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When Recorded, Return To:

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08/21/2002 12:21 PM 108.00
Book - 8635 Pg - 8294-8313
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
DWAYNE A VANCE
PO BOX 3390
PARK CITY UT 84060
BY: ZJM, DEPUTY - WI 20 p.

**DECLARATION OF CONDOMINIUM
4340 HIGHLAND CONDOMINIUM PROJECT**

This Declaration of Condominium 4340 Highland Condominium Project is made and executed effective as of the 21 day of August, 2002.

RECITALS

A. Declarant is the owner of all of the real property located in Salt Lake County, Utah, and more particularly described in Exhibit A attached hereto.

B. Declarant is desirous of subjecting the real property described in Exhibit A attached hereto to the Utah Condominium Ownership Act, as the same may be amended from time to time.

C. Declarant is desirous of making various improvements to the real property described in Exhibit A attached hereto so as to enable its use and operation as a condominium project, and dividing, selling and conveying the same to various purchasers subject to the covenants, conditions, restrictions, reservations, assessments, charges and liens set forth herein.

NOW THEREFORE, for the foregoing purposes, Declarant hereby makes the following Declaration:

**ARTICLE I
Declaration**

1.01 Declaration. This instrument is a declaration of covenants, conditions, restrictions, reservations, assessments, charges and liens for the condominium project commonly known as 4340 Highland Condominium Project, and which is more particularly described in Exhibit A attached hereto, for the purpose of protecting the value and desirability of the subject property, and to provide for the management, maintenance and upkeep of the same. This instrument shall be construed as covenants in the nature of equitable servitudes, which shall run with title to the subject property and be binding on all parties having any right, title or interest in or to the subject property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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1.02 Submission to Act. Declarant hereby submits the real property described in Exhibit A attached hereto, together with all improvements to such real property, to the provisions of the Utah Condominium Ownership Act, as the same may be amended from time to time, which real property shall be held, occupied, used, sold, mortgaged, assessed, and otherwise possessed as condominium property subject in all respects to such act.

1.03 Term of Declaration. This Declaration shall remain in full force and effect perpetually unless and until amended in whole or in part as provided for herein.

ARTICLE II **Definitions**

When used in this Declaration, the following terms shall have the meaning indicated.

2.01 Act. The Utah Condominium Ownership Act, as codified in the Utah Code at Sections 57-8-1, *et seq.*, as the same may be amended from time to time.

2.02 Articles. The Articles of Incorporation of 4340 Highland Homeowners Association, a Utah nonprofit corporation.

2.03 Annual Assessment. The charges regularly levied and assessed each year against a Unit by the Association.

2.04 Assessment. Both Annual (or regular) Assessments and Special (or periodic) Assessments.

2.05 Association. The 4340 Highland Homeowners Association, a Utah nonprofit corporation.

2.06 Board. The Board of Trustees of 4340 Highland Homeowners Association, a Utah nonprofit corporation.

2.07 Bylaws. The Bylaws of 4340 Highland Homeowners Association, a Utah nonprofit corporation, as the same may be amended from time to time.

2.08 Common Area. All areas of the Property not included within the Units or the Limited Common Area, including, but not necessarily limited to: the underlying land; the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of any building within the Property; the yards, gardens, parking areas, and storage spaces; installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating; and all other parts of the Property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

2.09 Declarant. Helen, LLC, a Utah limited liability company, and any party designated as a successor or assign of Declarant by a written instrument duly recorded in the office of the Salt Lake County Recorder, which instrument need only be signed by Declarant to be effective. Such instrument may specify the extent and portion of the rights or interests being assigned by Declarant, in which case Declarant shall retain all other rights of Declarant not so assigned.

2.10 Declaration. This instrument entitled Declaration of Condominium 4340 Highland Condominium Project, as the same may be amended from time to time.

2.11 Eligible Mortgage Holder. Upon written request to the Board by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Unit number or address of the Unit encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder, insurer, or guarantor shall be deemed thereafter to be an Eligible Mortgage Holder, and shall be included on the appropriate lists maintained by the Association.

2.12 Limited Common Area. The Common Area and related facilities designated in this Declaration or the Map as reserved for use of a certain Unit or Units to the exclusion of the other Units.

2.13 Map. The Record of Survey Map recorded in the office of the Salt Lake County Recorder with respect to the Property, as the same may be amended from time to time.

2.14 Mortgage. Any mortgage, deed of trust or other security instrument creating a real property security interest in any Unit, excluding any statutory, tax or judicial liens.

2.15 Mortgagee. The grantee, beneficiary, or assignee of a grantee or beneficiary, of a Mortgage.

2.16 Mortgagor. The grantor or trustor of a Mortgage.

2.17 Owner. Any Person with an ownership interest in a Unit together with the undivided interest in the common areas appurtenant to such Unit.

2.18 Person. Any natural person, partnership, limited liability company, corporation, association, cooperative, trust, estate, custodian, nominee or other individual or entity in its own or representative capacity.

2.19 Property. The real property more particularly described in Exhibit A attached hereto, together with all improvements existing thereon.

2.20 Special Assessment. Any special or extraordinary assessment periodically levied and assessed from time to time against a Unit by the Association.

2.21 Unit. A separate physical part of the Property intended for ownership and use of an Owner to the exclusion of all other Owners, including one or more rooms or spaces located on one or more floors in a building as depicted on the Map, bounded by the interior surfaces of the walls, floors, ceilings, windows and doors, together with all fixtures and improvements contained therein. Paint and other wall, ceiling or floor coverings or interior surfaces shall be deemed to be part of the Unit. Notwithstanding the fact that they may be within the boundaries of such interior surfaces, the following are not part of a Unit insofar as they are necessary for the support or full use and enjoyment of another Unit: bearing walls, floors, ceilings and roofs (except the interior surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other electrical installations (except the outlets thereof when located within the Unit). The interior surfaces of a window or door means the points at which such surfaces are located when such window or door is closed. Each Unit shall also consist of an undivided ownership interest in the Common Area equal to one divided by the number of Units within the Property, which undivided ownership interest in the Common Area shall not be separated from the Unit to which it is appurtenant even though not specifically mentioned in the instrument of transfer regarding such Unit, which interest shall automatically accompany the transfer of the Unit to which it is appurtenant. Appurtenant to each Unit shall also be a perpetual right of ingress to and egress from such Unit. * CONSISTING OF SIXTY (60) UNITS.

ARTICLE III **Association**

3.01 Formation. The Association shall be a nonprofit Utah corporation charged with the duties and invested with the powers prescribed by law and as set forth in the Articles, Bylaws, this Declaration and the Act. Neither the Articles nor Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

3.02 Board of Trustees and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with its Articles and Bylaws, as the same may be amended from time to time. The Association by and through the Board shall: (a) govern and/or manage the Property, including all Common Area and Limited Common Area; and (b) enforce the provisions of this Declaration. The initial Board shall be composed of no less than three (3) members. The Board also may appoint various committees. The Board may employ or otherwise contract with a property manager who shall, subject to the direction of the Board and/or the terms of the written contract between the Association and the property manager, be responsible for the maintenance, upkeep and operation of the Property. The Board shall determine the compensation to be paid to the property manager or any other employee or agent of the Association. Declarant shall have the right to appoint and remove members of the Board until the sooner of: (i) the sale of fifty one percent (51%) of the Units within the Property; or (ii) five (5) years after the sale of the first Unit by Declarant. By instrument signed by Declarant and duly recorded in the office of the Salt Lake County Recorder, Declarant may elect to relinquish this right to appoint and remove members of the Board sooner than provided above.

3.03 Homeowners Association Rules. The Association may from time to time adopt, amend and repeal rules and regulations to be known as the "Homeowners Association Rules" by a majority vote of the Board. The purpose of the Homeowners Association Rules shall be to implement, supplement or otherwise carry out the purposes and intentions of this Declaration. The Homeowners Association Rules shall not be inconsistent with this Declaration.

3.04 Limited Liability. Neither the Association, nor any of its past, present or future, officers or directors, employees, agents or committee members, shall be liable to any Owner or to any other person for any damage, act, omission to act, simple negligence or other matter of any kind or nature, except for gross negligence or willful and intentional misconduct. As to employees of the Association, the limits of liability set forth in the immediately preceding sentence shall only apply where: (i) such persons were employees of the Association (as opposed to independent contractors) at the time of the alleged damage, act, omission to act, simple negligence or other matter of any kind or nature, except gross negligence; and (ii) said employee was acting within the scope of his or her job or responsibility. Without limiting the foregoing, neither the Association nor the Board shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Acts taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall be conclusively deemed to be in good faith and without malice.

3.05 Membership. The Association shall be a membership association without certificates or shares of stock. The members of the Association shall be those Persons, including Declarant, who are Owners from time to time of a Unit or Units within the Property. Membership in the Association shall automatically terminate when an Owner of one of the Units ceases to be an Owner of such Unit.

3.06 Voting. The affirmative vote of a majority of the Owners entitled to vote on any matter present in person or by written proxy when a quorum has been established at any meeting of the Owners for purposes of such vote shall constitute approval of such matter, except for matters which specifically require some other vote or level of approval under the terms of this Declaration or under the Bylaws or otherwise by law, in which case the specifically identified voting requirements shall apply. Where there is more than one Person is a record Owner of a particular Unit, the several record Owners of such Unit collectively shall have only one (1) vote , and shall be required to designate, by prior written notice to the Association, the particular Owner who shall cast the one vote appurtenant to that Unit. If the several Owners of any Unit are unable or unwilling to designate a particular Owner to vote, then the membership appurtenant to that Unit shall not be entitled to vote on any Association affairs until such designation is made.

3.07 Binding Effect. Each Owner, their lessees, families and guests, the heirs, successors or assigns of an Owner, or any Mortgagee, and any other Person using or occupying a Unit, shall be bound by and shall strictly comply with the provisions of this Declaration, the Bylaws, the Articles, any deed restrictions and covenants, and all rules, regulations and agreements lawfully made by the Association.

3.08 Enforcement. The Association and Declarant shall each have the right and power to bring suit in their respective names for legal and/or equitable relief for any lack of compliance with any provisions of this Declaration or rules promulgated by the Board. In addition, the Board shall have the right to adopt from time to time penalties and a schedule of monetary fines relative to violations or any lack of compliance with provisions of this Declaration or rules or regulations promulgated by the Board, impose such penalties and/or monetary fines on any Owner, and obtain all appropriate legal and/or equitable relief with respect thereto; such fines may be collected in the same manner as an Assessment. The failure of the Association or Declarant to insist upon the strict performance of any such provisions or to exercise any right or option available to it, or to serve any notice or to institute any action, shall not be a waiver or a relinquishment for the future of any such provision or the enforcement thereof. Any Owner aggrieved by a lack of compliance by another Owner may also bring suit for legal and equitable remedies against the non-complying Owner. In no event shall any Owner be permitted to bring suit for legal or equitable remedies directly against the Association or Declarant for lack of enforcement or otherwise, but rather such legal action by an aggrieved Owner is strictly limited to legal action against the non-complying Owner. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to reimbursement of its costs and expenses, including reasonable attorneys' fees, in connection therewith.

3.09 Power of the Association. Each Owner agrees that the Association has all the powers granted to it by this Declaration and by the Utah Revised Nonprofit Corporation Act and any amendments thereto or replacements thereof. Such powers shall include, but shall not be limited to: the right to grant utility and other easements under, through or over the Common Area or Limited Common Areas; levying Assessments against Units and Owners; imposing a lien on Units for any unpaid or uncollected Assessments or penalties; foreclosing any such liens, enforcing any deed restrictions and covenants; acquiring, holding, owning, leasing, mortgaging and disposing of property; the adoption, and amendment from time to time, of rules and regulations with respect to the Property in general, and the use of Common Area and Limited Common Areas; defending, prosecuting or intervening in litigation on behalf of all Owners; the borrowing of monies for Association purposes and the right to pledge future income in order to secure such borrowings. The right to "pledge future income" shall include the right to impose a Special Assessment for repayment of such borrowings and to assign such Special Assessment (and all lien and collection rights appurtenant thereto) to the lender as security for repayment thereof. The Association may exercise any other right, power or privilege given to it expressly by this Declaration, the Articles and Bylaws, or by law, and every other right, power or privilege reasonably to be implied from the existence of any right, power or privilege given to it herein or reasonably necessary to effectuate any such right, power or privilege.

3.10 Collection of Rents. If any Owner shall at any time let or sublet any Unit or portion thereof, and shall not have paid any assessment in full when due, the Board may, in its sole discretion, elect to demand and receive on behalf of the Association from any tenant or subtenant of such Owner occupying the Unit the rent due or becoming due up to the amount of the unpaid assessment, together with all interest, penalties and other costs provided for herein. Such

payment of rent to the Association shall be sufficient payment and discharge of such tenant or subtenant as between such tenant or subtenant and such Owner to the extent of the amount so paid.

3.11 Right of Entry. The Association and its duly authorized agents shall have the right to enter any and all Units in case of an emergency originating in or threatening such Unit or any other part of the Property, whether or not the Owner or occupant thereof is present at the time. The Association and its duly authorized agents shall also have the right to enter into any and all Units at all reasonable times as required to make necessary repairs upon or to any portion of the Common Areas or Limited Common Areas; provided, however, that the Owners and/or occupants affected by such entry shall first be notified thereof if available and if time reasonably permits in light of the purpose for such entry.

ARTICLE IV **Assessments**

4.01 Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with an interest in a Unit, be deemed to covenant and agree to pay the Association the Assessments and other charges and/or dues set forth or provided for in this Declaration, together with any costs of collection and interest thereon. All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Unit with respect to which such assessment is made; and (b) the personal obligation of the person who is the Owner of the respective Unit at the time the assessment falls due. No Owner shall exempt them self or their Unit from liability for payment of assessments by abandonment of the Unit. In a voluntary conveyance of a Unit, the grantor shall remain personally liable for all such unpaid Assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees related to Assessments against the Unit prior to the time of conveyance.

4.02 Annual Assessments. An Annual Assessment shall be made against each Unit and the Owner thereof whereby each Owner shall pay a proportionate share of the common expenses associated with the Property in the same proportion as the Owner's undivided interest in the Common Areas associated with the respective Unit owned by the Owner. The amount and timing of payment of the Annual Assessment shall be determined by the Board, after giving due consideration to the current expenses and future needs of the Association, including but not limited to, the maintenance of the Property. Written notice of the amount of the Annual Assessment, including the due date for payment, or installment payments, thereof, shall be mailed to every Owner at the mailing address last provided to the Association by each Owner. In setting the Annual Assessment, the Board shall provide for an adequate reserve fund for the maintenance, repair and replacement of the Common Area.

4.03 Special Assessments. From time to time the Association, by and through the Board, may impose a Special Assessment upon each Unit and the Owner thereof for the purpose of defraying, in whole or in part, any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or the Articles. Any Special Assessment must receive the prior affirmative consent of Owners representing at

least sixty-seven percent (67%) of the votes exercisable by Owners present in person or by written proxy that are entitled to cast a vote at a meeting of the Owners duly called for the specific purpose of considering a Special Assessment. Written notice setting forth the purpose of the meeting shall be sent to all Owners at least ten (10) and no more than thirty (30) calendar days prior to the meeting date. Written notice of the amount of any Special Assessment so approved, including the due date for payment thereof, shall be mailed to every Owner at the mailing address last provided to the Association by each Owner.

ARTICLE V
Covenants, Conditions And Restrictions

Each Unit shall be held, owned, used and maintained subject to the following covenants, conditions and restrictions.

5.01 Variances. The Board may, in its sole discretion, by an affirmative vote of a majority of its members, allow reasonable variances as to any of the provisions set forth in this Article V of this Declaration, provided there is a reasonable basis or justification for doing so.

5.02 Residential Purposes. Each and every Unit shall be used for residential living purposes, and shall never be solely occupied or used for any commercial or business purpose. However, any Owner or their duly authorized agent may rent or lease said Owner's Unit from time to time subject to the other terms and provisions of this Declaration, and a limited amount of commercial or business activities may be permitted on the following terms and conditions. Any commercial or business activity must be conducted entirely within a Unit, which activity must be compatible with the residential nature of the Property, and secondary to the use of the Unit as a residential dwelling. No employees other than a resident of the Unit may be employed to work on-site. Frequent or constant visits to the Property by clients to transact business or deliveries associated with the business shall not be permitted. Telecommuting from a home office away from a main office, and other activities limited to telephone calls and/or communications by e-mail or otherwise over the internet shall generally be permitted. Each and every commercial or business activity conducted within any Unit must receive the prior written approval of the Board.

5.03 Offensive Trade or Activities. No noxious or offensive trade or activity shall be carried within or about any Unit or the Property as a whole, nor shall anything be done thereon which may become an annoyance or nuisance to the occupants of the remaining Units.

5.04 Compliance With Municipal Ordinances. All Units shall be occupied and/or used in a manner which is consistent with any and all municipal ordinances or regulations applicable thereto.

5.05 Common Areas. There shall be no obstruction of the Common Area. Nothing shall be stored or locked in the Common Area without the prior written consent of the Board. Nothing shall be altered, or constructed in, or removed from the Common Area or any Limited Common Area without the prior written consent of the Board.

5.06 Improvements. No building, fence, wall, or other structure, landscaping or other improvements, shall be commenced, erected, or placed on any portion of the Property, without the prior written approval of the Board. All buildings, changes, alterations and additions to any portion of the Property shall be made in a workmanlike manner and shall be architecturally compatible with the rest of the Property.

5.07 Exterior Attachments. No radio or television antenna, aerial, satellite dish, or similar receiving mechanism, or cooler shall be installed on the outside of any building contained within the Property without the prior written consent of the Board.

5.08 Trees. No activity shall be carried on which shall have the effect of damaging, destroying or otherwise adversely affecting the appearance or utility of any tree or trees within the Property.

5.09 Signs. No sign of any kind shall be displayed to the public view on or from any Unit, the Common Area, or any Limited Common Area, without the prior written consent of the Board.

5.10 Parking. Each Unit shall be entitled to parking privileges within the Property, subject to rules and regulations adopted and amended from time to time by the Board.

5.11 Garbage. No Unit, or any portion of the Common Area, or any Limited Common Area, shall be used or maintained as a dumping ground for rubbish, trash, garbage, refuse, debris, papers, junk, or other waste (collectively "garbage"), nor shall any such garbage be burned anywhere within the Property. All garbage within the boundaries of the Property shall be kept only in sanitary containers and appropriately screened from view. Each Unit shall be kept free of garbage by the Owner of such Unit.

5.12 Unsightliness. No unsightliness shall be permitted in or about any portion of the Property. Without limiting the generality of the foregoing, (a) any unsightly structures, facilities, equipment, tools, boats, vehicles other than operable and properly licensed automobiles, objects and conditions shall be appropriately screened from view, except equipment and tools when in actual use for maintenance and repairs, (b) no trailers, mobile homes, tractors, truck campers or trucks other than pickup trucks shall be kept or permitted to remain upon any of the Property, (c) no vehicle, boat, or equipment shall be constructed, reconstructed, repaired or abandoned upon any of portion of the Property, (d) no lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials or scrap shall be kept, stored or allowed to accumulate on any of the Property, (e) hanging, drying or airing of clothing or household fabrics shall not be permitted in the Common Area, nor permitted within Units if visible from the Common Area, or other Units, or property adjacent to the Property.

5.13 Insurance Rates. Nothing shall be done or kept in any Unit, the Common Area, or any Limited Common Area without the prior written consent of the Board, which will increase the rate of insurance on the Property or any portion thereof. No Owner shall permit anything to

be done or kept in their Unit, the Common Area, or any Limited Common Area, which will result in the cancellation of insurance on any Unit or any portion of the Property, or which would be in violation of law.

5.14 Visible Unit Numbers. All Units shall have a clearly visible Unit number displayed on its main entrance.

5.15 Exterior Lighting. Any light used to illuminate any exterior area of a Unit or Limited Common Area shall be so arranged as to reflect light away from adjacent Units, other residences adjacent to the Property, and away from the vision of passing motorists.

5.16 Fire and Fireworks. No open fires or fireworks are allowed on or about any portion of the Property.

5.17 Right of First Refusal. The right of any Owner to sell, transfer or otherwise convey their Unit shall not be subject to any right of first refusal or similar restriction.

5.18 Delivery of Documents. By accepting a deed or other document of conveyance of all or some portion of title to a Unit, each Owner covenants and agrees that when they sell, rent or lease their Unit, they will deliver a copy of this Declaration, the Articles, the Bylaws, and other rules concerning the Property, to the purchaser, renter, tenant, lessee or resident.

ARTICLE VI
Insurance, Destruction & Condemnation

6.01 Types of Insurance. The Association shall obtain and keep in full force and effect the following insurance coverage:

(a) Property and fire insurance with extended coverage and standard all-risk endorsements, including vandalism and malicious mischief, on Common Area and Limited Common Area. The total amount of insurance, after application of deductibles, shall be one hundred percent (100%) of the replacement value of the insured property exclusive of land, foundations and other items normally excluded from property policies.

(b) Public liability and property damage insurance, including medical payments insurance, in an amount to be determined by the Board, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the ownership, operation, maintenance or other use of the Common Area and Limited Common Area. This policy shall also cover operation of automobiles or other vehicles or equipment on behalf of the Association. The minimum public liability insurance to be carried by the Association shall be \$10,000,000.00 and limits of coverage shall be reviewed annually to determine whether the Association should carry public liability insurance in excess of this minimum amount. The maximum deductible amount for the insurance required by this subsection (b) shall be \$25,000.00.

(c) Workmen's compensation and employer's liability insurance in the amounts and in the forms required by law, unless the Association has no employees which would require such coverage.

(d) Fidelity coverage in the minimum amount of \$250,000 against the dishonesty of employees, destruction or disappearance of money or securities, and forgery. This policy shall also cover persons who serve the Association without compensation.

(e) Coverage of members of the Board and officers of the Association against libel, slander, false arrest, invasion of privacy and errors and omissions and other forms of liability generally covered in officers and directors liability policies.

(f) Coverage against such other risks of a similar or dissimilar nature as the Board deems appropriate.

(g) Notwithstanding the preceding, the Association shall be permitted to omit any of the coverage described in (d) above where premiums are unreasonably expensive or the coverage is not available in this geographic area or the coverage is not offered by a carrier of sufficient credit rating.

6.02 Named Insured(s) and Interests. The Association shall be the named insured under each of said policies. Where appropriate, the named insured(s) may also be the officers and directors of the Association. Policies of insurance also shall name Declarant as an insured so long as it shall retain any interest in the Property. The certificate or memoranda of insurance, duplicate originals of all policies and renewals, and proof of payment of premiums shall be issued to the Association, and upon request, to Declarant and to any Owner who is a named insured or to any Eligible Mortgage Holder. Provided that such arrangements can be made with the Association's insurers and provided further there shall be no additional cost to the Association (other than a nominal cost not to exceed \$100.00 per policy annually) each policy shall provide that twenty (20) days written notice will be given to each Owner prior to any cancellation of such policy. The Association shall promptly report, in writing, to all Owners any claims made against the Association, which report shall contain the name of the claimant, date the Association received notice of the claim, amount of the claims, if known, and a brief description of the nature of the claim

6.03 Destruction, Condemnation and Obsolescence. The provisions of this Section 6.03 and of the following Sections 6.04 through 6.07 shall apply with respect to the destruction, condemnation or obsolescence of the Property. As used in such Sections, each of the following terms shall have the meaning indicated:

(a) "Available Funds" shall mean any proceeds of insurance, condemnation award, payments in lieu of condemnation, and any uncommitted funds of the Board and Association, including amounts contained in any reserve or contingency fund. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a Mortgagee, or that portion of any condemnation award or

payment in lieu of condemnation payable to the Owner or Mortgagee of a Unit for the condemnation or taking of the Unit in which they are interested.

(b) "Estimated Costs of Restoration" shall mean the estimated costs of Restoration.

(c) "Restoration" shall mean restoration of the Property, to the extent reasonably possible, in accordance with the Declaration, the Map, and the original plans and specifications for the Property, and to a condition the same or substantially the same as the condition in which the Property existed prior to the damage or destruction concerned; and to the extent no so possible, "Restoration" shall mean restoration of the Property to an attractive, sound and desirable condition. Any restoration not in accordance with the Declaration, the Map, and the original plans and specifications for the Property shall require the consent of Eligible Mortgage Holders holding Mortgages on Units which have appurtenant at least fifty-one percent (51%) of the undivided ownership interest in the Common Area which is subject to Mortgages held by Eligible Mortgage Holders.

(d) "Restored Value" shall mean the value of the Property after Restoration.

(e) "Substantial Condemnation" shall exist whenever a complete taking or part of the Property has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

(f) "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Property of any part thereof, the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

(g) "Substantial Obsolescence" shall exist whenever the Property or any part thereof has reached such a state of obsolescence or disrepair that the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Property. "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

6.04 Determination by Board. Upon the occurrence of any damage or destruction to the Property or any part thereof, or upon a complete or partial taking of the Property under eminent domain or by grant or conveyance in lieu thereof, the Board shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Property. In addition, the Board shall, from time to time, review the condition of the Property to determine whether Substantial

Obsolescence exists. In making such determinations, the Board may retain and rely upon one or more qualified appraisers or other professionals.

6.05 Restoration of Property. Restoration of the Property shall be undertaken by the Board promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent (67%) of the Property's undivided ownership and is further consented to by Eligible Mortgage Holders holding Mortgages on Units which have appurtenant at least fifty-one percent (51%) of the undivided ownership interest in the Common Area which is then subject to Mortgages held by Eligible Mortgage Holders. Within thirty (30) days after the Board has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgage Holder a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgage Holders concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preference of the Owners regarding Restoration. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Board or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Area. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee. In the event the cost of Restoration exceeds Available Funds, all of the Units shall be assessed for the deficiency on the basis of their respective percentages of undivided ownership in the Common Area. In the event that all or a portion of one or more Units will not be the subject of Restoration (even though the Property will continue as a condominium project) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided ownership interest in the Common Area shall be immediately reallocated to the remaining Units in the same manner as the prior allocation was made.

6.06 Sale of Property. Unless Restoration is accomplished in accordance with the foregoing Section, the Property shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, condominium ownership under this Declaration and the Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Board to the Owners in proportion to their respective undivided interests in the Common Area. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

6.07 Authority of Board to Restore or Sell. The Board, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Area. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their Mortgagees as their interests may appear. The Board, as

attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Property and each Unit therein wherever Restoration or sale, as the case may be, is undertaken as provided herein. Such authority shall include the right and power to enter into any contracts, instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

ARTICLE VII Mortgages

7.01 Mortgagee Protection.

(a) The lien or claim against a Unit for unpaid Assessments or charges levied by the Board pursuant to this Declaration or the Act shall be subordinate to any Mortgage recorded on or before the date such Assessments or charges became due.

(b) The lien or claim against a Unit for such unpaid Assessment or charges shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise of a power of sale available thereunder shall extinguish a subordinate lien for such Assessment or charges which become payable prior to such sale or transfer. Nevertheless, any such unpaid Assessment or charges which are extinguished in accordance with the foregoing may be reallocated and assessed to all Units as common expenses. Any such sale or transfer pursuant to a foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit for liability for, nor such Unit from the lien of, any Assessment or charges becoming due thereafter.

(c) The Board shall make available to Owners, to lenders, and to holders, insurers, and guarantors of any Mortgage current copies of this Declaration, the Map, the Articles, the Bylaws and other rules concerning the Property, and the books, records, and financial statements of the Association. "Available", as used in this subsection, shall mean available for inspection upon request during normal business hours or under other reasonable circumstances.

(d) Any holder, insurer or guarantor of any Mortgage shall be entitled upon written request, to an audited financial statement for the immediately preceding fiscal year free of charge to the party so requesting if one exists. Any financial statement requested shall be furnished to the requesting party within a reasonable time following such request.

7.02 Eligible Mortgage Holders. Eligible Mortgage Holder shall be entitled to timely written notice of any of the following:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or any Unit on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder;

(b) Any delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder, which delinquency 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 Board or the Association;

(d) Any proposed termination of the condominium regime; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as set forth herein.

ARTICLE VIII
General Provisions

8.01 Amendments.

(a) Except as otherwise expressly provided herein, Declarant, acting alone and/or on behalf of the Association, so long as Declarant shall have the right to appoint and remove members of the Board, shall have the absolute right to amend any provisions of this Declaration by recording in the office of the Salt Lake County Recorder an instrument setting forth the amendments to be made, which instrument shall be duly executed by the Declarant, provided that the value of any Unit not owned by Declarant is not substantially affected negatively thereby. Further, where any amendment is not considered by Declarant, in its reasonable judgment, to be a material change to any provision of this Declaration, such as the correction of a technical, drafting or typographical error, correction of some obvious omission, resolution of any conflict with applicable laws, clarification of any ambiguous statement or the like, such amendment may be made at any time by Declarant, without the need to obtain the consent of any Owner.

(b) Except as otherwise expressly provided herein, when Declarant no longer has the right to appoint and remove members of the Board, this Declaration may be amended by a vote of sixty-seven percent (67%) of the Owners of all Units, with Declarant deemed to be Owner of any Unit which has not yet been sold. Amendments to this Declaration by the Owners may only be made at a meeting called for that purpose, and within six (6) months after the date of such meeting there shall be recorded in the office of the Salt Lake County Recorder, an instrument evidencing such amendment. Such instrument amending this Declaration shall be duly executed by the President and Secretary of the Association confirming that the necessary number of Owners (and Eligible Mortgage Holders if required) approved the amendment at a meeting called for that purpose.. Notwithstanding the preceding sentence, no amendment shall be permitted that is inconsistent with any of the rights granted, retained or reserved to Declarant hereunder or which attempts to enlarge or expand any obligation of Declarant hereunder unless such amendment is consented to in writing by Declarant.

(c) The consent of Eligible Mortgage Holders holding Mortgages on Units which have appurtenant at least sixty-seven percent (67%) of the undivided ownership interest in the

Common Area which is then subject to Mortgages held by an Eligible Mortgage Holder shall be required regarding any amendment which would terminate the legal status of the Property as a condominium project.

(d) The consent of Eligible Mortgage Holders holding Mortgages on Units which have appurtenant at least fifty-one percent (51%) of the undivided ownership interest in the Common Area which is subject to Mortgages held by an Eligible Mortgage Holder shall be required to add to or amend any material provision of this Declaration or the Map which establishes, provides for, governs, or regulates any of the following:

- (i) Voting;
- (ii) Assessments, liens, or subordination of liens;
- (iii) Reserves for maintenance, repair, and replacement of the Common Area;
- (iv) Insurance or fidelity bonds;
- (v) Rights to use the Common Area;
- (vi) Responsibility for maintenance and repair of the several portions of the Property;
- (vii) Expansion or contraction of the Property, or the addition, annexation or withdrawal of parcels of property to or from the Property;
- (viii) The boundaries of any Unit;
- (ix) The interests in the Common Area or Limited Common Areas;
- (x) Convertibility of Units Common Area or Common Area into Units;
- (xi) Leasing of Units;
- (xii) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey their Unit;
- (xiii) Express benefits or rights of Mortgagees or Eligible Mortgage Holders; and
- (xiv) A requirement that the Property be professionally managed rather than self-managed.

An addition or amendment shall not be considered material for purposes of this subsection (d) if it is for the purpose of correcting technical errors or for clarification only. Any Eligible Mortgage Holder to whom a written request to approve an addition or amendment to this Declaration or the Map (or to approve a decision of the Owners and/or the Board with respect to the nature of Restoration as provided for herein or a decision not to undertake Restoration pursuant hereto) is mailed postage prepaid to the address for such Eligible Mortgage Holder on the list maintained by the Association and who does not deliver to the Board or the Association a negative response within thirty (30) days from the date of such mailing shall be deemed to have approved such request.

(e) The consent of the Veterans Administration, as per applicable regulations of the Veterans Administration, shall be required to add to or amend any material provision of this Declaration or the Map which establishes, provides for, governs, or regulates any of the following:

- (i) Termination of the legal status of the Property as a condominium project;
- (ii) Insurance or fidelity bonds;
- (iii) Convertibility of Units into Common Area or Common Area into Units;
- (iv) Leasing of Units; and
- (v) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey their Unit.

(f) The consent requirements set forth in subsections (c), (d) and (e) above of this Section 8.01 shall not be applicable to amendments to this Declaration or the Map or to termination of the legal status of the Property as a condominium project if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence.

8.02 Consent in Lieu of Vote. In any case in which the Act or this Declaration requires the vote of a stated percentage of the Property's undivided ownership interest for authorization or approval of an act or transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the stated percentage of undivided ownership interests. The following additional provisions shall govern any application of this Section.

(a) All necessary consents must be obtained prior to the expiration of ninety (90) calendar days after the first consent ins given by any Owner.

(b) Any change in ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

(c) Unless the consent of all Owners having an interest in the same Unit is secured, the consent of none of such Owners shall be affected.

8.03 Service. The President of the Association is the person to receive service of process in the cases authorized by the Act. However, the Board shall have the right to appoint a successor or substitute process agent.

8.04 Successors and Assigns. This Declaration and all the terms and provisions hereof shall be binding upon the Owners, their respective legal representatives, heirs, successors and assigns.

8.05 Captions and Pronouns. Captions contained in this Declaration are inserted only as a matter of convenience and for reference, and in no way do they define, limit or describe the scope of this Declaration or the intent of any provision hereof. Whenever the singular number is used in this Declaration and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

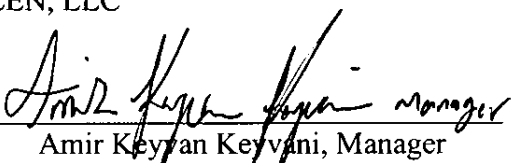
8.06 No Waiver. No delay or omission in the exercise of any power, remedy or right herein provided or otherwise available to the Association or an Owner shall impair or affect the right of the Association or any Owner to exercise the same. Any extension of time or other indulgence granted to an Owner hereunder shall not otherwise alter or affect any power, remedy or right of any other Owner or the Association, or the obligations of the Owner to whom such extension or indulgence is granted.

8.07 Severability. If any provision of this Declaration, or the application of such provision to any Person, Unit or circumstance, shall be held invalid, the remainder of this Declaration, or the application of such provision to Persons, Units or circumstances other than those as to which it is held invalid, shall not be affected thereby.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Condominium 4340 Highland Condominium this 21 day of August, 2002.

“Declarant”

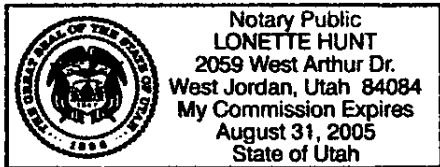
HELEN, LLC

By: 
Amir Keyvan Keyvani, Manager

Acknowledgment

State of Utah)
 : ss.
County of Salt Lake)

On this the 2 / day of August, 2002, personally appeared before me, AMIR KEYVAN KEYVANI, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the foregoing instrument, who being duly sworn, acknowledged that he was duly authorized as the Manager of HELEN, LLC to execute the foregoing instrument on behalf of such entity and to bind such entity thereby, ant that he did so of his own voluntary act.



Lonette Hunt

Notary Public

PROPERTY DESCRIPTION

Beginning at a point on the West Right-of-Way line of Highland Drive, which point lies North $05^{\circ}26'00''$ West along the monument line of Highland Drive 175.91 feet and South $84^{\circ}34'00''$ West 33.00 feet from the Found monument at the intersection of Highland Drive and Lincoln Lane, said monument being North 1128.19 and West 2319.44 feet and South $05^{\circ}26'00''$ East 690.89 feet from the East Quarter corner of Section 4, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence

South $05^{\circ}26'00''$ East along the West Right-of-Way line of Highland Drive 178.31 feet; thence South $14^{\circ}20'08''$ East along said Right-of-Way line 73.52 feet; thence

South $01^{\circ}16'44''$ East 28.16 feet to a fence line; thence

along said fence line he following four calls;

North $89^{\circ}17'49''$ West 84.75 feet;

South $89^{\circ}55'36''$ West 69.58 feet;

North $89^{\circ}50'51''$ West 81.11 feet; and

North $89^{\circ}07'09''$ West 35.55 feet to the East line of the Christensen deed per Tax Id. No. 22-04-179-012 on file with the Salt Lake County Recorder's Office; thence along said East line

North $00^{\circ}00'00''$ West 101.44 feet to the Northeast corner of said Christensen deed; thence

North $90^{\circ}00'00''$ West 101.44 feet to the Northeast corner of the said Christensen deed; thence

South $90^{\circ}00'00''$ West along the North line of Said Christensen deed 20.12 feet to an existing fence line; thence

North $00^{\circ}43'29''$ West along said fence line 8.69 feet to a fence corner; thence

South $89^{\circ}38'07''$ West along said fence line 59.63 feet to the East line of the Christensen deed on file with the Salt Lake County Recorder's Office in Book 6280 at Page 003; thence

North $00^{\circ}04'32''$ East along said deed line 165.95 feet o a fence line; thence

South $89^{\circ}54'23''$ East along said fence line and fence line extended 314.90 feet to the point of beginning.

Parcel Contains 82,669 Sq. Ft. (1.90 Acres).

Tax Id. No. 22-04-251-002 AND 003

EXHIBIT A

BK 8635 PG 8313