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WV2018449



**SECOND AMENDMENT TO DECLARATION OF
CONDOMINIUM OF THE
BEN LOMOND SUITES CONDOMINIUM PROJECT**

This Amendment is made this 11th day of February, 2004, by the Ben Lomond Suite Owners Association, A Utah non-profit corporation (the "Association"), whose address is 2510 Washington Boulevard, Ogden, Utah 84401.

RECITALS:

A. On July 18, 1984, Ben Lomond Suites, Ltd., a Utah limited partnership, and Weber County, Utah, a political subdivision of the State of Utah, executed a Declaration of Condominium of the Ben Lomond Suites Condominium Project (the "Declaration") and caused the Declaration to be recorded in the official records of the Weber County Recorder on September 18, 1984, as Entry No. 919072, at Pages 71 - 150, in Book 1454 and caused the Record of Survey Map (the "Survey Map") to be recorded in the official records of the Weber County Recorder on September 18, 1984, as Entry Nos. 919703, at Pages 41 to 45, in Book 26 of Plats.

B. In accordance with the Declaration, the Association was created by filing Articles of Incorporation with the Utah Division of Corporations on September 6, 1984. The Association has taken all steps necessary to be and is now a duly formed validly existing nonprofit corporation under the laws of the State of Utah.

WHEREAS there has been previously filed a Declaration Of Condominium Ben Lomond Suite Condominium Project and an Amendment To Declaration Of Condominium Of Ben Lomond Suite Condominium Project (the original Declaration was filed in the Weber County recorders office Book 1454 Pages 72 through 143 at recording number 919072) and there after amended once.

WHEREAS the total ownership of the subject property is in 2510 Washington L.L.C. [who is a successor owner] and Donna Field Phillips Revocable Trust [Unit 111] and Lynn E. Wardley, and Bruce G. Crompton and Kathy Ann Cropton [Unit 1107] ;and

WHEREAS all previous ownership has conveyed their interests to M&D Ventures, then to 2510 Washington L.L.C., except as above stated. the Association has determined that it is in its best interest to amend the Declaration, those units were used in conjunction with the hotel operation and each 2 units specified shall be sold with 2 units combined as live in condominiums with parking spaces as attached hereto as herein specified.

NOW, THEREFORE, the existing Amendment To Declaration Of Condominium Ben Lomond Suites Condominium Project is amended as follows, pursuant to the unanimous agreement of all Association/Owners, the consent of security holders and the consent of Ogden City.

C. In accordance with Section 57-8-7(2) of the Utah Code Annotated and Section 13.06 of the Declaration, the Association hereby certifies that the members of the Association have unanimously consented to this amendment. (The written consent of each member is attached hereto.)

D. In accordance with Section 13.02 of the Declaration, the Association hereby certifies that the consent of Pacific Cost Investments which is a Mortgagee (as defined in the Declaration) holding a Mortgage on all Units except the two owners listed above with ownership interest in the Common Areas as is then subject to one or more Mortgages, has been obtained by the Association. (The consent of Pacific Cost Investments, is attached hereto, as is the consent of all Suite Owners.)

E. In accordance with the Declaration, Ogden City has approved this amendment to the Declaration.

F. The Board of Trustees of the Association has authorized the President and Secretary to take all actions necessary to effectuate the Amendment of the Declaration said authorization is attached hereto.

NOW, THEREFORE, the Declaration of the Ben Lomond Suites Owners Association and subsequent Amendment is hereby amended as follows:

1. **Amendment to Declaration of Condominium.** The DECLARATION OF CONDOMINIUM OF THE BEN LOMOND SUITES CONDOMINIUM PROJECT and the DECLARATION OF AMENDMENT TO DECLARATION OF CONDOMINIUM OF THE BEN LOMOND SUITES CONDOMINIUM PROJECT are amended as here included.

2.04. Ownership of Units Created by Amendment.

(a) **Conveyance to M&D Ventures, Inc.** Other than Units 101, 106, 111, 1107; each owner of a Convertible Space or Unit in the Project hereby has conveyed, transferred and sets over to M&D Ventures, Inc., a Nevada Corporation, all of their right, title and interest in and to the following with the successor in interest 2510 Washington L.L.C.:

All of its Convertible Spaces contained within the Ben Lomond Suites Condominium Project, as the same are identified in the Record of Survey Map for said Project recorded in Weber County, Utah, on September 18, 1984, as Entry no. 919073, at Pages 41 to 45, in Book 26 of Plats (the "Survey Map") and in the Declaration of Condominium for said Project recorded in weber County, Utah, on September 18, 1984, as Entry No. 919072, at pages 71 - 150, in Book 1454 (the "Declaration"), as such Survey Map and Declaration are amended by this Amendment dated the 11th day of February, 2004. Together with the undivided ownership interest in said Project's Common Areas and Facilities which is appurtenant to each of said Convertible Spaces and Units as more particularly described in the Declaration as amended by this Amendment.

Section 3.01 of the Declaration is amended to read as follows:

3.01. Declaration of Improvement. The improvements included in the Project are now or will be located upon the Tract. The significant improvements contained in the

Project (other than improvements located on or otherwise associated with the Additional Land) include: (i) All Units except Units 101, 106, 111 and 1107 which retain their original ownership and common interest (including Convertible Spaces) located within the historic Ben Lomond Hotel ("Building A") which contains a basement level, a ground floor level, a shop mezzanine level, a mezzanine level, twelve (12) additional above ground levels consisting of floors two through thirteen, inclusive, and a mechanical penthouse on the roof; (ii) A vehicular entrance canopy adjacent (but not attached) to building A on the south; (iii) Twenty-seven (27) uncovered parking spaces; and (iv) Landscaping, walkways, and driveways. The location and configuration of the improvements referred to in the foregoing sentence, including the basement stories, and/or levels of Building A, are depicted on the Survey Map. The four story portion of Building A (consisting of the northwest corner of said Building) is composed primarily of the following materials: footings and foundations are of reinforced concrete and stone; floors and roof are of wood joists surfaced with wood planks; interior loadbearing walls are of brick and contain glass windows; interior loadbearing walls are of brick; interior nonloadbearing walls are of sheetrock on wood studs; and the roof is surfaced with builtup membrane roofing. The tower portion of Building A (consisting of the south and east parts of said Building) is composed primarily of the following materials: loadbearing girders, columns, footings, foundations, floors, and roof are of reinforced concrete; interior nonloadbearing walls are of sheetrock on metal studs; exterior walls are brick veneer over clay tile and metal studs and contain glass windows; and the roof is surfaced with builtup membrane roofing.

Section 3.03 of the Declaration is amended to read as follows:

3.03. Parking will be on an assigned unit bases but will generally provide for one (1) reserved space and one (1) general parking space per unit in residential units as shown by the hereto attached Exhibit. ~~F~~

- (a) Commercial units will generally be allowed parking to accommodate a pro rata of their square footage.
- (b) No storage of vehicle tractors or recreational equipment is or will be allowed on the property.
- (c) As all of the above are approved by Ogden City.

Section 6.01 of the Declaration is amended to read as follows:

6.01. Use Restrictions on Residential Units. The term "Residential Units" as used in this Article VI shall mean and refer to (i) All Units previously listed as residential Units on the original and amended Declaration, inclusive, and (i) any Unit or Convertible Space which ceases (from and after the time it ceases) to be an "office Unit" as defined in Section 6.01 hereof. A Residential Unit may also be used as a single-family residence if the parking for such Unit is approved by Ogden City. No restriction shall be placed on the rental of a Residential Unit for any of such uses, but any and all occupants of a

Residential Unit shall be subject to this Declaration and all reasonable rules and regulations governing the Project as promulgated by the Association from time to time. No Residential Unit shall be used for any office, business, industrial, or commercial purposes.

Section 6.02 of the Declaration is amended to read as follows:

6.02. Use Restrictions on Office Units. The term "Office Units", as used in this Article VI, shall mean and refer to All Units, Office Units, and Convertible Spaces, and any and all Units created from any of such Convertible Spaces; provided, however, that when any of said Units, Convertible Spaces, or Units created from any of such Convertible Spaces ceases to be used for the purposes applicable to "Office Units" described in this Section 6.02, and is occupied for the first time for any of the purposes applicable to Residential Units described in the foregoing Section 6.01, such Unit, Convertible Space, or a Unit created from any of such Convertible Spaces shall irrevocably and immediately cease to be an "Office Unit" and shall automatically become a Residential Unit subject to said Section 6.01. For other business offices of the type and quality commonly found in first-class office buildings, including (without limitation) banking and financial facilities and offices data processing facilities and offices, travel agencies, brokerage offices, and professional offices. No restriction shall be placed on the rental of an Office Unit for any of the uses permitted in this Section, but any and all occupants of, or invitees to, such Unit shall be subject to this Declaration and all reasonable rules and regulations governing the Project as promulgated by the Association from time to time.

Section 6.06 of the Declaration is amended to read as follows:

6.06. Pets or Animals. Pets are defined as dogs (one each per unit) under 20 lbs, cats (one each per unit) under 15 lbs, birds, fish. (i) Any pet must be restrained to the unit or confined by a lease if in a common area. Any feces caused by pets in a common area will result in a \$50.00 (fifty) dollar fine payable to the Home Owners Association. (ii) Any noise of or interference with others quiet enjoyment of the premises of the neighbors units or other suite owners, will upon verification of the Suite Owners Association Directors be declared a nuisance and inevitably result in the loss of the right to keep any pet in said unit. However, the Directors of the Suite Owners Association reserve the right to grant variances to the above on showing of need and majority rule of said Directors.

Section 6.15 of the Declaration is amended to read as follows:

6.15. Smoking. Smoking is allowed in residential units, not otherwise in the building including the common areas. In the event smoking in a residential unit defuses or enters adjoining units the owner of the smoking unit consents that upon the declaration of

the Directors Association that said smoking is offensive to the adjoining units, smoking must be abated and will be determined a nuisance.

Section 7.01 of the Declaration is amended to read as follows:

7.01. The Common Areas and Maintenance Responsibility. The Association, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas (including the Parking Easement) and Facilities and shall keep the same in a good, clean, attractive, safe, and sanitary condition, order, and repair. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.

Section 11.02 of the Declaration is amended to read as follows:

11.02. Power to Convert. The Owner of any Convertible Space shall have the sole power and authority to convert, and shall be deemed to be the Declarant for the purpose of converting, such Convertible space and each and any portion thereof into Units and/or Common Areas as set forth in this Article, subject, however, to the limitations and provisions contained in this Article and in the Act. For purposes of this Article, the Owner of a Convertible Space who undertakes any conversion of such Convertible Space or any portion or portions thereof, is referred to as the "Converter".

Section 12.01 of the Declaration is amended to read as follows:

12.01. Right to Expand, Effective Date of Expansion, and State of Title to New Units Created by Expansion. There is hereby granted unto M&D Ventures, Inc., and M&D Ventures, Inc., hereby reserves, the absolute right and option to expand the Project at any time (within the limits herein prescribed) and from time to time by adding to the Project the Additional Land or a Portion or portions thereof. Notwithstanding any provision of the Act or this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Unit Owner or Mortgagee) except as expressly required by Section 12.04 hereof and shall be limited only as specifically provided in the Act and this Declaration. Any given portion of the Additional Land shall be deemed added to the Project at such time as a supplement to this Declaration and to the Survey map containing the information required by the Act and by Section 12.03 below has been recorded with respect to the portion of the Additional Land concerned. After the recordation of such supplements, title to each Unit thereby created within the portion of the Additional Land concerned and its appurtenant percentage of undivided ownership interest in the Common Areas shall be vested in and held be Partnership, and none of the other Unit Owners shall have any claim or title to or interest in such Unit or its appurtenant percentage of undivided ownership interest. If at the time a particular portion of the Additional Land is

added to the Project there is of record a mortgage or deed of trust which by its terms describes the real property thereby encumbered by a metes and bounds description or other description describing the lateral or perimetric boundaries of such real property (as distinguished from the description of a Condominium Unit), and if the parcel of real property defined by the description set forth in such mortgage or trust deed includes the portion of the Additional Land then being added to the Project, and irrespective of whether or not any partial release or reconveyance pertaining to such mortgage or trust deed has theretofore been recorded with respect to any other Condominium Unit in the Project, then and in that event such mortgage or trust deed shall, upon the addition to the Project of that portion of the Additional land concerned and whether or not such mortgage or trust deed does so by its terms, automatically cover, encumber, and include each Unit thereby created within such portion of the Additional Land and such Unit's appurtenant undivided ownership interest in the Common Areas. Nothing herein shall prevent the granting of a mortgage or trust deed on any Condominium Unit produced by the addition to the Project of a portion of the Additional Land, but any such mortgage or trust deed shall be subject and inferior to the lien on or interests in such Condominium Unit which arise by operation of the immediately preceding sentence.

2. **Amendment to Record of Survey Map.** The Declaration and Survey Map shall remain in full force and effect as originally recorded and there after amended except as above changes are approved and recorded.

DATED this 11th day of March, 2004.

Ben Lomond Suite Owners Association

By: [Signature]
President

ATTEST:

[Signature]
Secretary

STATE OF UTAH)
): ss.
COUNTY OF WEBER)

The foregoing instrument was acknowledge before me on this the 11 day of March, 2004, by Dan Talish and R.V. Phillips, the President and Secretary of Ben Lomond Suites Owners Association.

[Signature]
NOTARY PUBLIC

My Commission Expires :
3-p-06

Residing at:
Ogden UT 84401



Minutes of the Special Meeting of the Ogden City Planning Commission held February 18, 2004. Meeting was conducted by Vice-Chair Herman and began at 5:04 p.m.

Members Present: Robert Herman, Vice-Chair
Cathy Blaisdell
Carol Brockman
Tim Eck
Carlin Maw
Bryan Schade

Members Excused: Eulogio Alejandre
Richard Hyer

Staff Present: Greg Montgomery, Planning Manager
Jannette Borklund, Sr. Office Assistant
Andrea Lockwood, City Attorney

Others Present: Ralph Evans Robert Phillips Linda Langeveld
Gary House Joe Langeveld Jeff Woodbury
Daniel Kohler Sean Williams

1. CBD Site Plan, for Weber-Morgan Health Service Building at 2341 Adams Avenue.
2. CBD Site Plan, for to revise parking requirement for Ben Lomond Condominium at 2510 Washington Boulevard.
3. Petition #2003-16, to rezone the southeast corner of Washington Boulevard and North Street from R-4 to C-2/CO.
4. Adjourn

1. CBD Site Plan, for Weber-Morgan Health Service Building at 2341 Adams Avenue.

Mr. David Kohler introduced the design team in attendance, with Jeff Woodbury, Gary Howe, Ralph Evans and Shawn Woodbury. He stated the Commission had tabled action on this agenda item requesting some revisions to the building material and colors to help the building blend with existing and potential uses on the east side of Adams Avenue as well as the fabric of the overall East-Central neighborhood. Since that time, the design team also has met with the Planning Staff, and are of the opinion the revised project is superior and would satisfy the concerns expressed by the Planning Commission at its previous meeting. He reviewed the details of the site plan, stating trees have been added along the park strip at 40' on center as required, the generator has been relocated and is screened, plantings have been added in the parking lot to divide the stalls as required by Ordinance and the eastern edge of the building along Adams has been revised. He presented a model of the proposed building and indicated there are indentations in the façade which provide some relief to the wall so it is not one long wall. It will have the appearance of being multiple buildings with the features and elements defining each area. A cornice cap also is introduced on the majority of the building, which provides a better finish to the building. The glass color has been changed from a green tint to a gray tint, and the ceramic tile is also proposed along the base and vertical features to create a sandstone appearance, with colors selected which are indigenous to the area such as grays and tans. Stucco also is introduced in the upper area of the building. He felt the project has a variety of color and texture to blend with the community and is a better project for both the tenants and Ogden City.

Commissioner Herman asked how far the off-set is along Adams Avenue. Mr. Kohler responded this is approximately 2'. He further discussed the details of the building, outlining the material and theme created.

Mr. Montgomery stated the Commission reviews projects in the CBD to assure buildings are both architecturally compatible and the overall intent of the CBD zone is satisfied. He stated many of the concerns previously identified by Staff have been satisfied, but there still is some concern that the dimensions of the tile and whether it would create the appearance of sandstone or rock features. He felt rectangular tiles might be more appropriate along the base of the building in that it would have an appearance of stone rather than the square tiles. He felt some size variations might be considered to create more of a horizontal line. The question he raises is to whether the building does meet the context of the area. He stated the function of the building on the site seems to work well, but should also be considered with the context of the overall area. He stated the appearance of the building and its ability to blend with the character of the east side of Adams Avenue is improved, and the features discussed by the applicant does give some relief to the building which was not present at the original design proposal. Staff recommendation is for approval of the site plan subject to departmental requirements, and approval of the building design and material subject to some type of vertical element dividing the center module on Adams so the three windows and blank wall appear to be different planes and the tile having more of a rectangular shape to meet the shape of the general buildings in the area.

Commissioner Brockman asked about the benefits of tile when compared with sandstone or brick. Mr. Woodbury stated tile has a life expectancy similar to brick, but was chosen due to the fact it is easier to clean, and would not show wear and tear as visibly as brick. If damaged a single tile can be replaced, where this is difficult to accomplish with brick. The color variety available for the tiles also have more of a sandstone color base which is the desired effect, and would be easier to match in the future. He stated tiles have been used in other buildings in Utah during recent years, and their appearance has turned out quite similar to that desired by this building. He stated a more horizontal appearance could be created with thinner relief lines, different sizes of tiles, but the square shape is the only option available. He stated they would be willing to continue to work with Staff to produce the desired effect.

Mr. Kohler stated the ceramic tiles are produced in much the same way as are bricks or terra cotta material. He outlined other buildings in Ogden where terra cotta was used and has remained in service over a period of time. He stated the tiles are more dense than terra cotta and would likely last much longer. He also felt the square moduls will disappear in the massing of the tiles, and that color could be used to either create more of a single mass appearance or to give relief to the massing.

MOTION: A motion was made by Commissioner Brockman to recommend approval of the site plan and building material based on the findings the site design meets the ordinance requirements and traffic circulation function, building materials are somewhat compatible with the surrounding existing buildings and meet the intent and objectives of the General Plan in determining compatibility and building design elements show a relationship to the context of the CBD. Approval is subject to site plan satisfying departmental requirements and building design and material being subject to some type of vertical element dividing the center module on Adams so the three windows and blank wall appear to be different planes and the tile having more of a rectangular appearance to meet the shape of the general building materials in the area, and the applicant continue to work with Staff in accomplishing the desired appearance. Motion was seconded by Commissioner Blaisdell and passed unanimously, with Commissioners Blaisdell, Brockman, Eck, Maw, Schade and Herman voting aye.

2. CBD Site Plan, for to revise parking requirement for Ben Lomond Condominium at 2510 Washington Boulevard.

Mr. Robert Phillips stated this item was tabled at the previous meeting of the Commission, with the anticipation it would be considered on March 3rd. However, due to scheduling conflicts of the owners, it was added to this special meeting agenda. The solutions proposed at that time would not allow the project to be viable, but the applicants have since met with the Planning Staff and feel the solution proposed is workable at this time. This would eliminate from public use portions of the building, thus decreasing the parking requirement. He indicated it is the desire of the owners of the existing hotel to combine hotel units into residential condominiums for long-term residents. In this change of use, it is the desire that residential units have two assigned parking stalls at all times, which previously were allowed to be shared between daytime and night-time uses.

Mr. Montgomery stated in 1983 the Planning Commission had reduced the required parking for this building to 182 stalls, and then was later reduced to 170 stalls. He reviewed the various uses in the hotel and their parking requirements which were identified at that time and discussed how the number of stalls for the parking reduction had been identified. He stated the remodeling proposed would change the parking requirement, as residential dwelling units would require full-time parking spaces, while the uses previously approved allowed shared parking based on daytime and night-time usage. He stated at that time Weber County occupied office space in the building, which is now vacant, and also some dining areas have changed. He stated if the office space were eliminated, the parking requirement would be reduced by 28 stalls, and felt the intent of the original reduction still would be satisfied. Staff recommendation is for approval of reducing the required number of parking stalls to allow 39 dwelling units so long as the 8,380 square feet of office space is eliminated. This portion of the building cannot have any use, which would be stated in the condo declaration. The only way a use could be reinstated in this area is that a plan would be provided to increase the parking at such time the space is to be used. He stated this area is not being used now, and if a use were found for that area the Commission would again review the site plan and determine whether the intent of the parking regulations are satisfied.

MOTION: A motion was made by Commissioner Brockman to recommend approval of the CBD site plan and revise the Ben Lomond condominium project as proposed based on the findings the change of hotel to dwelling space would impact the existing parking demand on the site, but with the recommendation of Staff this is acceptable, and this is an appropriate mix of hotel and dwelling units, providing a good solution at this point. Approval is subject to a maximum of 39 dwelling units and excluding the ability to use 8,380 square feet of office space in the building. Motion was seconded by Commissioner Schade and passed unanimously, with Commissioners Blaisdell, Brockman, Eck, Maw, Schade and Herman voting aye.

3. Petition #2003-16, to rezone the southeast corner of Washington Boulevard and North Street from R-4 to C-2/CO.

Mr. David Putvin stated this item was tabled at the previous Planning Commission meeting, with questions as to details of the Development Agreement. He indicated he has continued meeting with Staff and feels the latest draft of such agreement is acceptable to both the developer and the City. He felt the rezone and development agreement are ready for approval.

Mr. Montgomery stated the Hillcrest-Bonneville Plan was adopted by the City Council earlier this week. As a part of that plan, and according to earlier recommendations by the Commission relating to this area, the consideration of rezoning of this property requires an overall project to be established, developed as a center, which is one phase, and not several free-standing commercial properties. He reviewed the proposed site plan and building materials, stating the facade would consist of stone with panels of glazing with metal roofing. He stated at the previous meeting, several types of uses were identified as not being appropriate, such as service station, car wash, auto sales and repair. Concern also has been expressed about uses which might be in the big box building, stating these should not interfere with potential tenants of the mall site, while still allowing market trends to be considered. In response to this, language in the Development Agreement excludes use of a bookstore over 10,000 square feet in floor area, a movie theater or a recreation center over 15,000 square feet of floor area. This would not exclude use as a health club or spa. Any other uses allowed in the C-2 zone would be allowed if not specifically identified in the Development Agreement.

He then discussed the design materials of the buildings, stating the concept proposed is that of stone of a yellowish-tan shade, with non-reflective tinted glass, with colors of gray, olive green or similar colors specified in the agreement. Signs would be limited to 9' in height, and lighting would be required to be shielded from residential areas. Lights could be mounted on the wall so long as they are directed down and away from the residential neighborhoods to the north and east of the property. A masonry wall is required along the north and east property lines.

Commissioner Brockman asked if some leeway is allowed for a store's own facade, stating many stores have corporate images which are required to be implemented. It was indicated the guidelines allow some modification, however the main design and color themes should be continued to create a unified theme within the project.

Ms. Lockwood indicated there is some desire to use other colors, but the predominant color should be that which is what is approved, and that building materials be those approved as part of the Development Agreement. She stated as development is proposed, it would be reviewed and compared with the overall project, and a determination made as to whether it would meet the intent of the Development Agreement. She stated the intent is that the buildings blend together, and if a particular image is desired, the façade would be reviewed by the Planning Commission to determine whether the intent of the agreement is satisfied, or whether an amendment to that agreement is desired. She also indicated the signage is not discussed in the agreement. Further discussion continued regarding the building materials, and it was indicated a particular sample board is not required, allowing some variation in color. Commission felt a color family also should be identified for the roof material, stating the proposal is for copper and it was suggested the roof materials be earth-tone shades.

Commissioner Schade questioned the placement of signs, asking if there is a specific location for these. It was indicated the use and location of signs may be determined by the location of approaches allowed by UDOT. Mr. Montgomery stated the way the agreement is drafted, it does not address the location of signs, allowing the applicant to work within the parameters of the Ogden City Sign Ordinance and the regulations of UDOT in terms of entrances to the site. To satisfy the regulations of the Sign Ordinance, signs would not be allowed in the park strip and not in the site-triangle created by the intersection of North Street and Washington Boulevard. Commissioner Schade felt the height of a 9' should require a set back from the sidewalk. He also felt the number of 9' signs should be limited to 2 monument signs. Commission felt the project may need two signs to allow each of the tenants identification space due to the size of the buildings proposed.

Ms. Lockwood also stated the development agreement should be considered a long-range agreement, and suggested the language on the first page referring to immediate uses should be removed.

Mr. Joe Langeveld asked about the access to the property, stating if none were allowed on Washington, the use would impact existing uses along North Street, making these properties unusable. He also expressed concern about water shares and what would happen to the canal which crosses the property. Staff indicated the canal concerns would be addressed as part of the site plan process, and would be required to either be covered or fenced, but water flow is required to be retained, and shares should not be affected.

Mr. Putvin indicated he is working with both UDOT and Ogden City in an effort to attain both access points on Washington Boulevard. He felt two accesses on Washington are needed for many reasons, first to keep truck traffic away from the residential neighborhood to the east, as well as away from customer traffic. He also felt with the number of parking stalls both options are desirable in terms of entering or exiting the property. He stated although UDOT prefers no new access points be created on Washington, it is felt one will be approved, and a second is also being considered. He felt if no access is allowed on Washington, the ability of the project to be developed may be affected.

Mr. Langeveld asked about the installation of a traffic signal at this location. Mr. Putvin indicated UDOT has indicated this intersection does not warrant a signal if the status quo remains, but Ogden City's traffic engineer had requested a new study, which is felt will satisfy the warrants of UDOT. With the development of this property, it is felt a signal would be warranted.

MOTION: A motion was made by Commissioner Schade to recommend approval of the zoning to C-2/CO based on the findings the request is consistent with the Community Policies of reflecting the character of the area, creating definite edges, providing transition from lesser to higher intensity uses and can be developed as centers, and with specific conditions addressed in the Development Agreement, can be consistent with the Community Policies. Recommendation is for approval of the rezoning of the property from R-4 to C-2/CO as well as the approval of the associated Development Agreement as drafted, with changes being made to the Agreement to (1) eliminate the wording relating to immediate development on the first page; (2) roof color be identified as earth-tone colors; and (3) the sign be set back a minimum of 5' from the sidewalk. Motion was seconded by Commissioner Brockman, and passed unanimously, with Commissioners Blaisdell, Brockman, Eck, Maw, Schade and Herman voting aye.

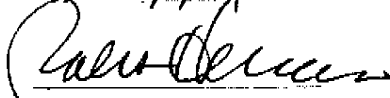
4. Adjourn

There being no further business before the Commission, the meeting was adjourned at 6:10 p.m.

Respectfully submitted,


Jannette Borklund, Sr. Office Assistant

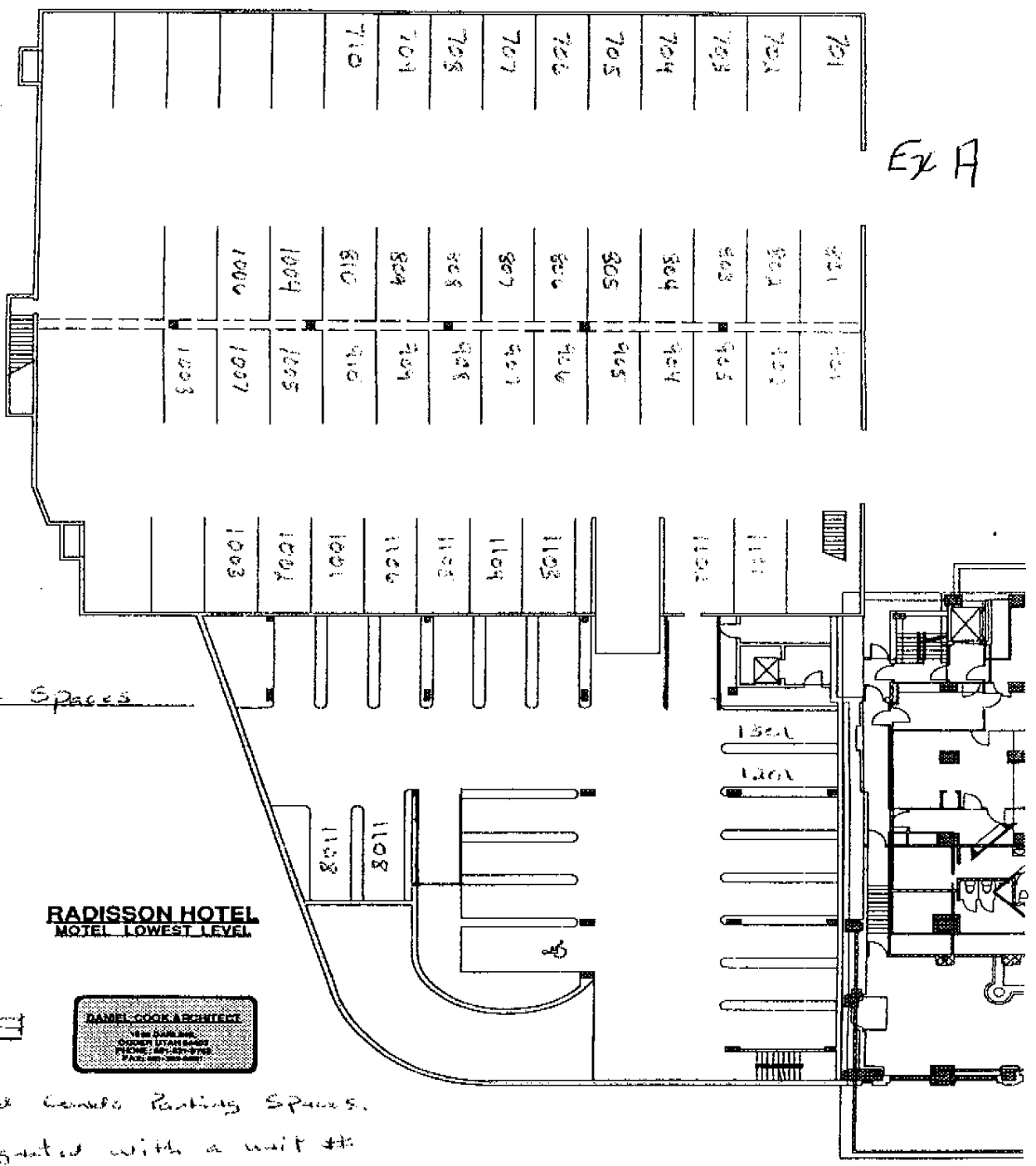
Approved: 3/3/04


Robert Herman, Vice-Chair

52 Spaces

Ex A

22 Spaces



RADISSON HOTEL
MOTEL LOWEST LEVEL



HAMELCOOK ARCHITECTS
 1100 PARKWAY
 SUITE 1100
 PHOENIX, ARIZONA 85015
 (602) 998-8888

48 Reserved General Parking Spaces.
 If not designated with a unit #
 the unassigned parking will go into
 the General Parking Pool.

M&D Ventures, Inc., a Nevada Corporation

By: [Signature]
President

By: _____

Date: _____

STATE OF UTAH)
 : ss.
COUNTY OF WEBER)

The foregoing instrument was acknowledged before me this 11th day of March, 2004, by Jan Tabish the President

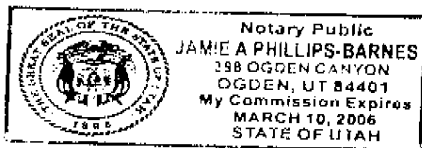
[Signature]
NOTARY PUBLIC

My Commission Expires:

3-10-06

Residing at:

OGDEN UTAH 84401



APPROVED BY

Pacific Coast Investment

By: [Signature]

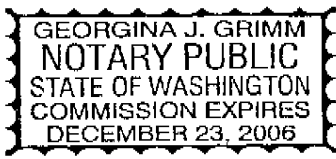
Its: CEO

Date: 3/1/04

STATE OF WASHINGTON)

COUNTY OF KING)
: ss.

The foregoing instrument was acknowledged before me this 1st day of MARCH, 2004, by [Signature] the President of Pacific Coast Investment Co.



Georgina J. Grimm
NOTARY PUBLIC

My Commission Expires:
12/23/06

Residing at:
OKYMAA

Donna Field Phillips
Revocable Trust

Donna F Phillips

DONNA F. PHILLIPS
Trustee

Dated : 3-9-04

STATE OF UTAH)
) : ss.
COUNTY OF WEBER)

The foregoing instrument was acknowledged before me this 9th day of MARCH,
2004, by Donna F. Phillips.

Jamie A Phillips-Barnes
NOTARY PUBLIC

My Commission Expires:
3-10-06

Residing at:
OGDEN, UTAH 84401

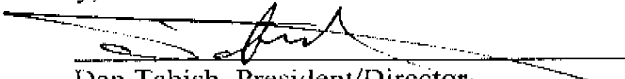


MEETING MINUTES
February 11, 2004

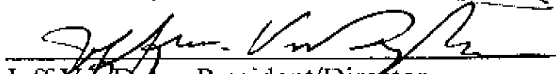
At a special meeting of the Ben Lomond Suite Home Owners Association, attended by Jeff VanDyke, Dan Tabish and Robert V. Phillips, representing ninety nine percent (99%) of the outstanding membership of said association, held on February 11, 2004, the following resolutions were presented and voted on unanimously to wit;

1. That the association consents and agrees that the by laws of the declaration be amended pursuant to the hereto attached Exhibit "A". See Second Amendment to Declaration.
2. That the Officers, Directors and Statutory Agent of the association be elected and approved as set for in the hereto Exhibit "B", (replacing those officers, directors and statutory agent as set forth on said exhibit).
3. That said association does hereby consent to the modification of the existing hotel/condominium units to incorporate the new units as residential units as set forth in the amended declaration and as set forth in the hereto attached Exhibit "C". See Second Amendment to Dec.
4. That the agreement by and between Ogden City, Ben Lomond Suite Home Owners Association and M and D Ventures Inc. be in and is hereby ratified and is set forth in the hereto attached Exhibit "D". See Ogden City Planning Commission minutes.


IN WITNESS WHEREOF the parties hereto have set their hands this 12th day of February, 2004.



Dan Tabish, President/Director




Jeff VanDyke, President/Director

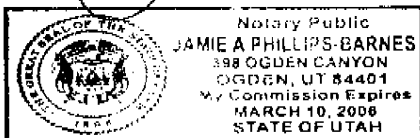


Robert V. Phillips, Secretary/Director

SUBSCRIBED AND SWORN to before me this 12th day of February, 2004.



NOTARY PUBLIC





The State of Utah
Utah State Tax
Commission

Taxpayer Service Division
Ogden Branch
2540 Washington Blvd
Ogden Utah 84401

Feb 3, 2004

BEN LOMOND SUITES OWNERS ASSOCIATION
2510 Washington Blvd
Ogden Ut 84401

Attn: Robert B. Cheney

Federal Identification Number: 87-0461639
Utah Charter Number: 878802-0140

LETTER OF GOOD STANDING

Dear Mr. Cheney:

We certify that BEN LOMOND SUITE OWNERS ASSOCIATION has filed any required franchise and income tax returns and paid any required franchise and income taxes due as of the date of this letter. For reinstatement purposes, this letter must be submitted to the Utah Department of Commerce within 90 days of the issue date.

If a liability exists pursuant to a review or audit of the account, the issuance of this letter will not fix, abate, modify or cancel any performance of an obligation to the State of Utah or any payment due.

This letter is not to be construed as a *Certificate of Tax Clearance* issued to corporations dissolving or withdrawing from Utah in accordance with Utah Code.

If you have any questions, contact me at (801) 626-3405.

Respectfully,


Mary Loo Cordon
Taxpayer Service / Ogden

E# 2018449 PG17 OF19

If you need an accommodation under the Americans with Disabilities Act, contact the Tax Commission at (801) 297-3811, or Telecommunications Device for the Deaf (TDD) (801) 297-2020. Please allow three working days for a response.

Utah!
Where ideas connect



State of Utah
 DEPARTMENT OF COMMERCE
 Division of Corporations & Commercial Code
 Registration Information Change Form

This form must be type written or computer generated.

Non-Refundable Processing Fee: \$12.00

1. <input type="radio"/> Corporation		<input type="radio"/> Limited Liability Company		<input type="radio"/> Limited Liability Partnership		<input type="radio"/> Partnership	
2. <input type="radio"/> LLC		<input type="radio"/> Limited Liability Partnership		<input type="radio"/> Partnership		<input type="radio"/> Other	
Entity File Number:	878802-0140	Registration Date:	09/06/84				
Entity Name:	Ben Lomond Suite Owners Associaton						
Business Purpose:	Homeowners Association						
Registered Agent:	ROBERT V. PHILLIPS	Signature:					
Registered Address:	Address: 2510 Washington Blvd		City: Ogden		State: UT Zip: 84401		
Utah Street Address Required, PO Boxes can be listed on the line below the Street Address	Address: 2510 Washington Blvd		City: Ogden		State: UT Zip: 84401		
3. Add <input checked="" type="radio"/>	REG. AGENT/SEC./DIR	Name: Robert V. Phillips		Address: 2510 Washington Blvd.			
	Change <input type="radio"/>		City: Ogden		State: UT Zip: 84401		
Add <input type="radio"/>		Name: robert B. Cheney		Address: 2510 Washington Blvd.			
Change <input type="radio"/>		City: Ogden		State: UT Zip: 84401			
Add <input type="radio"/>	DIR./PRES./REG. AGENT	Name: CHESTER JOHNSON		Address: 4687 signe Lane			
Change <input type="radio"/>		City: Ogden		State: UT Zip: 84404			
Add <input type="radio"/>		Name: Michael Amidan		Address: 3092 East 125 North			
Change <input type="radio"/>		City: Layton		State: UT Zip: 84014			
Add <input type="radio"/>	DIR./V. Pres.	Name: Jeff Vandyke		Address: 123 South 1200 East			
Change <input type="radio"/>		City: SLC		State: UT Zip: 84102			
Add <input type="radio"/>	President	Name: Dan Tabish		Address: 3668 North 2500 West			
Change <input type="radio"/>		City: Farr West		State: UT Zip: 84404			
Add <input type="radio"/>	OGDEN TAXPAYER SERVICES	Name:		Address:			
Change <input type="radio"/>	UTAH STATE TAX COMMISSION	City:		State:			Zip:

RECEIVED
 FEB 04 2004

Under penalties of perjury and as an authorized authority, I declare that this statement of change(s), has been examined by me and is, to the best of my knowledge and belief, true, correct and complete.

BY Title sec Date 2/2/04
 Signature of Authorizing Party

Revised 10/03 Under GRAMA (63-2-201), all registration information maintained by the Division is classified as public record. For confidentiality purposes, the business entity physical address may be provided rather than the residential or private address of any individual affiliated with the entity.

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**SECOND AMENDMENT TO DECLARATION OF
CONDOMINIUM OF THE
BEN LOMOND SUITES CONDOMINIUM PROJECT**

BEN LOMOND SUITES CONDOMINIUM PROJECT (THE "CONDOMINIUM PROJECT"), AS THE SAME IDENTIFIED IN THE RECORD OF SURVEY MAP RECORDED SEPTEMBER 18, 1984, AS ENTRY NO. 919073 IN THE OFFICE OF THE WEBER COUNTY RECORDER (AS SAID RECORD SURVEY MAP MAY HAVE HERETOFORE BEEN AMENDED OR SUPPLEMENTED)(THE "RECORD OF SURVEY MAP") AND IN THE DECLARATION OF CONDOMINIUM THE BEN LOMOND SUITES CONDOMINIUM PROJECT RECORDED CONCURRENTLY WITH SAID RECORD OF SURVEY MAP IN SAID OFFICE AS ENTRY NO. 919072 IN BOOK 1454 AT PAGE 71 (AS SAID DECLARATION MAY HAVE HERETOFORE BEEN AMENDED OR SUPPLEMENTED)(THE "DECLARATION"), TOGETHER WITH THE UNDIVIDED OWNERSHIP IN SAID PROJECT'S COMMON AREAS AND FACILITIES WHICH IS APPURTENANT TO SAID UNIT (THE REFERENCED DECLARATION OF CONDOMINIUM PROVIDING FOR PERIODIC ALTERATION BOTH IN THE MAGNITUDE OF SAID UNDIVIDED OWNERSHIP INTEREST AND IN THE COMPOSITION OF THE COMMON FACILITIES TO WHICH SAID INTEREST RELATES) AS MORE PARTICULARLY DESCRIBED IN SAID DECLARATION (AS SAID DECLARATION MAY HAVE HERETOFORE BEEN AMENDED OR SUPPLEMENTED.

01-079-0001 thru 0028 ✓

01-080-0001 thru 0020 ✓

01-075-0001 thru 0019 ✓

01-076-0001 thru 0019 ✓

01-077-0001 thru 0028 ✓

01-078-0001 thru 0028 F