

8424454  
11/18/2002 02:49 PM 90.00  
Book - 8685 Pg - 9004-9038  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
COLLEGE DRIVE ASSOCIATES  
723 W COLUMBIA LN  
PROVO UT 84604  
BY: ELF, DEPUTY - WI 35 P.

8424454

**DECLARATION OF CONDOMINIUM  
OF  
COLLEGE DRIVE OFFICE BUILDING  
Murray, Utah**

THIS DECLARATION is made this \_\_\_\_\_ day of \_\_\_\_\_, 2002 by College Drive Associates, L.L.C., a Utah limited liability company, (hereinafter referred to as "Declarant"), pursuant to the provisions of the Utah Condominium Ownership Act.

**RECITALS**

A. Declarant is the owner of that certain real property situated in the City of Murray, Salt Lake County, Utah, and more particularly described on Exhibit A attached hereto and by reference incorporated herein.

B. Declarant has constructed improvements and will continue to construct improvements and units upon said real property in accordance with the plans and drawings contained in the Record of Survey Map filed for record contemporaneously herewith.

C. Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property and the interests therein. Declarant desires, by filing this Declaration and the Record of Survey Map, to submit said real property and all improvements now or hereafter constructed hereon to the provisions of the Utah Condominium Ownership Act as a Condominium Project to be known as the College Drive Office Building.

D. Declarant intends to sell to various purchasers the fee title to the Individual Units contained in the Project, together with the undivided percentage ownership interest in the Common Areas and Facilities appurtenant to such Units, subject to the covenants, conditions, restrictions, limitations and easements herein set forth.

**DECLARATION**

NOW THEREFORE, for the foregoing purposes, Declarant hereby declares and certifies as follows:

**ARTICLE I.**

**DEFINITIONS**

When used in this Declaration (including that portion hereof captioned "Recitals" and in the By-laws hereinafter set forth) the terms used shall have the meaning stated in the Utah Condominium Ownership Act and as follows unless the context otherwise requires.

1.1. Act shall mean and refer to the Utah Condominium Ownership Act, Title 57, Chapter 8, Utah Code Annotated 1953 as the same may be amended from time to time.

8424454

BK 8685 PG 9004

1.2. Articles or Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Association filed with the Utah State Department of Commerce, and Commercial Code.

1.3. Association of Unit Owners or the Association shall mean and refer to the College Drive Office Building Owners Association, Inc., a Utah non-profit corporation.

1.4. Board of Directors or Board shall mean and refer to the group of persons comprising the governing board of the Association; and Director(s) shall mean and refer to the members of such governing board.

1.5. Bylaws shall mean and refer to that portion of the Declaration denominated as the Bylaws of the Association.

1.6. Common Areas or the Common Areas and Facilities shall mean and refer to and include:

1.6.1. The real property which is submitted by this Declaration to the terms of the Act, including all easements and appurtenances.

1.6.2. Those Common Areas and Facilities and Limited Common Areas and Facilities specifically set forth and designated as such on the Map.

1.6.3. All exterior walkways, streets, grounds, yards, landscaped areas, fences, parking areas, the parking garage, driveways, and other similar areas, existing for common use.

1.6.4. All exterior walls, the structural components of the roof, floors and ceiling and the roof membranes, but not including any drywall, finishes, floor coverings, or drop in ceilings in the Units.

1.6.5. All installations and facilities for central services such as power, light, and gas, including any mechanical structures and facilities on the roof, or in the basement, HVAC system, common meters and all apparatus and installations existing for common use, but not including any parts or components of the electrical, plumbing, sewer or HVAC systems, meters, fixtures, or facilities (including duct work) which is within a Unit or which services only one Unit.

1.6.6. All elevators, stairways, lobbies, entryways, corridors, halls and common restrooms.

1.6.7. All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management.

1.6.8. All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein.

1.7. Common Expenses shall mean and refer to any of the following:

1.7.1. Expenses or reasonable reserves for the maintenance, management, operation, repair, or replacement of the Common Areas or Limited Common Areas;

1.7.2. Expenses of management and administration of the Association, including any compensation paid by the Association to a manager, accountant, attorney, or to any employees or agents; and

1.7.3. All other items, things and sums described in the Act or this Declaration which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration, the By-laws, such rules, regulations, and other determinations and agreements pertaining to the Condominium Project as the Management Committee, the Unit Owners, or the Association as hereinafter mentioned, may from time to time adopt.

1.8. Condominium Project or Project shall mean and refer to the College Drive Office Building as the same may exist from time to time.

1.9. Condominium Unit or Units mean and refers to one of the Units in the Project intended for independent use as defined in the Act and as shown in the Map together with the undivided interest in and to the Common Areas and Facilities appertaining to that Unit. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles, switches and outlets, air conditioning compressors and other heating, ventilation and air conditioning apparatus, electrical and plumbing fixtures and the like, shall be considered part of the Unit, as shall all individual restrooms (as opposed to the common restrooms), decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of, inter alia and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, ducts, or other individual meters, utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members of any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety or usefulness of the remainder of the Building within which the Unit is situated shall be considered part of the Unit. It is acknowledged that the HVAC system for the Building is an integrated system which allows the free flow of air from Unit to Unit.

1.10. Declarant shall mean and refer to the College Drive Associates, L.L.C., a Utah limited liability company, its successors and assigns.

1.11. Declaration shall mean and refer to this Declaration. This declaration has been drafted to comply with the requirements of the Utah Condominium Ownership Act, Title 57, Chapter 8, Utah Code Annotated 1953. Any ambiguities, omissions, and/or conflicts shall be construed to comply with the provisions of said Act.

1.12. Limited Common Areas and Facilities or Limited Common Areas shall mean those Common Areas designated in the Declaration and shown on the Map as reserved for use of certain Unit or Units to the exclusion of other Units. Any areas and facilities identified on the Plat as Limited Common Areas are permanently assigned to such specific Units, as an appurtenance to such Units and are for the exclusive use of such Units. In addition, Limited Common Areas may be any areas and facilities designated by Declarant or the Association, as hereafter provided, to be Limited Common Areas, and after such designation are permanently assigned to such specific Units, as an appurtenance to such Units, and are thereafter for the exclusive use of such Units. Limited Common Areas may include storage areas and parking spaces specifically assigned or to be assigned to a Unit Owner.

1.13. Management Committee or Committee shall mean and refer to the Committee as provided in the Declaration charged with and having the responsibility and authority to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the

Property. In the event the Association is incorporated, the Management Committee shall mean the Board of Directors thereof and members of the Management Committee shall mean the Directors.

1.14. Manager shall mean and refer to the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and Project.

1.15. Member shall mean and refer to an Owner as a member of the Association.

1.16. Mortgage shall mean a recorded first mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered.

1.17. Mortgagee shall mean any person named as a Mortgagee or beneficiary under or holder of a Deed of Trust which is defined as a Mortgage hereunder.

1.18. Property shall mean and refer to the real property described in Exhibit "A", the buildings, all improvements and the structures thereon, all easements, rights and appurtenances belonging thereto and all articles of personal property intended for use in connection therewith.

1.19. Record of Survey Map, Survey Map, Map or Plat shall mean and refer to the Plat or Record of Survey Map filed concurrently herewith with the Salt Lake County Recorder entitled "College Drive Office Building, Murray City, Salt Lake County, Utah", executed and acknowledged by Declarant, prepared by a duly registered Utah land surveyor, as said Map may hereafter be modified, supplemented, or amended in accordance with law and the provisions hereof.

1.20. Unit Number shall mean and refer to the number which designates a Unit on the Map.

1.21. Unit Owner or Owner shall mean and refer to the person or persons owning the fee simple interest in a Unit. The Declarant shall be deemed to be the Owner of all unsold Units. In the event a Unit is the subject of an executory contract of sale, the buyer shall, unless the seller and the buyer have otherwise agreed and have informed the Committee in writing of such agreement, be considered the Unit Owner for all purposes. The term "Unit Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or non-judicial action, including without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure).

## ARTICLE II.

### PROPERTY DESCRIPTION AND SUBMISSION

2.1. The Submission Declarant hereby submits to the provisions of the Act the Property which is described on Exhibit A which is and shall be held, transferred, sold, conveyed, leased and occupied subject to the provisions of this Declaration.

2.2. Reservation. Declarant reserves, however, such easements and rights of ingress and egress over, across, through, and under the Property and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant: (i) to construct and complete the Building and all of the other improvements described in this Declaration or in the Survey Map recorded concurrently herewith including any construction or completion of the Units themselves, and to do all things reasonably necessary or proper in connection therewith; (ii) to improve portions of the said Property with such other additional improvements, facilities, or landscaping designed for the use and enjoyment of all Owners as Declarant may reasonably determine to be appropriate, and

(iii) the right to use any Unit owned by Declarant, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any activities designed to accomplish or facilitate sale or lease of any Units owned by Declarant. Declarant shall also have the right to maintain a reasonable number of promotional, advertising, or directional signs, banners, or similar devices at any place or places on the Property. Declarant shall have the right from time to time to locate or relocate any of its signs, banners or similar devices. If, pursuant to the foregoing reservations, the Property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements described herein, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire five (5) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

### ARTICLE III.

#### IMPROVEMENTS

3.1. Description of Improvements. The improvements included in the Project consist of a three-story building with a combined total of approximately 37,510 square feet and in addition an underground covered parking garage (hereinafter collectively referred to as the "Building") which is now located on the Property, together with driveways, parking facilities, both outside and in the basement, landscaping and other related improvements as described herein or on the Map. The Building is constructed of steel, concrete, glass and stucco with a flat, single-ply membrane roof.

3.2. Description of and Legal Status of Units. The Building is hereby divided into twelve (12) Condominium Units as set forth on the Map. Each Condominium Unit shall consist of the Unit and an appurtenant undivided interest in and to the Common Areas and Facilities as set forth on Exhibit B attached hereto and by reference incorporated herein. The Map shows the Unit Number of each Unit, its location and dimensions, from which its square footage may be determined, the Limited Common Areas, if any, which are reserved for its use, and the Common Areas of the Project. The Units shall be legally designated and described by Unit number. Declarant reserves the right to modify, alter and amend the size, dimensions, square footage and location of any Units owned by Declarant; provided that (i) the modification, alteration or amendment with respect to any Unit may only affect the other Units and Common Areas on the same floor as such Unit; (ii) the modification, alteration or amendment may not substantially modify, alter or amend the size, dimensions, square footage or location of the Common Areas which are stairs, corridors, halls, elevators or lobbies of the Building; and (iii) the modification, alteration or amendment may not modify, alter or amend the size, dimensions, square footage or location of any Unit not owned by Declarant without the prior written consent or approval of the Owner of such Unit, and (iv) any wall dividing one Unit from another Unit or the Common Areas shall comply with applicable Murray City building codes for demising walls. Declarant, without the consent or approval of any Unit Owner, except a Unit Owner as provided in clause (iii) above, shall be entitled to amend the Plat or Map and the Exhibit B attached to this Declaration to reflect any such changes in the Units so modified, altered or amended as well as their voting rights, share of the Common Areas and percentage of assessments as set forth on such Exhibit B.

3.3. Common and Limited Common Areas. The Common Areas and Limited Common Areas contained in the Project are described and identified in Article I hereof and in the Map. Neither the Ownership of undivided interests in the Common Areas nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which it appertains; and even though not specifically mentioned in the instrument of conveyance, such percentage of undivided interest and such right of exclusive use shall automatically accompany the conveyance of the Unit to which they relate.

3.4. Legal Description of a Unit. Each conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown on the Map with the appropriate reference to the Map and to this Declaration, as each shall appear on the Records of the County Recorder of Salt Lake County, Utah and in substantially the following form:

Unit \_\_\_\_\_, shown in the Record of Survey Map for the College Drive Office Building appearing in the Records of the County of Salt Lake, in Book \_\_\_\_\_ Page \_\_\_\_\_ of Plats, and as defined and described in the Declaration of Condominium, appearing in such Records in Book \_\_\_\_\_ Page \_\_\_\_\_ of Records. This conveyance is subject to the provisions of the aforesaid Declaration of the College Drive Office Building.

Such description will be construed to describe the Unit together with an undivided interest in and to the Common Areas as the same is established and identified in the Declaration and Map referred to herein above, and to incorporate all the rights incident to Ownership of a Unit and all the limitations of such Ownership as described in this Declaration.

#### ARTICLE IV.

#### EASEMENTS

4.1. Easement for Encroachment. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance for the same, shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas or upon any adjoining Unit or Units, an easement for such encroachment and for maintenance shall and does exist. Such encroachment shall not be considered to be encumbrances either in the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building on the Property, by error in the Map, by settling, raising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof. There is also hereby created an easement for any encroachment by any roof or other architectural appurtenances upon an adjoining Unit or upon any part of the Common Areas.

4.2. Right of Ingress, Egress and Lateral Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his, her or its Unit, and to the Limited Common Areas designated for use in connection with his, her or its Unit, and each Owner shall have the right to the horizontal and lateral support of a Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

4.3. Access for Repair of Common Areas. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable rights, to be exercised by the Committee as their agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or another Unit or Units. The Committee shall also have such rights independent of the agency relationship. Damage to the interior of any part of the Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the instance of the Committee or of Unit Owners, shall be an expense of all the Unit Owners and assessed in accordance with this Declaration; provided, that if such damage is the result of negligence of the Owner of the Unit, then

such Owner shall be financially responsible for all such damage. This provision shall be collected by the Committee by assessment pursuant to the Declaration.

4.4. Easement to Management Committee. The Management Committee shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

4.5. Easement for Utility Services. There is hereby created a blanket easement upon, across, over and under the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewer, gas, telephone, electricity, and other utility services.

4.6. Reservation of Rights in Property. Declarant reserves, such easements and rights of ingress and egress over, across, through and under the Property and any improvements (including the Building or Units) now or hereafter constructed thereon as may be reasonably necessary for Declarant (a) to construct and complete the Building and Units and all of the other improvements, structures, utilities and facilities described in this Declaration or in the Map or which shall hereafter be recorded and all other things reasonably necessary in connection therewith; and (b) to construct and complete on the Property, or any portions thereof, such other improvements, structures, facilities or landscaping designed for the use and enjoyment of the Owners as Declarant may reasonably deem necessary or appropriate. With the exception of any easements also described in other sections of this Article, this reservation shall, unless sooner terminated in accordance with the terms hereof, expire five (5) years after the date on which this Declaration is filed for record with the County Recorder of Salt Lake County.

## ARTICLE V.

### NATURE AND INCIDENTS OF OWNERSHIP

5.1. Holding Title. Title to a Unit shall be in fee simple and may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common.

5.2. No Separation. No part of a Unit or of the legal rights comprising ownership of a Unit may be separated from any other part thereof during the period of Condominium Ownership described herein, so that each Unit, the undivided interest in the Common Areas appurtenant to such Unit, and the exclusive right to use and occupy the Limited Common Areas appurtenant to each Unit, shall always be conveyed, devised, encumbered, and otherwise effected only together and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance or other disposition of a Unit or any part thereof, shall constitute a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration.

5.3. Undivided Interest in Common Areas. Each Owner of a Unit shall have for each Unit owned, the undivided ownership interest in and to the Common Areas as set forth on Exhibit B.

5.4. Membership in Association. Each Owner shall be a Member of the Association. An Owner shall be entitled to one membership for each Unit owned by such Owner. Membership in the Association shall be mandatory, shall be appurtenant to, and shall not be separated from the Unit to which it is appurtenant and shall be transferred automatically by conveyance of the Unit.

Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held.

5.5. No Partition. The Common Areas shall be owned in common by all the Owners of Units, and no Unit Owner may bring action for partition thereof.

5.6. Use of Common Areas and Limited Common Areas. Subject to the limitations contained in the Declaration, each Unit Owners shall have the non-exclusive right to use and enjoy the Common Areas and shall have the exclusive right to use and enjoy the Limited Common Areas designated herein or on the Map for exclusive use by such Unit. This right of use shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any guest, invitee, tenant, lessee, contract purchaser, or other person who occupies or utilizes such Owner's Unit.

5.7. Limitation on Use. An Owner's right of use and enjoyment concerning the Common Areas shall be subject to the following:

5.7.1. The right of the Association to suspend an Owner's voting right in the Association upon notice and a chance for hearing (i) for any period during which an assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

5.7.2. The right of the Association to (i) impose reasonable limitations of the number of guests, tenants or clients per Unit who at any given time are permitted to use the Common Areas; (ii) allocate and/or assign specific parking spaces to each Owner of such spaces as may be available, if any, as may be reasonably necessary based on the assessment percentages set forth in Exhibit "B"; and (iii) after the Declarant's right to so assign has expired or terminated to designate portions of the Common Areas consisting of parking areas and storage facilities as Limited Common Area for the use and benefit of the Owner or Owners of any Unit or Units.

5.7.3. The right of Salt Lake County or any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property or to which the Property has rights for purposes of providing police and fire protection and providing other governmental or municipal service;

5.7.4. The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument signed by Owners holding sixty seven percent (67%) or more of the total votes of the Association agreeing to such dedication or transfer has been recorded, except that the Board shall have authority to transfer to such public agencies, authorities or utilities, permits, licenses, easements and rights-of-way which are intended to benefit and which do not have any substantial adverse effect on the enjoyment of the Common Areas by the Members.



5.8. Unit Maintenance. Each Owner shall, at his, her or its own cost and expense:

5.8.1. install sheetrock or drywall on the exterior, boundary or interior walls;

5.8.2. maintain, repair, paint, re-paint, tile, wax, paper or otherwise refinish and decorate the interior walls, trim and interior surfaces of the walls, ceilings, floors and windows and doors forming the boundaries of his, her or its Unit, all walls, ceilings, floors, windows and doors within such boundaries;

5.8.3. maintain, repair and replace all plumbing fixtures, electrical fixtures, switches, receptacles and outlets, appliances, lines, wires, ducts, individual electrical meters, heating, air conditioning and any other fixtures and equipment that may be in or connected with a Unit or service only the Units; if any and

5.8.4. keep the interior of his, her or its Unit, including any windows or glass surfaces on the boundaries of the Units and any individual restrooms located in the Unit, in good repair, including replacement of broken glass, and in a clean and sanitary condition; and

5.8.5. otherwise maintain the same so as not to detract from the appearance of the property and so as not to adversely affect the value or use of any other Unit.

5.9. Maintenance of Limited Common Areas. Unless the association shall elect to maintain the same, each Owner, at his, her or its own cost and expense, shall have the duty and responsibility to maintain and repair the Limited Common Area related to their individual Unit. In the event an Owner fails to do so in a manner satisfactory to the Committee, then after reasonable notice, the Association shall have the right, through its agents and employees, to repair, maintain, and restore such Limited Common Areas to a standard consistent with the Property, the cost thereof to be added to and become a part of the assessment to which such Unit is subject.

5.10. Duty of Owner to Pay Taxes on Unit Owned. Each Owner shall pay and discharge any and all real estate taxes and assessments which may be assessed against such Owner relative to his or her Unit.

5.11. Duty to Pay Association Assessments. Each Unit Owner is obligated to pay and discharge all assessments and charges levied by the Association as set forth herein.

5.12. Right and Duty of Owners to Insure. It is the responsibility of each Owner to provide insurance on his personal property and upon all other property and improvements within his Unit. Nothing hereby shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability for damage to persons or property occurring inside his individual Unit or elsewhere upon the Property. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

5.13. Utilities. The Owner shall pay for all utility services furnished to each Unit except utility services which are not separately billed or metered to individual Units by the utility or other party furnishing such service. The Association shall pay such bills which are not separately metered and charge an appropriate share to each Unit and Owner as part of the Common Expenses. In the

event any Owner is found to use any service disproportionately, the Association may make alter the share so charged. In the event that submeters are installed or used for common utilities which are billed collectively, each Owner agrees to pay for the actual utility usage attributable to his or her Unit.

**ARTICLE VI.  
RESTRICTIONS**

6.1. Office Use. Each of the Units in the Project is intended to be used for business offices, professional offices, and government offices together with support facilities and for such other similar uses as may be allowed under applicable zoning laws, provided that such uses do not otherwise violate the provisions of this Declaration. Each unit may be rented or leased by the Unit Owner for the use and occupancy as herein stated. Unless consented to in writing by the Board, in its sole and absolute discretion, the Units shall not be used for:

- 6.1.1. the storage, sales or repair of motor vehicles;
- 6.1.2. a movie theater or restaurant;
- 6.1.3. a bowling alley, miniature golf course, video arcade; video or music rental or sales (retail);
- 6.1.4. the sale, distribution, rental or viewing of sexually explicit materials or sexually explicit performances;
- 6.1.5. the sale of paraphernalia related to illegal drugs;
- 6.1.6. escort services;
- 6.1.7. any business establishment utilizing an indoor or outdoor speaker system that produces in excess of 40 db's or which can be heard by a person occupying the Units or any business establishment utilizing an indoor or outdoor speaker system during the hours of midnight to 8:00 a.m. on weekdays and 1:00 a.m. to 8:00 a.m. on weekends;
- 6.1.8. The storage or sale of petroleum products or other Hazardous Materials (as defined herein);
- 6.1.9. Any business establishment creating noxious or harmful odors; or
- 6.1.10. Any business which utilizes more than four parking stalls per 1,000 square feet of Unit space.
- 6.1.11. For rental for periods of less than thirty (30) days per rental period.

6.2. Restrictions Concerning Common Areas. There shall be no obstructions of the Common Areas by the Owners, their tenants, guests or invitees without the prior written consent of the Management Committee. The Management Committee may by rules and regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Management Committee, except

BK8685PG9013

as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas except upon consent of the Management Committee.

6.3. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render any part of the Property unsanitary or unsightly or which would be offensive or detrimental to any other part of the Property or to the occupants thereof. No noise, odors or other nuisance shall be permitted to exist or operate upon any part of the Property or from within any Unit so as to be offensive or detrimental to any other part of the Property, or to the occupants thereof. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on the Property without the prior written approval of the Board.

6.4. Unsightly Articles. No unsightly articles shall be permitted to remain on or near a Unit or the Common Areas so as to be visible from any other Unit or the Common Areas. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view within each Unit. No lumber, waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Unit except within an enclosed structure or when appropriately screened from view.

6.5. Temporary and Other Structures. No structures of a temporary nature, trailer, tent, shack, shed, garage, barn or other outbuildings shall be allowed on the Property either temporarily or permanently at any time.

6.6. Trash Removal. Trash or refuse containers of any kind shall not be permitted on the Common Areas without the prior written consent of the Board. Each Owner shall utilize the common trash containers provided for and assessed by the Association located on the Common Areas in an area arranged by the Association. If any Owner shall abuse the common trash containers provided in the Common Areas, the Board may in its discretion (i) require such Owner to maintain at such Owner's expense a separate garbage removal system in an area designated by the Board, or (ii) charge such Owner such additional amount for garbage removal as the Board deems necessary or proper to defray the added cost of garbage removal resulting from such abuse. The term "abuse" as used herein shall mean any overuse of the garbage removal system in the reasonable judgment of the Board.

6.7. Signs. The following shall apply to signs within the Project:

6.7.1. For five (5) years following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Declarant shall have the right to maintain a reasonable number of promotional, advertising, and directional signs, banners, or similar devices at any place or places on the Property to aid in selling or leasing of any Unit owned by Declarant.

6.7.2. A Unit owner shall have the right to advertise their Unit for sale or lease by placing a sign inside of their Unit, provided the dimensions of such sign do not exceed 2 ft. x 3 ft.

6.7.3. The Association shall have the right to install and maintain such directional, directory and monument signs as the Board deems reasonably necessary and appropriate for the Project.

6.7.4. Each Unit Owner (or lessee) shall have the right to install and maintain (at its sole expense) in the place designated by the Board, letters or insignias which identify the business being conducted from such Unit; provided that such lettering and insignias are pre-approved in writing by the Board, in its reasonable discretion.

6.7.5. Except as set forth herein, signs, flags, or advertising devices of any kind are prohibited from being placed or maintained anywhere in the Project without the prior written consent of the Board, which consent may be withheld in its absolute discretion.

6.8. No Hazardous Materials. Each Owner shall not cause or permit any Hazardous Substance to be use, stored, generated or disposed of on or in such Owner's Unit. If any Hazardous Substance is used, stored, generated or disposed of on or in any Owner's Unit, or if an Owner's Unit becomes contaminated in any manner by such Owner (or its lessee), such Owner shall indemnify and hold harmless all other Owners from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses including, without limitation, a decrease in the value of the non-contaminated Units, damages caused by loss or restriction of usable space, or any damages caused by adverse impact on the marketing of the non-contaminated Units, and any and all sums paid for settlement of claims, attorney's fees, consultant and expert fees. This restriction shall not apply to the use or storage of a reasonable amount of typical household and office cleaning supplies.

As used herein, the term "Hazardous Substance" shall mean any pollutants, contaminants, chemicals, waste and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical or chemical compound or hazardous substance, material or waste, whether solid, liquid or gas, including any quantity of asbestos in any form, urea, formaldehyde, PCB's, radon gas, crude oil or any fraction thereof, all forms of natural gas, petroleum products or byproducts or derivatives, radioactive substance, waste waters, sludges, slag and any other substance, material or waste that is substant to regulation, control or remediation under any Environmental Laws.

As used herein, "Environmental Laws" shall mean all local, state and federal laws and regulations which regulate or relate to the protection, clean-up and restoration of the environment; the use, treatment, storage, transportation, generation, manufacture, processing, distribution, handling or disposal of, or emission, discharge or other release or threatened release of Hazardous Substance or otherwise dangerous substances, wastes, pollution or materials and shall include the Resource Conservation & Recovery Act, Clean Water Act, Safe Drinking Water Act, Atomic Energy Act,

Occupational Safety and Health Act, Toxic Substances Control Act, Clean Air Act, Oil Pollution Act of 1990, Comprehensive Environmental Response Compensation and Liability Act and the Hazardous Materials Transportation Act.

6.9. Rooftop Antennas. No television, ham radio, citizens band or radio antenna, satellite receiving or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any unit or elsewhere without prior written approval of the Board. Such antennas, if used, must be of the type that are installed within the natural building structure. In no case will any such receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of any neighboring Unit Owner's premises or equipment. Provided, however, Declarant and the Association reserve the right and option to install cable service lines and antennas as needed throughout the Project in connection with its development of the Property.

6.10. Miscellaneous Restrictions. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would result in the cancellation of the insurance of the

Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Management Committee, but for such activity, would pay, without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Management Committee and other Owners harmless against all loss resulting from any such damage or waste caused by his or her invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

6.11. No Violation of Rules and Regulations. No Owner shall violate the rules and regulations for the use of the Units and the Common Areas as adopted from time to time by the Management Committee.

6.12. Restrictions on Alterations. No structural alterations to any Unit shall be made by any Owner without the prior written consent of the Management Committee.

6.13. Declarant's Right to Complete Units. Notwithstanding anything contained herein to the contrary, until the Declarant has completed all of the Units, neither the Unit Owners who have purchased Units from the Declarant, the Management Committee, nor the Association shall interfere with the completion of the Units and Common Areas.

6.14. No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants contained in this Article VI or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, and the Unit Owner shall assume all risks of the validity and enforceability thereof and, by acquiring the Unit agrees to hold Declarant harmless therefrom.

## ARTICLE VII.

### OPERATION AND MAINTENANCE OF COMMON AREAS

7.1. Maintenance of Common Areas. The Association will keep and maintain all exterior Common Areas in good order, condition and repair, including paint, stain, repair, replacement of and care of roof, roof membrane, trusses, joists, walls and other structural members, gutters, down spouts, foundations, fences, exterior building surfaces, exterior doors and other exterior improvements, parking garage, parking areas, driveways, walkways, common area or building signage, landscaping, trees, shrubs, grass and all exterior surfaces and glass; and including the sweeping of and the snow removal from parking areas, driveways and walkways. The Association will keep and maintain all interior Common Areas in good order, condition and repair and shall keep the same in a clean and sanitary condition, including clean, paint, stain, repair, replacement of and care of lobbies, entryways, elevators, stairs and stairways, common corridors and common bathrooms, and the interior surfaces and glass of the interior Common Areas, provided, however, that such obligation shall not include the obligation to provide janitorial, maintenance or other services to the interior surfaces of the walls, windows, ceilings, or floors (which though Common Areas) are the interior walls, windows, ceilings or floors of the Units. All expenses of the

maintenance of the Common Areas shall be Common Expenses to be allocated to the Owners as hereafter provided.

7.2. In the event that the need for maintenance or repair of the Condominium Building Exteriors is caused through the willful or negligent acts of an Owner(s), or through the willful or negligent acts of the guests, tenants or invitees of the Owner(s), the cost of such exterior maintenance shall be immediately due and payable from such Owner(s) and added to and become a part of the assessment to which such Unit is subject.

7.3. Professional Management. The Association may carry out through a Manager those of its functions which are properly the subject of delegation. The Manager (who may be an affiliated entity or a related person to Declarant), so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management agreement executed on or before the termination of Declarant's control of the appointment of the Board of Directors as described in Section 12.3 may be terminated by the Association (pursuant to a vote held according to the Bylaws) without cause at any time after termination of such control. The above term and termination provisions shall not apply to any other types of service contracts.

## VIII.

### INSURANCE

8.1. Hazard Insurance. The Association shall procure and maintain, from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports, a master or blanket type policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the Units, Common Areas and Limited Common Areas, including any fixtures, building service equipment, and any common personal property and supplies owned by the Association, with either a Replacement Cost Endorsement or a Guaranteed Replacement Cost Endorsement and an Agreed Amount Endorsement or its equivalent, an Inflation Guard Endorsement, if available, and such other endorsements as the Association shall deem necessary. Such policy or policies shall provide for deductibles which shall not be greater than the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the face amount of the policy. Such insurance policy or policies shall name the Association as insured and shall afford protection against loss or damage by fire and other hazards that are normally covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, and such other risks as are normally covered by the standard "all risk" or Cause of Loss-Broad Form policy of insurance. The Policy shall provide that it may not be canceled or substantially modified by the insurer unless it gives at least ten (10) days' prior written notice thereof to each insured.

8.2. Flood Insurance. If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a "master" or "blanket" policy of flood insurance shall be maintained covering the Condominium Buildings, any machinery and equipment that are not part of a Condominium Building and all Common Areas within the Project (hereinafter "Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for all Condominium Buildings and Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable

value of all such facilities. The maximum deductible amount for any such policy shall be the lessor of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount.

8.3. Provision regarding Hazard and Flood Insurance.

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

8.3.2. Each policy required to be maintained by the foregoing items Sections 8.1 and 8.2, shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Project is located. In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

8.3.3. Each policy required to be maintained by the foregoing item Section 8.1 shall also contain or provide the following: (a) "Inflation Guard Endorsement", if available; (b) "Building Ordinance or Law Endorsement", if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (c) "Steam Boiler and Machinery Coverage Endorsement", if the project has central heating or cooling, which shall provide that the insurer's minimum liability per accident at least equals the lessor of One Million Dollars (\$1,000,000.00) or the insurable value of the Unit or Condominium Building containing the boiler or machinery. In lieu of obtaining this as an endorsement to the commercial package property, the Association may purchase separate stand-alone boiler and machinery coverage.

8.4. Liability Insurance. The Association shall procure and maintain from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports a policy or policies (herein called the "Policy") of public liability insurance to insure the Association, the Board, the Manager and employees of the Association and the Owners against claims for bodily injury and property damage arising out of the operation, maintenance and use of the Common Areas, any activities thereon, and any conditions of the Common Areas under a Comprehensive General Liability form of policy. Such insurance shall be for such limits as the Association may decide, but not less than \$1,000,000 for personal injury and property damage arising out of a single occurrence which coverage shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use to the Common Areas. If the Policy does not include "severability of interest" in the terms, the Policy shall contain an endorsement which shall preclude the insurer from denying the claim of any Owner because of the negligent acts of the Association or other Owners

and a cross-liability endorsement pursuant to which the rights of the named insureds, as between themselves, are not prejudiced. The Policy shall provide that it may not be canceled or substantially modified by the insurer unless it gives at least ten (10) days' prior written notice thereof to each insured.

8.5. Fidelity Insurance. The Association shall procure and maintain from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports a policy or policies of blanket fidelity insurance to protect against dishonest acts on the part of any trustee, officer, manager, agent, employee or other person who administers, handles, or is otherwise responsible for the funds of the Association. Such policy or policies shall name the Association as the obligee, shall provide coverage for the maximum sum of funds, including reserves, which will be in the possession or custody of the Association at any time the policy is in force, but in no event less than three (3) months assessment on all Lots, plus reserves. The policy or policies shall provide that they may not be cancelled or substantially modified by the insurer unless it gives at least ten (10) days prior written notice thereof to each insured. The policy shall contain a waiver of any defense for persons who serve without compensation. In the event the Association shall engage the services of a management agent who shall administer, handle or be responsible for the funds of the Association, then the Association shall require such management agent to provide a policy or policies of fidelity insurance which shall provide the same insurance coverage as required of the Association by this Section.

8.6. Worker's Compensation. The Association shall carry worker's compensation and employer's liability insurance and other similar insurance with respect to all employees of the Association in the amounts and in the forms now or hereafter required by law.

8.7. Additional Insurance. The Association may also procure such additional insurance which shall insure the Common Areas, the Association or the Owners and others against such additional risks as may be customarily insured against in connection with condominium projects similar in construction, nature and use to the Project or as the Association shall otherwise deem advisable.

8.8. General Requirements. Each policy of insurance obtained by the Association shall be written by insurers licensed in the State of Utah. If reasonably possible, each policy of insurance to be obtained by the Association shall provide:

8.8.1. a waiver of the insurer's right of subrogation against the Association, Owners, and their respective trustees, directors, officers, agents, employees, invitees and tenants;

8.8.2. that it cannot be cancelled, suspended or invalidated or otherwise prejudiced due to the conduct of any Owner or Owners, but only due to the conduct of the Association, and then only after the Association shall have failed to cure or correct the defect within a reasonable time after a written demand to so cure or correct; and

8.8.3. that any "no other insurance" clause shall not apply to any insurance maintained individually by any Owner.

8.9. Owners' Insurance. Each Owner shall obtain such insurance, at his or her own expense, providing coverage on Owner's personal property and Owner's personal liability and covering such risks as Owner may deem appropriate. Each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies of the Association, the other Owners, and the trustees, directors, officer, servants, employees, agents,



invitees or tenants of any of them, if such insurance can be obtained in the customary practice without substantial additional premium charge for the waiver of rights of subrogation.

## ARTICLE IX.

### DAMAGE AND DESTRUCTION

9.1. Damage to Project. In the event the damage to or destruction of part or all of the improvements in the Project, the following procedures shall apply:

9.1.1. If proceeds of the insurance maintained by the Management Committee are lone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out as soon as reasonably possible.

9.1.2. If less than seventy-five percent (75%) of the Project's improvements are destroyed or substantially damaged, and if the proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, then restoration shall be carried out as soon as reasonably possible. The Association shall levy a special assessment sufficient to provide the funds to pay the cost of such repair and restoration. Such Special Assessment shall be allocated and collected as provided in Article XIV, except that the vote specified in Section 14.5 shall not be required.

9.1.3. If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if the proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, and if, within one hundred (100) days after the destruction or damage, seventy-five percent (75%) of the Unit Owners based on a vote thereof in accordance with Article XIII, elect to repair or reconstruct the affected improvements, then restoration shall be carried out as soon as reasonably possible, and the Unit Owners shall be assessed for any deficiency on the basis of their respective percentages of undivided interest in the Common Areas and Facilities.

9.1.4. If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if, within one hundred (100) days after the destruction or damage, the Unit Owners do not by a vote of at least seventy-five percent (75%) based on a vote thereof in accordance with Article XIII, elect to repair or reconstruct the affected improvements, and if Mortgagees representing fifty-one percent (51%) of the votes of the Units subject to Mortgages approve such termination, then the Management Committee shall promptly record with the Salt Lake County Recorder a notice setting forth such facts. Upon the recording of such notice, the provisions of Utah Code Annotated Section 57-8-31(1) through (4) shall apply and govern the rights of all parties having an interest in the Project or any of the Units. However, in no event shall an Owner of a Unit or any other party have priority over the holder of any First Mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

9.1.5. Any determination which is required to be made regarding the extent of the damage to or destruction of Project's improvements, shall be made by three (3) qualified appraisers selected by the Management Committee. The decision of any two (2) such appraisers shall be conclusive.

9.2. Repair or Reconstruction. If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that

part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect such repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

9.3. Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to this Article IX shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners based on relative Unit approximate square footage, as set forth on Exhibit "B".

9.4. Amendment of Article. This Article IX shall not be amended unless Owners entitled to vote at least seventy-five percent (75%) of the votes of the Owners consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Board of Directors of the Association and recorded in accordance with the provisions of this Declaration.

## ARTICLE X.

### CONDEMNATION

10.1. Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Directors shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any Mortgagee who has requested in writing notice thereof. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

10.2. Proceeds. All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "Condemnation Award") shall be made payable to the Association and shall be distributed by the Board of Directors, on behalf of the Association as herein provided.

10.3. Complete Taking. In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners and the Owners shall divide the Condemnation Award based upon the relative values of the Units immediately prior to the condemnation. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

10.4. Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur::

10.4.1. Allocation of Award. As soon as practicable, the Board of Directors shall, on behalf of the Association, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages or other proceeds and shall allocate such apportioned amounts and pay the same to the Owners as follows:

- (a) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken).
- (b) The total amount apportioned to severance damages shall be allocated among and distributed equally to the Owners of those Units that have not been taken.
- (c) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit.
- (d) The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;
- (e) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;
- (f) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and
- (g) No provision of this Article X or any other provision of this Declaration, the Articles or the Bylaws shall entitle the Owner of a Unit or other party to priority over any Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

10.4.2. Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows:

- (a) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a member of the Association and all voting rights shall terminate
- (b) If any partial taking results in the taking of a portion of a Unit, the voting rights appertaining to such Unit shall continue.
- (c) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board of Directors, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit, then all voting rights terminate and the remaining portion of such Unit shall thenceforth be part of the Common Areas;
- (d) The Board of Directors, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make

all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section 10.4.2; provided, however, that if any such determination shall have been or such action take by judicial decree, the Board of Directors shall defer thereto and proceed in accordance therewith.

C. Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article IX hereof for cases of Damage or Destruction; provided, however, that the provisions of said article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

## ARTICLE XI.

### TERMINATION

11.1. Required Vote. Except as otherwise provided in Article IX and Article X, the Project may be terminated only by agreement of all Owners of the Units.

11.2. Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by all of the Owners. Such an agreement to terminate must also be approved by the holders of all liens affecting any of the Units. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in Salt Lake County, Utah and is effective only on recordation.

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

11.4. Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 11.1 and 11.2 as applicable. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the relative value of each Unit. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.

11.5. Proceeds of Sale. Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, Mortgagees holding Mortgages on the Units which were recorded before termination may enforce those liens in the same manner as any lienholder.

PURSUANT TO THE PROVISIONS OF SECTION 57-8-15 OF THE ACT, THE PROVISIONS SET FORTH IN ARTICLES XII, XIII AND XIV ARE ALSO THE BY-LAWS OF THE ASSOCIATION.

**BY-LAWS**

**ARTICLE XII.**

**THE MANAGEMENT COMMITTEE**

12.1. Status and General Authority of Committee. Except as hereinafter provided, the Condominium Project shall be managed, operated and maintained by the Management Committee as agent for the Association of Unit Owners. The Committee shall, in connection with its exercise of any of the powers hereinafter provided, constitute a legal entity capable of dealing in the Committee's name. The Management Committee shall have, and is hereby granted, the following authority and powers:

12.1.1. The authority without the consent of the Unit Owners or of any other person(s), except Mortgages, if required by the terms of their Mortgage, to grant or create on such terms as it deems advisable, utility and similar easements over, under, across and through the Common Areas.

12.1.2. The authority to execute and record, on behalf of all Unit Owners, any amendments to the Declaration or the Map which has been approved by the vote or consent necessary to authorize such amendment as hereinafter set forth.

12.1.3. The power to sue and be sued.

12.1.4. The authority to enter into contract relating to the Common Areas and other matters over which it has jurisdiction, so long as any vote or consent of the Unit Owners, as set forth herein, which is necessitated by the subject matter of the agreement has been obtained.

12.1.5. The power and authority to convey or transfer any interest in real property, so long as the vote or consent, as set forth herein, which is necessary under the circumstances have been obtained.

12.1.6. The power and authority to purchase, or otherwise acquire, and accept title to, any interest in real property so long as such action has been authorized by any vote or consent, as set forth herein, which is necessary under the circumstances.

12.1.7. The power and authority to add any interest in real property obtained pursuant to Section 9.1.6 to the Project, so long as such action has been authorized by the necessary vote or consent as set forth herein.

12.1.8. The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out its function or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners.

12.1.9. The power and authority to perform any other acts and to enter into any other transactions, subject to the rights of the Association, which may be reasonably necessary for the Management Committee to perform its functions as agent for the Unit Owners. Any instrument executed by the Management Committee relating to the Common Areas of the Project that recites

facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

12.2. Rights and Duties. The Management Committee, subject to the rights and duties of the Unit Owners, the Association, this Declaration, and the By-laws shall be responsible for the general management of the Project. It shall be the duty of the Board of Directors to:

12.2.1. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by thirty-five (35%) of the Members who are entitled to vote;

12.2.2. Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed .

12.2.3. As more fully provided in the Declaration, to:

(a) Fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period;

(b) Send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(c) Foreclose at its discretion the lien against any Unit for which assessments are not timely paid and/or to bring an action at law against the Owner personally obligated to pay the same.

12.2.4. Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

12.2.5. Procure and maintain adequate liability and hazard insurance on property owned by the Association, and adequate officers and Directors indemnity insurance, and all other insurance required by the Declaration;

12.2.6. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

12.2.7. Cause the Common Areas and the Building Exteriors to be maintained;

12.2.8. Permit Mortgagees of Units in the Project to pay taxes or other charges which are in default and which may or have become a charge against the Common Areas of the Association, and such Mortgagees may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such property, and such Mortgagees, upon making such payments, shall be owed immediate reimbursement therefor from the Association;

12.2.9. Assess and collect all assessments referred to or authorized in the Declaration.

12.3. Composition of Committee, Appointment, Election, Vacancy. The Management Committee shall be composed of at least three (3) Directors and no more than nine (9) Directors. The term for each Director shall be one (1) year. Directors shall serve until their successors are elected. Only Unit Owners and officers, directors, agents, and employees of Owners who are other than individuals shall be eligible to be Directors. Until such time as the responsibility for electing the Board of Directors of the Association is turned over to the Owners, the Declarant shall have the exclusive right to appoint and remove all such Directors. The exclusive right of the Declarant to appoint the Directors shall terminate after the first to occur of the following:

12.3.1. Five (5) years from the date on which the first Unit in the Project is conveyed; or

12.3.2. One Hundred Twenty Days after 75% of the total floor space footage of the Project shall have been conveyed by Declarant.

After the responsibility to elect Directors is turned over to the Association, Directors shall be elected by a majority vote of the Owners. In the event of a vacancy, the remaining Directors shall elect a replacement to sit on the Committee until the expiration of the term for which the Director being replaced was elected.

12.4. Meetings and Manner of Action. The Directors shall hold such meetings as they shall deem necessary. The act of the majority of the Directors shall be the act of the Committee, unless the vote of a greater number is required by the Declaration, the Act, the Articles of Incorporation or these By-Laws.

12.5. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written consent or approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

12.6. Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

12.7. Right of Delegation to Manager. The Management Committee may carry out any of its functions which are capable of delegation through a manager. The Manager so engaged shall be responsible for managing the Common Areas and shall, to the extent permitted by law and the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself.

12.8. Payment of Services, Etc. The Management Committee may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Management Committee shall determine to be necessary or desirable for the proper operation of its function in the Project, whether such Committee or by any person or entity with whom it contracts. The Management Committee may obtain and pay for the operation of the Project or the enforcement of this Declaration. It is recognized that the Committee may arrange with other persons to furnish snow removal, ground maintenance and other common services to the Project whether such personnel are furnished or employed directly by the Management Committee.

12.9. Personal Property Ownership and Use. The Management Committee may acquire and hold for the use and the benefit of all of the Owners tangible and intangible personal property

and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in the Common Areas. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Such interest shall not be transferable except with the transfer of a Unit, and such beneficial interest may in no event be reserved, by the transferor of a Unit.

12.10. Rules and Regulations. The Management Committee may make reasonable rules and regulations governing the operation and use of the Common Areas and other matters over which it has jurisdiction, which rules and regulations shall be consistent with the rights and duties established in this Declaration and By-laws. The Management Committee may suspend any Owner's voting rights at the meeting of Unit Owners during any period or such periods during which such Owner fails to comply with such rules and regulations, or with any other obligations of such Owners under this Declaration. The Management Committee may also take judicial action against any Owner to enforce compliance with such rules and regulations or other obligation or to obtain damages for noncompliance, all to the extent provided by law.

12.11. Capital Improvements. There shall be no structural alterations, capital additions to, or capital improvements of the Common Areas (as opposed to customer repairs or maintenance) requiring expenditure in excess of \$20,000.00 without the prior vote or approval of a majority of the Unit Owners.

12.12. Additional Management Committee Rights. The Management Committee may exercise any other right or privilege given to it expressly by this Declaration or by law and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

12.13. Indemnification of Management Committee. Each member of the Management Committee shall be indemnified and held harmless by the Association and the Unit Owners from and against any and all claims, judgments and liabilities to which such persons shall become subject by reason of having been a member of the Management Committee, or by reason of any action alleged to have been taken or omitted to have been taken as a member of such Management Committee, and shall reimburse each such person for all legal and other expenses reasonably incurred in connection with any such claim or liability, including power to defend such person from all suits or claims; provided, however, that no such person shall be indemnified against, or be reimbursed for, any expense incurred in connection with any claim or liability arising out of his or her own fraudulent or criminal misconduct.

### ARTICLE XIII.

#### ASSOCIATION

13.1. Voting Rights. A Unit Owner shall be entitled to one vote for each usable square foot contained within his Unit as set forth on Exhibit B. The Declarant shall have full voting rights with respect to each Unit which it owns. Notwithstanding any of the foregoing, so long as the Declarant controls appointment of the Board of Directors as set forth in section 12.3, the Declarant shall have 3 votes for each usable square foot as set forth on Exhibit B appurtenant to any Unit owned by Declarant.

13.2. Multiple Owners of a Unit. In the event there is more than one Owner of a Unit, the vote relating to such Unit shall be exercised as such Owners may determine between or among themselves, but in no event shall more than one (1) vote per usable square foot be cast with respect



to Unit Owners other than Declarant and no more than three (3) votes per usable square foot be cast with respect to Units owned by Declarant be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Unit concerned unless an objection is made at the meeting or in writing by another Owner of the same Unit, in which event no vote will be counted with respect to such Unit except to determine the presence or absence of a quorum.

13.3. Annual Meeting. The annual meeting of the Association shall be held on the first Tuesday of February of each year commencing in the year 2003. If the day fixed for the annual meeting shall be a legal holiday, the meeting shall be held on the next succeeding business day. At such annual meetings there shall be elected Directors of the Association, as needed, pursuant to the provisions of this Declaration, if not appointed by Declarant, and financial reports and budgets shall be presented, as well as other business of the Association properly placed before the Association.

13.4. Special Meetings. Special meetings of the Association may be called by the President, or by not less than thirty-five percent (35%) of the Unit Owners.

13.5. Place of Meeting. The Board of Directors may designate any place, within the State of Utah as the place of meeting for any annual meeting or for any special meeting. A waiver of notice signed by all members may designate any place, within the State of Utah, as the place for the holding of such meeting. If no designation is made, or if a special meeting is otherwise called, the place of meeting shall be at the principal office of the Association in the State of Utah.

13.6. Notice of Meeting. Written or printed notice stating the place, day and hour of the meeting, and in the case of a special meeting, the purposes for which the meeting is called, shall be delivered not less than ten (10) days nor more than sixty (60) days before the date of the meeting, either personally or by mail, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his, her or its address as it appears on the records of the Association, with postage thereon prepaid.

13.7. Quorum. The presence, in person or by proxy, of the members who are entitled to cast a majority of the votes of the Association shall constitute a quorum. If less than the required quorum of the members are represented at a meeting, the chairman of the meeting or a majority of the members so represented may adjourn the meeting from time to time without further notice. The quorum for an adjourned meeting shall be one-half of the required members for the meeting as originally noticed. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The members at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

13.8. Voting. If a quorum is present, the affirmative vote of a majority of the votes, present at the meeting or represented by proxy, shall be the act of the Association, unless the vote of a greater number is required by the Act, the Articles of Incorporation, these By-Laws or the Declaration in which case it shall require the affirmative vote of such greater number.

13.9. Proxies. At all meetings of members, a member may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. Such proxy shall be filed with the secretary of the Association at least three (3) days before the date of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise permitted in the act and so provided in the proxy.

13.10. Consent Equivalent to Vote. In those cases in which the Act or this Declaration require the vote of Unit Owners or the vote of a stated percentage of the Project's Undivided Ownership Interest for the authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who hold at least the necessary vote or percentage of Undivided Ownership Interest.

13.11. Officers. The officers of the Association shall be a president, a vice president, a treasurer, and a secretary, and such assistant treasurers, assistant secretaries, or other officers as may be elected or appointed by the Management Committee. Any two or more offices may be held by the same person.

13.11.1. Election and Term of Office. The officers of the corporation shall be elected annually by the Management Committee at a meeting of the Management Committee held after each annual meeting of the Association. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Vacancies may be filled or new offices filled by the Management Committee. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided.

13.11.2. Removal. Any officer or agent elected or appointed by the Management Committee may be removed by the Management Committee whenever in its judgment the best interests of the Association would be served thereby.

13.11.3. President. The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Management Committee. He or she shall have such duties and powers generally vested in similar Associations and such other powers and duties as may be prescribed by the Management Committee.

13.11.4. Vice President. In the absence of the president or in the event of his or her inability or refusal to act, the vice president shall perform the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions upon the president. The vice president shall perform such other duties as from time to time may be assigned to him by the President or by the Management Committee.

13.11.5. Treasurer. The treasurer shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be selected by the Management Committee and in general perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him or her by the president or by the Management Committee.

13.11.6. Secretary. The secretary shall keep the minutes of the meetings of the Management Committee and the Association; see that all notices are duly given in accordance with the provisions of the Declaration, the By-Laws or as required by law; be custodian of the books and records of the Association; keep a register of the post office address of each member which shall be furnished to the secretary by such member; and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the President or the Management Committee.

## ARTICLE XIV.

### ASSESSMENTS

14.1. Agreement to Pay Assessments. Each Owner of a Unit by the acceptance of a deed or contract therefore, whether or not it be so expressed in the deed or contract, shall be deemed to covenant and agree with each other Unit Owner and with the Management Committee to pay annual assessments for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided hereunder.

14.2. Basis of Assessments. The total annual assessments against all Units shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated Common Expenses growing out of or connected with the maintenance and operation of the Common Areas and/or the Common Properties, which estimates may include among other things, expenses of management, taxes and special assessments levied by governmental authorities until the Units are separately assessed as provided herein; premiums for all insurance which the Management Committee is required or permitted to maintain pursuant hereto; lighting, water, sewer, garbage and waste disposal for the Common Areas or any such utilities for the Units which are not separately metered; repair, maintenance and cleaning of the Common Areas, landscaping and snow removal, wages for employees of the Committee, legal and accounting fees, any deficit remaining from a previous period, creation of a reasonably adequate contingency reserve, surplus and/or sinking fund, any other expenses and liabilities which may be incurred by the Committee for the benefit of the Owners or by reason of this Declaration.

14.3. Apportionment of Common Expenses. Common Expenses shall be apportioned among all Units and their Owners based upon the relative usable square footage of the Units as set forth on Exhibit B. Notwithstanding the foregoing, until termination of Declarant's control of the appointment of the Board as described in Section 12.3, Declarant shall not have apportioned to it and shall not be obligated to pay assessments relative to any Unit owned by it but not occupied for any Common Expenses except that Declarant shall be obligated for its proportionate share of the taxes of the Unit, if not separately assessed to its Unit(s) and its proportionate share of the insurance premiums with respect to such Units. Upon conveyance to a third party purchaser or the leasing of a Unit to a third party tenant, or upon termination of Declarant's control of the appointment of the Board, the annual assessment for Common Expenses shall be prorated based on the relevant rates of apportionment for the number of days Declarant qualified for each rate.

14.4. Method, Payment of Assessments, Etc. Annual assessments shall be made on a calendar year basis. The Committee shall give written notice to each Owner as to the amount of the annual assessment with respect to his, her or its Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year, provided, however, that the first annual assessment shall be for the balance of the calendar year remaining after the day fixed by the Committee as the date of commencement of the assessment. Each annual assessment shall be due and payable in monthly installments. Each monthly assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. The monthly assessment becomes payable upon the date the Unit Owner purchases his Unit, whether by conveyance of title or entering into a contract of sale and purchase, and thereafter each monthly payment shall be due and payable on the first day of each and every month in advance.

14.5. Special Assessments. In addition to the annual assessments authorized hereunder, the Management Committee may levy in any assessment year special assessments, subject to the

provisions of Section 12.11 above, payable over such period as the Management Committee may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas of the Project or any other part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration. This paragraph shall not be construed as an independent source of authority for the Management Committee to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof. Any amount assessed pursuant thereto shall be assessed to Owners in proportion to their respective Undivided Interest in the Common Areas. Notice in writing of the amount of such special assessment and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall been given. A special assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

14.6. Liens for Unpaid Assessments. All sums assessed to any Unit pursuant to this section, together with interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Unit, except only for:

14.6.1 tax and special assessment liens on the unit in favor of any assessing unit or special improvement district;

14.6.2 liens of first Mortgages; and

14.6.3 encumbrances on the interest of the Unit Owner recorded prior to the date the notice of lien provided herein is recorded which by law would be a lien prior to subsequently recorded encumbrances.

To evidence a lien for sums assessed pursuant of this Section, the Management Committee may prepare a written notice of lien setting forth the amount of the assessment, the due date, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such notice shall be signed by the Management Committee and may be recorded in the Office of the County Recorder of Salt Lake County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by foreclosure by the Management Committee in the same manner in which mortgage on real property may be foreclosed in Utah. In any such foreclosure, the Owner shall be required to pay the cost and expenses of such proceedings, the cost and expenses of filing the notice of lien, and all reasonable attorney's fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The lien shall also secure, and the Owner shall also be required to pay to the Management Committee any assessments against the Unit which shall become due during the period of foreclosure. The Management Committee shall have the right and the power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

14.7. Release of Lien. A release of notice of lien shall be executed by the Management Committee and recorded in the Office of the County Recorder of Salt Lake County, Utah, upon payment of all sums and secured by a lien which has been made the subject of a recorded notice of lien.

14.8. Payment by Mortgagee. Any Mortgagee or other encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment the Mortgagee or other encumbrancer shall be subrogated to all

rights of the Management Committee with respect to such lien, including priority. The Management Committee shall report to any Mortgage or encumbrancer of a Unit any unpaid assessment remaining unpaid for longer than sixty (60) days after the same shall have become due; provided, however, that such Mortgagee or other encumbrancer first shall have furnished to the Management Committee written notice of such Mortgage or other encumbrance.

14.9. Personal Obligation Assessments. The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgement for such personal obligation shall be maintainable by the Management Committee, as agent for the Association, without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit.

14.10. Effect of Foreclosure on Lien. Each Mortgagee of a Unit who comes into possession of a Unit by virtue of foreclosure of the Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any unpaid claims or assessments and charges against the Unit which accrue prior to the time such holder comes into possession of the Unit. However, such foreclosure shall not relieve the Mortgagee or a subsequent Unit Owner of liability for assessments which shall accrue after such foreclosure.

14.11. Information Concerning Unpaid Assessments. Upon payment of a reasonable fee not to exceed Fifty Dollars (\$50.00) and upon written request of any Owner or Mortgagee, prospective mortgagee or prospective purchaser of a Unit, the Management Committee shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit; the amount of the current yearly assessment and the portion thereof which has theretofore been paid; credit for advance payments of prepaid items including but not limited to, an Owner's share of prepaid insurance premiums, and such statement shall be conclusive upon such Management Committee in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within thirty (30) days, all unpaid assessments which become due prior to the lien of the mortgagee which become due prior to the date of making such request shall be subordinate to the lien of the mortgagee which acquired its interest subsequent to requesting such statement.

14.12. Purchaser's Obligation. A purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

## ARTICLE XV.

### MORTGAGEE PROTECTION

15.1. Notice of Mortgage. Each Mortgagee may request notice as provided herein by written request to the Management Committee which request shall set forth its name and address, and the Unit Number for the Unit secured by its Mortgage. The Committee shall maintain records of such Mortgages and Mortgagees.

15.2. Books and Records. A Mortgagee shall have the right to examine the books and records of the Association and the Committee. A Mortgagee may also require annual financial statements of the Association to be made available to it within one hundred twenty (120) days after the end of the fiscal year.

15.3. Damage or Condemnation. A Mortgagee shall be entitled to notice of any condemnation of or damage to a material part of the Unit secured by its Mortgage or of or to the Project. No Unit Owner or other party shall be entitled to priority over such institutional holder with respect to the distribution to such Unit of any insurance proceeds or condemnation award.

15.4. Notice of Default or Lapse. Each Mortgagee is entitled to written notification from the Management Committee of any default by the Owner of such Unit in the performance of any obligation under the Declaration which is not cured within sixty (60) days; and of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and any proposed action which requires the consent of a specified percentage of eligible mortgage holders.

15.5. General Mortgagee Protection. Notwithstanding anything to the contrary in the Declaration:

15.5.1. Adequate Reserves. The Association shall establish and maintain an adequate reserve fund for maintenance, repairs and replacement of the Common Areas which shall be funded by regular monthly payments rather than by special assessments.

15.5.2. Management Agreement. Any management agreement for the Project shall be terminable by the Management Committee with or without cause upon thirty (30) days written notice thereof, without payment of a termination fee, and the term of any such agreement shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods.

15.5.3. Consent of Mortgagees. Unless at least fifty-one percent (51%) of the first Mortgagees (based on one vote for each square foot of usable space secured by such Mortgagee) of Units have given their prior written approval, neither the Management Committee nor the Association shall amend the Declaration or Project documents in such a way as to change any of the following:

(a) By act or omission, seek to abandon or terminate the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation or eminent domain.

(b) Change the pro-rata interest or obligations of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the prorata share of ownership of each Unit in the appurtenant Common Areas, provided that this provision shall not serve to limit the reserved right of Declarant to modify certain Units and then shares of the Common Areas in accordance with Section 3.2.

(c) Make any material amendment to the Declaration or to the By-laws of the Management Committee, including but not limited to, any amendment which would change the percentage interest of the Unit Owners in the Common Areas, provided that this provision shall not serve to limit the reserved right of Declarant to modify certain Units and then shares of the Common Areas in accordance with Section 3.2.

(d) By act or omission, seek to amend, partition, subdivide, encumber, sell or transfer, the Common Areas. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common areas of the Project shall not be deemed a transfer within the meaning of this subparagraph.

(e) Use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or the Common Areas of the Project.

## ARTICLE XVI.

### MISCELLANEOUS PROVISIONS

16.1. Party Walls. Each wall built or to be built as a part of the original construction of the Units and placed substantially on a dividing line between the Units shall constitute a party wall and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of such party wall. If a party wall is destroyed or damaged by fire or other casualty, the provisions of Article IX hereof shall apply. Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes a party wall to be damaged shall bear the entire cost of furnishing repairs to the party wall. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

16.2. Amendment. This Declaration may be amended as follows:

16.2.1. Amendment. Except for the reserved right of Declarant as contained in Section 3.2, vote of at least sixty-seven percent (67%) of the Undivided Ownership Interest in the Common Areas and Facilities and of fifty-one percent (51%) of the Mortgagees of the Units (based on one vote for each square foot of usable space secured by such Mortgagee) shall be required to amend this Declaration or the Record of Survey Map.

16.2.2. Recording Amendment. Any amendment so authorized shall be accomplished through the recordation of any instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Section for amendment has occurred.

16.3. Declarant's Rights Assignable. The rights of Declarant under this Declaration or in any way relating to the Property may be assigned, whereupon the assignee of Declarant shall have all the rights of Declarant hereunder.

16.4. Service of Process. Steve Davies whose address is 723 West Columbia Lane, Provo, Utah 84601 shall act as registered agent for the service of process in cases authorized by the Act. The Management Committee shall, however, have right to appoint a successor or substitute process agent. Such successor or substitute agent and his address shall be specified by an appropriate instrument filed in the Office of the County Recorder of Utah County, State of Utah.

16.5. Enforcement. Each Unit Owner shall comply strictly with the provisions of this Declaration, the By-Laws, the administrative rules and regulations pursuant thereto as the same may be lawfully adopted or amended from time to time and with the decisions adopted pursuant to this Declaration, By-Laws and the administrative rules and regulations. The failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee or Manager on behalf of the Unit Owners, or in a proper case, by an aggrieved Unit Owner. The defaulting Owner shall also be liable for all costs and expenses of such action, including a reasonable attorney's fee.

16.6. Covenants to Run with Land: Compliance. This Declaration and all the provisions hereof shall constitute covenants to run with land, and/or equitable servitudes, as the case may be, and shall be binding upon and inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of the Act, the terms of this Declaration, the By-laws and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief for both, maintainable by the Committee on behalf of Unit Owners, or, in a proper case, by an aggrieved Unit Owner. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to, be bound by each and every provision of this Declaration.

16.7. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

16.8. Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural; the plural, the singular; and the use of any gender shall include all genders.

16.9. Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, or word or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

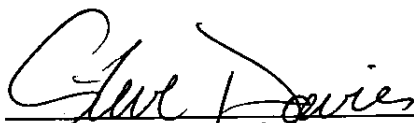
16.10. Topical Headings. The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning or intent of this Declaration or any paragraph or provision hereof.

16.11. Effective Date. This Declaration shall take effect upon recording in the Office of the County Recorder of Salt Lake County, Utah.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has caused this instrument to be executed and its seal to be affixed hereto on the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

DECLARANT


College Drive Associates, L.L.C., a  
Utah Corporation

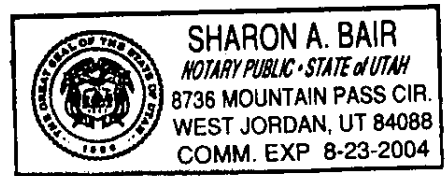
By:   
Steve Davies, Manager



STATE OF UTAH                    )  
  :SS  
COUNTY OF UTAH )

On the 14 day of November, 2002 personally appeared before me, Steve Davies, who represented to me that he is the Manager of College Drive Associates, L.L.C., a Utah Limited Liability Company, the signer of the above instrument, who duly acknowledged to me that he has authority to execute the within and foregoing instrument in behalf of said Limited Liability Company, and that said Limited Liability Company executed the same.

  
\_\_\_\_\_  
Notary Public



## LEGAL DESCRIPTION

Beginning at a point on the West line of College Drive, a recorded and dedicated street on file in the Salt Lake County Recorder's Office, said point of beginning being North  $0^{\circ} 06' 54''$  West 634.448 feet (634.98 feet calculated) along the quarter section line and West 1197.730 feet (1197.64 feet calculated) from the South quarter corner of Section 12, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running thence South  $82^{\circ} 18' 00''$  West 181.31 feet (South  $82^{\circ} 16' 56''$  West 182.48 feet measured); thence North  $4^{\circ} 59' 33''$  West 181.73 feet (North  $4^{\circ} 55' 34''$  West 181.11 feet measured) to and along an Easterly line of GERMANIA GARDENS SUBDIVISION No. 1 to the Northeast corner of said GERMANIA GARDENS SUBDIVISION No. 1; thence South  $86^{\circ} 27' 37''$  West 84.57 feet (South  $86^{\circ} 31' 36''$  West 84.57 feet measured) along a North line of said subdivision to the Southeast corner of Lot 7 of said subdivision; thence North  $4^{\circ} 58' 53''$  West 103.95 feet (North  $4^{\circ} 54' 54''$  West 103.95 feet measured) along the East line of said subdivision to the Northeast corner of said Lot 7; thence North  $85^{\circ} 07' 57''$  East 24.41 feet (North  $85^{\circ} 06' 53''$  East 24.41 feet measured); thence South  $46^{\circ} 59' 33''$  East 103.02 feet (South  $47^{\circ} 00' 37''$  East 103.02 feet measured); thence North  $43^{\circ} 00' 27''$  East 222.86 feet (North  $42^{\circ} 59' 23''$  East 223.80 feet measured) to the Westerly line of said College Drive; thence southeasterly 316.83 feet (316.92 feet measured) along the arc of a 280.00 foot radius curve to the right (center bears South  $47^{\circ} 10' 06''$  West and long chord bears South  $10^{\circ} 24' 57''$  East 300.19 feet, with a central angle of  $64^{\circ} 49' 54''$ ) (measured central angle equals  $64^{\circ} 50' 44''$ ) along said Westerly line of College Drive; thence Southerly and Southwesterly 57.26 feet along the arc of a 350.00 foot radius curve to the left (center bears South  $68^{\circ} 00' 00''$  East and long chord bears South  $17^{\circ} 18' 46''$  West 57.20 feet, with a central angle of  $09^{\circ} 22' 27''$ ) along the Westerly line of said College Drive to the point of beginning.

The record information has been rotated  $0^{\circ} 01' 04''$  to match the dedication plat for College Drive

21-12-353-017

Contains: 69,755 Sq. Ft.; 1.60 Acres

Salt Lake County, State of Utah

**EXHIBIT "B"**

**List of Units, Votes and Assessment Percentages**

<b><u>Building Address</u></b>	<b><u>Unit</u></b>	<b><u>Votes</u></b>	<b><u>Approximate Usable Square Footage</u></b>	<b><u>Assessment Percentages</u></b>
5292 College Drive	101	2,510	2,510	8.118%
5292 College Drive	102	2,670	2,670	8.635%
5292 College Drive	103	2,415	2,415	7.810%
5292 College Drive	104	2,505	2,505	8.102%
5292 College Drive	201	2,610	2,610	8.441%
5292 College Drive	202	2,685	2,685	8.684%
5292 College Drive	203	1,775	1,775	5.741%
5292 College Drive	204	3,030	3,030	9.799%
5292 College Drive	301	2,840	2,840	9.185%
5292 College Drive	302	2,655	2,655	8.587%
5292 College Drive	303	3,050	3,050	9.864%
5292 College Drive	304	<u>2,175</u>	<u>2,175</u>	<u>7.034%</u>
TOTALS		<u>30,920</u>	<u>30,920</u>	<u>100.000%</u>