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# DECLARATION AND BYLAWS

of the

## Willow Grove Condominium

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 NANCY WORKMAN  
 RECORDER, SALT LAKE COUNTY, UTAH  
 SUPERIOR TITLE  
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Condominium Project Created

Pursuant to the Utah Condominium Ownership Act

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## DECLARATION

### Willow Grove Condominium

This Declaration is made and executed by **B&B Developers, LLC** (“Declarant”), pursuant to the provisions of the Utah Condominium Ownership Act, as amended, Utah Code Ann. § 57-8-1 *et seq.* (“Act”), and pursuant to Title 38 of the United States Code and 38 CFR Part 36, as amended.

#### 1. Recitals.

1.1. Declarant, and the persons joining in this Declaration, are the sole owners of the real property and improvements located at **4072 South 300 East, Salt Lake City, Utah**, more particularly described hereinafter.

1.2. Declarant, by recording this Declaration, intends that the provisions of the Act shall apply to the Property.

1.3. This Declaration containing covenants, conditions and restrictions relating to the project shall be enforceable, equitable servitudes and shall run with the land and this Declaration and these servitudes shall be binding upon Declarant, its successors and assigns, and upon all unit owners or subsequent unit owners of all or any part of the condominium project, and upon their grantees, mortgagees, successors, heirs, executors, administrators, devisees and assigns.

1.4. Declarant has filed simultaneously herewith a record of survey map (“Map”) as required by Section 57-8-13(1) of the Act.

1.5. The administration of the Property shall be governed by bylaws which are embodied in a separate instrument, a true copy of which is appended to and recorded with this Declaration as Appendix “B”.

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1.6. All terms used in this Declaration and the Bylaws, which are not otherwise defined, shall have the same definition as the terms defined in the Act, unless the Act allows for a variation of the terms and such variation is contained herein. The following definitions shall apply to the terms used in this Declaration and the Bylaws:

1.6.1. The term “condominium” shall mean and refer to the ownership of a single unit in this condominium project, together with an undivided interest in the common areas and facilities of the Property.

1.6.2. The term “Property” shall mean and include land, buildings, all improvements and structures thereon, all easements, rights and appurtenances thereto, and all articles of personal property for use and connection therewith.

1.6.3. The term “condominium project” or “project” shall mean and refer to the entire real estate condominium project referred to in this Declaration.

1.6.4. The term “unit” shall mean one or more of the residential units designated on the Map filed simultaneously with the original declaration. Horizontally, each unit consists of the area measured horizontally from the unit side of the exterior walls of the building to the unit side of the walls and partitions separating each such unit from corridors, stairs, incinerators, and other mechanical equipment spaces, and where walls and partitions separate such units from other units, to the side of such walls and partitions on the interior of such units. Vertically, each unit consists of the space between the top of the floor to the underside of the ceiling. A unit shall not include pipes, wires, conduits or other utility lines running through it which are utilized for or which serve more than one unit.

1.6.5. The term “unit owner” shall mean and refer to the person or persons owning a unit in fee simple and an undivided interest in the fee simple estate of the common areas and facilities in the percentages applied and established in this Declaration, which shall include the original purchasers and any other persons who may subsequently acquire a unit.

1.6.6. The term “tenant” or “lessee” shall mean and refer to all persons who reside in a unit who are not the owners of record of that unit, and who are not direct family members of the owners’ family (i.e., children, parents, siblings) and where none of the owners also reside in the unit.

1.6.7. The term “association of unit owners” shall mean and refer to all of the unit owners acting as a group in accordance with the Act, the Declaration and Bylaws.

1.6.8. The term “unit number” shall mean and refer to the number designating the unit in this Declaration and in the Map.

1.6.9. The terms “majority” or “majority of unit owners” shall mean the owners of more than fifty percent (50%) of the total residential units in the condominium project.

1.6.10. The term “management committee” shall mean and refer to a committee composed of persons duly elected thereto by the association of unit owners, as provided by the Act, this Declaration and the Bylaws. The management committee is charged with and shall have the responsibility and authority to make and enforce all of the reasonable rules and regulations pertaining to the operation and maintenance of the Property, except as hereinafter provided.

1.6.11. The term “manager” shall mean and refer to the person, persons, corporation or other entities selected by the management committee to manage the affairs of the condominium project.

1.6.12. The term “common areas and facilities” refers to and consists of the entire condominium property, including all parts of the building other than the units, including without limitation, the following:

- (a) The land on which the buildings are erected;
- (b) All foundations, columns, girders, beams, and supports;

(c) All exterior walls of the building not including the portions thereof on the unit side of such wall; all walls and partitions separating units from corridors, elevators, stairs, incinerators and other mechanical equipment spaces, other than the portions of the plaster or sheetrock partitions separating units between the center lines of the plaster or sheetrock on each side of such partition; and all concrete floors and concrete ceilings;

(d) Roofs, hall corridors, lobbies, stairs, stairways and entrances to and exits from the buildings;

(e) Basements, sub-basements, yards, gardens, recreational or common facilities, mailrooms, vaults and other areas used in connection therewith; parking and driveway areas and storage spaces;

(f) All space devoted to the lodging or use of the superintendent or other person employed in connection with the operation of the condominium property;

(g) All central and appurtenant installations for services such as power, light, telephone, gas, hot and cold water, heat, refrigeration and incinerating (including all pipes, ducts, wires, cables and conduits used in connection therewith, whether located in common areas or units) and all other mechanical equipment spaces;

(h) All elevators, tanks, pumps, motors, fans, compressors and control equipment;

(i) All sewer pipes;

(j) All storage spaces in laundry rooms;

(k) All terraces, balconies or patios, provided, however, that each unit owner whose unit has sole access to a terrace, balcony or patio shall have an easement for the exclusive use thereof; and

(l) All other parts of the condominium property and all apparatus and installations existing in the building or on the Property for common use and necessary or convenient to the existence, maintenance or safety of the condominium.

1.6.13. The term “limited common areas and facilities” shall mean and refer to those common areas and facilities designated in the Declaration and the Map as reserved for use of a certain unit or units to the exclusion of the other units. Limited common areas and facilities shall be the assigned parking spaces and the storage areas as set forth in Appendix “A,” attached hereto and made a part of this Declaration, and as more particularly identified in the Map. The use and occupancy of designated limited common areas and facilities shall be reserved to its assigned unit and that unit owner is hereby granted an irrevocable license to use and occupy his assigned limited common areas and facilities.

1.6.14. The term “common expense” shall mean and refer to all expenses of administration, maintenance, repair or replacement of the common areas and facilities, to all items, things and sums described in the Act which are lawfully assessed against the unit owners in accordance with the provisions of the Act, this Declaration, the Bylaws, such rules and regulations pertaining to the condominium project as the association of unit owners or the management committee may from time to time adopt and such determinations and agreements lawfully made or entered into by the management committee.

1.6.15. The term “size” shall mean the number of square feet of floor space within each unit as computed by reference to the Map and rounded off to the next highest whole number. The space within the unit shall not include attic, basement or garage spaces.

1.6.16. The term “reconstruction of the building(s)” shall mean restoring the building(s) to substantially the same condition in which it existed prior to the fire or other disaster, with each unit and common elements having the same vertical and horizontal boundaries as before.

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1.6.17. Those definitions contained in the Act, to the extent they are applicable and not inconsistent herewith, shall have the same effect as if they were expressly set forth herein and made a part hereof.

1.7. The Property shall be known as the Willow Grove Condominium. The mailing address of the Property is 4072 South 300 East, Salt Lake City, Utah.

## 2. Description of the Land.

2.1. The land on which the building and improvements are located is particularly described as follows:

**Beginning at a point on the West line of 300 East Street; said point being the Southeast corner of Lot 5, Block 1, of the Hill Park Subdivision, recorded as Instrument No. 209563 in Book "A" of Plats on Page 12, on June 13, 1906, in the official records of Salt Lake County, running thence South 89 degrees 58'14" West 346.45 feet along the South line of Lot 5, Block 1 of said subdivision; thence North 00 degrees 02'03" East 115.50 feet along the West line of said Lot 5 to the North line of Lot 6 of said subdivision; thence North 89 degrees 58'14" East 239.45 feet along said Lot 6 of said subdivision; thence 00 degrees 02'03" West 85.00 feet' thence North 89 degrees 58'14" East 107.00 feet to the West line of 300 East Street; thence South 00 degrees 02'03" West 30.50 feet along said West line to the point of beginning.**

## 3. Description of the Building and Units.

3.1. The building has three levels, one underground level for parking and storage, and two levels above grade for living. Each unit includes an enclosed 2-car garage with door and storage space. From each garage, a stairway leads directly into the living quarters of each unit, providing privacy and security.

3.2. There are sixteen (16) units in the building, all approximately 1,277 square feet, with two bedrooms and two and a half bathrooms. Each unit also contains its own laundry facilities.

3.3. The building is constructed of brick, concrete, and stucco. The interior floors are constructed of wood and are covered with carpet or tile. The building is centrally supplied with water and sewage service and a central garbage collection service. The units are individually heated and air conditioned. The building is more fully depicted in the Map.

3.4. There are four guest parking spaces exterior to the building. There is also a central trash receptacle. From the guest parking area, there are walkways on each side of the building lead to the exterior entrances to each unit, eight units on one side of the building and eight units on the opposite side of the building.

#### 4. Unit designations.

4.1. Appendix "A" contains a table setting forth the number designation of each unit. The units are more particularly described in the Map.

#### 5. Percentages of Undivided Interest in Common Areas and Facilities.

5.1. The percentage of undivided interest in the common areas and facilities appurtenant to each unit and its owner for all purposes, including voting, is set forth in Appendix "A."

#### 6. Purpose of the Property.

6.1. The purpose of the Property is to provide single family residential housing and parking for unit owners, their respective families, tenants, guests and servants.

6.2. The units and common areas and facilities shall be occupied and used as follows:

6.2.1. A unit owner shall not permit his unit to be occupied or used other than as a private residence for a single family, without the express approval of the management committee. No more than six (6) individuals shall be permitted to occupy a unit.

6.2.2. A unit owner shall not permit his garage to be used for any other purpose except to park a vehicle or store his personal belongings. No garage shall be used for any commercial purpose if doing so requires visitors, who are not residents of the unit, to enter the underground garage area of the building or if doing so requires the garage door of the unit to generally be open.

6.2.3. A unit owner shall not obstruct the common areas and facilities in any manner, including parking of any vehicles in the parking spaces reserved for guests. A unit owner shall not place or store anything within the common areas and facilities without the prior written consent of the management committee, except in the limited common areas and facilities assigned to the unit and specifically designated or approved by the management committee for storage.

6.2.4. Without the prior written consent of the management committee, a unit owner shall not permit anything to be done or kept in his unit or in the limited common areas and facilities assigned to his unit that would result in an increase in the cost of insurance on the Property, that would result in the cancellation of insurance with respect to all or any part of the Property or that would be in violation of any governmental law, ordinance or regulation.

6.2.5. Without the prior written consent of the management committee, a unit owner shall not permit any sign of any kind to be displayed to the public view from his unit or from the limited common areas and facilities assigned to his unit.

6.2.6. A unit owner shall not permit any animals of any kind to be raised, bred or kept in his unit or in the limited common areas and facilities assigned to his unit, except that the management committee may provide in its rules and regulations that dogs, cats and other household pets may be kept in units subject to the rules and regulations adopted by the management committee.

6.2.7. A unit owner shall not permit any obnoxious or offensive activity or nuisance to be carried on in his unit or in the limited common areas and facilities assigned to his unit.

6.2.8. A unit owner shall not alter, construct in or remove anything from the common areas and facilities, except with the prior written consent of the management committee.

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6.2.9. A unit owner shall not violate any of the rules and regulations for the use of units, common areas and facilities or limited common areas and facilities adopted by the management committee and furnished in writing to the unit owners.

7. Agent for Service of Process.

7.1. The name and address of the person in Utah, appointed as first agent to receive service of process in matter pertaining to the Property is: LeRoy C. Bushnell, 10393 So. Whispering Sands, So. Jordan, Utah 84095.

7.2. The agent for service of process may be changed from time to time by the management committee by recording an appropriate affidavit.

8. Association of Unit Owners: Management Committee.

8.1. The persons or entities who are at the time of reference the unit owners shall constitute an unincorporated association and not a legal entity, the characteristics and nature of which are determined by the Act, the Declaration and the Bylaws. The name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and disposed of, bank accounts shall be opened and suits shall be brought and defended by the management committee or officers thereof on behalf of and agents for the unit owners in the manner specified by the Act, the Declaration or the Bylaws is: **“Willow Grove Condominium Association, an association of unit owners under the Utah Condominium Ownership Act.”**

8.2. The management and maintenance of the Property, business and affairs of the **Willow Grove Condominium Association** (“Association”) shall be managed by a management committee. Initially, the management committee shall consist of two (2) members. When at least six (6) units have been sold, the management committee shall consist of three (3) members, one of which shall be the Declarant or a representative of the Declarant and the remaining shall be unit owners and who shall reside in their respective units, two (2) of whom, including the president, shall also have resided in their respective units for one (1) year prior to their term of office, except for the Declarant or its representative and except for the first six unit owners during their first year of ownership. The management

committee shall be elected as provided in the Bylaws. All agreements and determinations with respect to the Property lawfully made or entered into by the management committee shall be binding upon all the unit owners and their successors and assigns, except as hereinafter provided in paragraph 8.8.

8.3. Notwithstanding the foregoing process defined in paragraph 8.2 above for establishing a management committee and transferring control from the Declarant to the Owners, the Declarant shall transfer control of the Association from the Declarant to the Owners not later than the earlier of:

8.3.1. 120 days after the date by which 75 percent of the units have been conveyed to unit purchasers, or

8.3.2. One year from the first conveyance to a unit purchaser.

8.4. The management committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, the Declaration and Bylaws, including, but not limited to, the following:

8.4.1. To make and enforce all house rules and administrative rules and regulations covering the operation and maintenance of the Property.

8.4.2. To engage the services of a manager or managing company, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefor; provided, however, that any management agreement may be terminable by the management committee for cause upon thirty (30) days written notice and that the term of any said management agreement may not exceed one (1) year, renewable by agreement for successive one-year periods.

8.4.3. To operate, maintain, repair, improve and replace the common areas and facilities.

8.4.4. To determine and pay the common expenses.

8.4.5. To assess and collect a proportionate share of common expenses from the unit owners.

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8.4.6. To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

8.4.7. To open bank accounts on behalf of the Association and to designate the signatures therefor.

8.4.8. To purchase, hold, sell, convey, mortgage or lease any one or more units in the name of the Association or its designee.

8.4.9. To bring, prosecute and settle litigation for itself, the Association and the Property, provided that it shall make no settlement that results in a liability against the management committee, the Association or the Property in excess of \$5,000.00 without prior approval of a majority of unit owners.

8.4.10. To obtain insurance for the Association with respect to the units and the common areas and facilities, as well as workmen's compensation insurance.

8.4.11. To repair or restore the Property following damage or destruction, or a permanent taking by the power, or power in the nature of, eminent domain or by an action or deed in lieu of condemnation, not resulting in the removal of the Property from the provisions of the Act.

8.4.12. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the unit owners, items of personal property necessary to or convenient in the management of the business and affairs of the Association and the management committee and in the operations of the Property, including, without limitation, furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

8.4.13. To keep and store adequate books and records, including, but not limited to, all financial ledgers, minutes of meetings and resolutions adopted by the management committee or the association of unit owners.

8.4.14. To charge a reasonable moving fee for moving in to or out of a unit not in excess of one hundred dollars (\$100.00).

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8.4.15. To do all other acts necessary for the operation and the maintenance of the Property, including the maintenance and repair of any unit if the same is necessary to protect or preserve the Property.

8.5. The management committee may delegate to a manager or a managing company all of its foregoing powers, duties and responsibilities referred to in paragraph 8.4 above, except the following: (i) the final determination of common expenses, budgets and assessments based thereon; (ii) the promulgation of house rules and administrative rules and regulations; (iii) the power to enter into any contract involving more than \$5,000.00 in any one fiscal year; (iv) the opening of bank accounts; (v) the power to purchase, hold, convey, mortgage or lease any units in the name of the Association; or (vi) to bring, prosecute and settle litigation. However, such delegation to a manager or managing company must be formalized with a written management agreement that is (i) terminable for cause upon 30 days' notice; (ii) for a term between 1 and 3 years; and (iii) renewable by consent of the Association and the management.

8.6. Members of the management committee, the officers and any assistant officer, agents and employees of the Association (i) shall not be liable to the unit owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own wilful misconduct or bad faith; (ii) shall have no personal liability in contract to a unit owner or any person or entity under any agreement, instrument of transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any unit owner or any person or entity, direct or imputed, by virtue of the acts performed by them or acts performed for them in their capacity as such, except for their own wilful misconduct or bad faith; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Property, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

8.7. The unit owners shall indemnify and hold harmless any person, his heirs and personal representatives from and against all personal liability and all expenses including attorney fees incurred, imposed or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, instituted by any one or more unit owners or any other persons or entities to which he shall be or shall be threatened to be

made a party by reason of the fact that he is or was a member of the management committee or an officer or assistant officer, agent or employee of the Association. This indemnification shall not apply to the extent, if any, that such liability or expense shall be attributable to his wilful misconduct or bad faith, provided, in the case of any settlement that the management committee shall have approved the settlement which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or vote of unit owners or of the management committee or otherwise. The indemnification by the unit owners as contained herein shall be paid by the management committee on behalf of the unit owners and shall constitute a common expense and shall be assessed and collectible as such.

8.8. Any decision of the management committee may be overruled, and be of no force or effect, by a two-thirds (2/3) vote of all votes cast at any meeting of the unit owners called for that purpose.

#### 9. Maintenance, Alteration and Improvement.

9.1. The maintenance, alteration, replacement and repair of the common areas and facilities shall be the responsibility of the management committee and the cost thereof shall be a common expense. The management committee shall also maintain, alter, replace and repair all parking areas, balconies and patios (if any) and all conduits, ducts, plumbing and wiring and other facilities for the furnish of heat, gas, light, power, air conditioning, water and sewer in the portions of the units that service part or parts of the Property other than the unit in which they are contained. All incidental damages caused to a unit by the maintenance, alteration, replacement and repair of the common areas and facilities or utility services shall be repaired promptly at the expense of the management committee and the cost thereof shall be a common expense.

9.2. The unit owners shall have the responsibility to maintain, repair, replace and keep in a clean and sanitary condition, at the unit owner's expense, all portions of the unit owners' unit, except those portions to be maintained, altered, repaired and replaced by the management committee. The unit owners shall keep clean and in a sanitary condition their storage areas and balconies and patios, if any.



The management committee shall be responsible for cleaning and general maintenance of all parking areas.

9.3. The management committee or its designee shall have the irrevocable right to have access to each unit from time to time during reasonable hours, and upon giving twenty-four (24) hours advance notice, as may be necessary for the maintenance, repair or replacement of any of the common areas and facilities. The management committee or manager shall have the irrevocable right to have access to each unit from time to time, or at any time and without notice, for making emergency repairs necessary to prevent damage to the common areas and facilities or to another unit or units. Each unit owner shall deposit a key to his unit with the management committee or manager to be used solely for emergency access to the unit.

#### 10. Insurance.

10.1. The management committee shall obtain and maintain at all times insurance of the type and kind as provided herein and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other properties similar to the Property in construction, design and use. The management committee shall make every reasonable effort to obtain insurance with the following provisions or endorsements:

10.1.1. Exclusive authority to adjust losses shall be vested in the management committee as insurance trustee or any successor trustee as designated by the management committee;

10.1.2. The insurance coverage shall not be brought into contribution with insurance purchased by individual unit owners or their respective mortgagees;

10.1.3. Each unit owner may obtain additional insurance covering his real property interest at his own expense;

10.1.4. The insurer waives his right of subrogation as to any and all claims against the Association, each unit owner and/or their respective agents, employees or tenants, and of all defenses based upon co-insurance or upon invalidity arising from the acts of the insured;

10.1.5. The insurance coverage cannot be canceled, invalidated or suspended because of the conduct of any one or more individual unit owners or their respective tenants, employees, agents, contractors and guests;

10.1.6. The insurance coverage cannot be canceled, invalidated or suspended because of the conduct of any officer or employee of the Association or management committee or their employees, agents or contractors without prior demand in writing that the management committee cure the defect and then only if the defect is not cured within fifteen (15) days;

10.1.7. Such policies shall provide that the coverage shall not be prejudiced by (i) any act or neglect of the unit owners when such act or neglect is not within the control of the Association or (ii) by failure by the Association to comply with any warranty or condition with regard to any portion of the premises over which the Association has no control; and

10.1.8. The insurance coverage shall provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insurers named thereon, including all mortgagees of the units.

10.2. The management committee, for the benefit of the Property and the unit owners, shall maintain a "master" or "blanket" property insurance in an amount equal to the full replacement value (i.e., 100% of current "replacement cost" exclusive of land, foundation, excavations, and other items normally excluded from coverage) of the entire condominium project (including all units, all common areas and facilities, all building service equipment and the like and any fixtures or equipment within the unit) with an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent and, if necessary, an "Increased Cost of Construction Endorsement" or "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, payable to the insurance trustee to be disbursed in accordance with the terms of this Declaration. Such insurance will

afford protection against at least the loss of or damage by fire and other hazards covered by the standard coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage. The limits and coverage of said insurance shall be reviewed at least annually by the management committee and shall include an appraisal of the Property. Said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgage or mortgagees, if any, of each unit.

10.3. The management committee shall obtain a policy or policies of insurance insuring the management committee, the unit owners and their respective tenants, servants, agents or guests against any liability to the public or to the unit owners, members of the households of unit owners and their respective invitees or tenants, incident to the ownership and/or use of the Property, and including the personal liability exposure to the unit owners, incident to the ownership and/or use of the Property. Limits of liability under such insurance shall not be less than one million dollars (\$1,000,000.00) for any one (1) person injured in any one (1) occurrence and shall not be less than one hundred thousand dollars (\$100,000.00) for property damage in each occurrence. The limits in coverage of said liability policy or policies shall be reviewed at least annually by the management committee and increased at its discretion. Said policy or policies shall be issued on a comprehensive liability basis and, if possible, shall provide cross-liability endorsements for possible claims of any one or more or group of insureds against any one or more or group of insureds, without prejudice to the right of a named insured under the policies to maintain an action against another named insured. Such coverage will include protection against water damage, liability, liability for non-owned and hired automobile, liability for property of others and elevator collision, garage keeper's liability, host liquor liability and such other risks that are customarily covered with respect to projects similar in construction, location and use.

10.4. All policies of property insurance shall provide that, notwithstanding any provisions thereof which give the insurer the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the management committee (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law.

10.5. Each unit owner shall be required to notify the management committee of, and shall be liable for any increased insurance premium for insurance maintained by the management committee occasioned by, all improvements made by the unit owner to his unit, the value of which is in excess one thousand dollars (\$1,000.00). Each unit owner shall bear the risk of loss for all improvements made to his unit that were not the subject of notice to the management committee.

10.6. Any unit owner who obtains individual insurance coverage covering any portion of the Property, other than personal property belonging to such unit owner, shall be required to file a copy of such individual policy or policies with the management committee within thirty (30) days after obtaining such insurance coverage.

10.7. No unit owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount that the management committee, on behalf of all the unit owners, may realize under any insurance policy that the management committee may have in force covering the Property or any part thereof at any time.

10.8. The management committee shall maintain adequate fidelity coverage to protect against dishonest acts on the part of members of the management committee, officers and employees of the Association, and all others who handle or are responsible for handling funds of the Association, including professional managers and their employees. Such fidelity bonds shall meet the following requirements:

10.8.1. All such fidelity bonds shall name the Association as an obligee;

10.8.2. All such fidelity bonds shall be written in an amount equal to least one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves;

10.8.3. All such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve with compensation from any definitions of "employee" or similar expression; and

10.8.4. All such fidelity bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the mortgagees of the units.

## 11. Destruction or Damage.

11.1. In case of fire or any other disaster which causes damage or destruction to all or part of the Property, the management committee, with the help of an independent appraisal, shall determine the percentage of the building which was destroyed or substantially damaged. If less than seventy-five percent (75%) of the building was destroyed or substantially damaged, the management committee shall arrange for the prompt repair and restoration of the building using the proceeds of the insurance on the building for that purpose. The unit owners shall be liable for assessment for any deficiency, if any, in proportion to their respective percentages of undivided interest in the common areas and facilities. Reconstruction of the building shall mean the restoring of the building to substantially the same condition in which it existed prior to the damage or destruction, with each unit and the common areas and facilities having the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of paragraph 13 hereof shall apply.

11.2. If seventy-five percent (75%) or more of the building is destroyed or substantially damaged, the membership committee shall, within one hundred (100) days after such destruction or damage, call a special meeting of the unit owners for the purpose of deciding whether or not the building shall be repaired or restored. If at least three-fourths (3/4) of the votes cast, in person or in proxy, vote to repair or restore the building, the management committee shall promptly arrange for the reconstruction of the building, using the proceeds of insurance on the building for that purpose. The unit owners shall be liable for assessment for any deficiency, if any, in proportion to their respective percentage of undivided interest in the common areas and facilities. If the destruction or damage is by reason of eminent domain, the provisions of paragraph 13 hereof shall apply. However, if at least three-fourths (3/4) of the votes cast are voted not to make provision for reconstruction, the management committee shall record, with the county recorder, a notice setting forth such facts, and upon the recording of such notice: (i) the Property shall be deemed to be owned in common by the unit owners; (ii) the

undivided interest in the Property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities; (iii) any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the unit owner in the Property; and (iv) the Property shall be subject to an action for partition at the suit of any unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, shall be considered as one fund and shall be divided among all unit owners on a percentage equal to the percentage of undivided interest owned by each owner in the Property, after first paying out of the respective shares of the unit owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the Property owned by each unit owner.

11.3. For the purpose of this paragraph 11, the terms “disaster,” “destruction” or “substantial damage” shall mean and include a temporary or permanent taking, injury or destruction of all or part of the common areas and facilities or one or more units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation.

11.4. The management committee shall timely notify in writing each mortgagee of a unit whenever damage to a unit exceeds one thousand dollars (\$1,000.00) or damage to the common areas and facilities exceeds ten thousand dollars (\$10,000.00).

## 12. Termination.

12.1. In the event seventy-five percent (75%) or more of the building is destroyed or substantially damaged and the unit owners vote not to reconstruct the building, the Property shall be removed from the provisions of the Act without further agreement one hundred and one (101) days after such destruction or damage.

12.2. All of the unit owners may remove the Property from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the units consent or agree by instrument duly recorded that their liens be transferred to the percentage of the undivided interest of the unit owners in the Property.

12.3. After removal of the Property from the Act, the unit owners shall own the Property and all assets of the Association as tenants in common and the respective mortgagees and lien holders shall have mortgages and liens upon the respective undivided interests of the unit owners. Such undivided interests of the unit owners shall be the same as the percentage of the undivided interest in the common areas and facilities appurtenant to the owners' units prior to removal from the Act.

12.4. This paragraph 12 cannot be amended without consent of all unit owners and mortgagees of units.

### 13. Eminent Domain.

13.1. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the common areas and facilities or one or more units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation (all of which shall be defined as "eminent domain") the management committee, each unit owner and every holder of all liens affecting the units shall be entitled to timely written notice thereof and the management committee shall and the unit owners at their respective expense may participate in the proceedings incident thereto.

13.2. The procedures governing the allocation of awards by reason of eminent domain shall be determined in accordance with Section 57-8-32.5 of the Act; provided, that the priority of any mortgagee's lien shall remain undisturbed.

### 14. Mortgage Protection.

14.1. The management committee shall maintain a roster of unit owners from the evidence of change of ownership furnished to the management committee, which roster shall include the mailing addresses of unit owners. If the management committee has been given notice and the necessary information, the management committee shall maintain another roster which shall contain the name and address of each mortgagee of a unit. Each notice shall consist of a certified copy of the recorded instrument evidencing the title of the mortgagee. The mortgagee shall be

stricken from the roster upon receipt by the management committee of a request from the mortgagee or a certified copy of a recorded release or satisfaction of the mortgage. Notice of such removal shall be given to the mortgagee unless the removal is requested by the mortgagee.

14.2. Any mortgagee on any unit is entitled to written notification from the management committee of any default by the mortgagor of such unit in the performance of such mortgagor's obligation under the Declaration which is not cured within thirty (3) days.

14.3. Any mortgagee shall have the right to examine the books and records of the Association during normal business hours and shall be entitled to receive copies of annual reports and other financial data within ninety (90) days following the end of any fiscal year and shall be entitled to receive notice of all meetings of the Association and may designate a representative to attend all such meetings.

14.4. A mortgagee of any unit who comes into possession of the unit pursuant to the remedies provided in the mortgage, foreclosure of mortgage or deed (or assignment) in lieu of foreclosure shall take the Property free of any claims, unpaid assessment or charges against the mortgaged unit which accrued prior to the time such mortgagee comes into possession of the unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessment or charges to all units, including the mortgaged unit).

14.5. The liens created under the Act or pursuant to this Declaration or Bylaws upon any unit shall be subject and subordinate to, and shall not affect the rights of a mortgagee upon such interest made in good faith and for value, provided that after the foreclosure sale, which said liens, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

14.6. No unit may be partitioned or subdivided without the prior written approval of the mortgagee of the affected unit.

14.7. No amendment to this paragraph 14 shall affect the rights of a mortgagee recorded prior to the recordation of any such amendment not otherwise entitled thereto.



## 15. Leasing of Units.

15.1. All leases of units shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and Bylaws and that failure of the tenant to comply with the terms of said documents shall be a default under the lease.

15.2. No lease shall be for a term greater than one (1) year. However, a lease can be renewed for successive one (1) year terms.

15.3. No unit owner shall be permitted to lease his unit for transient or hotel purposes.

15.4. No unit shall lease less than the entire unit.

15.5. No lease, including renewed leases, shall be valid until the unit owner provides a written copy of such lease to the management committee and receives written approval of the lease from the management committee, which such approval will not be unreasonably withheld.

15.6. No tenant shall be given the right to sublease or subrent the leased unit. Subleasing or subrenting shall include, but is not limited to, allowing persons to reside in the unit who are not expressly identified in the lease.

15.7. All leased units are subject to an increased monthly maintenance fee to be determined at the sole discretion of the management committee.

## 16. Encroachments.

16.1. None of the rights and obligations of any unit owner created by this Declaration, Bylaws or by any deed conveying a unit shall be affected in any way by an encroachment: (i) by any portion of the common areas and facilities upon any unit; (ii) by any unit upon any portion of the common areas and facilities; or (iii) by any unit upon another unit due to settling or shifting of the building or other structure, including the rebuilding of the building and other structures after fire or other casualty or an eminent domain taking or delivery of a deed in lieu of condemnation, unless there occurs an encroachment that results from the wilful or

negligent act or omission of the unit owner of the encroaching unit, or of the owners of the units to which the use of the encroaching limited common areas and facilities is assigned, or of the management committee in the event of an encroachment by any portion of the common areas and facilities other than the limited common areas and facilities.

16.2. There are hereby created valid easements for the maintenance of any encroachments permitted by this paragraph 16 of this Declaration so long as such encroachments exist.

### 17. Conveyances, Easements.

17.1. Every deed, lease, mortgage or other instrument may describe a unit by its identifying number and letter designation set forth in Appendix "A" and in the Map. Every such description shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber or otherwise affect the unit owner's corresponding percentage of undivided ownership in the common areas and facilities, as a tenant in common, as set forth in Appendix "A," even though the same is not exactly mentioned or described.

17.2. Every deed, lease, mortgage or other similar instrument shall be deemed to:

17.2.1. Except and reserve with respect to a unit: (i) any portion of the common areas and facilities lying within said unit; (ii) easements through said unit, appurtenant to the common areas and facilities and all other units, for support and repair of the common areas and facilities and all other units; and (iii) easements, appurtenant to the common areas and facilities, for encroachment upon the air space of said unit by those portions of the common areas and facilities located within said unit;

17.2.2. Include with respect to a unit nonexclusive easements for ingress and support of said unit through the common areas and facilities, for the repair of said unit through all other units and through the common areas and facilities and for the use of the storage and parking spaces as indicated in Appendix "A" and the Map;

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17.2.3. Except and reserve, with respect to the undivided percentage interest in the common areas and facilities, nonexclusive easements appurtenant to all units for ingress, egress, support and repair and exclusive easements appurtenant to each unit for the use of the storage and parking spaces as set forth in Appendix "A" and the Map; and

17.2.4. Include, with respect to the undivided percentage interest in the common areas and facilities, nonexclusive easements through each unit for support and repair of the common areas and facilities and nonexclusive easements for encroachment upon the air space of all of the units by and for the portions of the common areas and facilities lying with the units.

#### 18. Amendment and Mergers.

18.1. Except as otherwise provided in this Declaration and except as prohibited by the Act, the provisions of this Declaration may be amended by an instrument in writing signed and acknowledged by unit owners who own three-fourths (3/4) in the aggregate of ownership interest in the common areas and facilities, which amendment shall be effective upon recording. Unit owners may not use a proxy in signing such instrument. Notwithstanding these provisions, while the Declarant remains in control of the Association, amendments to this Declaration or Bylaws, attached hereto as Exhibit B, must be approved by the Secretary of Veterans Affairs of the Department of Veterans Affairs.

18.2. The condominium project, Association, or Property may not be merged with a successor condominium project, Association, or Property without prior written approval of the Secretary of Veterans Affairs of the Department of Veterans Affairs.

#### 19. Assessments.

19.1. The making and collection of assessments from unit owners for their share of common expenses shall be pursuant to the Bylaws and subject to the following provisions:

19.1.1. Each unit owner shall be liable for their proportionate share of the common expenses, and shall share in the common profits. Each unit owner's share shall be the same as the percentage of undivided interest in the common areas and facilities appurtenant to the unit owned by the unit owner as set forth in Appendix "A."

19.1.2. Assessments and any installments thereof not paid on or before twenty (20) days after the date when due shall incur a late fee of twenty-five dollars (\$25.00). All payments on account shall be first applied to late charges and then to the assessment payment first due.

19.1.3. A lien for unpaid assessments also shall secure reasonable attorney's fees and all costs and expenses, including taxes, if any, incurred by the management committee incident to the collection of such assessment or enforcement of such lien.

19.1.4. The management committee may include in the monthly assessments amounts representing contributions to the capital of the Association to be used for the replacement of or additions to capital items or improvements in the Property. These amounts shall be held as capital accounts for each unit. In the event of a transfer of a unit, the capital account shall be deemed transferred to the new unit owner. Initially, a working capital fund shall be established for the initial months of the project operations equal to at least a 2 months estimated common area charge for each unit.

19.1.5. In assessing the unit owners for capital improvements to the common areas and facilities following the completion of the Property and for which there are non-sufficient amounts in the respective capital accounts, there shall be no single improvement exceeding the sum of eight thousand dollars (\$8,000.00) made by the management committee without the same having been first voted on and approved by two-thirds (2/3) of the votes cast, either in person or by proxy, in a meeting duly called for that purpose. The foregoing shall not apply in connection with damage or destruction referred to in paragraph 11 of this Declaration or to such emergency structural alterations, capital additions to or capital improvements to the common areas and facilities as are necessary in the management committee's reasonable judgment to preserve or maintain the integrity of the common areas and facilities of the Property.

19.1.6. If the unit owner shall, at any time, lease his unit and default for a period of one (1) month in the payment of assessments, the management committee may, at its option, and so long as such default shall continue, demand and receive from any tenant the rent due or becoming due to the unit owner and apply such rent to the assessments owed by the unit owner. The payment of such rent to the management committee by the tenant shall satisfy the tenant's obligation to pay rent to the unit owner in the amount paid to the management committee.

19.2. Real estate taxes shall be assessed against the individual units and not against the Association. Therefore, all common areas of the Property shall be allocated among the Units for real estate tax purposes, and each Unit shall receive from the appropriate taxing authority a single tax assessment that includes the Unit's pro rata share of the common areas of the Property.

## 20. Voting.

20.1. At any meeting of the Association of unit owners, each unit owner, including Declarant, either in person or by proxy, shall be entitled to the same number of votes as the percentage of undivided interest in the common areas and facilities assigned to his unit in Appendix "A" to this Declaration. If there is more than one unit owner with respect to a particular unit, any or all of such unit owners may attend any meeting of the Association, but it shall be necessary for all such unit owners present to act unanimously in order to cast the votes pertaining to their unit.

## 21. Notices.

21.1. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by first-class mail, postage prepaid. If delivery is made by mail, it shall be deemed to be delivered twenty-four (24) hours after a copy of the same has been deposited with the United States Postal Service, postage prepaid, return receipt requested. Notice to unit owners shall be addressed to each unit owner at the address given by such unit owner to the management committee for the purpose of service of such notice or to the unit of such unit owner if no such address has been given to the management committee. Such address may

be changed from time to time by notice in writing to the management committee. Notice to the management committee shall be addressed to: Management Committee, Willow Grove Condominium Association, 4072 South 300 East, Salt Lake City, Utah..

## 22. No Waiver.

22.1. The failure of the management committee, its contractors or other unit owners to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or the Bylaws, or to exercise any right herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or relinquishment for the future of such term, covenant, condition or restriction and such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the management committee or its contractor of the payment of any assessment from a unit owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach and no waiver by the management committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the management committee.

## 23. Enforcement.

23.1. Each unit owner shall strictly comply with the provisions of the Declaration, the Bylaws, the house rules and administrative rules and regulations and decisions issued pursuant thereto. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, including costs and attorneys fees, maintainable by the management committee or its designee on behalf of the unit owners, or in an appropriate case, by an aggrieved unit owner.

23.2. If the management committee shall fail or refuse to enforce any provision of this Declaration, the Bylaws, the house rules and administrative rules and regulations and decisions issued pursuant thereto, any unit owner may bring an action in law or equity to enforce any such provision. Any such unit owner must comply with the following requirements before bringing any action to enforce any such provision:

23.2.1. Demand in writing to the management committee that the requested action be taken, setting forth with particularity any such provision which is being violated, the person(s) who is violating any such provision and the facts which constitute a violation of any such provision.

23.2.2. The management committee shall accept or reject the demand within ten (10) days of receipt of such demand. If the management committee does not accept or reject the demand within the ten-day period, the demand will be deemed rejected. In addition, if the management committee accepts the demand, but then does not in good faith take any action to enforce the provision within thirty (30) days of the date the demand was made, the demand will be deemed rejected.

23.2.3. If the management committee rejects the demand, the unit owner may then bring the action in the name of the Association.

23.3. In any action brought to enforce any provision of this Declaration, the Bylaws, the house rules, administrative rules and regulations and decisions issued thereto by either the management committee, or in an appropriate case, by an aggrieved unit owner, the Association or unit owner, as the case may be, shall be entitled to reasonable attorney's fees and costs incurred in prosecuting or defending the action if successful on the merits of the claim or defense, and for which the offending unit owner shall be liable. If a unit owner prevails in an action brought by the Association or management committee, that unit owner shall not bear the pro rata share of the costs of litigation, including attorney's fees and costs incurred by the Association.

#### 24. Declarant's Use.

24.1. Declarant and persons it may select from time to time shall have the right of ingress and egress over, upon and across the common areas and facilities and limited common areas and facilities and the right to store materials therein and to make such other use thereof as may be reasonably necessary incident to the refurbishing, development and sale of all the units.

25. Severability.

25.1. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision thereof.

26. Captions.

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

27. Controlling Law.

27.1. This Declaration, the Map and the Bylaws shall be construed and controlled by and under the laws of the State of Utah.

28. Effective Date.

28.1. This Declaration shall take effect when recorded.

IN WITNESS WHEREOF, the undersigned has executed this instrument  
this 29<sup>th</sup> day of ~~October, 1997~~  
March, 1998

B&B Developers, LLC



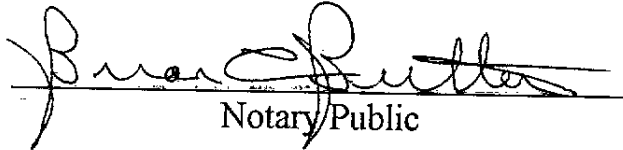
By LeRoy C. Bushnell  
Its Managing Member

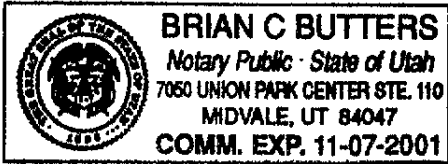


STATE OF UTAH )  
 : SS  
COUNTY OF SALT LAKE )

On the 29 day of ~~October~~ March 1999, personally appeared before me **LeRoy C. Bushnell** who, being by me duly sworn, did say that he is the Managing Member of **B&B Developers, LLC** and that said instrument was signed on behalf of **B&B Developers, LLC**.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

  
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Notary Public



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## APPENDIX A

### PERCENTAGE OF UNDIVIDED INTERESTS

Unit Number	Percentage of Undivided Interest in the Common Areas and Facilities
1	6.25%
2	6.25%
3	6.25%
4	6.25%
5	6.25%
6	6.25%
7	6.25%
8	6.25%
9	6.25%
10	6.25%
11	6.25%
12	6.25%
13	6.25%
14	6.25%
15	6.25%
16	6.25%

## **APPENDIX B**

### **BYLAWS**

#### **Willow Grove Condominium Association**

An Association of Unit Owners Under  
the Utah Condominium Ownership Act

The administration of the Willow Grove Condominium ("Property") and the Willow Grove Condominium Association ("Association") shall be governed by these Bylaws, by the Utah Condominium Ownership Act, Utah Code Ann. §§ 57-8-1 et seq. ("Act") and by the Declaration.

#### 1. Application of Bylaws.

All present and future unit owners, mortgagees, lessees and occupants of units and their employees, and any other persons who may use the facilities of the Property in any manner are subject to the Declaration, these bylaws and all rules made pursuant hereto and any amendment thereof. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a unit shall constitute an agreement that the provisions of the Declaration and these Bylaws (and any rules and regulations made pursuant thereto), as they may be amended from time to time, are accepted, ratified and will be complied with.

#### 2. Management Committee.

2.1. The administration of the Property on behalf of the Association shall be conducted by a management committee. Initially, the management committee shall consist of two (2) members. When at least six (6) units have been sold, the management committee shall consist of three (3) members, one of which shall be the Declarant or a representative of the Declarant and the remaining shall be unit owners and who shall reside in their respective units, two (2) of whom, including the president, shall also have resided in their respective units for one (1) year prior to their term of office, except for the Declarant or its representative and

except for the first six unit owners during their first year of ownership. Control of the Declarant, however, shall be consistent with the Declaration's requirements for transfer of control by the Declarant. All agreements and determinations with respect to the Property lawfully made or entered into by the management committee shall be binding upon all the unit owners and their successors and assigns.

2.2. Beginning with the first annual meeting that follows the sale of at least three units and at every annual meeting thereafter, the Association shall elect the members of the management committee for the forthcoming year. At least thirty (3) days prior to any annual meeting of the Association, the management committee shall elect from the unit owners a nominating committee of not less than three (3) members (none of whom shall be members of the then management committee) who shall recommend to the annual meeting one (1) nominee for each position on the management committee to be filled at that particular annual meeting. Nominations for positions on the management committee may also be made by petition filed with the secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by ten (10) or more unit owners and signed by the nominee named therein indicating his willingness to serve as a member of the management committee, if elected.

2.3. Members of the management committee shall serve for a term of two (2) years. However, two (2) members of the management committee elected at the first annual meeting shall serve for an initial term of one (1) year and the other member shall serve for an initial term of two (2) years. Thereafter, all management committee members elected shall serve for a two-year term. The terms of no more than two (2) members shall end on any given year. The members of the management committee shall serve until their respective successors are elected, or until their death, resignation or removal. Any member of the management committee who fails to attend three (3) consecutive management committee meetings or fails to attend at least twenty-five percent (25%) of the management committee meetings held during any calendar year shall forfeit his membership on the management committee.

2.4. Any member of the management committee may resign at any time by giving written notice to the president of the Association, or the remaining management committee members. Any member of the management committee may be removed from membership on the management committee by a two-thirds (2/3)

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vote of the votes cast. Whenever there shall occur a vacancy on the management committee due to death, resignation, removal or any other cause, the remaining members shall elect a successor member to serve until the next annual meeting of the Association, at which time said vacancy shall be filled by the Association for the unexpired term, if any.

2.5. The members of the management committee shall receive no compensation for their services unless expressly approved by a majority of the Association. However, any member of the management committee may be employed by the Association in another capacity and receive compensation for such employment.

2.6. The management committee, for the benefit of the Property and the Association, shall manage the business, Property and affairs of the Property and the Association and enforce the provisions of the Declaration, these Bylaws, the house rules and the administrative rules and regulations governing the Property. The management committee shall have the powers, duties and responsibilities with respect to the Property as contained in the Act, the Declaration and these Bylaws.

2.7. The meetings of the management committee shall be held at such places within the State of Utah as the management committee shall determine. The management Committee cannot transact business unless a quorum is present. Two (2) members of the management committee shall constitute a quorum, and if a quorum is present, the decision of both of those present shall be the act of the management committee. The management committee shall annually elect all of the officers of the Association. The meeting for the election of officers shall be held at the first meeting of the management committee immediately following the annual meeting of the Association.

2.8. Special meetings of the management committee may be called by any member of the management committee.

2.9. Regular meetings of the management committee may be held without call or notice. The person or persons calling a special meeting of the management committee shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called. If an agenda is prepared for such a

meeting, the meeting need not be restricted to discussion of those items listed on the agenda.

2.10. Any member of the management committee may, at any time, waive notice of any meeting of the management committee in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the management committee at a meeting shall constitute a waiver of notice of such meeting except if a management committee member attends the meeting for the express and sole purpose of objecting to the transaction of any business because the meeting was not lawfully called.

2.11. Until a date two (2) years from the recording of the Declaration, or until units to which three-fourths (3/4) of the undivided interest in the common areas and facilities appertain have been conveyed, whichever occurs first, and Declarant, or some other person or persons selected or to be selected by Declarant, may appoint and remove two (2) members of the management committee and all officers of the Association, or at Declarant's option, may exercise the powers and responsibilities otherwise assigned by the Declaration, these Bylaws, and the Act to the Association. The first annual meeting of the Association shall be held within 120 days of the happening of the first event described in the preceding sentence, at which time the Association shall elect the members of the management committee.

2.12. After the election of the members of the management committee at the first annual meeting of the Association, Declarant shall execute, acknowledge and record an affidavit stating the names of the members of the newly elected management committee. Thereafter, any two (2) persons who are designated of record as being members of the most recent management committee (regardless of whether or not they shall still be members) may execute, acknowledge and record an affidavit stating the names of the members of the then current management committee. The most recently recorded of such affidavits shall be prima facie evidence that the persons named therein are all of the incumbent members of the management committee and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

2.13. The fiscal year shall be determined by the management committee.

### 3. Meetings of the Association.

3.1. The presence in person or by proxy at any meeting of the Association of fifty percent (50%) of the votes entitled to be cast in response to notice of all unit owners or record properly given shall constitute a quorum. No business can be transacted unless a quorum is present. In the event that fifty percent (50%) of the votes entitled to be cast are not present in person or by proxy, the meeting shall be adjourned for twenty-four (24) hours, at which time it shall reconvene and any number of votes entitled to be cast which are present at such subsequent meeting shall constitute a quorum. Unless otherwise expressly provided in the Declaration, any action may be taken at any meeting of the unit owners upon a majority vote of the votes cast which are present in person or by proxy.

3.2. There shall be an annual meeting of the Association on the second Thursday of February at 7:00 p.m. at the Property or at such other reasonable place or time (not more than sixty (60) days before or after such date) as may be designated by written notice by the management committee delivered to the unit owners not less than fifteen (15) days prior to the date fixed for said meeting. At or prior to an annual meeting, the management committee shall furnish to the unit owners: (i) a budget for the coming fiscal year that shall itemize the estimated common expenses of the coming fiscal year with the estimated allocation thereof to each unit owner; and (ii) an audited statement of the common expenses itemizing receipts and disbursements for the previous and current fiscal year, together with the allocation thereof to each unit owner. Within ten (10) days after the annual meeting, that budget statement shall be delivered to the unit owners who were not present at the annual meeting.

3.3. Special meetings of the Association may be held at any time at the Property or at such other reasonable place to consider matters which, by the terms of the Declaration, require the approval of all or some of the unit owners, or for any other reasonable purpose. Special meetings shall be called by written notice, signed by a majority of the management committee, or by unit owners representing at least one-third (1/3) in interest of the undivided ownership of the common areas and facilities and delivered to all unit owners not less than fifteen (15) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting, and the matters to be considered.

3.4. Robert's Rules of Order (latest edition) shall govern the conduct of the Association's meeting when not in conflict with the Declaration or these Bylaws.

#### 4. Officers.

4.1. All officers and employees of the Association shall serve at the will of the management committee. The officers shall be a president, secretary and treasurer. The management committee may appoint such other assistant officers as the management committee may deem necessary. The president must be a member of the management committee, but no other officer shall be required to be a member of the management committee or be a unit owner. No officer shall receive compensation for serving as such. Officers shall be annually elected by the management committee and may be removed and replaced by the management committee.

4.2. The president shall be the chief executive of the management committee and shall preside at all meetings of the unit owners and of the management committee and may exercise the powers ordinarily allocable to the presiding officer of an association, including the appointment of committees. The president shall exercise general supervision over the Property and its affairs. He shall sign on behalf of the Association all conveyances, mortgages and contracts of material importance to its business. He shall do and perform all acts which the management committee may require.

4.3. The secretary shall keep minutes of all proceedings of the management committee and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the unit owners and the management committee. In the absence or inability of the president, the secretary shall perform the functions of the president.

4.4. The treasurer shall be responsible for the fiscal affairs of the Association, but may delegate the daily handling of funds and the keeping of records to a manager or managing company.



## 5. Common Expenses; Assessments.

5.1. All assessments shall be made in accordance with the general provisions of paragraph 21 of the Declaration.

5.2. Within thirty (30) days prior to the annual meeting of the Association, the management committee shall estimate the common expenses and capital contributions for the following year. The estimated capital contributions may include such amounts as the management committee may deem proper for general working capital, for the general operating reserve, for a reserve fund for replacements and major maintenance and shall take into account any expected income, surplus or deficit in the common expenses for any prior year. These estimated capital contributions and common expenses shall be presented at the annual meeting and thereafter shall be assessed on a monthly basis to the unit owners in proportion to their percentage of undivided interest in the common areas and facilities as set forth in the Declaration. If the estimated common expenses prove inadequate for any reason, including nonpayment of any unit owner's assessments, the management committee may, by resolution duly adopted, make additional assessments, which shall be assessed to the unit owners in the same manner as the estimated common expenses. Each unit owner shall be obligated to pay to the management committee assessments made pursuant to this paragraph on or before the first day of each month, or in such other reasonable manner as the management committee shall designate. The funds received by the management committee from assessments shall be kept in either capital accounts or in the common expense fund and shall be expended by the management committee only in accordance with the provisions of the Act, the Declaration and these Bylaws.

5.3. Every determination, by the management committee with respect to common expenses and common expenditures necessary to maintain the Property, that is made within the bounds of the Act, the Declaration and these Bylaws shall be final and conclusive as to the unit owners and shall be deemed necessary and properly made for such purposes, except as provided in paragraph 8.7 of the Declaration.

5.4. The rights, duties and functions of the management committee set forth in this paragraph 5 shall be exercised by Declarant until thirty (30) days after the first annual meeting of the Association.

5.5. The failure by the management committee before the expiration of any year to estimate the common expenses as required herein shall not be deemed a waiver or modification in any respect of the provisions of the Declaration or these Bylaws or a release of the unit owner from the obligation to pay any past or future assessments, and the estimated common expenses filed for the previous and current year shall continue until a new estimate is fixed.

5.6. Amendments to this paragraph 5 shall be effective only upon unanimous written consent of the unit owners and their mortgagees.

5.7. No unit owner may exempt himself from liability for common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his unit.

5.8. The treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the common areas and facilities, specifying and itemizing the maintenance, repair and replacement expenses of the common areas and facilities and any other expenses incurred. Such record shall be available for examination by the unit owners during regular business hours. In accordance with the actions of the management committee assessing common expenses against the units and unit owners, the treasurer shall keep an accurate record of such assessments and of the payments thereof by each unit owner.

5.9. All common expense assessments shall be a separate, distinct and personal liability of the owner of the unit at the time each assessment is made. The management committee shall have the rights and remedies contained in the Act and in the Declaration to enforce the collection of assessments for common expenses.

5.10. Any person who shall have entered into a written agreement to purchase a unit shall be entitled to obtain a written statement from the treasurer setting forth the amount of unpaid assessments charged against the unit and its owners, and if such statement does not reveal the full amount of the unpaid assessments as of the date it is rendered, neither the purchaser nor the unit shall be liable for the payment of an amount in excess of the unpaid assessments shown thereon, provided that the former unit owner shall remain so liable. Any such excess which cannot be promptly collected from the former unit owner shall be

reassessed by the management committee as a common expense to be collected from all unit owners, including without limitation the purchaser of the unit, his successors and assigns. The new unit owner shall and the former unit owner shall not be liable for any assessments made after the date of transfer of title to a unit, even though the common expenses for the expenses incurred or the advances made by the management committee for which the assessment is made relate in whole or in part to any period prior to that date.

5.11. In the event that title to a unit is transferred at a sheriff's sale pursuant to execution upon any lien against the unit, the management committee shall give notice in writing to the sheriff of any unpaid assessments for common expenses which are a lien against the unit, and for any expenses of or advances by the management committee which have not theretofore been reduced to a lien, which shall be paid out of the proceeds of the sale prior to the distribution of any balance to the former unit owner against whom the execution was issued. The purchaser at such sheriff's sale and the unit involved shall not be liable for unpaid assessments for common expenses and for any expenses of or advances by the management committee which became due prior to the sheriff's sale of the unit. Any such unpaid assessments which cannot be promptly collected from the former unit owner shall be reassessed by the management committee as a common expense to be collected from all of the unit owners, including the purchaser who acquired title at the sheriff's sale, his successors and assigns. To protect its right to collect unpaid assessments for common expenses which are a lien against a unit, and for any expenses of and advances by the management committee, the management committee may on behalf of all the unit owners purchase the unit at the sheriff's sale, provided such action is authorized by the affirmative vote of a majority of the members of the management committee.

5.12. In addition to the statements issuable to purchasers of units, the management committee shall provide a current statement of unpaid assessments for common expenses and for any expenses of and advances by the management committee in respect of the unit to the unit owner, to any person who shall have entered into a binding agreement to purchase the unit and to any mortgagee on request at reasonable intervals.

5.13. In all cases where all or part of any assessments for common expenses and for any expenses of and advances by the management committee cannot be promptly collected from the persons or entities liable therefor under the Act, Declaration or Bylaws, the management committee shall reassess the same as a common expense, without prejudice to its rights of collection against such persons or entities.

## 6. Litigation.

6.1. If any action is brought by one or more but less than all unit owners on behalf of the Association and recovery is had, the plaintiff's expenses, including reasonable attorney's fees, shall be a common expense. However, if such action is brought against the unit owners or against the management committee, the officers, employees, or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the unit owners, the plaintiff's expenses, including attorney's fees, shall not be charged to or borne by the other unit owners as a common expense or otherwise.

6.2. Complaints brought against the Association, the management committee or the officers, employees or agents thereof, in their respective capacities as such, or the Property as a whole, shall be directed to the management committee, which shall promptly give written notice thereof to the unit owners and any mortgagees and shall be defended by the management committee, and the unit owners and mortgagees shall have no right to participate other than through the management committee in such defense. Complaints against one or more, but less than all unit owners, shall be directed to such unit owners who shall promptly give written notice thereof to the management committee and to the mortgagees affecting such units and shall be defended by such unit owners.

## 7. Abatement and Enjoinment of Violations by Unit Owners.

The violation of any house rules or administrative rules or regulations adopted by the management committee or the breach of any provision contained herein, or the breach of any provision of the Declaration, shall give the management committee the right, in addition to any other rights set forth in these Bylaws:

7.1. To enter the unit in which or as to which such violation or breach exists and to similarly abate and remove at the expense of the defaulting unit owner any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the management committee shall not thereby be deemed guilty in any manner of trespass; or

7.2. To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

#### 8. Accounting.

8.1. The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the treasurer.

8.2. At the close of each fiscal year, the books and records of the management committee shall be audited by a certified public accountant approved by the Association and in accordance with generally accepted auditing standards.

8.3. The books and accounts of the Association shall be available for inspection at the office of the Association by any unit owner or his authorized representative during regular business hours.

#### 9. Special Committees.

The management committee by resolution may designate one or more special committees, each committee to consist of two (2) or more unit owners, which to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution and which is not offensive to the Declaration or these Bylaws. Such special committee(s) shall have such name(s) as may be determined from time to time by the management committee. Such special committees shall keep regular minutes of their proceedings and report the same to the management committee when required. The members of such special committee(s) designated shall be appointed by the management committee or the president. The management committee or the president may appoint unit owners to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

10. Amendment of Bylaws.

These Bylaws may be amended by a two-thirds (2/3) affirmative vote of the votes cast at a meeting duly called for such purpose. Upon such an affirmative vote, the management committee shall acknowledge the amended Bylaws, setting forth the fact of the required affirmative vote of the unit owners and the amendment shall be effective upon recording. Notwithstanding these provisions, while the Declarant remains in control of the Association, amendments to these Bylaws must be approved by the Secretary of Veterans Affairs of the Department of Veterans Affairs.

11. Severability.

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

12. Captions.

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

13. Effective Date.

These Bylaws shall take effect upon recording of the Declaration of which they are a part.

IN WITNESS WHEREOF, the undersigned has executed this instrument  
this 29<sup>th</sup> day of ~~October, 1997~~  
March 1999

B&B Developers, LLC

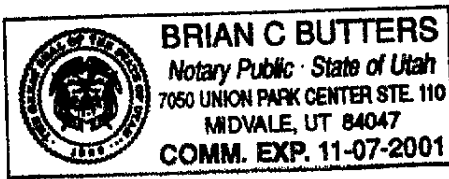


By LeRoy C. Bushnell  
Its Managing Member

STATE OF UTAH )  
 : SS  
COUNTY OF SALT LAKE )

On the 29 <sup>March 1999</sup> day of ~~October~~, 1997, personally appeared before me **LeRoy C. Bushnell** who, being by me duly sworn, did say that he is the Managing Member of **B&B Developers, LLC** and that said instrument was signed on behalf of **B&B Developers, LLC**.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



*Brian C Butters*  
\_\_\_\_\_  
Notary Public

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