

Ent 879102 Bk 1332 Pg 488
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For PHILLIPS-HANSEN

DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND BYLAWS
for
SAUNDERS PROFESSIONAL PLAZA CONDOMINIUMS
(Referred to in the Condominium Plat as
the David R. Saunders Office Building)

A Condominium Project

**DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND BYLAWS
FOR**

SAUNDERS PROFESSIONAL PLAZA CONDOMINIUMS

A Condominium Project

This Declaration of Covenants, Conditions, Restrictions and Bylaws, hereinafter called "Declaration", is made and executed in Cache County, Utah, this 8th day of December, 2004, by PROVENTIAL INVESTMENT PROPERTIES, L.L.C., and the undersigned, as owners of or holders of leasehold interests in the property described below, hereinafter collectively referred to as "Declarant", for itself, its successors, grantees, and assigns.

RECITALS

A. The Declarant is the sole owner of certain land located in Logan, Cache County, State of Utah, particularly described as follows:

SEE SCHEDULE "A" ATTACHED HERETO AND
MADE A PART HEREOF BY REFERENCE

B. The real property consists of the land above-described together with certain office buildings and certain other improvements heretofore constructed on said premises.

C. Existing office buildings and other improvements on said premises are in accordance with the plans and drawings set forth in the Condominium Plat map filed concurrently herewith, consisting of three (3) sheets, certified by Gibbons & Crow, Tim V. Gibbons, of Cache Landmark Engineering, a duly registered Utah Land Surveyor.

D. Declarant, by filing this Declaration and Condominium Plat map, desires to submit the above-described real property and improvements thereon to the provisions of the Utah Condominium Act as a condominium project known as the SAUNDERS PROFESSIONAL PLAZA CONDOMINIUMS.

E. Declarant intends to convey and upon filing this Declaration does hereby convey and transfer all right, title, and interest in and to said property, all improvements and all the individual condominium units contained in the project, together with all ownership interest in the common and limited areas of the facilities appurtenant thereto, to the SAUNDERS PROFESSIONAL PLAZA CONDOMINIUM ASSOCIATION, a Utah non-profit corporation,, subject to the covenants, conditions, and restrictions herein.

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F. Declarant, by filing this Declaration and Condominium Plat map, submits the property and imposes upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of said property and the owners thereof.

NOW, THEREFORE, for such purposes Declarant, fee owner of the above-described real property and holder of all leasehold interests therein, does hereby publish the following Declaration containing covenants and restrictions, uses, limitations and obligations, all of which shall be enforceable equitable servitudes, pursuant to the provisions of Utah Code Annotated, Sections 57-8-1 et seq. (1953, as amended). These Covenants and Restrictions shall run with the land and shall be a burden and benefit to the Declarant, its successors and assigns, and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns. The administration of the property shall be governed by the Bylaws, which are contained herein.

PART 1 NAME OF THE CONDOMINIUM PROPERTY

1.1 Name of Condominium Project. The name by which the condominium property shall be known is SAUNDERS PROFESSIONAL PLAZA CONDOMINIUMS.

PART 2 DEFINITIONS

2.1 Definitions. The terms used herein shall have the meaning stated in the Utah Condominium Ownership Act as follows, unless the context clearly indicates a different meaning therefor:

a. **"Act or The Act"** shall mean and refer to Utah Condominium Ownership Act, Utah Code Annotated, Section 57-8-1, et seq. (1953, as amended).

b. **"Association of Unit Owners"** shall mean and refer to all of the unit owners acting as a group in accordance with the Act, the Declaration, and Bylaws, which may include a Utah nonprofit corporation formed by all of the unit owners for such purposes, and known as "SAUNDERS PROFESSIONAL PLAZA CONDOMINIUM ASSOCIATION, INC."

c. **"Building"** means a building, containing units, and comprising a part of the property.

d. **"Common Areas and Facilities"** shall mean and refer to:

(1) all land, including the land on which the buildings are erected;

(2) all foundations, columns, girders, beams, supports, main walls, halls, corridors, roof, walkways, stairways, attics, yards, gardens, fences, landscaping improvements, storage areas, installations of power, lights, and other utilities (specifically including, but not limited to sewer, water, and electrical mains) to the outlets, central plants, refrigeration, air conditioning, heating and in general all

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other apparatus, installations, and other parts of the property necessary or convenient to the existence, maintenance, and safety of the common areas, or normally in common use;

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

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

(5) all tanks, pumps, motors, fans, compressors, and control equipment;

(6) all sewer pipes;

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(7) all parking areas and/or stalls;

(8) those common areas and facilities specifically set forth and designated on the map;

(9) all common areas and facilities defined in the Act, whether or not expressly listed herein, except that portion of the condominium project included in the respective units.

e. **"Common Expense"** shall mean and refer to all expenses of administration, maintenance, repair or replacement of common areas and facilities; all items, things, and sums described in the Act which are lawfully assessed the unit owners in accordance with provisions of the Act, this Declaration, or Bylaws, such rules and regulations pertaining to the condominium project as the Association of Unit Owners or the management committee may from time to time adopt; and such expenses agreed upon as common expenses by the association of unit owners.

f. **"Condominium"** shall mean and refer to the ownership of a single unit in this condominium project, together with an undivided interest in common areas and facilities of the project.

g. **"Condominium Project"** shall mean and refer to the SAUNDERS PROFESSIONAL PLAZA CONDOMINIUMS project.

h. **"Declarant"** shall mean PROVENTIAL INVESTMENT PROPERTIES, L.L.C., and the other individuals and entities who own leasehold interests in the property described in schedule "A", which have executed this Declaration.

i. **"Declaration"** shall mean this instrument by which the SAUNDERS PROFESSIONAL PLAZA CONDOMINIUMS project is established as provided for under the Utah Condominium Ownership Act.

j. **"Enclosed Project"** shall mean the entire parcel of real property referred to in this Declaration to be divided into condominiums, including all structures thereon.

k. **"Limited Common Areas and Facilities"** shall mean those common areas and facilities designated in the declaration, if any, as are reserved for use of a certain unit or units to the exclusion of the other units. Such specifically includes, but is not limited to, any shutter, door, window, patio, door step or other structure, facility or apparatus intended to serve a single unit, but located outside the boundaries of the unit, subject to the "Unit" definitions and provisions of this Declaration. It is expressly acknowledged that, with respect to Unit 2, such unit has been built to qualify for certain medical facility certification, and certain vacuum pump apparatus (with 220 volt electrical service) has been installed within the common attic space above such Unit 2, and a back up generator has been installed beneath a steel deck and stairs (an emergency exit from such unit), for the exclusive use and benefit of such Unit 2, and all of such facilities are Limited Common Areas and Facilities with respect to such Unit 2; and, the owner of said Unit 2 shall be solely responsible for maintenance and upkeep, and any other expenses attributable to such specific Limited Common Areas and Facilities.

l. **"Majority" and "Majority of Unit Owners"** shall mean those owners of Fifty-One percent (51%) in the aggregate in interest of the undivided ownership in the common areas and facilities.

m. **"Management Committee"** shall mean and refer to a committee composed of persons duly elected thereto by the Association of Unit Owners, as provided by this Declaration. Said committee is charged with and shall have responsibility and authority to make and enforce all the reasonable rules and regulations covering the operation and maintenance of the property.

n. **"Manager"** shall mean and refer to the person, persons, or corporation selected by the management committee to manage the affairs of the condominium project.

o. **"Map"** shall mean and refer to the Condominium Plat Map of the DAVID R. SAUNDERS OFFICE BUILDING, recorded herewith by Declarant in accordance with UCA Section 57-8-13, 1953, as amended. Ent 879102 Bk 1332 Pg 492

p. **"Mortgage"** shall mean that property interest which constitutes security for a legal obligation (such as a promissory note) and specifically includes a Trust Deed. The terms mortgage, mortgagee and mortgagor are intended to be synonymous with and include Trust Deed (mortgage), Beneficiary (mortgagee), and Trustor (mortgagor) as the context requires.

q. **"Parking Area"** shall mean that parking area in which the Condominium project holds fee simple title interest for the use and benefit of customers and clients of unit owners, and it shall further mean that area designated as "Parking Area" on the recorded map.

r. **"Person"** shall mean a person, persons, or legal entity as well as a natural person.

s. **"Property"** shall mean and include the land, buildings, all improvements and structures thereon, all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

t. **"Record", "Recording", "Recorded", and "Recorder"** shall have the meaning stated in Chapter 3, Title 57.

u. **"Condominium Plat Map"** means a plat or plats of survey of land and units prepared in accordance with Section 57-8-13.

v. **"Size"** means the number of square feet of ground or floor space, within each unit as computed by reference to the Condominium Plat map and rounded off to a whole number.

w. **"Unit"** shall mean that part of the property owned in fee simple by unit owners for independent use and shall include the elements of the condominium property that are not owned in common with the owners of the units as shown on the map. Horizontally each unit consists of the area measured horizontally from the unit side of the interior walls of the building to the unit side of the walls and partitions separating such unit from corridors, stairs, incinerators and other mechanical equipment spaces, and where walls and partitions separate such units from other units, to the side of such walls and partitions on the interior of such units, and where plaster or sheetrock partitions separate such unit from other units, to the centerline of the plaster or sheetrock on the side of such plaster or sheetrock partitions facing such unit. Vertically each unit consists of the space between the top of the floor to the underside of the ceiling. A unit shall not include pipes, wires, conduits or other utility lines running through it that are utilized for or which serve more than one unit, but shall include such pipes, wires, conduits and other utility lines which serve only that unit.

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x. **"Unit Number"** shall mean and refer to the number, letter or combination thereof, designating the unit in the Declaration and Condominium Plat.

y. **"Unit Owner"** shall mean the person or persons owning a unit in fee simple and an undivided interest in the fee simple estate of the common areas and facilities in a percentage specified and established in the Declaration.

Those definitions contained in the Act, to the extent that they are applicable to and not inconsistent herewith shall be and are hereby incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof. The use of or reference to any gender (or gender neutral) is for convenience only; the masculine specifically includes the feminine and vice versa; the use of it refers to and includes both the masculine and feminine as the context may require.

PART 3 DESCRIPTION OF LAND

3.1 Description of Land. The land on which the building and improvements are provided for in this Declaration is located in Providence City, Cache County, State of Utah, and is more particularly set forth in Schedule "A" accompanying this Declaration and incorporated herein by reference.

PART 4 DESCRIPTION OF BUILDING AND IMPROVEMENTS

4.1 Buildings. There is a single brick veneer building, containing units 1 (Main Floor) and 2 on the main floor, and Unit 3 and Unit 1 (Basement) in the basement of said building. Unit 1 (Main Floor) and Unit 1 (Basement) shall be considered as a single Unit. The size and room partitioning within each unit is illustrated and more specifically diagrammed on the accompanying survey map recorded in the Cache County Recorder's Office.

4.2 Utilities. All the units are supplied with electricity, gas and water utility service.

4.3 Sewer. Each of the units is connected to and has access to sewer service.

4.4 Unit. Under this Declaration, a unit shall mean a single business unit, as described more fully in Part 5 below.

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PART 5 DESCRIPTION OF UNIT

5.1 Designation of Building. Each unit is identified by letter and/or number. Schedule "B" contains the letter and/or number designation of each unit and the percentage of ownership in the common area applicable to each unit. Hereafter, the description of the project by name and the unit by the letter and/or number shall be deemed sufficient to convey legal title to the unit and its appurtenant percentage interest in the property.

The units are the elements of the condominium project that are not owned in common with the owners of the other units.

5.2 Boundary Lines. The boundary lines of the units are the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, the top of the floor, and underside of the ceiling, and the interior surfaces of doors, windows, window frames, door frames, and trim. Each of the units shall include both the portions of the building that are not common areas and facilities within such boundary lines and the space they encompass. without limitation, a unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceiling.

A unit shall also include all non-supporting interior walls, including to the center of a wall separating one unit from another or separating a portion of the unit from a portion of another;

windows and doors in the perimeter walls, whether located within the boundaries of a unit or not, not including any space occupied thereby to the extent located outside the bounds of the unit.

Units forming a part of the condominium property are more particularly described in the map, which shows graphically all of the particulars of the building and without limiting the generality of the foregoing, the unit designations and locations.

Each non-supporting wall which is the dividing line between the units shall constitute a party wall. To the extent not inconsistent with the provisions hereof, the general rules of law regarding party walls, and liability for property 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 by the owners who make use of the wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost or restoration thereof in proportion to such use, without prejudice however, to the right of such owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions. The right of any owner to a contribution from any other owner under this Part shall be appurtenant to the land and shall pass to such owner's successors in title.

5.3 Description. Every contract for the sale of a unit and every other instrument affecting title to a unit may describe that unit by its identifying number or symbol as designated on the map or maps with the appropriate reference to the map(s) and the Declaration as each shall appear on the records of the County Recorder of Cache County, Utah, in substantially the following fashion:

Unit(s) Number(s) _____ together with ____ percent interest in a common area and facilities, as shown on the Condominium Plat Map of the SAUNDERS PROFESSIONAL PLAZA CONDOMINIUMS condominium project, appearing in the record of the County Recorder of Cache County, State of Utah, in Book _____, at Page _____, of Plats, and as defined and described in the Declaration of Condominium for SAUNDERS PROFESSIONAL PLAZA CONDOMINIUMS appearing in such records, in Book _____ at Page _____, of Records.

Such descriptions will be construed to describe the unit, together with the appurtenant undivided interest in the common areas and facilities and to incorporate all the rights incident to ownership of a unit and all of the limitations of such ownership as described in this Declaration, including all appurtenant undivided interest.

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Each unit shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown on said plat, as well as any appliances, air conditioning units, plumbing, electrical fixtures, electrical outlets; *provided, however*, that no structural components of the building in which such unit is located, and no pipes, wires, conduits, ducts, flues, shafts, or public utility lines situated within such unit and forming a part of any system serving one or more other units or the common elements shall be deemed to be a part of such unit.

PART 6 DESCRIPTION OF COMMON AREAS AND FACILITIES

6.1 Common Areas. The common areas and facilities shall mean and include: the land on which the buildings are located and all portions of the property not contained within any unit, including but not limited to, the foundations, columns, girders, beams, supports, bearing walls, perimeter walls, and windows, roofs, attics, ducts, flues, conduits, wires, and other utility installations to the outlets; the grounds, gardens, sidewalks, and parking area; water heaters used in common with other units; installation of all central power, lights, gas, and services or services common to more than one unit, including power, lights, gas, sewer, hot and cold water facilities used in common with other units; pipes, heating, pumps, motors, fans, ducts, and in general all apparatus and installation existing for common use; any utility pipe, line or system servicing more than a single unit and all ducts, flues, chutes, wires, conduits, and other accessories and utility installations to the outlets used therewith; all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally common in use, or which have been designated as common areas and facilities in the map; and all repairs and replacements of any of the foregoing; *excepting, however*, heating units, air conditioning units, air conditioning equipment, and individual utility lines servicing only one unit or the equipment within one unit to which they pertain.

6.2 Access to Common Areas. Each unit has direct access to the common areas.

6.3 Access to Public Streets. The parking area has direct access (rights of ingress and egress) to both Gateway Drive and East Golf Course Road (200 North Street), Providence, Utah.

PART 7 DESCRIPTION OF LIMITED AREAS AND FACILITIES

7.1 Limited Area and Facilities. Limited common areas and facilities mean and include those portions of the common areas and facilities reserved exclusively for use by individual units to the exclusion of other units. Such specifically includes, but is not limited to any shutter, door, window, patio, doorstep or other structure, facility or apparatus intended to serve a single unit, but located outside the boundaries of the unit.

PART 8 PERCENTAGE OF UNDIVIDED INTEREST IN COMMON AREAS AND FACILITIES—VOTING

8.1 Percentage Ownership in Common Area. The percentage of undivided interest in the common areas and facilities appurtenant to each unit shall be, for all purposes, including voting, as set forth in Schedule "B". Such percentages have been computed by taking the square footage of each unit in relation to the total square footage of all units. As used in this Article 8, the square footage shall mean the initial square footage of each unit.

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8.2 Voting. For purposes of voting, the percentage of ownership in the common areas and facilities of the condominium project shall be as set forth in Schedule "B". Upon recordation of the map, the percentage of ownership in the common areas and facilities shall be fixed for all purposes, including voting. At any meeting of the owners, such owners shall be entitled to cast the number of

votes in relation to the proportionate interest identified on Exhibit "B" attached hereto. Any owner may attend and vote at such meeting in person or by an agent duly appointed by an instrument in writing signed by the owner and filed with the management committee or the manager prior to or during such meeting. Any designation of an agent to act for an owner may be revoked at any time by written notice to the management committee or manager and shall be deemed revoked when the management committee or the manager shall receive actual notice of the death, or judicially declared incompetency (*except in the case of a Durable Power of Attorney for a living principal*) of such owner or of the conveyance by an owner of its condominium. Where there is more than one record owner, all such persons may attend any meeting of the owners, but it shall be necessary for those present to act unanimously in order to cast their votes. Any designation of an agent to act for such persons must be signed by all such persons. Declarant shall be entitled to vote with respect to any condominiums owned by the Declarant.

In the event that a Notice of Default is recorded by or on behalf of any mortgagee/trust deed beneficiary who owns or holds a mortgage/trust deed that is a first lien or encumbrance upon a condominium, then and in that event, and until a default is cured, the right of the owner of such condominium to vote shall be transferred to the mortgagee/trust deed beneficiary who recorded or caused to be recorded the Notice of Default.

PART 9 STATEMENT OF PURPOSES, GENERAL USE AND RESTRICTIONS

9.1 Purposes. The purpose of the condominium property is to provide a commercial office building plaza for the unit owners and tenants according to the provisions of the Utah Condominium Ownership Act.

9.2 General Restrictions on Use. Units and common areas and facilities shall be used and occupied as follows: Ent 879102 Bk 1332 Pg 497

- (a) No part of the condominium property shall be used for any purpose other than those expressly provided for in Paragraph 9.3 below.
- (b) There shall be no obstruction of the common areas and facilities nor shall anything be stored in the common areas and facilities without the prior written consent of the management committee.
- (c) Nothing shall be done or kept in any unit or in the common areas of the facilities that will increase the rates of insurance on the building or contents thereof beyond that customarily applicable for a professional medical office use without the prior written consent of the management committee. No unit owner shall permit anything to be done which would result in the cancellation of insurance on any building, or the contents thereof, or which would be in violation of any law or regulation of any governmental authority. No waste shall be committed in the common areas and facilities.
- (d) No noxious or offensive activities shall be carried on at any unit or in the common areas and facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other unit owners.

(e) No unit shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such unit to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any unit that will emit foul or obnoxious odors or that will cause any noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of the surrounding units.

(f) No billboards or advertising signs of any character shall be erected, placed, permitted, or maintained on any unit except as expressly permitted by the management committee.

(g) No garage or other outbuilding shall be placed, erected, or maintained upon any part of the common area without the consent of the management committee.

(h) No animals, birds, or fowls shall be kept or maintained on or in any part of the units or any part of the common area.

(i) No trailers or other habitable motor vehicles of any nature shall be kept on or stored in any part of the common area. No food or beverage shall be kept in any of the units for resale or display. No unit shall be used to sell appliances, equipment, goods, or other paraphernalia stored within the confines of a unit.

(j) Nothing shall be done in or to any unit or common areas and facilities which will impair the structural integrity of the building, or any part thereof, or which would structurally change the building or any part thereof except as is otherwise provided herein,

9.3 Specific Restrictions on Use. The units and common areas and facilities are subject to any applicable additional restrictions by virtue of recorded easements, covenants, conditions or restrictions pertaining to the Original Gateway Business Park Subdivision. To the extent any provision of this Declaration conflicts with any provision of such additional restrictions, easements, covenants, etc., it is the intent that such restrictions, to the maximum extent the law or equity will allow, be interpreted in such a fashion to prevent any forfeiture or loss.

9.4 Ownership of Unit. Each unit owner shall be entitled to the exclusive ownership and possession of his unit and to the ownership of an undivided interest in the common areas and facilities in the percentages set forth in Schedule B.

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9.5 Ownership of Common Areas and Facilities. Common areas and facilities shall be owned by the unit owners as tenants in common, and ownership thereof shall remain undivided. No action for a partition of any part of the common areas or facilities shall be maintained, except as specifically provided in the Utah Condominium Ownership Act, nor may any unit owner otherwise waive or release any rights in the common areas and facilities. Provided, however, that for convenience of administration and enforcement, title to the Common Areas and Facilities may be transferred to and held by the SAUNDERS PROFESSIONAL PLAZA CONDOMINIUM OWNERS ASSOCIATION, a Utah nonprofit corporation organized for the

benefit of the owners of the units, and for which Bylaws are recorded as an integral part hereof, and such entity may hold title as a nominee for the benefit of the various unit owners, who by statute, shall continue to be regarded as the individual owners as tenants in common of their respective interests in the common areas. No unit owner may convey or encumber his interest in the common areas independent from his interest in his unit; and, property tax assessments and voting rights shall continue to apply to the individual unit owners, as set forth herein and pursuant to the Act.

9.6 Use of Common Areas and Facilities. Each unit owner may use the common areas and facilities in accordance with the purposes for which they are intended, but subject to this Declaration, and the bylaws, which right of use shall be appurtenant to and run with his unit.

9.7 Division of Maintenance Responsibilities for Buildings. It is the intention of Declarant that the unit owners shall be fully responsible for all maintenance and upkeep for their respective units. The Management Committee provided for in this Declaration shall manage and see to the maintenance of all common areas, and expenses incurred in relation thereto shall be prorated among the unit owners. All unit owners shall be ratably responsible for all common area expenses. This Declaration shall be interpreted and applied in a manner consistent with the intent stated in this subsection, and the Management Committee is hereby directed to adopt rules and regulations which are also consistent with this subsection.

PART 10 AGENT FOR SERVICE OF PROCESS

10.1 Agent. The name and address of the person in Cache County, State of Utah, appointed as the first agent to receive service of process in matters pertaining to the property as provided under the Act is:

David R. Saunders
286 North Gateway Drive, Suite 202
Providence, Utah 84332

The agent may be changed from time to time by filing appropriate instruments.

10.2 Acceptance. The agent named above acknowledges the appointment as agent to receive service of process and by signing the Declaration below accepts the appointment.

PART 11 AMENDMENTS TO DECLARATION

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This Declaration may be amended in the following manner:

11.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the unit owners at which the proposed amendment is to be considered.

11.2 Resolution. A resolution adopting a proposed amendment may be proposed by either the management committee or any combination of two (2) unit owners. Members not present in person or by proxy at the meeting considering the amendment may express their approval in

writing, providing such approval is delivered to the management committee at or prior to the meeting. A resolution to be adopted must be approved by the ownership of not less than two-thirds (2/3) of the units.

11.3 Anti-Discrimination. No amendment shall discriminate against any unit owner. No amendment shall change any unit nor the unit's share in the common elements pertinent to it nor increase a unit owner's share of the common expenses, unless the record owner of the unit and all lien holders of record thereon shall join in the execution of the amendment.

11.4 Filing. A copy of the amendment shall be certified by the management committee as having been duly adopted, and shall be effective when recorded in the public records of Cache County, Utah.

PART 12 EASEMENTS

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12.1 Easement for Common Utilities and Facilities. The management committee may hereafter grant easements for utility and common facilities for the benefit of the condominium property, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along, on, and through any portion of any unit, of the common areas and facilities and the limited common areas and facilities. This easement is intended to encompass not only existing utility and common or limited common facilities, but also any easement necessary to accommodate future technological developments as well.

12.2 Interior Easement. An easement in favor of each unit owner is hereby established to permit such owner to attach draperies, pictures, mirrors, and like decorations and furnishings to the interior surfaces of the common walls, floors, and ceilings.

12.3 Easement for Encroachments. Each unit shall be subject to such easements as may be necessary for the installation, maintenance, repair, or replacement of any common areas and facilities located within the bounds of such unit.

12.4 Future Encroachments. In the event that, by reason of the construction, reconstruction, settlement or shifting of any building, any part of the common areas and facilities encroach or shall hereinafter encroach upon any part of the limited common areas and facilities of any other unit, valid easements for such encroachments and the maintenance of such encroachments are hereby established and shall exist for the benefit of such unit in the common areas and facilities, as the case may be, so long as all or any part of the building containing any such unit shall remain standing; *provided, however*, that in no event shall a valid easement for any encroachment be created in favor of any unit owner or in favor of the unit owners as owners of the common areas and facilities if such encroachment occurred due to the willful conduct of such unit owner or owners.

PART 13 SUBMISSION TO CONDOMINIUM OWNERSHIP

13.1 Submission to Act. Declarant hereby submits the above-described property, tract of land, building, and other improvements constructed thereon or hereafter to be constructed, together with all appurtenances thereto, to the provisions of the Act as a condominium project, and this Declaration is submitted in accordance with the terms and provisions of the Act and shall be construed in accordance therewith.

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

13.3 Option to Expand Condominium Project. Declarant does not reserve the option to expand the condominium project. Therefore, the percentages in Schedule "B" are fixed and shall represent at the same time maximum and minimum percentages.

13.4 Mortgage Protection. Notwithstanding anything herein to the contrary, it is hereby expressly declared, certified and agreed as follows:

(a) Any holder of a first or second mortgage or deed of trust on any unit is entitled to written notification from the management committee of any default by the Mortgagor/Trustor of such unit in the performance of such mortgagor's/trustor's obligations under the Declaration, which have not been cured within ninety (90) days;

(b) If notice of said action is given to the management committee fifteen (15) days prior to said action occurring, any holder of a first or second mortgage or a deed of trust on any unit which comes into possession of the unit pursuant to the remedies provided in the mortgage or trust deed or by an assignment in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against said unit, which accrue prior to the acquisition of title to such unit by the mortgagee or trust deed beneficiary (*except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all units including the mortgaged unit*). After a foreclosure, however, a lien may be created to secure all assessments which may be enforceable as provided herein.

**PART 14 BYLAWS OF THE SAUNDERS PROFESSIONAL PLAZA
CONDOMINIUM ASSOCIATION**

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ARTICLE I

Plan of Condominium Unit Ownership

Section 1. Condominium Unit Ownership. The property located at approximately 286 Gateway Drive, Providence, Utah, and more particularly described in Schedule "A", hereinafter

called the condominium project, has been made subject to the provisions of the Act, by this Declaration of Covenants, Conditions, Restrictions and Bylaws recorded in the office of the County Recorder, Cache County.

Section 2. Applicability of Bylaws. The provisions of these Bylaws are applicable to the condominium project and to the use and occupancy thereof.

Section 3. Application. All present and future owners, mortgagees, lessees, and occupants of any unit, and any other persons who may use the facilities of the condominium project in any manner are subject to this Declaration, and all rules and regulations pertaining to the use and operation of the condominium property. The acceptance of a deed or conveyance or the entering into of a lease, or the act of occupancy of a unit shall constitute an acceptance of the provisions of this instrument and an agreement to comply therewith.

ARTICLE II

Unit Owners

Section 1. Annual Meetings. The first regular annual meeting of unit owners may be held, subject to the terms hereof, at any date, at the option of the management committee; *provided, however,* the first meeting shall be held not less than 1 day nor more than 90 days after the recording date of the Declaration of Condominium. Subsequent to the first meeting, there shall be a regular annual meeting of unit owners held each year within 45 days after the anniversary of the first meeting. All such meetings of unit owners shall be held at such place in Cache County, Utah, and at such time as specified in the written notice of such meeting, which shall be delivered to all unit owners at least 10 days prior to the date of such meeting, but no more than 30 days prior to the date of such meeting.

Section 2. Special Meetings. Special meetings of the unit owners may be called by the management committee or by unit owners having at least 30 percent of the votes entitled to be cast at such meeting. Such special meetings shall be called by delivering written notice to all unit owners not less than 10 days nor more than 30 days prior to the date of such meeting, stating a date, time and place of such special meeting and the matters to be considered. Notices of meetings may be delivered either personally or by mail to a unit owner at the address given to the management committee by said unit owner for such purpose, or to the unit owner's unit, if no address for such purpose has been given to the management committee.

Section 3. Voting. The total voting power of all owners of units shall be one hundred (100) votes, and the total number of votes available to an owner of any unit shall be equal to that unit percentage of ownership in common area as set forth on Schedule "B". There shall be one (1) "voting representative" of each unit. If a person owns more than one unit, he shall have the votes for each unit owned. The voting representative shall be designated by the owner or owners of each unit by written notice to the committee and need not be an owner. The designation shall be revocable at any time by actual notice to the committee from a party having an ownership interest in the unit, or by actual notice to the committee of the death or judicially declared

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incompetence (*except in the case of a Durable Power of Attorney for a living principal*) of any party with ownership interest in the unit.

Section 4. Quorum. Except as otherwise provided in these by-laws, the presence in person or by proxy of the unit owners holding at least sixty (60%) percent of the voting power of the Association of Unit Owners shall constitute a quorum of the membership. The unit owners present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of one or more unit owners which results in less than a quorum being present.

Section 5. Majority of Owners. As used in these by-laws, the term "majority of owners" shall mean those owners of fifty-one (51%) percent of an undivided ownership of the general common areas in person or by proxy.

Section 6. Proxies. Votes may be cast in person or by proxy. Proxies may be in writing and signatures witnessed or acknowledged. Proxies must be filed with a member of the committee before the appointed time of each meeting. No proxy shall be valid for a period longer than 11 months after date thereof.

Section 7. Voting by Mail. The management committee may decide that the voting of the unit owners may be by mail with respect to any particular election of the management committee or with respect to the adoption of any proposed amendment to the Declaration of Condominium or Bylaws, or with respect to any other matter for which approval by unit owners is required by the Declaration or Bylaws.

Section 8. Adjourned Meeting. If any meetings of the owners cannot be organized because a quorum has not attended, the unit owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than 48 hours nor more than 96 hours from the time the original meeting was called.

Section 9. Order of Business. The order of business at all meetings of the unit owners shall be as follows:

- (a) Roll call and review of proxies;
- (b) Proof of notice or waiver of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Report of management committee;
- (f) Reports of committees;
- (g) Election of inspectors of election (when so required);

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- (h) Election of members of the management committee (when so required);
- (i) Unfinished business; and
- (j) New business.

Section 10. Binding Vote. The vote of a majority of all unit owners' votes, as determined in Section 3 above, at a meeting at which a quorum shall be present, shall be binding upon all unit owners for all purposes except where a higher percentage vote is required by law or by this Declaration.

Section 11. Title to Condominium Units. Title to condominium units may be taken in the name of an individual or in the names of two or more persons, as tenants in common or as joint tenants, or in the name of a corporation, limited liability company, partnership, or in the name of a fiduciary (such as a Trustee).

ARTICLE III

Management Committee

Section 1. Management Committee - Number and Qualifications. The affairs of the association of unit owners and of the property shall be governed by the management committee. The committee shall be composed of three (3) persons, at least two (2) of the three (3) persons shall be owners of units and shall be elected by the unit owners as provided herein. The third (3rd) member of the management committee shall be appointed by the two (2) elected members, unless the owners have chosen to elect all three (3) members directly.

Section 2. Management Committee - Election and Term of Office. The elected members of the committee shall hold office and serve as such until their respective successors shall have been elected by the unit owners. The non-elected member shall serve at the will of the elected members, and shall also hold office and serve as such until his successor shall have been elected by the unit owners, or appointed by the two (2) elected members, as set forth herein.

Section 3. Initial Management Committee. Inasmuch as there are only several units included within the project, Staggered terms of office shall *not* be provided for the management committee. Each member of the Management Committee shall be elected, or appointed as set forth herein, on an annual basis. Nevertheless, each member of the Management Committee shall serve as such until their respective successor shall have been properly elected or appointed, as set forth herein, and shall have accepted.

Section 4. Management Committee - General Powers. The business, property, and affairs of the SAUNDERS PROFESSIONAL PLAZA CONDOMINIUMS shall be managed by a management committee hereinafter sometimes referred to for convenience as the committee. The management committee shall have all the powers, duties, and responsibilities as are now or may hereafter be provided by the Act, this Declaration, the Bylaws, and/or any amendments subsequently filed thereto.

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The management committee shall be responsible for the control, operation and management of the project in accordance with the provisions of the Act, this Declaration, such rules and regulations as may be adopted from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the committee.

The management committee shall have authority to employ accountants, architects, appraisers, attorneys, engineers or such other professionals as it deems necessary to advise it in carrying out its responsibilities as set forth herein,

Ownership of a unit shall be the sole qualification for a membership on the management committee. Each fee owner (including Declarant) as to any units owned by him shall be a member of the association and shall be entitled to one membership for each unit so owned; *provided*, that if a unit has been sold on contract, the contract purchaser shall exercise the right of the unit owner for purposes of the association, this Declaration, and the Bylaws, except as hereinafter limited, and shall be the voting owner unless otherwise specified.

The association membership of each owner (including Declarant) shall be appurtenant to the unit giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, or conveyed or alienated in any way except upon the transfer of title to said unit, and then only to the transferee of title to such unit. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a unit shall operate automatically to transfer the membership in the association pertinent thereto to the new owner thereof.

Section 5. Specific Powers and Duties. The management committee shall have the powers and duties necessary for the administration of the affairs of the condominium, except as such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the management committee by the unit owners. The Management Committee shall use its best efforts to assure that the property is maintained and operated in a condition suitable for a professional office facility, and with due regard for the concerns and interests of all unit owners, including any minority interest holders. The powers and duties to be exercised by the management committee shall include, but shall not be limited to the following:

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- (a) Operation, care, upkeep and maintenance of the common areas and exterior portions of limited common areas;
- (b) Determination of the amounts of money required for operation, maintenance, and other affairs of the condominiums;
- (c) Collection of the common charges from the unit owners;
- (d) Employment and dismissal of personnel as necessary for the efficient maintenance and operation of the condominium;

- (e) Adoption and amendment of rules and regulations covering the details of the operation and use of the condominium property;
- (f) Opening of bank accounts on behalf of the condominium and designating the signatories required therefore;
- (g) Obtaining insurance for the condominium property, including the condominium units, pursuant to the provisions contained in this Declaration, etc.;
- (h) Making repairs, additions and improvements to, or alteration of, the condominium property, and repairs to and reconstruction of the property in accordance with the provisions of this Declaration, etc. after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;
- (i) Taking all steps necessary to incorporate the association of unit owners under either the provisions of the Utah law dealing with nonprofit corporations, or profit corporations, or limited liability companies, as deemed necessary or desirable by the management committee.
- (j) Receiving funds from unit owners as an agent of the unit owners (to be used solely for the benefit of the unit owners) and to expend such funds collected, pursuant to its fiduciary obligation in the manner approved by the unit owners. (Rev. Ruling 75-370)

Section 6. Managing Agent and Manager. The management committee may employ for the condominium a managing agent and a manager at a compensation established by the management committee to perform such duties and services as the management committee shall authorize, including, but not limited to the duties listed in subdivisions (a), (c), (d), (g), and (h) of Section 4 of this Article III. The management committee may delegate to the manager or managing agent, all the powers granted to the management committee by these Bylaws other than the powers set forth in subdivisions (b), (e), and (f) of Section 4 of this Article III. Any agreement for a professional management of the condominium project, or any other contract providing for services to the management committee must provide for termination by the management committee with or without cause upon thirty (30) days written notice.

Section 7. Removal of Members of Management at Committee. At any regular or special meeting of unit owners, after the unit owners have assumed the management responsibility, any one or more of the members of the management committee may be removed with or without cause by two-thirds (2/3) of the unit owners and a successor may immediately be elected to fill the vacancy thus created. Any member of the management committee whose removal has been proposed by the unit owners shall be given an opportunity to be heard at the meeting.

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Section 8. Vacancies. Vacancies in the management committee caused by any reason other than the removal of a member thereof by a vote of the unit owners shall be filled by vote of a majority of those remaining members at a special meeting of the management committee held for that purpose promptly after the occurrence of any such vacancy, even though

the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the management committee for the remainder of the term of the member so removed and until a successor shall be elected at the next annual meeting of the unit owners.

Section 9. Regular Meeting. Regular meetings of the management committee may be held at such time and place as shall be determined from time to time by a majority of the members of the management committee, but at least two such meetings shall be held during each fiscal year. Notice of regular meetings of the management committee shall be given to each member of the management committee by mail, telephone or in person at least three business days prior to the day named for such meeting.

Section 10. Special Meetings. Special meetings of the management committee may be called by the president on three business days' notice to each member of the management committee, given by mail or telephone, or in person, which notice shall state the time, place and purpose of the meeting. Special meetings of the management committee shall be called by the president or secretary in like manner and on like notice on the written request of at least two members of the management committee.

Section 11. Waiver of Notice. Any member of the management committee may, at any time, waive notice of any meeting of the management committee in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the management committee at any meeting of the management committee shall constitute a waiver of notice by him of the time and place thereof. If all the members of the management committee are present at any meeting of the management committee, no notice shall be required and any business may be transacted at such meeting.

Section 12. Quorum of Management Committee. At all meetings of the management committee, two (2) of the voting members thereof shall constitute a quorum for the transaction of business, and the vote of a majority of the voting members of the management committee when a quorum is present shall constitute the decision of the management committee. If at any meeting of the management committee there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

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Section 13. Fidelity Bonds. The management committee need not obtain fidelity bonds for all officers and employees of the condominium handling or responsible for condominium funds.

Section 14. Compensation. No voting member of the management committee shall receive any compensation from the condominium project or association for acting as such.

Section 15. Liability of the Management Committee. The members of the management committee, including Declarant, shall not be liable to the unit owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or

bad faith. The unit owners shall indemnify and hold harmless each member of the management committee including Declarant against all contractual liability to others arising out of contracts made by the management committee on behalf of the condominium unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these Bylaws. The members of the management committee including Declarant shall have no personal liability with respect to any contract made by them on behalf of the association of unit owners. It is intended that the liability of any unit owner arising out of any contract made by the management committee or out of the indemnity in favor of the members of the management committee shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interests of all the unit owners in the common elements. Every agreement made by the management committee or by the managing agent or by the manager on behalf of the condominium shall provide that the members of the management committee or the managing agent, or the manager, as the case may be, are acting only as agents for the unit owners and shall have no personal liability thereunder (except as unit owners), and that each unit owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interests of all unit owners in the common elements. It is anticipated that all contracts will be entered into by the Association, which, if a nonprofit corporation, should provide liability protection to the officers thereof, and should constitute the obligation of such association.

Section 16. Right of Entry. The management committee or its duly authorized agents shall have the right to enter any or all units in the case of an emergency originating in or threatening such unit or any part of the project, whether or not the unit owner or occupant thereof is present at the time. The committee or its duly authorized agent shall also have the right to enter into any and all of said units at all reasonable times as required for the purpose of performing emergency installations, alterations, or repairs to the mechanical, electrical or other utility devices or installations located therein or thereon, *provided, however*, that such emergency, installation, alteration or repair is necessary to prevent damage or threatened damage to such unit or units in the project; and *provided further*, that the unit owner affected by such entry shall first be notified thereof if available and if time and circumstances shall permit.

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Section 17. Administrative Rules and Regulations. The management committee shall have the power to adopt, establish and amend by resolution, such building management, and operational rules as it may deem necessary for the maintenance, operation, management and control of the project and the committee may from time to time by resolution, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the unit owners, such amendment, alteration, or repeal shall be deemed to be a part of such rules. Unit owners shall at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply to, and be binding upon all unit owners and/or occupants of any unit. Any rule promulgated by the committee shall become immediately effective, unless objected to by unit owners constituting two-thirds (2/3) of votes identified on Schedule "B", in which case the rule shall be stayed unless approved by a simple majority (51%) of the unit owners identified on Schedule "B".

Section 18. Obligation to Comply with Rules. Each unit owner, tenant or occupant of a unit shall comply with the provisions of the Act, this Declaration, the rules and regulations of this management committee, all agreements and determinations lawfully made and/or entered into by the management committee or unit owners, when acting within the scope of their authority and any failure to comply with any of the provisions thereof shall be grounds for an action by the management committee for injunctive relief and/or to recover for any loss or damage resulting therefrom.

Section 19. Liability for Negligence. Notwithstanding any other provision herein to the contrary, the management committee's power hereinabove enumerated shall be limited in that the management committee shall have no authority to acquire and pay for out of the common expense fund capital additions and improvements (other than for purposes of replacing portions of the common area, subject to all the provisions of this Declaration) having a single or cumulative annual cost of more than Two Thousand Dollars (\$ 2,000.00), without the written consent of a majority of Unit Owners (allowing, for this purpose, one vote for each unit owned, even if multiple units are owned by a common owner.)

ARTICLE IV

Officers

Section 1. Designation. The principal officers of the condominium association shall be the president, vice-president, secretary, and treasurer, all of whom shall be elected by the management committee. The president and vice-president must be members of the management committee. *The offices of secretary and treasurer may be combined and may be held by the manager of the project.*

Section 2. Election of Officers. Officers shall be elected by the management committee at the organization meeting, and shall hold office at the pleasure of the management committee.

Section 3. Removal of Officers. Upon the affirmative vote of a majority of the members of the management committee any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the management committee or at any special meeting of the management committee called for such purpose.

Section 4. President. The president shall be the chief executive officer of the condominium. He shall preside at all meetings of the unit owners and of the management committee. He shall have all the general powers and duties that are incident to the office of president of a corporation organized under the applicable laws of the State of Utah, including but not limited to the power to appoint from the unit owners any committee which he decides is appropriate to assist in the conduct of the affairs of the condominium. Ent 879102 Bk 1332 Pg 509

Section 5. Vice-President. The vice-president shall take the place of the president and perform his duties whenever the president shall be absent or unable to act. If neither the president nor the vice-president is able to act, the management committee shall appoint some

other member of the management committee to act in the place of the president, on an interim basis. The vice-president shall also perform such other duties as shall from time to time be requested of or assigned to him by the management committee or by the president.

Section 6. Secretary. The secretary shall keep the minutes of all meetings of the unit owners and of the management committee. He shall have charge of such books and papers as the management committee may direct; he shall perform all the duties incident to the office of secretary of a corporation organized under the Revised Business Corporation Act of the State of Utah.

Section 7. Treasurer. The treasurer shall have the responsibility for condominium funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall be responsible for the deposit of all monies and other valuable effects in the name of the management committee, or the managing agent, in such depositories as may from time to time be designated by the management committee; and he shall perform all the duties incident to the office of treasurer of a corporation organized under the Revised Business Corporation Act of the State of Utah.

Section 8. Agreement, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks and other similar obligations or actions of the condominium association shall be executed by the president and secretary of the Association or by such other person or persons as may be designated by the management committee.

Section 9. Compensation of Officers. No officer shall receive any compensation from the Association for acting as such.

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ARTICLE V

Operation of the Property

Section 1. Determination of Common Expenses and Common Charges. The management committee shall from time to time, and at least annually, prepare a budget for the condominium, determine the amount of the common charges required to meet the common expenses of the condominium and allocate and assess such common charges against the unit owners according to their respective common interests. The common expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the management committee pursuant to the provisions of Section 2 of this Article V and the fees and disbursements of the management committee. The common expenses may also include such amounts as the management committee may deem proper for the operation and maintenance of the condominium property, including, without limitation, an amount for working capital of the condominium, for a general operating reserve and shall include for a reserve fund for replacements, maintenance and repairs and to make up any deficit in the common expenses for any prior year. The management committee shall advise each unit owner in writing of the amount of common charges payable by him and shall furnish copies of each budget on which such common charges are based to all unit owners and to their

mortgagees. In the event that such assessment shall result in any excess for any one year, the management committee may refund the excess to the unit owners or apply such excess to assessments for the succeeding year.

That portion of the common assessments payable by each unit owner in each year, or for a portion of a year, shall be a sum, within the limits and on the conditions hereinabove provided, bearing to the aggregate amount of such cash requirements for each year, or portion of a year, determined as aforesaid, the same ratio as the unit owner owns an undivided interest in the common areas and facilities. Such assessments together with any additional sums accruing under this Declaration or the Act, shall be payable monthly in advance, or in such payments, installments or such times as shall be required by the management committee; but in any event, the charges shall be payable in regular installments rather than by special assessment.

The management committee shall have absolute, discretionary authority to prescribe the manner of maintaining and operating the project and to determine the cash requirements to be paid as aforesaid by the owners under this Declaration. Any such determination by the management committee within the bounds of the Act or this Declaration, shall be final and conclusive on the unit owners, and any expenditures made by the management committee within the bounds of the Act or Declaration, shall be deemed necessary and proper for such purpose as against the unit owners.

Section 2. Insurance. The management committee shall be required to obtain and maintain, to the extent obtainable, the following insurance:

(a) fire insurance with extended coverage, vandalism, and malicious mischief endorsements, insuring the entire condominium building (including all of the condominium units and the fixtures initially installed therein by the Declarant, *but not including furniture ,furnishing, or other personal property supplied or installed by unit owners*), together with all air conditioning equipment and other service machinery contained therein; such insurance shall cover the Association, the management committee, and all unit owners and their mortgagees, as their interests may appear, in an amount equal to the full replacement value of the building, without deduction for depreciation. Each policy shall contain a standard mortgagee clause in favor of each mortgagee of a condominium unit which shall provide that proceeds shall be payable to such mortgagee as its interest may appear, subject, however, to payment provisions in favor of the management committee for repair, replacement or reconstruction as provided for herein;

- (b) workmen's compensation insurance;
- (c) boiler and machinery insurance, where appropriate;
- (d) plate glass insurance;
- (e) water damage insurance;
- (f) such insurance necessary to meet any mortgagee's specifications;

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- (g) such other insurance as the management committee may determine advisable.

All such policies shall comply with F.H.A., V.A. or F.H.L.M.C. standards, if applicable, and shall provide that adjustment of loss shall be made by the management committee, and that the net proceeds thereof shall be payable to the management committee subject to the rights of the respective mortgagees to receive proceeds for any purpose other than repair, replacement, or reconstruction.

All policies of physical damage insurance shall contain waivers of subrogation and waivers of any defense based on coinsurance or of invalidity arising from any acts of the insured, and shall provide that such policies may not be canceled or substantially modified without at least ten (10) days prior written notice to all the insured, including all mortgagees of condominium units. Duplicate originals of all policies of physical damage insurance and of all renewals thereof, together with proof of payment of premiums, shall be delivered to all mortgagees of condominium units at least ten (10) days before the expiration of the then-current policies.

The management committee shall also be required to obtain and maintain, to the extent obtainable, public liability insurance in such limits as the management committee may from time to time determine, covering each member of the management committee, the managing agent, the manager, and each unit owner. Such public liability coverage shall also cover cross liability claims of one insured against another. The management committee shall review such limits annually.

Unit owners shall not be prohibited from carrying other insurance for their own benefit *provided* that all policies shall contain waivers of subrogation and *further provided* that the liability of the carriers issuing insurance obtained by the management committee shall not be affected or diminished by reason of any such additional insurance carried by any unit owner.

Section 3. Repair or Reconstruction after Damage. In the event of damage to or destruction of any building as a result of fire or other casualty (unless the last paragraph of this section applies), the management committee shall arrange for the prompt repair and reconstruction of the buildings (including any damaged condominium units, and any fixtures initially installed therein by the Declarant, but not including any ceiling or floor decorations or coverings or other furniture, furnishings, fixtures, or equipment installed by unit owners in the condominium units), and the management committee shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute a common expense and the management committee may assess all the unit owners for such deficit as part of the common charges.

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The management committee will give any notice of loss required by any lender's coverage, or if applicable by the F.H.A., V.A., or F.H.L.M.C.

If 75% or more of the building is destroyed or substantially damaged, and if 75% or more of the first mortgagees (each mortgagee having the same number of votes as the owners of

the units for which it holds the mortgages) or owners (other than the sponsor, developer or builder) of the units have given their prior written approval, and only under such conditions, the condominium property shall be subject to an action for partition at the suit of any unit owner, lienor or mortgagor, as if owned in common, in which event the net proceeds of sale, together with the net proceeds of insurance policies (or if there shall have been a repair or restoration pursuant to the first paragraph of this Section 3, and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration then the excess of such insurance proceeds) shall be divided by the management committee among all the unit owners in proportion to their respective common interest, after first paying out of the share of each unit owner the amount of any unpaid liens or mortgages on his condominium unit, in the order of the priority of such liens or mortgages. As used in this Article, the term "emergency work" shall mean that work which the committee deems reasonably necessary to avoid further damage, destruction or substantial diminution in value to the improvements and to reasonably protect the owners from liability from the condition of the site. Notwithstanding any other provision of this Declaration, the management committee shall have total and complete authority to authorize "Emergency Work" up to Fifteen Thousand Dollars (\$15,000).

Unless prior to the commencement of repair and restoration work (other than emergency work referred to in the subsection above) the owners shall have decided not to repair and reconstruct, the committee shall promptly repair and restore the damage and destruction, use the available insurance proceeds therefor, and pay for the actual cost of repair and restoration in excess of insurance proceeds secured as a common expense which shall be specially assessed against all units in proportion to their percentages of interest in the common areas. Each unit owner, at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within his own unit. Maintenance of, repairs to and replacements within the common elements shall be the responsibility of and shall be furnished by the Association. The cost of maintenance of, repairs to and replacements within the common elements shall be part of the common expenses, subject to the Bylaws, rules and regulations of the Association. However, at the discretion of the committee, maintenance of, repairs to and replacements within the limited common elements may be assessed in whole or in part to unit owners benefited thereby; and, further, at the discretion of the committee, the committee may direct unit owners who stand to be benefited by such maintenance of, repairs to and replacements within the limited common elements to arrange for such maintenance, repairs and replacement in the name and for the account of such benefited unit owners, pay the cost thereof with their own funds, and procure and deliver to the committee such lien waivers and contractor's and subcontractor's sworn statements as may be required to protect the property from all mechanics' or materialmen's lien claims that may arise therefrom.

Unit owners sharing a common wall shall furnish and be responsible for all maintenance of, repairs to, and replacement of such wall.

Section 4. Payment of Common Charges. All unit owners shall be obligated to pay the common charges assessed by the management committee pursuant to the provisions of Section 1 of Article V at such times as the management committee shall determine.

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No unit owner shall be liable for the payment of any part of the common charges assessed against his condominium unit subsequent to a sale, transfer, or other conveyance made by him according to the provisions of Section 1 of Article VII of these by-laws.

Any grantee of a voluntary conveyance acquiring an interest in a unit that has unpaid or delinquent assessment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grant or conveyance.

Except for claims for a pro rata share of such assessments or charges resulting from a pro rata allocation of extinguished assessments or charges, a mortgagee or other purchaser of a condominium unit at a mortgage or trust deed foreclosure sale of such condominium unit shall not be liable for, and such condominium unit shall not be subject to a lien for the payment of common charges that accrue prior to the acquisition of title to such unit by the mortgagee or other purchaser at the foreclosure sale.

Section 5. Collection of Assessments. The management committee shall assess common charges against the unit owners from time to time and at least annually and shall take action to collect from a unit owner any common charge due which remains unpaid by him for more than 30 days from the due date for its payment.

Section 6. Default in Payment of Common Charges.

(a) If any unit owner shall fail or refuse to make any payment of the common expenses when due, the amount thereof shall constitute a lien on the interest of the owner of the property, and upon the recording of notice thereof by the management committee shall be a lien upon the unit owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded, *except only:*

- (1) tax and special assessment liens; Ent 879102 Bk 1332 Pg 514
- (2) prior recorded encumbrances that are superior as a matter of law.

(b) In the event of default by any unit owner in paying to the management committee the assessed common charges, such unit owner shall be obligated to pay interest at the legal rate for judgments on such common charges from the date due thereof, together with all expenses, including attorney's fees, incurred by the management committee in any proceeding brought to collect such unpaid common charges. The management committee shall have the right and duty to attempt to recover such common charges, together with interest thereon, and the expenses of the proceeding, including attorney's fees, in an action brought against such unit owner, or by foreclosure of the lien on such condominium unit.

(c) Upon payment of a delinquent assessment the management committee shall cause a satisfaction of lien filed in cases where a notice of lien had been filed.

(d) If a unit owner shall at any time let or sublet the unit and shall be in default for a period of one month in the payment of any assessments, the management committee may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the owner occupying the unit the rent due or becoming due and payment of such rent to the management committee shall be payment and discharge of such tenant or subtenant and the owner of the unit to the extent of the amount so paid. No action on the part of the management committee under this section shall have the effect of relieving the unit owner of primary liability.

Section 7. Foreclosure of Liens for Unpaid Common Charges. In any action brought by the management committee to foreclose a lien on a condominium unit because of unpaid common charges, the unit owner shall be required to pay a reasonable rental for the use of his condominium unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect such rental. The management committee, acting on behalf of all unit owners, shall have power to purchase such condominium unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the same. A suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien securing the same.

Section 8. Statement of Common Charges. The management committee shall promptly provide any unit owner, who makes a reasonable request in writing, with a written statement of his common charges.

Section 9. Abatement and Enjoining of Violations. The violation of any rule or regulation adopted by the management committee, or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the management committee the right, in addition to any other rights available at law or set forth in these by-laws:

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

(b) to enjoin, abate or remedy such thing or condition by appropriate legal proceedings.

Section 10. Maintenance and Repair.

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(a) All maintenance of and repairs to any unit, structural or non-structural, ordinary or extraordinary, (other than maintenance of and repairs to any common elements contained therein not required by the negligence, misuse, or neglect of the owner of such condominium unit) shall be made by the owner of such condominium unit. Each unit owner shall be responsible for all damages to any other condominium unit and to the common elements resulting from his failure to effect such maintenance and repairs.

(b) All maintenance, repairs and replacements to the common elements, whether located inside or outside of the condominium units (unless required by the negligence, misuse, or neglect of a unit owner, in which case such expense shall be charged to the unit owner) shall be made by the management committee and be charged to all the unit owners as a common expense.

Section 11. Additions, Alterations or Improvements, by Unit Owners. No unit owner shall make any structural addition, alteration or improvement in or to his condominium unit without the prior written consent thereto of the management committee. The management committee shall have the obligation to answer any written request by a unit owner for approval of a proposed structural addition, alteration or improvement in such unit owner's condominium unit within twenty (20) days of such request and failure to do so within the stipulated time shall constitute a consent by the management committee to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any condominium unit shall be executed by the management committee. The management committee shall not be liable to any contractor, subcontractor, matcrialman or to any person sustaining personal injury or property damage for any claim in connection with such addition, alteration or improvement. Any unit owner may make nonstructural alterations, additions or improvements within the unit of the unit owner, without the prior written approval of the committee, but such unit owner shall be responsible for any damage to other units, the common elements or limited common elements, the property, or any part thereof, resulting from such alterations, additions or improvements. Each unit owner, at his own expense, shall furnish and be responsible for all decorating within his own unit and limited common elements serving his unit, as may be required from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lighting and other furnishings and decorating. Each unit owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floor and ceilings of his unit, and such unit owner shall maintain said interior surfaces in good condition at his sole expense, as may be required from time to time. The maintenance and use of interior surfaces shall be subject to the rules and regulations of the association, but each such unit owner shall have the right to decorate such interior surfaces from time to time as he may see fit and at his sole expense. Decorating of the common elements (other than interior surfaces within the units as above provided and other than surfaces within the units as above provided and other than of limited common elements) and any redecorating of units, to the extent such redecorating of units is made necessary by damage to units caused by maintenance, repair or replacement of the common elements by the Association, shall be furnished by the Association as part of the common expenses. The exteriors and interiors of all windows forming part of a perimeter wall of a unit shall be cleaned and washed at the expense of the owner of that unit.

Section 12. Water Charges and Sewer Rents. Water shall be supplied by the City of Providence directly to each condominium unit through a separate meter and each unit owner shall be required to pay the bills for water consumed or used in his condominium unit. The management committee shall pay all bills for water consumed by the common facilities and sewer services rendered to the condominium as a common expense.

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Section 13. Electricity. Electricity shall be supplied by the customary utility providers directly to each condominium unit through a separate meter and each unit owner shall be required to pay the bills for electricity consumed or used in his condominium unit. The electricity supplied to the common facilities will be separately metered and paid by all units through the assessment.

Section 14. Gas. Gas shall be supplied by Mountain Fuel directly to each condominium unit through a separate meter and each unit owner shall be required to pay the bills for gas consumed or used in his or her condominium unit. The gas supplied to the common facilities will be separately metered and paid by all units through the assessment.

Section 15. Taxes. Each unit and its percentage of undivided interest in common area and facilities shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law including, but not limited to, ad valorem liens and special assessments.

Section 16. Liability for Negligence. If, due to the act or neglect of a unit owner, or of his agent, servant, tenant, family member, invitee, licensee or pet, damage shall be caused to the common or limited elements or to a unit or units owned by others, or maintenance, repair or replacement are required which would otherwise be a common expense, then such unit owner shall pay for such damage or such maintenance, repair and replacements, as may be determined by the Association, to the extent not covered by the Association's insurance.

ARTICLE VI

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Mortgages

Section 1. Notice to Management Committee. A unit owner who mortgages his condominium unit shall notify the management committee of the name and address of his mortgagee and shall file a conformed copy of the note and mortgage with the management committee. The management committee shall maintain such information in a book entitled "Mortgages of Condominium Units."

Section 2. Notice of Unpaid Common Charges. The management committee, whenever so requested in writing by a mortgagee of a condominium unit, shall promptly report any then unpaid common charges or other default by the owner of the mortgaged condominium unit.

Section 3. F.H.A., V.A. and F.H.L.M.C. Requirements. Notwithstanding any other provisions herein, the management committee, management agent, manager and officers shall comply with all provisions required by F.H.A., V.A. and F.H.L.M.C., if applicable.

Section 4. Notice of Default. The management committee when giving notice to a unit owner of a default in paying common charges or other default, shall send a copy of such notice to each holder of a mortgage covering such condominium unit whose name and address has heretofore been furnished to the management committee.

Section 5. Examination of Books. Each unit owner and each mortgagee of a condominium unit shall be permitted to examine the books of account of the condominium at reasonable times on business days, but not more often than once a month.

ARTICLE VII

Sales of Units

Section 1. Sales. No unit owner may sell his condominium unit or any interest therein *except* by complying with the provisions of this Article VII. A unit owner's sale of his condominium unit shall include the sale of:

- (a) the undivided interest in the common elements appurtenant thereto; and
- (b) the interest of such unit owner in any other assets of the condominium, hereinafter collectively called the appurtenant interests.

Section 2. No Severance of Ownership. No unit owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his condominium unit without including therein the appurtenant interests, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the appurtenant interest of any condominium unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer, or other disposition of the condominium unit to which such interests are appurtenant, or as a part of a sale, transfer or other disposition of such part of the appurtenant interests of all condominium units.

Section 3. Gifts and Devises, etc. Subject to this Declaration, Bylaws, and any applicable restrictions of record, any unit owner shall be free to convey or transfer his condominium unit by gift, or to devise his condominium unit by will, or to pass the same by intestacy, without restriction.

Section 4. Payment of Assessments. No unit owner shall be permitted to convey, mortgage, pledge, hypothecate or sell his condominium unit until he shall have paid, in full, all unpaid common charges theretofore assessed by the management committee against his condominium unit and until he shall have satisfied all unpaid liens against such condominium unit, except permitted mortgages.

ARTICLE VIII

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Condemnation

Section 1. Condemnation. In the event of a taking in condemnation or by eminent domain, part or all of the common elements, the award made for such taking shall be payable to the management committee subject to the rights of any mortgage holders to receive part or all of a given distribution according to the terms of the restricted mortgages. If 75% or more of the unit owners duly and promptly approve any repair and reconstruction of the common elements, the management committee shall disburse the proceeds of such award to the contractors engaged in such repair and reconstruction in appropriate progress payments. In the event that 75% or more of the unit owners do not duly and promptly approve such repair and reconstruction of the common elements, the management committee shall disburse the net proceeds of such award in the same manner as they are required to distribute insurance proceeds where there is no repair or restoration of the damage, as provided in Section 3 of Article V of these by-laws.

ARTICLE IX

Records

Section 1. Records and Audits. The management committee or the managing agent shall keep detailed records of the actions of the management committee and the managing agent, minutes of the meeting of the management committee, minutes of the meetings of the unit owners, and financial records and books of account of the condominium, including a chronological listing of receipts and expenditures, as well as a separate account for each condominium unit which, among other things, shall contain the amount of each assessment of the common charges against such condominium unit, the date when due, the amounts paid thereon, and the balance remaining unpaid. A written report summarizing all receipts and expenditures of the condominium shall be rendered by the management committee to all unit owners at least annually, including a report of the receipts and expenditures of the condominium. The management committee may give such report to all mortgagees of condominium units who have requested the same, promptly after the end of each fiscal year.

ARTICLE X

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Miscellaneous

Section 1. Notices. All notices to the management committee shall be sent by registered or certified mail, in care of the managing agent, or if there is no managing agent, to the office of the management committee or to such other address as the management committee may hereafter designate from time to time. All notices to any unit owner shall be sent by mail to the building or to such other address as may have been designated by him from time to time, in writing, to the management committee. All notices to mortgagees of condominium units shall be sent by mail to their respective addresses as designated by them from time to time, in writing, to the management committee. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

Section 2. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these by-Laws, or the intent of any provision thereof.

ARTICLE XI

Assessments

Section 1. **Estimated Expenses.** The management committee shall have discretionary powers to prescribe the manner of maintaining and operating the condominium project and to determine the cash requirements of the management committee to be paid as aforesaid by the owners under this Declaration. Every such reasonable and final determination by the management committee (final within the bounds of the Act, and this Declaration) shall be conclusive as to the owners, and any expenditures made by the management committee, within the bounds of the Act and this Declaration shall as against the owner be deemed necessary and properly made for such purposes. Within thirty (30) days prior to the beginning of each calendar year, the committee: shall estimate the charges (including common expenses, and any special assessments for particular units) to be paid during such year; shall make provision for creating, funding and maintaining reasonable reserves for contingencies, operations, and repair, replacement and acquisition of common areas and facilities; and shall take into account any expected income and any surplus available from the prior year's operating fund. The committee may at any suitable time establish the first such estimate. If the sum estimated and budgeted at any time proves inadequate for any reason (including nonpayment for any reason of any owner's assessment), the committee may at any time levy a further assessment, which shall be assessed to the owners. The committee may levy individual assessments against each unit, so long as such individual assessment bears a direct relationship to such expense and the unit, i.e., such as hot or cold water usage by a unit.

Section 2. **Partial Year or Month.** For the first fiscal year the annual budget shall be adjusted, and the monthly assessments for each unit owner shall be proportionate to the number of months and days in such period covered by such budget. Commencing with the date of occupancy of his unit, each unit owner shall pay his assessment for the following month or fraction of a month, which assessment shall be in proportion to his respective ownership interest in the common elements and the number of months and days remaining of the period covered by the current annual budget, and which assessment shall be as computed by the committee.

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Section 3. **Supplemental Budget.** In the event that during the course of any year it shall appear to the committee that the monthly assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated common expenses and limited common expenses for the remainder of such year, or if there shall be any nonrecurring common expenses or any common expenses not set forth in the annual budget as adopted, then the committee shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be furnished to each unit owner, and thereupon a supplemental share of such supplemental budget shall be assessed; *subject nevertheless*, to the following rules: A) Any nonrecurring common expense

or limited common expense, any common expense or limited common expense not set forth in the budget as adopted, and any increase over the amount adopted in the annual budget shall be separately assessed against all unit owners. B) An affirmative vote of at least two thirds of the unit owners voting at a special meeting of unit owners duly called to approve the supplemental assessment shall be required if it involves proposed expenditures resulting in a total payment of assessment to a unit equal to the greater of five times the unit's most recent common expense assessment calculated on a monthly basis or One Thousand Dollars (\$1,000.00).

Section 4. Annual Report. Within ninety (90) days after the end of each fiscal year covered by an annual budget, or as soon thereafter as shall be practicable, but in any event within one hundred-twenty (120) days, the committee shall cause to be furnished to each unit owner a statement for such year so ended, showing an itemized accounting of the common expenses for the preceding year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves, and such other information as the committee shall deem desirable.

Section 5. Payment by Owners. Each owner shall be obligated to pay assessments made pursuant to this Article to the treasurer for the Association in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the committee shall designate, and any unpaid assessments shall bear interest at the rate of eighteen percent (18%) per annum from due date until paid. The budget may be reviewed and revised by the membership at any annual meeting; or any special meeting called for such purpose, but if not so reviewed or if no change is made, shall be deemed approved.

Section 6. Purpose. All funds collected hereunder shall be expended for the purposes designated in the Declaration.

Section 7. Separate Accounts. The committee shall maintain separate accounts for current operations, reserves, and a special separate reserve account for payment of insurance. Each month the committee shall first deposit to the insurance reserve account that portion of the common expense assessment necessary to pay at least one twelfth (1/12) of the total cost of all the insurance policies provided regarding the condominium and such insurance reserve account shall be held separately and inviolate until utilized for payment of other expenses or deposited or credited to other accounts. All such assessments shall be collected and held in trust for, and administered and expended for the benefit of, the unit owners.

Section 8. Based on Percentage. Except for certain special assessments that may be levied against particular units under the provisions of this Declaration, all assessments for common expenses shall be assessed to the units and the owners thereof on the basis of the percentages set forth in Schedule "B" hereof and any amendments thereto.

Section 9. Omission of Assessment. The omission by the committee or the Association before the expiration of any year to fix the estimate and assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the owner from the obligation to pay the assessments, or any

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installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

Section 10. Records. The committee shall cause to be kept detailed, accurate records in the form established by the Associations' accountant of the receipts and expenditures of the Association, specifying and itemizing the maintenance and repair expenses and any other expense incurred. Such records and any resolutions authorizing the payments involved shall be available for examination by any owner at convenient hours on weekdays.

Section 11. Lien Indebtedness. Each monthly assessment and each special assessment shall be joint and several personal debts and obligations of the owner or owners and contract purchasers of units for which the same are assessed as of the time the assessment is made and shall be collectible as such. The amount of any assessment, whether regular or special, assessed to any unit and the owner and/or purchaser of any unit plus interest at the rate of eighteen percent (18%) per annum, and costs, including reasonable collection and/or attorney's fees, shall be a lien upon such unit, the appurtenant limited common area and the exclusive use thereof. The lien for nonpayment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, *except only*:

- (a) tax and special assessment liens on the unit in favor of any assessment unit and/or special district; and
- (b) encumbrances on the owner's interest in the unit (and common areas and facilities) recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrance.

Section 12. Certificate of Assessment. A certificate, executed and acknowledged by a member of the committee or an authorized agent thereof, stating the indebtedness for assessments or lack thereof secured by the assessment lien upon any unit shall be conclusive upon the committee and the owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such a certificate shall be furnished to any owner or any encumbrancer of a unit within a reasonable time after request, in recordable form, at a reasonable fee. Unless otherwise prohibited by law, any lien holder owning or possessing a lien on a unit may pay any unpaid common expenses payable with respect to such unit and upon such payment such lien holder shall have a further lien on such unit for the amounts paid of the same rank as the lien holder's prior encumbrance or lien.

Section 13. Security Deposit. A unit owner may be required, by the committee or by the managing agent, from time to time, to make and maintain a security deposit not in excess of three (3) months estimated monthly assessments, which may be collected as are other assessments. Such deposit shall be held in a separate fund, credited to such owner, and resort may be had thereto at any time when such owner is ten (10) days or more delinquent in paying his monthly or other assessment.

Section 14. Foreclosure of Assessment Lien: Attorney's Fees and Costs. The committee, on behalf of the Association, may initiate action to foreclose the lien of any assessment. In any

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action to foreclose a lien against any unit for nonpayment of delinquent assessments, any judgment rendered against the owners of such unit in favor of the Association shall include a reasonable sum for collection and/or attorney's fees and all costs and expenses reasonably incurred in preparation for or in the prosecution of said action, in addition to all costs incurred and permitted by law.

Section 15. Rental Value. From the time of commencement of any action to foreclose a lien against a unit for nonpayment of delinquent assessments, the owner or purchaser of such unit shall pay to the Association the reasonable rental value of the unit to be fixed by the committee, and the plaintiff in any such foreclosure shall be entitled to the appointment of a receiver to collect the same, who may, if said rental is not paid, obtain possession of the unit, refurbish it for rental to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply rents first to costs of the receivership and attorney's fees thereof, and then to costs of refurbishing the unit, then to costs, fees and charges, of the foreclosure action, then to the payment of the delinquent assessment charges.

Section 16. Rental Units. if a unit is rented by its owner, the committee may collect, and the tenant or lessee shall pay over to the committee so much of the rent for such unit as is required to pay any amounts due the committee hereunder, plus interest and costs, if the same are in default over ten (10) days. The renter or lessee shall not have the right to question payment over to the committee, and such payment will discharge the lessee's or renter's duty of payment to the owner for rent, to the extent such rent is paid to the Association but will not discharge the liability of the owner or purchaser and the unit under this Declaration for assessments, or operate as an approval of the lease. The committee shall not exercise this power where a receiver has been appointed.

Section 17. Termination of Utility Service. In addition to and not by way of limitation upon other methods of collecting any assessments, the committee shall have the right, after giving ten (10) days notice to any unit owner who is delinquent in paying his assessments, to cut off water (hot and cold) services or any other services or utilities provided by common facilities (i.e. common heating or refrigeration plant, etc.) to the delinquent owner's unit unless such assessments are paid.

Section 18. Remedies Cumulative. The remedies provided are cumulative and the committee may peruse them concurrently, as well as any other remedies which may be available under law although not expressed herein.

Section 19. Discharge of Liens. The committee may cause the Association to discharge any mechanic's lien or other encumbrance which in the opinion of the committee may constitute a lien against the property of the common elements, rather than a lien against only a particular unit ownership. When less than all the unit owners are responsible for the existence of any such lien, the unit owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorney's fees incurred by reason of such lien.

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Section 20, Payment of Expenses. Each unit owner shall pay the management committee his allocated portion of the cash requirement deemed necessary by the management committee to manage and operate the condominium project, at the times, and in the manner herein provided without any deduction on account of a setoff or claim which the owner may have against the management committee.

ARTICLE XII

Maintenance Personnel

Section 1. Maintenance Personnel. The management committee shall have discretionary powers to prescribe the manner of maintaining and operating the project and to determine the cash requirements to:

- (a) provide for the maintenance, repair, and replacement of the common elements and payments therefore, and to approve payment vouchers or to delegate such approval to the officers of the manager or managing agent; and
- (b) provide for the designation, hiring and removal of employees and other personnel, including accountants and attorneys, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the property and the common elements, and to delegate any such powers to the management agent (and any such employees or other personnel who may be the employees of a managing agent).

ARTICLE XIII

Administrative Rules and Regulations

Section 1. Declaration; Changes. Except as limited by this Declaration's express provisions, the management committee shall have the power to adopt and establish by resolution such building management and operational rules as it may deem necessary for the maintenance, operation, management and control of the project; the committee may, from time to time by resolution, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the unit owners, such amendment, alteration and provision shall be taken to be a part of such rules. Unit owners shall at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all unit owners and/or occupants of the condominium.

ARTICLE XIV

Amendment of Bylaws

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Section 1. By-Law Changes, By-laws (and amendments thereto) for the administration of the Association and the property, and for other purposes not inconsistent with the Act or with the intent of the Declaration, shall be adopted by the Association upon concurrence of those voting owners holding two-thirds (2/3) of the voting power at a regular or special meeting. This provision is intended to apply only to the process to amend the by-laws and shall not affect in any manner the provisions set forth separately above for the amendment of the Declaration.

PART 15 EXTERIOR APPEARANCE AND ARCHITECTURE

15.1 Exterior Appearance. To preserve a uniform exterior appearance to the buildings, and the common and limited common areas visible to the public, the committee may require and provide for the painting and other decorative finish of the buildings, or other common or limited common areas, and prescribe, require or regulate any modification or decoration of the building or other common areas undertaken or proposed by an owner. This power of the committee extends to screens, doors, awnings, rails or other visible portions of each unit and the building as well as any advertising, lettering or signage.

PART 16 SEVERABILITY

16.1 Severability. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are included conditionally on their being held valid in law. In the event that one or more of the phrases, sentences, clauses, paragraphs, or sections contained herein should be held invalid, or should operate to render this instrument otherwise invalid, then this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, section or sections had not been inserted.

PART 17 GENDER

17.1 Gender. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, entities, fiduciaries or individuals, men or women, shall in all cases be assumed, as though, in each case fully expressed.

PART 18 TOPICAL HEADINGS

18.1 Headings. The topical headings contained in this Declaration are for convenience only and not to define, limit or construe the contents of the Declaration.

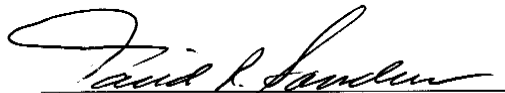
PART 19 EFFECTIVE DATE

19.1 Effective Date. This Declaration shall take effect upon recording in the Office of the Recorder, Cache County, State of Utah.

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IN WITNESS WHEREOF, the undersigned, on behalf of the Declarant, have set their hands and seals effective the 8th day of December, 2004.

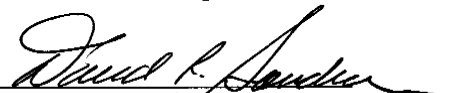
AGENT FOR SERVICE OF PROCESS:



David R. Saunders

DECLARANT:

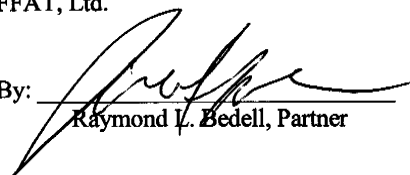
Provential Investment Properties, L.L.C.

By 

David R. Saunders, Manager

Additional Declarant, as Tenant of Property

FFAT, Ltd.

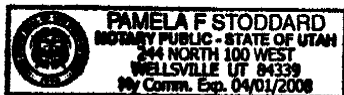
By: 

Raymond L. Bedell, Partner

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STATE OF UTAH)
 : ss.
County of Cache)

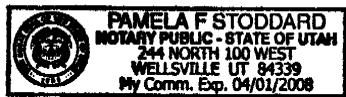
On the 8th day of Dec., 2004, personally appeared before me DAVID SAUNDERS, who, being my me duly sworn, did say that he is the Manager/Member of PROVENTIAL INVESTMENT PROPERTIES, L.L.C., and that the said instrument was signed in behalf of said Limited Liability Company by authority of its Articles of Organization and Operating Agreement, and the aforesaid individual acknowledged to me that said Company executed the same.



Pamela F Stoddard
NOTARY PUBLIC

STATE OF UTAH)
 : ss.
County of Cache)

On the 8th day of Dec., 2004, personally appeared before me DAVID R. SAUNDERS, the signer of the within instrument, who duly acknowledged to me that he executed the same.

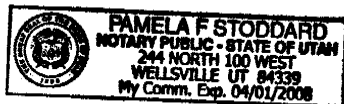


Pamela F Stoddard
NOTARY PUBLIC

STATE OF UTAH)
 : ss.
County of Cache)

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On the 8th day of Dec., 2004, personally appeared before me RAYMOND L. BEDELL, who, being my me duly sworn, did say that he is the Partner of FFAT, Ltd., a Utah Limited Partnership, and that the said instrument was signed in behalf of said Limited Partnership by authority of its Certificate of Limited Partnership and its Limited Partnership Agreement, and the aforesaid individual acknowledged to me that said Partnership executed the same.



Pamela F Stoddard
NOTARY PUBLIC

Schedule "A"**LEGAL DESCRIPTION**

LOT 4 "GATEWAY BUSINESS PARK SUBDIVISION" A PART OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 11 NORTH, RANGE 1 EAST OF THE SALT LAKE MERIDIAN, CITY OF PROVIDENCE, COUNTY OF CACHE, STATE OF UTAH FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4, "GATEWAY BUSINESS PARK SUBDIVISION", THENCE SOUTH 89°59'49" WEST 95.29 FEET TO A REBAR & PLASTIC CAP SET BY HANSEN AND ASSOCIATES AS PART OF THE "GATEWAY BUSINESS PARK SUBDIVISION"; THENCE NORTH 14°33'20" EAST 217.46 FEET TO A POINT IN THE EAST RIGHT-OF-WAY (R/W) LINE OF GATEWAY DRIVE, SAID POINT BEING THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE WEST, HAVING A RADIUS OF 183.00 FEET; THENCE ALONG SAID R/W THE FOLLOWING 3 COURSES:

- 1.) NORTHERLY ALONG SAID CURVE 48.19 FEET, (CHORD BEARS NORTH 07°00'42" EAST 48.05');
- 2.) NORTH 00°31'50" WEST 214.34 FEET TO A TANGENT CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 15.00 FEET;
- 3.) NORTHEASTERLY ALONG SAID CURVE 23.80 FEET, (CHORD BEARS NORTH 44°54'55" EAST 21.38 FEET) TO A POINT IN THE SOUTH R/W LINE OF GOLF COURSE ROAD (200 NORTH STREET);

THENCE ALONG SAID R/W LINE SOUTH 89°38'20" EAST 335.93 FEET; THENCE LEAVING SAID R/W LINE SOUTH 44°33'53" EAST 49.63 FEET TO THE CENTER OF SRING CREEK AND WEST BOUNDARY LINE OF THE "CREEKSIDE SUBDIVISION"; THENCE ALONG SAID CENTER OF SPRINK CREEK AND BOUNDARY LINE THE FOLLOWING 13 COURSES:

- 1.) SOUTH 46°59'52" WEST 37.78 FEET;
- 2.) SOUTH 35°21'45" WEST 38.01 FEET;
- 3.) NORTH 86°11'09" WEST 22.55 FEET;
- 4.) SOUTH 83°38'28" WEST 100.46 FEET;
- 5.) SOUTH 36°52'42" EAST 74.30 FEET;
- 6.) SOUTH 03°19'42" EAST 40.50 FEET;
- 7.) SOUTH 70°11'44" WEST 112.44 FEET;
- 8.) SOUTH 21°20'17" WEST 81.34 FEET;
- 9.) SOUTH 33°49'22" WEST 34.61 FEET;
- 10.) SOUTH 18°00'41" EAST 45.60 FEET;
- 11.) SOUTH 22°04'35" WEST 45.88 FEET;
- 12.) SOUTH 77°58'15" WEST 37.77 FEET;
- 13.) NORTH 75°04'43" WEST 30.18 FEET TO A REBAR & PLASTIC CAP SET BY HANSEN AND ASSOCIATES AS PART OF THE "GATEWAY BUSINESS PARK SUBDIVISION"; THENCE ALONG THE WEST LINE OF THE "CREEKSIDE SUBDIVISION", SOUTH 00°09'34" WEST 55.31 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.315 ACRES, MORE OR LESS, AND 3 UNITS.

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Schedule "B"

Percentage of Ownership in Common Area per Unit

<u>Unit Number</u>	<u>Percentage</u>
1 (Main Floor and Basement Combined)	49.00 %
2	25.63 %
3	25.37 %
Total:	100%

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