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RECORDER, SALT LAKE COUNTY, UTAH
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BY: ZJM, DEPUTY - WI 6 P.

**AMENDMENT TO FIFTH AMENDED DECLARATION OF
CONDOMINIUM OF THE SHADYBROOK CONDOMINIUM PROJECT**

This Amendment to the Fifth Amended Declaration of Condominium of the Shadybrook Condominium Project is made and executed this 13th day of December, 2004, by Shadybrook Home Owners Association, Inc., hereinafter referred to as the "Association".

RECITALS:

WHEREAS, the Fifth Amended Declaration of Condominium of the Shadybrook Condominium Project was recorded on February 13, 1992, in the office of the Salt Lake County Recorder, in Salt Lake County, Utah, as Entry No. 5198513 in Book 6410 at Pages 1182-1232; and

WHEREAS, the legal description of the Shadybrook Condominium Project in Salt Lake County Utah, is as follows: See attached Exhibit "A"; and

WHEREAS, the Members of the Association adopted Amendments to the Fifth Amended Declaration at a special meeting of the Association duly noticed for consideration of amendments to the Declaration, which commenced on June 30, 2004, and was thereafter adjourned and continued on August 4, 2004; and

WHEREAS, pursuant to Sections 41 and 43 of the Fifth Amended Declaration, and pursuant to the Utah Revised Nonprofit Corporation Act and the Utah Condominium Ownership Act, the Unit Owners of the Association, by valid consent and a vote of more than sixty-seven percent (67%) of the Unit Owners who were present, in person, by proxy, and by consent at the meeting set forth above and thereafter, and the Association consented and agreed to further amend the Condominium Declaration as follows,

NOW, THEREFORE, the Association does hereby make the following Amendments to the Fifth Amended Declaration of Condominium of the Shadybrook Condominium Project:

The Fifth Amended Declaration of Condominium of the Shadybrook Condominium Project is amended by the insertion of a new Section 15A, as follows:

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Section 15A. PAID EMPLOYMENT AND COMPENSATION FOR BOARD MEMBERS, UNIT OWNERS, AND FAMILY MEMBERS.

No Management Committee Member, Unit Owner, or any immediate family member of a Management Committee Member or Unit Owner shall receive payment for services rendered to the community. Any out-of-pocket purchases must be pre-approved by the Management Committee and itemized store receipts must be provided for reimbursement of any approved purchases.

The Fifth Amended Declaration of Condominium of the Shadybrook Condominium Project is amended by the deletion of the existing Section 17 and the insertion of the following:

Section 17. ANNUAL HOMEOWNERS MEETINGS.

The annual meeting of the Unit Owners shall be held at 7:00 p.m. on the first Monday in April of each year. Whenever such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be at a location in Salt Lake County, Utah specified in the notice of meeting. At least ten (10) but not more than thirty (30) days before the date of the annual meeting, a written notice thereof shall be personally delivered or mailed postage prepaid to each person who appears as an Owner, at the latest address for such person appearing, in the notice shall state the time, place, and general purpose of the meeting.

The Fifth Amended Declaration of Condominium of the Shadybrook Condominium Project is amended by the insertion of new Sections 46A.1, 46A.2, and 46A.3, as follows:

Section 46A.1. AGREEMENT TO ENCOURAGE RESOLUTION OF DISPUTES WITHOUT LITIGATION.

(a) The Association, the Management Committee, Unit Owners, and other persons subject to this Declaration agree that it is in the best interests of all concerned to encourage the amicable resolution of disputes involving the Association without the emotional and financial costs of litigation. Accordingly, each of the foregoing agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 46A.2 in a good faith effort to resolve such Claim.

(b) As used in this Section, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of anyone arising from the Association's Declaration or Bylaws;

(iii) the design or construction of improvements within the Association;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 46A.2:

(1) any suit by the Association to collect assessments or other amounts due from any Owner;

(2) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;

(3) any suit between Owners, which does not include the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Association's Declaration or Bylaws;

(4) any suit in which any indispensable party is not bound hereby; and

(5) any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required in Section 46A.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

Section 46A.2. **DISPUTE RESOLUTION PROCEDURES.**

(a) **Notice.** A person asserting a Claim ("Claimant") against another person subject to this Section ("Respondent") shall give written notice to each Respondent and to the Management Committee stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) **Negotiation.** The Claimant(s) and Respondent(s) shall make every reasonable effort to meet in person and confer for the purpose of resolving the

Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Management Committee may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice described in Section 46A.2(a) (or within such other period as the parties may agree upon), the Claimant(s) shall have thirty (30) additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Salt Lake City area.

If the Claimant(s) does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant(s) shall be deemed to have waived the Claim, and the Respondent(s) shall be relieved of any and all liability to the Claimant(s) (but not third parties) on account of such Claim.

If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings, indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant(s) shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

Section 46A.3. ARBITRATION.

Any claim or controversy that cannot be resolved pursuant to Section 46A.1 or 46A.2 between any person bound by this Declaration and the Association or a representative of the Association that arises out of or relates to the ownership and use of a Unit or the Common Areas or Limited Common Areas of the Association, other than actions brought by and on behalf of the Association for 1) the collection of assessments and fines, or 2) respecting the enforcement of the

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

On the 2nd day of December, 2004, personally appeared before me James D. Sweeney who, after having been sworn upon oath, duly acknowledged that he is the Vice President of the Shadybrook Home Owners Association, Inc., and as such has the power to appear on behalf of said entity, and acting in such capacity executed the foregoing document on the day and year aforementioned.

Connie E. Bird
NOTARY PUBLIC

