the Board in the management and operation of the Condominium Project and may delegate such of its powers and duties to the management agent as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, to impose a special Assessment and to authorize foreclosure of an Assessment lien.

ARTICLE 6 - COVENANT FOR ASSESSMENTS

6.1 Creation of Lien and Personal Obligation for Assessment. Each Owner, including Declarant to the extent Declarant is an Owner as defined herein, of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree with each other and with the Association to pay to the Association such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, collection charges, attorneys' fees, court costs and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due. The personal obligation shall not pass to the successor in title of an Owner unless expressly assumed by such successor. Provided, however, a lien to secure unpaid Assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a prior recorded encumbrance is involved, in which case the foreclosure will extinguish the lien for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further Assessments.

6.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Owners, the management, maintenance, care, preservation and protection of the Condominium Project, enhancing the quality of life in the Condominium Project and the value of the Condominium Project including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, or in furtherance of any other duty or power of the Association.

6.3 Regular Assessment. The Board is expressly authorized to adopt and amend budgets from time to time. Not later than thirty (30) days prior to the beginning of each fiscal year, the Board shall adopt a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Board may, but is not required to, send a written summary of the budget to all Owners within thirty (30) days after the adoption of the proposed budget. The Board shall at that time determine the amount of the regular Assessments to be paid by each Owner. Each Owner shall thereafter pay to the Association their regular Assessment in equal monthly installments on the first day of each month. In the event the Board shall determine that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of the regular Assessment against each Owner, and the date or dates when due. The Owners shall have no right to ratify any budget, or amendment thereof, adopted by the Board.

6.4 Capital Improvement Assessments. In addition to regular Assessments, the Board may levy in any fiscal year a capital improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement upon the Common Areas, including the fixtures and personal property related thereto. The Board shall not impose a capital improvement Assessment exceeding ten percent (10%) of the then estimated annual Common Expenses without the approval of Owners holding a majority of the Allocated Interests in the votes of the Association. All amounts collected as capital improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account or the Association's account for reserve funds, to be held in trust for such purposes and said funds shall not be commingled with any other funds (other than reserve funds) of the Association.

6.5 Percentage Assessments. Except as otherwise provided herein, all Assessments (other than special Assessments) shall be in an amount based on the percentage interest for each Unit stated in Section 3.7 of this Declaration, as the same may be amended from time to time.

6.6 Rules Regarding Billing and Collection Procedures. The Board shall have the right and responsibility to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided in this Declaration and for the billing and collection of regular and

special Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefor shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days' written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment.

6.7 Certificate of Payment. The Association shall, within ten (10) business days after written demand, furnish to any Owner liable for Assessments or to the Lender or a potential Lender for such Unit, a recordable written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. To the extent permitted by law, a reasonable charge may be collected by the Board for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

6.8 Special Assessments. Special Assessments shall be levied by the Board against a Unit and its Owner to reimburse the Association for:

- (a) Costs incurred in bringing an Owner and/or the Owner's Unit into compliance with the provisions of the Declaration, the Articles, the Bylaws or Association Rules;
- (b) Costs associated with the maintenance, repair or replacement of a Limited Common Area assigned to such Unit;
- (c) Any other charge designated as a special Assessment in this Declaration, the Articles, the Bylaws or Association Rules; and
- (d) Attorneys' fees, interest and other charges relating thereto as provided in this Declaration.

In the event the Association undertakes to provide materials or services which benefit individual Units and which can be accepted or not by Individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be a special Assessment.

6.9 Date of Commencement of Assessments. Regular and other Assessments as to Units within the Condominium Project for which construction has been substantially completed shall commence as to all such substantially completed Units on the first day of the month following the conveyance of the first Unit by Declarant to an Owner. Thereafter, regular and other Assessments shall commence as to newly completed Units on the first day of the month following

the substantial completion of construction for each respective Unit. Until the Association makes an Assessment, the Declarant shall pay all Common Expenses of the Association. No Assessments shall be payable on Units for which construction has not been substantially completed, provided, however, that Declarant shall be obligated to pay to the Association any deficiencies in monies available to pay Common Expenses due to the Declarant not having paid an Assessment on uncompleted Units and which are necessary for the Association to be able to pay all Common Expenses in a timely manner. Notwithstanding the above, all Units, including uncompleted Units, shall be allocated full Assessments no later than sixty (60) days after the first Unit is conveyed from Declarant to an Owner.

6.10 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments or pay the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Condominium Project, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

6.11 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

6.12 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

ARTICLE 7 - EFFECT OF NON-PAYMENT OF ASSESSMENTS AND REMEDIES

7.1 Due Date and Delinquency. The first day of each month shall be the Assessment due date for that month. Any Assessment which is not paid within thirty (30) days after it becomes due shall be delinquent. Whenever an Assessment is delinquent, the Board may at its option invoke any or all of the sanctions granted in this Article 7.

7.2 Collection Charge. If any Assessment is delinquent, the Owner shall be obligated to pay the collection charge then provided for in the Bylaws or Association Rules. The amount of such collection charge until paid shall constitute part of the Assessment lien as provided for in Section 6.1 of this Declaration.

7.3 Interest. If any Assessment is delinquent, interest at the maximum rate set by law at the time may be assessed on the amount owing from the date due until such time as it is paid.

7.4 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay same or foreclose the Assessment lien; provided, however, that the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise the other. The costs of preparing and filing the complaint shall be assessed against the delinquent Owner and the Owner's Unit and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate) in the event that a judgment is obtained by the Association. Each Owner vests in the Association or its successors or assigns the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

7.5 Foreclosure Sale. Any foreclosure provided for in this Declaration is to be conducted in compliance with applicable provisions relating to the foreclosures in deeds of trust or realty mortgages in the State of Utah. In any foreclosure or sale, the Unit Owner shall pay the costs and expenses of such proceedings and reasonable attorneys' fees. The Association, upon approval by a majority of the Allocated Interests in the votes of the Association, may through its duly authorized agents have and exercise the power to bid on the Unit at the foreclosure or other sale and to acquire, hold, lease, mortgage and convey such Unit.

7.6 Suspension of Votes. The Board may suspend the obligated Owner's right to vote on any matter at regular or special meetings of the Association and the Owner's right to use all or any portion of the Common Area (exclusive of the Limited Common Area appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent.

ARTICLE 8 - PROPERTY RIGHTS IN COMMON AREAS

8.1 General Easements to Common Areas and Units. Subject to this Declaration and the Association Rules, each Owner shall have an equal undivided interest, right and easement of use and enjoyment in and to the Common Areas. Each Owner shall have an unrestricted right of ingress or egress to and from the Owner's Unit over and across such Common Areas (exclusive of the Limited Common Areas), and the non-exclusive right to the use of all open parking stalls, if any, within the Common Areas. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family members, household guest, tenant, lessee, contract purchaser, Occupant or other Person who resides in such Owner's Unit.

Declarant (before the Turnover Date) and the Association, acting through the Board or its authorized agent, and public utility companies providing service to the Condominium Project, shall have non-exclusive easements with the right of access to each Unit to make inspections, to remove violations, to maintain, repair, replace or effectuate the restoration of the Common Areas accessible from such Unit. Such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access. The Association, acting through the Board or its authorized agent, shall have a non-exclusive right to grant permits, licenses and easements upon, across, over, under and through the Common Areas for purposes necessary for the proper operation of the Condominium Project; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times with proper notification, unless emergency situations demand immediate access.

8.2 Public Utilities. Easements and rights-of-way over the Condominium Project for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Condominium Project are hereby reserved by Declarant and, after the Turnover Date, to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Areas and the Units by the Owners or Occupants. Declarant or the Association shall have the power to grant and convey, in the name of all of the Owners as their attorney-in-fact, to any other person easements and rights-of-way in, on, over or under the Common Areas for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi public improvements or facility, and each Owner in accepting the deed in a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association and Declarant (before the Turnover Date) as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or right-of-way. Such Owner and those claiming by, through or under an Owner agrees to promptly execute all such documents and instruments and do such other things as may be necessary or convenient to effect the same at the request of the Association and Declarant (before the Turnover Date). However, no such easement can be granted if it would permanently interfere with the use, occupancy or enjoyment by any Owner or such Owner's Unit.

8.3 Easements for Encroachments. If any portion of the Common Area now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or the Common Area, or if any such encroachment shall occur hereafter as a result of the manner in which the buildings have been constructed or due to settling, shifting, alteration, replacement, repair or restoration by Declarant or the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist so long as the buildings stand.

8.4 Development Easements for Declarant. Until all Units have been sold by Declarant, there are hereby reserved to Declarant, together with the right to grant and transfer the same to

others, including Declarant's sales agents, representatives, successors and assigns, easements and rights upon, across, over, under and through the Condominium Project:

- (a) for construction, display (including the use of any Unit owned by Declarant and any other Unit, with the express permission by the Owner of such Unit, as models), maintenance, sales and exhibit purposes (including the use of signs and other advertising devices) in connection with the erection, remodeling and sale or lease of Units within the Condominium Project; and
- (b) to create and cause noise, dust, vibration and other nuisances or annoyances created by and resulting from any work connected with or incidental to the development, construction and sale of any Unit or other improvement to the Condominium Project, and each Owner or Occupant in such Owner's Unit waives any and all rights, claims or actions that might otherwise be asserted against Declarant, its agents, employees, licensees, successors and assigns, based on any such noise, dust, vibration and other nuisances or annoyances;

provided, however, that no such use by Declarant or its agents shall otherwise restrict Owners or Occupants in the reasonable use and enjoyment of their Units.

8.5 Limitation on Easement. An Owner's equal undivided interest, right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

- (a) The right of the Association to suspend the Owner's voting right in the Association and the Owner's right to the use of any recreational facilities included in the Common Areas for any period during which (i) an assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or any Association Rule; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;
- (b) The right of the Association to impose reasonable limitations on the number of guests per Owner or Occupant who at any given time are permitted to use the Common Areas; and
- (c) The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal service.

8.6 Party Walls. Each wall or ceiling-floor physical boundary which is built as part of the original construction (or reconstruction) of the Units and placed on the dividing line (whether

horizontal or vertical) between the Units shall constitute a "Party Wall" and, to the extent not inconsistent with the provisions of this Section 8.6, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to all Party Walls within the Condominium Project. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners who make use of such Party Wall. If a Party Wall is destroyed or damaged by fire or other casualty, the provisions of Article 11 shall apply. Notwithstanding any other provision of this Section 8.6, an Owner who by negligent or willful act causes a Party Wall to be damaged shall bear the entire cost of furnishing repairs to the Party Wall. The right of any Owner to contribution from any other Owner under this Section 8.6 shall be appurtenant to the land and shall pass to such Owner's successors in title.

8.7 Form for Conveyancing. Any deed, lease, mortgage, deed of trust or other instrument conveying or encumbering title to a Unit may describe the interest or estate involved substantially as follows:

"Unit No. _____ of The Fields at Draper Phase 2C Condominiums, together with all improvements located thereon, as said Unit is identified in the Plat of said development recorded in the office of the Salt Lake County Recorder, State of Utah, as Book _____, Page _____, Entry No. _____. TOGETHER WITH an undivided interest, and a right and easement of use and enjoyment in and to the Common Areas described, as provided for and in the percentage shown, in said Declaration of Covenants, Conditions and Restrictions.

Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

8.8 Transfer of Title. At the time of the first conveyance of each Unit from Declarant to a third-party purchaser, Declarant agrees to cause the conveyance of such Unit free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities), and its percentage of undivided interest in the Common Area shall have been released therefrom by partial release duly recorded.

8.9 Views. Views from a Unit and the Condominium Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Condominium Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that:

(a) a completion of the Condominium Project and the future development of land adjacent to or in the vicinity of the Condominium Project may have a detrimental effect on the views from the Unit and other parts of the Condominium Project; and

(b) there are no view easements or rights appurtenant to the Unit or the Condominium Project.

ARTICLE 9 - USE RESTRICTIONS

9.1 Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Condominium Project is maintained and used in a manner consistent with the interest of the Owners.

9.2 Signs. No signs whatsoever (including, but not limited to commercial, political, sale or rental and similar signs) shall be erected or maintained on the Property whether in a window or otherwise without the approval of the Association, except:

(a) such signs as may be required by legal proceedings;

(b) one house number identification as originally placed by Declarant;

(c) such signs, the nature, number and location of which have been approved by the Board in advance; and

(d) street identification and traffic directional signs erected on or adjacent to the Condominium Project by Salt Lake County, or any other municipal entity, which signs shall not require prior approval from the Board.

Nothing included herein shall prevent Declarant and its agents and assigns from utilizing reasonable signs, flags, markers and sales devices in furtherance of sales activities until all Units have been sold by Declarant and such signs of customary and reasonable dimensions as may be displayed on a Unit advertising a Unit for sale or lease.

9.3 Nuisance. No noxious or offensive activity shall be carried on upon the Condominium Project, nor shall any activity which might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Condominium Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. In accordance with Section 8.4(b), nothing included herein shall be construed to prevent Declarant and its agents from engaging in all forms of construction and sales activities until all Units have been sold by Declarant.

9.4 Temporary Structures. No structure or building of a temporary character, including a tent or shack, shall be placed upon the Condominium Project or used therein unless the same and its proposed use are approved by the Board. Nothing included herein shall be construed as preventing Declarant from using temporary structures or trailers for construction or sales purposes or engaging in all forms of construction and sales activities within the Condominium Project.

9.5 Parking and Use of Open Parking/Visitor Parking. Unless otherwise permitted by the Association, and except for "customary parking" and "temporary parking," as permitted by this Section 9.5, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles or boats) shall be parked, stored or located within any portion of the Condominium Project, including any Unit, Limited Common Areas or Common Areas. "Customary parking" shall mean the parking of operable automobiles, motorcycles, small trucks and vans (each of which must not be used for commercial purposes and each of which must not exceed 3/4 ton in size and seven (7) feet in height measured from ground level and eighteen (18) feet in length) within the parking spaces designated as an exclusive Limited Common Areas for each respective Unit. "Temporary parking" shall mean the use of designated parking areas within the Condominium Project for parking of operable vehicles belonging to invited guests of Owners and Occupants including the parking of delivery trucks, service vehicles and other commercial vehicles being used in a furnishing of goods and services to the Owners and Occupants as well as parking of vehicles belonging to or being used by Owners, Occupants and invitees during social engagements and for loading and unloading purposes. The Association may adopt Association Rules relating to the admission and temporary parking of vehicles within the Condominium Project and the use of the visitor parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Association, the right to remove or cause to be removed any vehicles that are improperly parked, restrictions on the time visitor spaces may be used and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be special Assessments. Until all the Units are sold, nothing included herein shall be construed to prevent Declarant from using temporary structures or trailers for construction or sales purposes or from engaging in all forms of construction and sales activities within the Condominium Project.

9.6 Fencing. Each Owner shall be required to purchase, install and maintain a fence that shall enclose the 21 foot by 12 foot patio and backyard exclusive Limited Common Area appurtenant to the Owner's Unit, as depicted on the Plat. The Declarant will provide the Owner detailed specifications prior to, at, or immediately subsequent to the Owner's purchase of such Unit. Such specifications may include the type of materials to be used, the color and design of the fence, and other reasonable items deemed necessary to benefit the Condominium Project as a whole, including a list of contractor's approved by Declarant that may install the fence. Any deviation by an Owner from such specifications must be approved in writing. After the initial installation, the Board may adopt Association Rules regulating the maintenance of the fences.

9.7 External Fixtures. No external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, landscaping and planting, other than those provided in connection with the original construction for the Condominium Project, and any replacements thereof, and other than those approved by the Board, and any replacements thereof, shall be constructed, erected or maintained on the Condominium Project. The foregoing notwithstanding, until all the Units are sold, nothing included herein shall be construed as preventing Declarant and its agents and assigns from engaging in all forms of construction and sales activities within the Condominium Project.

9.8 Window Covers. Each Unit shall have window covers. Only curtains, drapes, shades, shutters and blinds may be installed as window covers, and all such window covers shall be approved in advance by the Board. No window shall be covered by paint, foil, sheets or similar items. The Board may adopt Association Rules regulating the type, color and design of the external surface of window covers. The Board may also require use of a uniform color and fabric for draperies, under-drapery and drapery linings to the extent such are visible from outside a Unit.

9.9 External Laundering. Unless otherwise permitted by the Board, external laundering and drying of clothing and other items is prohibited.

9.10 Outside Speakers and Amplifiers. No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of, any Unit without the prior written approval of the Board.

9.11 Repairs. No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles, shall be made upon the Condominium Project.

9.12 Unsightly Items. All rubbish, debris or unsightly materials or objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Units, shall be prohibited upon any Unit unless obscured from view of adjoining Units and Common Areas. Trash and garbage shall be properly disposed of by Owners and Occupants in refuse containers approved by the City of Draper or its subcontractor for regularly scheduled pick up and removal, in accordance with Association Rules applicable thereto adopted by the Board. The Board may adopt rules applicable to the provisions of this Section 9.12 and their enforcement, including the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be special Assessments. The foregoing notwithstanding, nothing included herein shall be construed as preventing Declarant and its agents and assigns from engaging in all forms of construction and sales activities within the Condominium Project.

9.13 Oil and Mineral Activity. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon the surface of the Condominium Project, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be installed upon the surface of the Condominium Project or within five hundred (500) feet below the surface of the Condominium Project. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon the Condominium Project.

9.14 Animals. No animals, livestock, birds, reptiles, or poultry of any kind shall be raised, bred or kept in any Unit or upon the Condominium Project, except that two (2) dogs, two (2) domestic cats, or other household pets approved by the Board may be kept by Owners within a Unit provided such pets are not raised, bred, kept or maintained for any commercial purposes. Notwithstanding the foregoing, no animal or fowl may be kept within a Unit which, in the good faith judgment of the Board, results in an annoyance or is obnoxious to Owners or Occupants within the Condominium Project and the Board may exercise this judgment for specific pets even though others are permitted to remain. All animals permitted to be kept by this Section 9.14 shall be kept on a leash, and all fecal matter shall be immediately cleaned up on any portion of the Common Area except within a Unit. The Board may adopt Association Rules applicable to the provisions of this Section 9.14 and to the keeping of pets within the Condominium Project, and their enforcement, including the assessment of charges to Owners and Occupants who violate such rules. Any charges so assessed shall be special Assessments.

9.15 Leases. Any agreement for the leasing, rental, or occupancy of a Unit (a "Lease") shall be in writing and a copy thereof shall be delivered to the Board before the term of the Lease commences. Every Lease shall provide that the terms of such Lease shall be subject in all respects to the provisions of this Declaration, the Bylaws and the Association Rules. Each Lease shall further provide that any failure by the Occupant thereunder to comply with the terms of the foregoing documents shall be a default under the Lease. If any Lease does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be a part of the Lease and binding on the Owner and Occupant by virtue of their inclusion in this Declaration. No Owner shall be permitted to lease the Owner's Unit for transient or hotel purposes, which shall be defined as rental for any period of less than thirty (30) days. No Owner may lease less than the Owner's entire Unit. Any Owner who shall lease the Owner's Unit shall be responsible for compliance by the Occupant with this Declaration, the Bylaws and the Association Rules. Failure by an Owner to take legal action, including the institution of a forcible entry and detainer proceeding against the Occupant who is in violation of this Declaration, the Bylaws or the Association Rules within ten (10) days after receipt of written demand so to do from the Board, shall entitle the Association, through the Board, to take any and all such action including the institution of proceedings in forcible entry and detainer on behalf of such Owner against the Occupant. Neither the Association nor any agent retained by the Association to manage the Condominium Project shall be liable to the Owner or Occupant for any eviction under this Section 9.15 that is made in good faith. Any expenses incurred by the Association, including attorneys' fees and costs of suit, shall be repaid by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Board to levy a special Assessment against such

Owner and the Owner's Unit for all such expenses incurred by the Association. In the event such special Assessment is not paid within thirty (30) days of its due date, the Board may resort to all remedies of the Association for the collection thereof. Other than as stated in this Section 9.15, there is no restriction on the right of any Owner to Lease or otherwise grant occupancy rights to a Unit.

9.16 Landscape Maintenance. The Declarant and the Association shall have the right to maintain all landscaping in the Common Areas and Limited Common Areas as specified in Article 4 of this Declaration. The Owner shall maintain all landscaping in exclusive Limited Common Areas as specified in Article 4 of this Declaration. The Declarant and the Association shall have the right of access to all Common Areas of the Condominium Project which are necessary for such landscape maintenance.

9.17 Floor Load. There shall be no floor load in excess of the weight for which the Unit or balcony was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is approved in writing by the Board.

9.18 Single Family Occupancy. The use of each Unit is restricted to single family occupancy. Except for those activities conducted as part of the marketing and development program for the Condominium Project by Declarant, no industry, business, trade or commercial activities (other than home professional pursuits without employees, public visits or nonresidential storage and mail), or other use of the Unit, shall be conducted, maintained or permitted in any part of a Unit, nor shall any Unit be used or rented for transient, hotel or motel purposes. Single family occupancy is defined as a single housekeeping unit, operated on a nonprofit, noncommercial basis between its occupants, cooking and eating with a common kitchen and dining areas, where all residents are members of a family related by blood, adoption or marriage, except for not more than two (2) additional persons not so related may reside in a Unit.

9.19 No Subdivision of Units or Further Restrictions. No Unit shall be split, subdivided or separated into two or more Units, and no Owner of a Unit shall sell or lease less than all of the Unit. An Owner of two (2) or more adjacent Units may, however, combine those Units to make a single Unit and then separate the single Unit into the original Units for purposes of selling one or more of the Units; provided however, that no such combination or subsequent separation shall be allowed until the Board has approved such combination or separation, in the Board's sole discretion, in writing. No subdivision plat or further covenants, conditions or restrictions shall be recorded by any owner or other Person with respect to any Unit unless the Board has first approved the plat or the proposed covenants, conditions or restrictions, such approval to be evidenced by the Association's signature on the final recorded plat or instrument imposing the covenants, conditions or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section 9.19 shall be absolutely null and void. The Board's review shall be for the purpose of assuring, in the sole and absolute discretion of the Board, that the plat or covenants, conditions and restrictions are consistent and compatible with the overall plan of development of the Property. However, in no event shall the approval of the Board of any plat or covenant,

condition or restriction be an abandonment or waiver of any provision of this Declaration. The provisions of this Declaration shall be and remain superior to any such plat or covenants, conditions or restrictions.

9.20 Architectural Control. No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board or any committee established by the Board for that purpose. By way of illustration, but not of limitation, the following are considered exterior changes; painting, landscaping, repairs, excavation, patio covers, screens, doors, evaporative coolers, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations or other work which in any way alters the exterior appearance of the Property. The Board, or committee established by the Board for that purpose, may designate the design, style, model and manufacturer of any exterior improvement or alteration which is acceptable to the Board. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board, or any committee established by the Board for that purpose. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like.

9.21 Lighting. Exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Board.

9.22 Association Rules. The Association shall have the power to make and adopt reasonable Association Rules with respect to activities which may be conducted on any part of the Condominium Project. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate such Association Rules shall be conclusive unless, at a regular or special meeting of the Association, Owners representing a majority of the Allocated Interests in the votes of the Association vote to the contrary.

9.23 Variances. The Board may, at its option and in extenuating circumstances, grant variances from the Restrictions set forth in this Article 9 if the Board determines in its discretion (a) either (i) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete; and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners or Occupants of the Condominium Project and is consistent with the high quality of life intended for residents of the Condominium Project.

9.24 Hazardous Substances. The Owner's shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage or release of any Hazardous Substances (as defined below), on or within the Condominium Project which are not properly controlled, safeguarded and disposed of. The Owner's shall not do, nor allow anyone else to do, anything affecting the Condominium Project that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use of storage

on the Condominium Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to maintenance of the Condominium Project.

Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Condominium Project, which the Association and/or Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (a) whether or not the release of the Hazardous Substances was caused by an indemnifying Owner, a tenant, invitee or otherwise of an indemnifying Owner, and (b) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Condominium Project. The obligations of each Owner under this Section 9.24 shall survive any subsequent sale by an indemnifying Owner.

As used in this Section 9.24, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section 9.24, "Environmental Law" means federal laws and laws of the jurisdiction where the Condominium Project is located that relate to health, safety or environmental protection.

ARTICLE 10 - INSURANCE

10.1 Property Insurance. Commencing not later than the date a Unit is conveyed to a Person other than Declarant, the Association shall obtain and maintain the insurance specified in this Declaration; provided, however, the Association shall always comply with the insurance requirements of the Act.

(a) Hazard Insurance. A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Condominium Project, including: Common Areas; all buildings including all Units (other than the interior content thereof); fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or owned by the Association, and which are of a class typically encumbered by Mortgages held by FNMA or other similar institutional Mortgage investors; but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type of policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Condominium Project in construction, location and use, including (without limitation) all

perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100% of current replacement cost of all elements of the Condominium Project covered by such policy, exclusive of land, foundations, excavation and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent (100%) of the Property's insurable replacement cost but not more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). The maximum deductible amount for such policy covering the Common Areas shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount. However, for losses related to Units that are covered by such a policy, the deductible related to each Unit shall be One Thousand Dollars (\$1,000.00). Funds to cover these deductible amounts shall be included in the Association's operating reserve account.

(b) Flood Insurance. If any part of the Condominium Project is or comes to be situated in a Special Flood Hazard Areas as designated on a Flood Insurance Rate Map, a "master" or "blanket" policy of flood insurance shall be maintained covering the Condominium Project, any machinery and equipment that are not part of a building and all Common Areas within the Condominium Project ("Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (i) the maximum limit of coverage available under the National Flood Insurance Administration Program for the Insurable Property within any portion of the Condominium Project located within a designated flood hazard Areas; or (ii) one hundred percent (100%) of the insurable value of the Insurable Property. The maximum deductible amount for any such policy shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount.

(1) The name of the insured under each policy required to be maintained by the foregoing (a) and (b) shall be the Association for the use and benefit of the individual Owners (the Owners shall be designated by name, if required). Notwithstanding the requirement of the immediately foregoing sentence, each such policy may be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each Owner's Mortgagee. Each Owner and each Owner's Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(2) Each policy required to be maintained by the foregoing Items (a) and (b) shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Condominium Project is located. If FNMA is a holder of one or more Mortgagees on Units within the Condominium Project, such mortgage clause shall name FNMA or FNMA's servicer of such mortgages as Mortgagee. If FNMA's servicer is named as Mortgagee in such mortgage clause, such servicer's name shall be followed therein by the phrase "its successors and assigns." In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a mortgage in the policy.

(3) Each policy required to be maintained by the foregoing items (a) and (b), shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and the policy is primary in the event the Owner as other insurance covering the same loss.

(4) Each policy required to be maintained by the foregoing item a shall also contain or provide the following: (i) "Inflation Guard Endorsement," if available; (ii) "Building Ordinance or Law Endorsement," if the enforcement of any building, zoning or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs (the endorsement must provide for contingent liability from the operation of building laws, demolition costs and increased costs of reconstruction); and (iii) "Steam Boiler and Machinery Coverage Endorsement," if the project has central heating or cooling, which shall provide that the insurer's minimum liability per accident at least equals the lesser of Two Million Dollars (\$2,000,000.00) or the insurable value of the building containing the boiler or machinery. In lieu of obtaining this as an endorsement to the commercial package property, the Association may purchase separate stand-alone boiler and machinery coverage.

10.2 Comprehensive Public Liability Insurance. To the extent available, the Association shall obtain comprehensive general liability insurance insuring the Association, Declarant, the agents and employees of the Association and Declarant, the Owners and Occupants and the respective family members, guests and invitees of the Owners and Occupants, against liability incident to the use, ownership or maintenance of the Common Areas or membership in the Association. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the project in construction, location and use. Nevertheless, such coverage shall not be less than one million dollars (\$1,000,000.00)

covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner or Occupant. Such insurance shall also include protection against water damage liability, liability for nonowned and hired automobiles and liability for the property of others. Such insurance must provide that, despite any provisions giving the carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the approval of the Association. The Board shall adjust the amount of the insurance carried under this Section 10.2 from time to time.

10.3 Workmen's Compensation Insurance. The Board shall purchase and maintain in effect workman's compensation insurance for all employees of the Association to the extent that such insurance is required by law.

10.4 Fidelity Insurance. The Board shall obtain fidelity coverage against dishonest acts on the part of Trustees, officers, employees or volunteers who handle or who are responsible for handling funds of the Association. Such fidelity bonds shall name the Association as obligee and shall be written in an amount equal to one hundred fifty percent (150%) of the estimated current annual Common Expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

10.5 Premiums. Premiums upon insurance policies purchased by the Board on behalf of the Association shall be paid by the Association as part of the Common Expenses.

10.6 Policy Provisions.

(a) Any insurer that has issued an insurance policy to the Association under this Article shall also issue a certificate or memoranda of insurance to the Association and upon request, to any Owner or Lender.

(b) The named insured under any policy of insurance shall be the Association, as trustee for the Owners, or its authorized representative, including an Insurance Trustee, who shall have exclusive authority to negotiate losses under the policies. The policy shall provide that each Owner shall be an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Areas or membership in the Association. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of purchasing and maintaining insurance required by this Declaration, and adjustment of all losses related thereto, including: the collection and appropriate disposition of all insurance proceeds, the negotiation of all losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to administer such insurance. The Association shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the Owners and their Lenders,

as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable ,and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

(c) The Association's Insurance shall contain the "Special Condominium Endorsement" or its equivalent. Insurance coverage obtained by the Association shall be primary insurance and may not be brought into contribution with Insurance purchased by the Owners.

(d) Coverage must not be limited by (i) any act or neglect by Owners or Occupants which is not within control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Condominium Project over which the Association has no control.

(e) Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) and the insurer may not refuse to renew the policy without at least thirty (30) days prior written notice to the Association and all Lenders, and to any owner to whom a certificate has been issued.

(f) All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Owners, Occupants and their respective agents and employees, and any defenses based on co-insurance or on invalidity arising from acts of the insured.

10.7 Supplemental Insurance. The Board may obtain such other policies of insurance in the name of the Association as the Board deems appropriate to protect the Association and Owners. The Board shall obtain Trustee's and officer's liability insurance for officers and Trustees of the Association in accordance with the Declaration. Notwithstanding any of the provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by FNMA and the Government National Mortgage Association, so long as either is a Mortgagee or Owner of a Unit, except to the extent such coverage is not available or has been waived in writing by FNMA or the Government National Mortgage Association.

10.8 Annual Insurance Report. Not later than sixty (60) days prior to the beginning of each fiscal year, the Board may obtain a written report by a reputable independent insurance broker or consultant setting forth the existing insurance obtained pursuant to this Declaration and stating whether, in the opinion of such broker or consultant, the Insurance complies with the requirements of this Declaration and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and Lenders in light of the insurance then available and the prevailing practice with respect to other similar condominium projects. The Board shall be fully protected

in relying on the written report furnished pursuant to this Section 10.8 provided reasonable care and prudence were exercised in selecting such independent insurance broker or consultant.

10.9 Insurance Obtained by Owners. Notwithstanding the above, and pursuant to Section 57-8-29 of the Act, an Owner or Occupant shall be permitted to insure the Owner's Unit for the Owner's own benefit.

ARTICLE 11 - DESTRUCTION OF IMPROVEMENTS

11.1 Reconstruction. In the event of partial or total destruction of a building or buildings or any portion of the Common Areas within the Condominium Project, the Board shall promptly take the following actions:

- (a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds;
- (b) The Board shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer carrying the policy covering the Condominium Project.
- (c) Pursuant to Section 57-8-30 of the Act, if the Insurance proceeds are sufficient to reconstruct the building, such proceeds shall be applied to such reconstruction.
- (d) If the Board determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more, but not all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and a Special Assessment equal to twenty-five percent (25%) or less of the then aggregate annual regular Assessments for all Units will completely cover the estimated cost of reconstruction, then the Board shall cause notice to be sent to all Owners and to all Lenders encumbering Units within the Condominium Project setting forth such findings and informing the Owners and Lenders that the Board intends to commence reconstruction pursuant to this Declaration. In the event that Owners representing at least twenty percent (20%) of the Allocated Interests in the votes of the Association object in writing to such reconstruction as indicated in such notice, the Board shall call a special meeting of the Owners pursuant to Section 11.2. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction, the Board shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Board shall levy a uniform special Assessment against each Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

(e) If the Board in good faith determines that none of the bids submitted under this Section 11.1 reasonably reflects the anticipated reconstruction costs, the Board shall continue to attempt to obtain an additional bid which it determines reasonably reflects such costs. Such determination shall be made by the Board as soon as possible. However, if such determination cannot be made within ninety (90) days after the date of such destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Board shall immediately call a meeting of the affected Owners and all Lenders pursuant to Section 11.2.

(f) If the Board determines that any Unit is uninhabitable by reason of its total or partial destruction, the Board may abate Assessments against the Owner thereof until the Board determines that habitability has been restored.

11.2 Reconstruction by Vote. If reconstruction is not to take place pursuant to Section 11.1, as soon as practicable after the same has been determined, the Board shall call a special meeting of the Owners by mailing a notice of such meeting to each such Owner. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Areas which will not be rebuilt) determine not to proceed with such reconstruction, reconstruction must take place and the Board shall levy a uniform special Assessment against each Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

11.3 Procedure for Minor Reconstruction. If the cost of reconstruction is equal to or less than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium Project, then the Board shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Condominium Project in conformance with the original plans and specifications, or if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.

11.4 Procedure for Major Reconstruction. If the cost of reconstruction is greater than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium Project, all insurance proceeds, together with such amounts from available reserves or special Assessments as are needed to complete the cost of reconstruction, shall be paid directly to an Insurance Trustee, to be designated by the Board, as trustee for all Owners and Lenders. The Insurance Trustee shall be a bank or savings and loan association located in Salt Lake County, Utah, whose accounts are insured by the Federal Deposit Insurance Corporation or the successor to such agency. Such proceeds shall be received, held and administered by the Insurance Trustee

subject to the provisions of an insurance trust agreement which shall be consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Board. Disbursement of such funds shall be made only upon the signatures of two members of the Board and upon the terms and conditions provided in this Section 11.4. As soon as practicable after notification of the receipt of insurance proceeds by the Insurance Trustee, the Board shall enter into a contract with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed Units and Common Areas according to the original plan and specifications of said improvements or, if the Board determines that adherence to such original plans and specifications is impracticable or not in conformity with applicable statutes, ordinances, building codes or other governmental rules and regulations then in effect, then of a quality and kind substantially equivalent to the original construction of such improvements. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors a specified sum for performance and execution of the work therein described, and shall have provisions for periodic disbursement of funds by the Insurance Trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Salt Lake County, Utah. Such periodic disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Board shall furnish to the Board before the commencement of construction a full performance and lien payment bond written by a good and responsible corporate surety. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate or other documentation containing such provisions as may be appropriate in the circumstances and deemed suitable by the Board. The Board may employ a licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract.

11.5 Determination not to Reconstruct Without Termination. If Owners of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Areas which will not be rebuilt after a casualty) vote not to rebuild and the entire Condominium Project is not repaired or replaced, and the Condominium Project is not terminated in accordance with the Act, the insurance proceeds shall be distributed as provided by the Act and the Allocated Interests are automatically reallocated as provided by the Act. In such event, the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations.

11.6 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Areas, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Areas. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.

11.7 Repair of Units. Installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Owner of that Unit and,

in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.

11.8 Priority. Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

ARTICLE 12 - EMINENT DOMAIN

12.1 Total Taking of a Unit. If a Unit is taken by eminent domain, or sold under threat thereof, or if part of a Unit is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant which may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area.

12.2 Partial Taking of a Unit. Except as provided in Section 12.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall remain the same, but if the decree provides for a reduction of the Allocated Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.

12.3 Taking of Limited Common Area. If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated at the time of the acquisition.

12.4 Taking of Common Area. If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is not comprised of, or include, any Unit or Limited Common Area, the Board shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring the portion of the Condominium Project so taken, and the portion

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of the award not used for restoration shall be divided among the owners in proportion to their Allocated Interest in the Common Area before the taking.

12.5 Taking of Entire Condominium Project. In the event the Condominium Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Condominium Project is terminated and the provisions of the Act apply.

12.6 Priority and Power of Attorney. Nothing contained in this Article 12 shall entitle an Owner to priority over any Lender under a lien encumbering his Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE 13 - RIGHTS OF LENDERS

13.1 Notice of Lenders. Lender shall notify, in writing, the Association that it is the holder of a loan encumbering a Unit within the Condominium Project, in accordance with Section 13.6. Until then, Lender shall not be entitled to any notice required hereunder for notice, approval or consent regarding a proposed action or otherwise. Notwithstanding the foregoing, if any right of a Lender under this Declaration is conditioned on a specific written request to the Association, in addition to the above, a Lender must also make such request in writing delivered to the Association. Except as provided in this Section 13.1, a Lender's rights pursuant to this Declaration, including, without limitation, the priority of any mortgage lien over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice or request to the Association.

13.2 Priority of Lenders. No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Unit, but all of such Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise.

13.3 Relationship with Assessment Liens.

(a) The lien provided for in Article 6 for the payment of Assessments shall be subordinate to the lien of any Lender which was recorded prior to the date any such Assessment becomes due.

(b) If any Unit which is subject to a monetary lien created by this Declaration is also subject to the lien of a Lender, then: (i) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Lender; and (ii) the foreclosure of the lien of a Lender or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any person who obtains an interest thereafter shall take title free of any lien created by this Declaration for any Assessments which became due after the recordation of the mortgage or deed of trust, or any personal obligation for such charges, but such Person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.

(c) Without limiting the provisions of Section 13.3(b), any Lender who obtains title to a Unit by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit which accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Condominium Project.

(d) Nothing in this Section 13.3 shall be construed as releasing any Person from the personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such Person is an Owner.

13.4 Required Lender Approval. Except upon the prior written approval of seventy-five percent (75%) of all Lenders which have provided notice to the Association as described in Section 13.1 and Section 13.6, based on one vote for each Unit encumbered by a loan, neither the Association nor the Board shall be entitled by action or inaction to do any of the following:

(a) Abandon or terminate by an act or omission the legal status of the Condominium Project, except for abandonment or termination provided by the Act or this Declaration in the case of substantial destruction by fire or other casualty or in the case of a taking by eminent domain; or

(b) Except as specifically provided by this Declaration, amend any provisions governing the following:

(1) voting rights;

(2) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;

(3) reductions in reserves for maintenance, repair and replacement of Common Areas;

- (4) reallocation of interests in the Common Areas and the Limited Common Areas, or rights to their use;
- (5) redefinition of any Unit boundaries;
- (6) convertibility of Units into Common Areas or vice versa;
- (7) expansion or contraction of the Condominium Project, or the addition, annexation or withdrawal of property to or from the Condominium Project;
- (8) hazard or fidelity insurance requirements;
- (9) imposition of any restrictions on the leasing of Units;
- (10) imposition of any restrictions on an Owner's right to sell or transfer such Owner's Unit;
- (11) restoration or repair of the Condominium Project (after damage or particular condemnation) in a manner other than that specified in this Declaration, the Articles or Bylaws; or
- (12) any provision that expressly benefits Lenders (including their insurers or guarantors).

Any Lender who receives, by certified or registered mail, a written request, with a return receipt requested, to approve a change and who does not return a negative response within thirty (30) days shall be deemed to have approved such request.

13.5 Other Rights of Lenders. Any Lender (and such Lender's insurer or guarantor) shall, upon written request to the Association, be entitled:

- (a) To inspect current copies of this Declaration (and any amendments), the Association's Articles, Bylaws, Association Rules and other books and records of the Association during normal business hours; and
- (b) To receive an annual financial statement of the Association within ninety (90) days following the end of the Association's fiscal year.

13.6 Notices of Action. Upon written request to the Association identifying the name and address of the Lender (and the name and address of the Lender's insurer or guarantor, if

desired) and the Unit Number or address, any such Lender (or any such insurer or guarantor) will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss which affects a material portion of the Condominium Project or any Unit on which there is a First Mortgage held by such Lender;
- (b) Any delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to the lien of a Lender, which remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action by the Owners or the Association which would amount to a material change in the Declaration as identified in Section 13.4 of the Declaration.

ARTICLE 14 - TERMINATION

14.1 Required Vote. Except as otherwise provided in Article 11 and Article 12, the Condominium Project may be terminated only by unanimous agreement of Owners of all Units.

14.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by unanimous consent of all Lenders with a loan secured by a Unit. Such approval (and any other approval related to an amendment to this Declaration) shall be deemed given when a Lender fails to submit a response within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the County Recorder in Salt Lake County, Utah and is effective only on recordation.

14.3 Sale of Project. A termination agreement may provide that the entire Condominium Project shall be sold following termination. If, pursuant to such agreement, any real estate in the Condominium Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

14.4 Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Condominium Project, but the contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the Condominium Project is to be sold following termination, title to that real estate on termination

vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit and Condominium Project. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.

14.5 Proceeds of Sale. Following termination of the Condominium Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Lenders as their interests may appear. The interest of any Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds. Following termination, Lenders holding notes on the Units which were recorded before termination may enforce those liens in the same manner as any lienholder.

ARTICLE 15 - GENERAL PROVISIONS

15.1 Enforcement. The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and Association Rules and any respective amendments thereto.

15.2 No Waiver. Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

15.3 Cumulative Remedies. All rights, options and remedies of Declarant, the Association, the Owners or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, the Association, the Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

15.4 Severability. Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration or in the Bylaws or Association Rules by judgment or court order shall

in no way affect any other Restrictions or provisions contained herein or therein which shall remain in full force and effect.

15.5 Covenants to Run with the Land: Term. The Restrictions and other provisions of this Declaration shall run with and bind the Condominium Project as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date this Declaration is recorded, after which time the Restrictions and other provisions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed and acknowledged by Owners of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association and their Lenders, has been recorded prior to the end of any such period agreeing to change or revoke the Restrictions and other provisions of this Declaration in whole or in part. By acquiring any interest in a Unit, or in a Limited Common Area, or in the Common Area, such Owner consents to, and agrees to be bound by, each and every provision of this Declaration.

15.6 Allocation upon Termination. Unless provided otherwise herein, upon any liquidation or termination of all or part of the Condominium Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders. Owners shall share in the proceeds of such termination or liquidation in the same proportion as their Allocated Interest in the Common Areas (or as otherwise provided by the Act), but in such event, the liens and provisions of all lenders or Assessment liens encumbering Units within the Condominium Project so encumbered shall extend to each applicable Owner's Interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

15.7 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential condominium community and for the maintenance of the Condominium Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to Articles and Section numbers, unless otherwise expressly provided, are to the Articles and Sections of this Declaration.

15.8 Gender and Number. Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

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15.9 Nuisance. The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or Association Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.

15.10 Attorneys' Fees. In the event any action is instituted to enforce any of the provisions contained in this Declaration, the Bylaws or Association Rules, the party prevailing in such action shall be entitled to recover from the other party thereto, as part of the judgment, reasonable attorneys' fees and costs of suit.

15.11 Notices. Any notice to be given to an Owner, a Lender or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:

(a) Notice to an Owner shall be delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.

In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners.

(b) Notice to a Lender shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender in Salt Lake County, Utah, or if no such office is located in Salt Lake County, to any office of such Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.

(c) The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, or to any Lender or Lenders, to the address or addresses for the giving of notice pursuant to this Section 15.11, shall be deemed conclusive proof of such mailing.

(d) Notice to the Association shall be delivered by registered or certified United States mail, postage prepaid, addressed to the office of the statutory agent of the Association or as follows:

Patrick Holmes
9345 South 1300 East
Sandy, Utah 84093

Any notice so deposited in the mail shall be deemed delivered upon the date of receipt.

15.12 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. Declarant shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws or Association Rules are determined to be unenforceable in whole or in part or under certain circumstances.

15.13 Personal Covenant. To the extent the acceptance of a conveyance of a Unit creates a personal covenant between the Owner of such Unit and Declarant, other Owners or the Association, such personal covenant shall terminate and be of no further force or effect from and after the date when a Person ceases to be an Owner except to the extent this Declaration provides for personal liability with respect to the Assessments incurred during the period a Person is an Owner.

15.14 Nonliability of Officials. To the fullest extent permitted by law, neither the Board nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence if such Board member or officer acted in good faith within the scope of such Person's duties.

15.15 Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for non-profit purposes of the Association in managing, maintaining, caring for and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

15.16 Notification of Sale and Transfer Fee. Concurrently with the consummation of the sale or other transfer of any Unit, or within fourteen (14) days after the date of such transfer, the transferee shall notify the Association in writing of such transfer and shall accompany such written notice with any nonrefundable transfer fee payable pursuant to the Association Rules, to cover Association documentation and processing. The Board may establish a transfer fee, from time to time, which shall be no more than the amount of the then current regular monthly Assessment. The written notice shall set forth the name of the transferee and the transferor, the street address

of the Unit purchased or acquired by the transferee, the transferee's mailing address, the date of the sale or transfer and the name and address of the transferee's Lender, if any. Prior to the receipt of such written notice, all notices required or permitted to be given by the Association to the Owner shall be deemed to be duly made or given to the transferee if duly and timely made and given to the transferee's predecessor in interest. The transfer fee shall be the personal obligation of the new Owner and shall be secured by the lien in Section 6.1. Notwithstanding the other provisions of this Declaration, this Section 15.16 shall not apply to a Lender who becomes an Owner by a foreclosure proceeding or any deed or assignment in lieu of foreclosure.

15.17 Owner Liability and Indemnification. Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligence of that Owner or such Owner's family members, tenants, guests or invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association. Each Owner, by acceptance of a deed for a Unit, agrees personally and for family members, tenants, guests and invitees to indemnify each and every other Owner, and to hold such other Owners harmless from, and to defend such Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including any Limited Common Area, if any, except to the extent (a) that such injury or damage is covered by liability insurance in favor of the Association or any other Owner, or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other Person temporarily visiting such Unit.

15.18 Conflicting Provisions. In the case of any conflict between this Declaration and the Bylaws, or Association Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified and amended only to the extent necessary to come into compliance with the Act.

15.19 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease or other conveyance of an interest in Unit, each Owner or Occupant of such Owner's Unit consents to the rights reserved to Declarant (before the Turnover Date) and the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of Declarant (before the Turnover Date) and the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period(s) of Declarant's and the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

15.20 Security. The Association or Declarant shall in no way be considered insurers or guarantors of security within or relating to the Condominium Project, including any Common Areas in which the Association may have an obligation to maintain, and the Association or Declarant shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant acknowledges and understands that Declarant, the Association and the Board are not insurers of the safety or well being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Units, the Common Area, and to the contents of improvements located thereon to the extent not insured by the Association pursuant to Article 10 above, and further acknowledges that Declarant, the Association and the Board have not made any representations or warranties of any kind and that each Owner or Occupant has not relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to the security of the Condominium Project.

15.21 Arbitration. In the event the Association or any Owner or Occupant shall have any claim or cause of action arising out of or in any way related to the Condominium Project, this Declaration, the Articles, Bylaws or any Association Rules against any covered party (as defined below), such claim or cause of action shall be submitted for determination by a single arbitrator in accordance with the Commercial Arbitration Rules or the Construction Industry Rules, as may be applicable, of the American Arbitration Association. If the parties to the arbitration cannot agree upon a single arbitrator, said arbitrator shall be selected in accordance with the Commercial Arbitration Rules. As used herein, a "Covered Party" shall mean Declarant, Declarant's real estate broker, agent or attorney, the architects, engineers, or other design consultants for the Condominium Project, the contractor, subcontractors, material suppliers of other persons involved with the Condominium Project, the managing agent, if any, and their respective officers, directors, agents, servants, employees or representatives, provided that such person(s) has entered into an agreement or otherwise agree to arbitrate such disputes. If such claim or cause of action is filed jointly and severally against a Covered Party and a party other than a Covered Party, it shall be subject to arbitration whether or not such other parties are willing to submit to arbitration as herein provided. Any arbitration shall be conducted in the County of Salt Lake and shall be governed by the laws of the State of Utah. No punitive damages shall be awarded in any claim against any Covered Party. The arbitrator may award attorney's fees and costs, including expert witness fees, to the prevailing party. Further, no award for damages attributable to emotional distress or a multiple of actual damages based upon any theory of law may be awarded any claim against any Covered Party by the arbitrator. The award rendered by the arbitrator shall be final and conclusive.

ARTICLE 16 - AMENDMENTS

16.1 Amendments by Declarant Prior to First Sale. Except as provided elsewhere in this Declaration, prior to the conveyance of the first Unit to an Owner other than a Declarant, this

Declaration and any amendments thereto may be amended or revoked by the execution of Declarant of an instrument amending or revoking the same.

16.2 Amendments by Declarant After First Sale. Except as provided elsewhere in this Declaration, Declarant (without obtaining the approval of Owners, the Association, or existing Lenders) may unilaterally amend or modify this Declaration in the exercise of its rights set forth in this Declaration. Also, notwithstanding anything herein to the contrary, Declarant shall have the unilateral right (without obtaining the approval of the Owners, the Association or existing Lenders) to amend this Declaration until the Turnover Date (as defined in Section 5.3), if such amendment is required solely: (a) to comply with applicable law or to correct any error or inconsistency of this Declaration and if such amendment does not adversely affect the rights of any Owner or Lender; or (b) to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments (including, without limitation, the Veterans Administration, Federal Housing Administration, FNMA, Federal Home Loan Mortgage Corporation, Government National Mortgage Association or any similar agency). If such amendment bears recitation that it is recorded based on such technical error or the requirements of any of the foregoing agencies, such amendment shall not require approval of any Owners or Lenders.

16.3 General Amendment Requirements. Except as permitted by Article 3, Section 16.1, Section 16.2, or as otherwise permitted or required by the Act, this Declaration may be amended only by vote or agreement of Owners of Units to which at least seventy-five percent (75%) of the votes in the Association are allocated. Prior to the Turnover Date, this Declaration shall not be amended without Declarant's prior written consent.

16.4 Protection of Declarant Rights. An amendment shall not terminate or decrease any unexpired development right, special Declarant right, or period of Declarant control unless the Declarant approves or consents in writing.

16.5 Execution of Amendments. An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder of Salt Lake County, Utah. An amendment which requires the affirmative written assent or vote of the Owners as provided above shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment has been so approved and Declarant if Declarant's consent is also required, and when the amendment has been recorded in the office of the County Recorder of Salt Lake County, Utah.

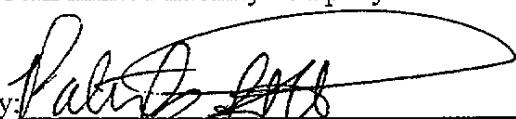
16.6 Lender Approval. Subject to the foregoing, any provision of this Declaration which expressly requires the approval of a specified percentage of the Lenders for action to be taken under such provision can be amended only with the affirmative written assent or vote of not less than the same percentage of the Lenders; provided that in the event approval is requested in

writing from a Lender with respect to a proposed amendment and a negative response is not returned within thirty (30) days following the Lender's receipt of the request, by certified or registered mail, with a return receipt requested, the Lender shall be deemed to have approved the proposed amendment.

DATED effective as of the date first above written.

DECLARANT:

HOLMES & ASSOCIATES, L.C.
a Utah limited liability company

By: 
Its: member

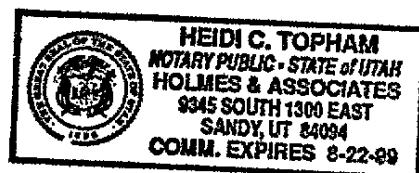
STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 29 day of April, 1998 by
Patrick Holmes who is the of HOLMES & ASSOCIATES, L.C., a Utah
limited liability company.

Heidi Topham
Notary Public Commissioned in Utah
Residingat: 533 W 2450 N Lehi UT

My Commission Expires:

8-22-99



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EXHIBIT "A"

LEGAL DESCRIPTION

The following described real property, located in Salt Lake County, Utah, is the Condominium Project:

NORTH PARCEL

Beginning at a point which is on the Northside of the right-of-way of South Fork Drive said point being North 89°51'21" West 1292.01 feet and North 103.11 feet from the North quarter corner of Section 7, Township 4 South, Range 1 East, Salt Lake Base and Meridian, and running thence Northwesterly along the arc of a 536.00 foot radius curve to the left through a central angle of 34°34'39" (center bears South 21°57'40" West) a distance of 323.47 feet; thence North 00°30'21" East 38.19' to the South bank of the East Jordan Canal and a point on a curve; thence along said South bank the following seven (7) courses; thence Northeasterly along the arc of 107.50 foot radius curve to the left through a central angle of 46°31'33" (center bears North 29°23'52" West) a distance of 87.30 to a point of tangency North 14°04'35" East 26.94 feet; thence North 08°24'54" East 94.55 feet; thence North 32°02'07" East 28.27 feet to a point of curvature; thence Northeasterly along the arc of a 115.73 foot radius curve to the right through a central angle of 36°11'42" a distance of 73.11 feet; thence North 70°00'10" East 98.83 feet to a point of curvature; thence running Northeasterly long the arc of a 85.01 foot radius curve to the left through a central angle of 38°24'00" a distance of 56.98 feet; thence North 31°36'10" East 74.24 feet; thence South 453.74 feet to the point of beginning.

Contains 1.92 acres

SOUTH PARCEL

Beginning at a point which is on the South side of the right-of-way of South Fork Drive said point also being North 89°51'21" West 938.22 feet and South 191.70 feet from the North quarter corner of Section 7, Township 4 South, Range 1 East, Salt Lake Base Meridian, and running thence Southeasterly along the arc of a 18.00 foot radius curve to the right through a central angle of 90°00'00" (center bears South 31°55'10" West) a distance of 28.27 feet to a point on the west right-of-way line of Honeyfield drive; thence South 31°55'10" West 50.61 feet along said West right-of-way line to a point of curvature; thence Southeasterly along the arc of a 250.00 foot radius curve to the left through a central angle of 63°08'39" a distance of 253.48 to a point of tangency; thence South 31°13'29" East 213.76 feet along said West right-of-way line to a point of curvature; thence Southerly along the arc of a 18.00 foot radius curve to the right through a central angle of 106°40'42" a distance of 33.51

feet to a point on the North right-of-way line of Mayfield Drive; thence Southeasterly along the arc of a 170.00 foot radius curve to the right through a central angle of $06^{\circ}43'15''$ (center bears North $14^{\circ}32'47''$ West) a distance of 19.94 feet to a point of tangency thence South $82^{\circ}10'28''$ West 292.37 feet to a point of curvature thence Southwesterly along the arc of a 230.00 foot radius curve to the left through a central angle of $32^{\circ}02'10''$ a distance of 128.60 feet to point of tangency thence South $50^{\circ}08'19''$ West 322.60 feet to a point of curvature; thence Southwesterly along the arc of a 70.00 foot radius curve to the right through a central angle of $08^{\circ}21'23''$ a distance of 10.21 feet to a point of tangency; thence South $58^{\circ}29'42''$ West 91.66 feet; thence North $00^{\circ}30'21''$ East 1121.19 feet to a point on a curve, said point also being on the South right-of-way line of South Fork Drive; thence running Northeasterly along the arc of a 464.00 foot radius curve on the Southside of said right-of-way to the right through a central angle of $46^{\circ}37'04''$ (center bears South $14^{\circ}41'53''$ East) a distance of 377.53 feet to a point of tangency; thence South $58^{\circ}04'50''$ East 363.95 feet to the point of beginning.

Contains 9.25 acres

Contains 192 lots

EXHIBIT "B"

FORM BYLAWS

BK 7965 PG 0285