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**DECLARATION OF CONDOMINIUM**  
for  
**WEST JORDAN GATEWAY OFFICE CONDOMINIUM,**  
**A Commercial Condominium Development**

**including**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**

[amending and superseding the Declaration of Covenants, Conditions, and  
Restrictions of West Jordan Gateway Office Park, which indicated that  
it was a Commercial Planned Unit Development]

THIS DECLARATION OF CONDOMINIUM, including COVENANTS, CONDITIONS, AND RESTRICTIONS of the West Jordan Gateway Office Condominium, a commercial condominium development approved and formed under the laws of the state of Utah and the ordinances of the City of West Jordan is made effective on the 8th day of April, 1998, by and among all of the Owners of the Properties, West Jordan Gateway L.L.C., a Utah limited liability company, Gary Cannon, an individual, and C.K.M. Development Corporation, a Utah corporation, which parties are together referred to herein as the "Declarant". [The parties which make up the Declarant acknowledge that, by mistake, a Declaration of Covenants, Conditions and Restrictions of West Jordan Gateway Office Park, indicating that the same would be a Commercial Planned Unit Development, were recorded at Book 8019, Page 0734, as Entry No. 7009346, with the Salt Lake County Recorder. Although a planned unit development had been anticipated, officials of the City of West Jordan, determined that without an amendment to the City's ordinances, they could not permit a commercial planned unit development, and, therefore, a commercial condominium development was approved by the City of West Jordan. A Declaration of Condominium was prepared and adopted, but, the Declaration indicating the Commercial Planned Unit Development was mistakenly recorded. The covenants, conditions and restrictions set forth herein are substantially the same as those in the mistaken Declaration, and are supplemented by provisions adjusting this Declaration to serve as a declaration of condominium. The purpose of this Declaration is to amend and supersede that previous declaration, to create the commercial condominium development, as approved under the laws of the City of West Jordan. It is intended that this Declaration shall be effective as of the date upon which the mistaken Declaration was executed.]

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A. The parties which, together, constitute the Declarant are the owners of the various parcels of real property which make up the West Jordan Gateway Office Park, as described in Exhibit "A", which is attached and incorporated by reference.

B. Declarant desires to create on the Properties a commercial condominium development ("Condominium Development") for retail, professional and business offices, restaurant, and general commercial uses with certain Common Areas and Common Facilities, and desires to provide for preservation of the values and amenities in the project and for the establishment and maintenance of such Common Areas and Common Facilities. To that end, and for the benefit of the Properties, and the Users of the Properties, Declarant desires to subject the Development to the easements, covenants, conditions, restrictions, charges and liens set forth in this Declaration.

C. By this Declaration, the parties Declarant join their Properties for the purpose of creating a commercial condominium development, to be treated as one integrated unit for zoning and land use purposes according to the ordinances of the City of West Jordan, and to impose thereon mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners of each of the Condominium Building Units in the Condominium Development and to establish a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, Declarant has caused the West Jordan Gateway Office Park Association, Inc., to be formed as a Utah non-profit corporation, and intends to convey easements, rights and restrictions upon the Common Areas and to charge such Association with the duty to hold, own and maintain the Common Areas, as defined below, and to administer and enforce the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I below) shall be governed by this Declaration to form a commercial condominium development, and the Properties, and each of the Condominium Building Units shall be accordingly held, sold, used, conveyed, transferred, leased, sub-leased and occupied subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, as well as their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner of any portion of the Properties and to each Occupant of any portion of the Properties. It is intended that the provisions of the Declaration be consistent with law. Should any provision in this Declaration be less restrictive than any ordinance or other applicable legal standard, then the more restrictive legal standard (or such portion thereof as so conflicts with the Declaration's provision) shall supersede and control.

Article I  
DEFINITIONS

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

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1.1. “Area of Common Responsibility”: The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, the Development Agreement or other applicable covenants, contract, or agreement.

1.2. “Articles of Incorporation” or “Articles”: The Articles of Incorporation of the West Jordan Gateway Office Park Association, Inc., as filed with the Division of Corporations of the Department of Commerce of the State of Utah.

1.3. “Association”: The West Jordan Gateway Office Park Association, Inc., a Utah non-profit corporation, its successors or assigns.

1.4. “Board of Directors” or “Board”: The body responsible for administration of the Association, selected as provided in the By-Laws of the Association and generally serving the same role as the board of directors or board of trustees of a non-profit corporation under Utah corporate law.

1.5. “Buildings”: All structures and buildings built upon and affixed to the Properties at any time and from time to time which are intended for permanent and exclusive use and occupancy, including but not limited to, financial, office, restaurant, retail and other commercial buildings according to the Master Plan, including any area directly below any Buildings, all projections, additions or extensions of any Buildings, all utility pipes and utility lines which extend from the Building to the main (Common Facility) utility pipes and lines, the drive-in window area of any building approved for such an area, and platforms and docks affixed to the outside of any Buildings. Notwithstanding the preceding sentence, for purposes of maintenance, repairs, etc., Buildings shall not include Common Areas or Common Facilities.

1.6. “Building Units” or “Condominium Building Units”: The condominium parcels into which the West Jordan Gateway Office Park has been divided, which are described and identified in the Master Plan as parcels upon which a building may be situated. A Condominium Building Unit shall refer to such a parcel, whether it is improved or unimproved, which may be independently owned and conveyed and which is intended for development, use and occupancy for the purposes allowed pursuant to the Master Plan.

1.7. “Business day”: Any week-day during the calendar year which is not an official federal or state holiday in the state of Utah.

1.8. “By-Laws”: The By-Laws of the West Jordan Gateway Office Park Association, Inc.

1.9. “Committee”: The Development Control Committee as governed by Article IV.

1.10. “Common Area”: All real and personal property, including easements, in which the Association holds rights for the common use and enjoyment of the Owners and Users.

1.11. “Common Expenses”: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association in maintaining, managing or operating the Common Areas or Common Facilities or in performing or exercising its functions, duties, obligations, or rights, including the creation and maintenance of any reasonable reserve, as the Board may find necessary and appropriate pursuant to its authorities under this Declaration and any rules and regulations promulgated hereunder, the By-Laws, the Articles of Incorporation and any management agreement. Common Expenses shall not include any expenses incurred for initial development, original construction and installation of infrastructure, original capital improvements, or other original construction costs relative to Common Area or Common Facilities unless approved by the Declarant.

1.12. “Common Facilities”: All of the following, if located within or upon a Common Area:

(a). Landscaping, including landscaping, lights, lighting fixtures, signs, furniture and fences, without limitation;

(b). Water Equipment, including sprinkling systems and associated pumps and hardware installed for the purpose of watering the landscaping;

(c). Structures, including fountains, monuments, sculptures, flag plazas, flag poles and related facilities;

(d). Common Use Equipment, including all tanks, electrical transformers, pumps, motors, fans, compressors, ducts, and in general, all apparatus, installations, utility lines and utility pipes which are “mains” from which lines and pipes may be stubbed to Buildings, and facilities existing for common use; and

(e). Other Facilities, including, generally, any other facility which is located on a Common Area, which is of a similar class or nature as the items listed in (a) through (d), above, or which is designated in any Supplemental Declaration relating to a portion of the Properties as being a Common Facility.

1.13. “Common Parking Area”: The areas of the Common Area described as such on the Master Plan and all other areas of the Properties which are part of the Common Area and which are from time to time designated for use as parking for automobiles or other vehicles.

1.14. “Community-Wide Standard”: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board or the Committee.

1.15. “Declarant”: West Jordan Gateway L.L.C., a Utah limited liability company, Gary Cannon, an individual, and C.K.M. Development Corporation, a Utah corporation, acting jointly, and/or any successor, success in title, or assign who takes title to any portion of the property described on Exhibit “A” for the purpose of development and/or sale.

1.16. "Design Guidelines": The design and construction guidelines and application and review procedures applicable to the Properties which are set forth as part of the Master Plan, and which may be promulgated and administered pursuant to Article IV.

1.17. "Development": The Properties and all improvements thereon and thereto as permitted under this Declaration and according to the Master Plan and Development Agreement applicable to the Condominium Development.

1.18. "Development Agreement": That agreement by the parties which make up the Declarant, dated April 8, 1998, by which the said parties agreed to a series of covenants and conditions and agreements to govern the acquisition and assembly of certain parcels of property into West Jordan Gateway Office Park and thereafter to govern the expenses of initial development and construction and installation of certain infrastructure, and the development, use, management and administration of the Properties.

1.19. "General Assessment": Assessments levied on all Condominium Building Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Condominium Building Units.

1.20. "Master Plan": The land use plan for the development of West Jordan Gateway Office Park, a planned unit development, prepared by Allred, Soffe, Wilkinson & Nichols, Architects in cooperation with Meridian Engineering & Surveying, L.C. and approved by the City of West Jordan as it may be amended from time to time, which plan includes the property described on Exhibit "A". Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to the Declaration, nor shall the exclusion of property from the Master Plan bar its later annexation in accordance with Article VII.

1.21. "Member": A Person who or group of Persons which holds membership in the Association.

1.22. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Condominium Building Unit, or any portion thereof.

1.23. "Mortgagee": A beneficiary or holder of a Mortgage.

1.24. "Mortgagor": Any Person who gives a Mortgage.

1.25. "Occupant": Any Person who has a legal right, whether by purchase, lease or rental, to occupy and use any Building or any part thereof.

1.26. "Owner": One or more Persons who hold the record title to any Condominium Building Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Condominium Building Unit is sold under a recorded contract of

sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.27. “Person”: A natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

1.28. “Properties”: The real property described on Exhibit “A”, together with such additional property as is subjected to this Declaration in accordance with Article IX.

1.29. “Public Records”: The Salt Lake County, Utah public records.

1.30. “Special Assessment”: Assessments levied in accordance with Section 8.4.

1.31. “Specific Assessment”: Assessments levied in accordance with Section 8.5.

1.32. “Supplemental Declaration”: An instrument filed in the Public Records as provided for in Article IX which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.33. “User”: The Persons entitled to use the Common Areas and Common Facilities, namely each Occupant, Owner, and their respective customers, clients, guests, invitees, tenants, employees and agents.

## Article II

### PURPOSE; UNITS; DEVELOPMENT; PROPERTY RIGHTS; AND USES

2.1 Statement of Purpose and Restrictions on Use. The purpose of the Declaration is to establish a commercial condominium development in accordance with the ordinances of the City of West Jordan, and to provide for commercial uses consistent with applicable zoning within the condominium development for the Condominium Building Units, all in accordance with the provisions of the Declaration. The Properties of the Development shall accordingly be used subject to and according to the provisions of this Declaration. Nothing shall be done in, on, or to the Properties which will impair the integrity of the Master Plan. Further, no Property shall be used in any way which would materially interfere with the use or enjoyment of a Condominium Building Unit consistent with that which is anticipated in, and as those uses and rights are governed by this Declaration.

2.2 Condominium Building Units. The survey map prepared by The DeMass Group, which is a part of the Master Plan, on file with West Jordan City, shows each of the Condominium Building Units of the development, which are numbered IA, I, II, III, and IV; as well as the location of each Condominium Building Unit, the Common Areas, and the easements and rights of way applicable to the Development. Each Condominium Building Unit shall be capable of being independently owned, encumbered and conveyed. There shall be no requirements concerning who

may own a Condominium Building Unit, it being intended that they may and shall be owned as any other property rights by persons, corporations, partnerships, limited liability companies, trusts, or any other entities capable of holding legal title, without limitation. The Owners may lease or rent their Condominium Building Units, or any portion thereof, with their appurtenant rights subject to terms and conditions chosen solely by the Owner, subject to the provisions of this Declaration. The Condominium Building Units may be converted, by appropriate zoning and land use approval, and associated declaration of condominium buildings, provided, however, that nothing in any such declaration shall be contrary to the provisions of this Declaration.

2.3. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Properties in order to enhance all Owners' and collective interests, the aesthetics and environment within the office park and the common interests of the Users of the office park, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires. As part of that plan, the Phase 1-A Condominium Building Unit is designated for a one-level Building to be used for first-class retail or restaurant purposes, and all other Phases for 3 to 4 story first-class office buildings. The Properties are subject to the land development, architectural, and design provisions set forth in or referred to in this Declaration governing uses of or actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration. All provisions of this Declaration and any Association rules shall apply to all Owners, Occupants, tenants, guests and invitees of any Condominium Building Unit. Any lease on any Condominium Building Unit shall provide that the lessee and all Occupants of the leased Condominium Building Unit shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association. Any declaration of condominium for a Building shall incorporate the provisions of this Declaration the By-laws and the rules of the Association.

2.4. Construction of Buildings. All Buildings shall be designed and constructed in accordance with the Design Guidelines. All Buildings shall be first-class retail, commercial, office or financial buildings of the type and quality typically found in first-class, high quality commercial developments. By way of example, but without limitation, each Building shall contain a lobby area with marble tile, shall contain nine (9) foot ceilings, or greater, and shall have multi-zoned variable air volume heating, ventilation and air conditioning systems. The finish quality in each Building shall be of the type and quality typically found in first-class, high quality commercial developments. The office buildings on Phases 1, 2, 3 & 4 shall incorporate a repeated design of masonry brick columns of a five (5) foot diameter, as shown on the Master Plan, and shall have main entries which face the Common Area central parking. The Buildings may have secondary entries along the perimeter of the office park Properties.

2.5. Maintenance. Each Owner and User shall maintain the Building located on its respective Condominium Building Unit in good condition and repair in a first-class, high quality manner, clean and free of rubbish and other hazards to persons using such Buildings. Each Owner shall bear the cost and expense of maintaining its Building. Such maintenance will include, without limitation:

- (a) Removal of all papers, debris, filth, snow and refuse from such Buildings;
- (b) Maintenance within the roads and parking areas of the Condominium Building Unit not constituting Common Area, such appropriate directional signs, markers and lights as will be reasonably required for a modern, first-class multi-use office and commercial development in accordance with the standards prescribed by the Association;
- (c) Cleaning of lighting fixtures in, on and immediately surrounding the Building and relamping as needed;
- (d) Repainting of striping, markers, directional signs, etc., as necessary to maintain the parking areas within the Building in its first-class conditions;
- (e) Cleaning of permitted signs on the respective Buildings and including relamping and repairs being made as required.

2.6. Destruction of a Building. If any Building is partially or wholly damaged or destroyed, the Owner thereof shall promptly commence to restore such Building so as to render the Building capable of occupancy, as applicable, as a first-class retail, restaurant, commercial, office or financial building in accordance with the provisions of this Declaration. The Owner shall diligently pursue such restoration to completion, or, if the Owner elects not to repair, restore or replace such Building or damaged portion thereof, such Owner shall, at its cost and expense, grade level that portion of the Condominium Building Unit upon which such Building was located and cover such portion with asphalt of sufficient thickness that the Condominium Building Unit may be used as a parking area.

2.7. Prohibited Uses. No portion of the Properties may be occupied for any use which is in violation of applicable ordinances, laws and regulations of any governmental entity having jurisdiction over the use of all or any part of the Properties or for any use which is inconsistent with the provisions of this Declaration.

2.8. Association's Right to Cure. If an Owner shall at any time fail to comply as expeditiously as reasonably feasible with any law, ordinance, rule or regulation concerning or affecting any Building, or the use and occupancy thereof, or any part of any Condominium Building Unit, or with any of the obligations under this Declaration; the Association, after five (5) Business days prior written notice to the Owner, during which the Owner shall have the opportunity to cure, may (but shall have no duty to) perform such obligation in the stead of the Owner, and the reasonable costs and expenses of the Association which are incurred in performing such obligations shall be paid by the Owner as a Specific Assessment. Such amount shall be payable upon demand and shall constitute a lien against the Condominium Building Unit. In the event that any failure to comply would reasonably require more time to cure than the five (5) Business days provided for above, the Owner may cure within that reasonable period of time, provided that the Owner commences the cure within the five (5) day period and diligently pursues it to its completion.



2.9. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Condominium Building Unit and any adjacent Common Area and between adjacent Condominium Building Units due to the unintentional placement or settling or shifting of improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

2.10. Easements for Utilities, Etc. There are hereby reserved to the Association, and the designees of the Association (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating master radio and television antenna/satellite dish systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; drainage systems; street lights and signage; and all utilities, including, but not limited to water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Association owns or within easements designated for such purposes on recorded plat of the Properties. Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable. Any damage to a Condominium Building Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Condominium Building Unit, nor shall it unreasonably interfere with the use of any Condominium Building Unit; and, except in an emergency, entry onto any Condominium Building Unit shall be made only after reasonable notice to the Owner and/or occupant.

2.11. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Condominium Building Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and/or in good faith to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and any rules. Such right may be exercised by any member of the Board, the Association's officers, agents, employees and managers, members of the Committee, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable advance notice to the Owner. This right of entry shall include the right of the Association to enter upon any Condominium Building Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board.

Article III  
ASSOCIATION: FUNCTION: MEMBERSHIP: VOTING RIGHTS: ETC.

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board or the membership may adopt, and enforcing the architectural standards and controls set forth or authorized in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and the laws of the State of Utah.

3.2. Membership. Every Owner shall be a Member of the Association. Accordingly, the Owners at the time of organization of the Association shall be the initial Members. There shall be only one membership per Condominium Building Unit. If a Condominium Building Unit is owned by more than one Person, all co-owners shall share the privileges of such membership as one Member applicable to that Condominium Building Unit subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the By-Laws, and all such co-owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or other individuals designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. Each Member shall have one equal vote for each Condominium Building Unit in which they hold the interest required for membership under Section 3.2; provided, there shall be only one vote per Condominium Building Unit. In any situation where there is more than one owner of a Condominium Building Unit, the vote for such Condominium Building Unit shall be exercised by such Person who is designated to represent the Owner as the co-owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Condominium Building Unit's vote shall be deemed an abstention if more than one of the co-owners seeks to exercise the vote.

3.4. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of this Declaration, its Articles, By-Laws, and applicable law. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, personal property and/or leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

3.5. Enforcement. The Association may impose sanctions for violations of this Declaration, any applicable Supplemental Declaration, the By-Laws, or any rules promulgated in accordance with procedures set forth in this Declaration or the By-Laws, including reasonable monetary fines and suspension of the right to vote. In addition, in accordance with the By-Laws, the

Association may exercise self-help to cure violations and may suspend any services it provides to the Condominium Building Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the By-Laws shall be cumulative with and in addition to any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or any Association rules, the prevailing party shall be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs incurred in such action.

3.6. Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or reasonably implied from or reasonably necessary to effectuate such right or privilege. Except as otherwise specifically provided in: this Declaration, the By-Laws, the Articles, any resolution of the Members directed to the Board, or applicable law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

3.7. Indemnification.

3.7.1. The Association shall indemnify every officer, director, and committee member, against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors ) to which he or she may be a party by reason of being or having been a officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Utah Law.

3.7.2. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association and have personal liability in that capacity.) The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled.

3.7.3. The Association may, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

3.8. Dedication of Common Areas. The Association may, by unanimous vote of its Members, dedicate portions of the Common Areas to the City of West Jordan, Utah, or to any other local, state or federal governmental or quasi-governmental entity, subject to such other approval as may be required by this Declaration or by any agreement or law.

3.9. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any surveillance camera security system, alarm system or other security system or measures, for limiting access to the Properties, is one which cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all Occupants of its Condominium Building Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each person using the properties assumes all risks of personal injury and loss or damage to property, including Condominium Building Units and the contents of Condominium Building Units, resulting from acts of third parties.

#### Article IV

#### ARCHITECTURAL AND DEVELOPMENT STANDARDS

4.1. General. No Building shall be placed, erected, or installed upon any Condominium Building Unit, and no improvements (including, without limitation, staking, clearing, excavation, grading and other site work; installation, placement or erection of a sign visible from outside of a Building; installing of infrastructure or parking lot; alteration of existing improvements; and planting or removal of landscaping materials) shall take place except in compliance with this Article and the Design Guidelines. Notwithstanding the foregoing, any Owner may remodel, paint or redecorate the interior of a leasehold Premises in the Building on the Owner's Condominium Building Unit without approval, provided that such remodel, paint, and/or redecoration is done in a manner which is consistent with the Design Guidelines and any prior approval by the Committee.

4.2. Architectural Review; Committee. Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the Development Control Committee (the "Committee"). The function of the Committee shall be to insure that all improvements on the Condominium Building Units harmonize with existing surroundings and structures and comply with the Design Guidelines and interpretations of the Design Guidelines by the Committee. The Committee shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction and all modifications, alterations or additions to existing structures and improvements on any portion of the Properties. The members of the Committee need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees

may include the reasonable costs incurred by the Committee in having any application reviewed by architects, engineers or other professionals.

4.3. Guidelines and Procedures.

4.3.1. The Declarant has adopted the Master Plan, which shall initially constitute the Design Guidelines for the Properties. The Design Guidelines contain general provisions applicable to each of the Condominium Building Units, as well as specific provisions which vary according to land use and from one portion of the Properties to another. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Committee in considering applications hereunder. The Design Guidelines are not the exclusive basis for decision of the Committee and compliance with the Design Guidelines does not guarantee approval of any application.

4.3.2. The Committee may promulgate such additional rules, guidelines and procedures consistent with the Master Plan, which shall become part of the Design Guidelines, and thereafter shall have authority to amend them. The Master Plan may only be amended by the Members. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines.

4.3.3. The Committee shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Properties. In the Board's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

4.3.4. Notwithstanding the above, the Board may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

4.3.5. All structures and improvements constructed upon a Condominium Building Unit shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the Committee, unless the Committee has granted a variance in writing. So long as the Committee has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

4.3.6. No activities within the scope of Sections 2.3, 2.4 and 3.3 shall commence on any portion of the Properties until an application for approval of the proposed work has been submitted to and approved by the Committee. Such application shall be in the form required by the Committee and shall include plans and specification ("Plans") showing the site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping,

drainage, lighting, irrigation, utility facilities layout and screening therefor, and other features of proposed construction, as applicable. The Committee may require the submission of such additional information as it deems necessary to consider any application. In reviewing each submission, the Committee may consider (but shall not be restricted to consideration of) the integration of the improvements to the Condominium Building Unit with those upon or planned for the other Condominium Building Units, the quality of workmanship and design and harmony of external design with existing structures, among other things. Decisions of the Committee may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as committee members change over time. In the event that the Committee fails to take action, it shall be deemed to have rejected the proposal submitted.

4.3.7. Unless otherwise specified in writing by the Committee, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the Condominium Building Unit, unless approval to modify any application has been obtained.

4.3.8. If construction does not commence on a project for which approval has been granted within 12 months of such approval, such approval shall - - unless expressly extended - - be deemed withdrawn, and it shall be necessary for the Owner to re-submit the Plans for reconsideration. All work shall be completed within 20 months from commencement or such other period as the Committee may specify in the notice of approval, unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Committee.

4.4. Variance. The Board may authorize variances from compliance with any of its guidelines and procedures (but not from the Master Plan) when circumstances require, but only in accordance with duly adopted resolutions. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Board from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

4.5. Limitation of Liability. The standards and procedures established by this Article are intended to enhance the overall aesthetics and quality of the Development and shall not create any duty to any Person. Neither the Committee nor its members nor the Association shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring the appropriateness of soils, drainage and general site work. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Condominium Building Unit. In all matters, the Committee and its members shall be indemnified by the Association as provided in Section 3.7.

4.6. Enforcement.

4.6.1. Any structure or improvement placed or made in violation of this Article or the Design Guidelines shall be deemed to be nonconforming, except to the extent that a variance has been granted pursuant to Section 4.4. Upon written request from the Board, the Owners of the Condominium Building Unit shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefitted Condominium Building Unit and collected as a Specific Assessment upon the Owner.

4.6.2. In the event that any Person fails to commence and diligently pursue to completion all approved work as required pursuant to sub-section 4.6.1., above, the Association shall be authorized, after notice to the Owner of the Condominium Building Unit, and reasonable opportunity to cure, to enter upon the Condominium Building Unit and remove or complete any incomplete work and to assess all costs incurred against the Condominium Building Unit and Owner thereof as a Specific Assessment.

4.6.3. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who, despite notice, materially fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

4.6.4. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Committee.

Article V

USE OF COMMON AREAS AND COMMON FACILITIES; PARKING

5.1. Common Area. Declarant hereby declares that the parking lots situated, and the private street which provides access, the landscaping between the Buildings, and all sidewalks, wherever situated upon the Properties shall be treated as Common Areas for purposes of this Agreement. The Common Areas shall not be owned by the Association. Rather, the Common Areas shall be owned by the respective Owners of the Condominium Building Units. Every Owner and User shall accordingly have a right and nonexclusive easement of reasonable use, access, and enjoyment in and to the Common Area and Common Facilities, subject to:

- (a) This Declaration and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed or Declaration of Easement conveying such property and

(c) The right of the Board and the membership to adopt rules pursuant to this Declaration regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

These easements shall be a pertinent to and shall pass with title to each Condominium Building Unit, shall in no event be separated therefrom, and shall bind and burden the entire Common Area. Notwithstanding the foregoing, the rights and easements shall not be exercised in any manner which substantially interferes (i) with the purposes for which the Common Areas and Common Facilities are provided; or (ii) with the rights and easements of any other User.

5.2. Association's Authority to Grant Rights to Others. The Association is hereby granted the right, in its sole discretion, to grant permits, licenses and easements over, across, through and under the Common Areas to any governmental or quasi-governmental authority, to any public or private utility company, or to any other person or entity for the purpose of installing, maintaining or providing utilities and related facilities or roads or for such other purposes reasonably necessary or useful for the proper construction, development, maintenance or operation of the Development.

5.3. Association's Right to Permit Activities. The right is hereby reserved to the Association to allow and permit various activities within and upon the Common Areas and Common Facilities, including, but not limited to, displays, kiosks and booths advertising and promoting the Development, and shows, exhibitions or other activities of all types. All income from any such activities shall be retained by the Association and used as an offset against Common Expenses assessed and allocated pursuant to this Declaration.

5.4. No Public Rights or Dedication. Nothing in the foregoing shall be construed as creating any rights in or for the benefit of the general public, or be deemed to be a gift or dedication of any of the Common Areas or Common Facilities to the general public or for any public use whatsoever.

5.5. Parking.

5.5.1. Each Condominium Building Unit shall be designed to include and shall include a sufficient number of parking spaces outside of the Building to satisfy the requirements for zoning of the City of West Jordan, and any other governmental body having jurisdiction over the Condominium Building Unit. No Building shall be constructed on the Properties which does not contain within the boundaries of such Condominium Building Unit, or in the judgment of the Committee, have proximate thereto, sufficient parking spaces to meet the applicable building code and parking ordinances, with or without variance.



5.5.2. The parking areas of all Condominium Building Units designated for office buildings on Phases 1 through 4 shall, commencing with the issuance of an occupancy permit for such Building, constitute common parking areas for all Users.

5.5.3. The parking area designated for the restaurant or retail commercial use on Phase 1-A shall be reserved for the exclusive use of the Users of that Building.

5.5.4. The Association may, in its sole discretion, agree to allocate any of the parking located in the Common Area to any Buildings constructed on additional property which is joined with the Development by Supplemental Declaration.

5.5.5. The Association may, but is not obligated to, in its sole discretion, construct or cause to be constructed by an Owner in connection with the construction of a Building upon a Condominium Building Unit, on the Common Area of such Condominium Building Unit, such structure or structures for the parking of vehicles as it deems appropriate or convenient, using such materials and design, and beginning and completing such construction at such times, as it determines.

5.5.6. The Association may, in its sole discretion (but is not obligated to) allocate the parking located in the Common Areas designated for parking in such a manner as the Association deems appropriate; provided, that there shall be sufficient parking as required by applicable laws, ordinances and regulations.

5.5.7. The Committee may require, as a condition to the approval of any plans and specifications for the construction of a Building, that the Owner submitting the same construct at its sole cost and expense, parking ramps, structures, or such roadways, curbs, sidewalks and other improvements on the Condominium Building Unit or on the Common Area associated with the Condominium Building Unit as the Committee, at its sole discretion, finds necessary to provide adequate parking for and ingress to and egress from the Building pursuant to such design as the Committee may prescribe.

5.5.8. Each Owner shall have an obligation to provide, in any lease or other agreement with Occupant of a Building, that the number of parking spaces available to such Occupant is and shall be limited to a ratio of parking spaces per square feet, as dictated by the zoning ordinances and other laws and regulations, and as may further be dictated by the Board or the Committee by rule and regulation. Accordingly, no Owner shall allow an Occupant to exceed that ratio unless that Owner or that Occupant has made other, separate arrangements for parking off of the Development Properties. It shall be the obligation of a Owner to make provision in the leases of office space to restrict the Occupant's parking accordingly.

5.5.9. The Board shall have the authority to establish rules and regulations in respect to the maintenance and control of use of the parking areas on the Common Areas.

Article VI  
MAINTENANCE OF COMMON AREAS AND COMMON FACILITIES

6.1. Responsibility of Association. The Association shall maintain and operate, or provide for the maintenance and operation of, the Common Areas and Common Facilities and shall reconstruct, repair or replace any improvements thereto as, in its sole discretion, it determines are appropriate in order to maintain the overall appearance of the Development in accordance with the standards prescribed by the Association and the Design Guidelines. The Association shall make good faith efforts to keep the Common Areas and Common Facilities in a good, clean, attractive, safe and sanitary condition, order and repair, and in a manner consistent with a first-class, multi-use office and commercial development. The foregoing duty to maintain shall extend to the maintenance of the private drive easement which the Properties share with neighboring parcels, to the extent of the obligation of the Properties.

6.2. Common Expenses. Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among the Condominium Building Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement for such costs from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owners(s) thereof.

6.3. Owner's Responsibility. Each Owner shall maintain its Building in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration or other covenants applicable to such Condominium Building Unit. In addition to any other enforcement rights, if an Owner fails properly to perform its maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Condominium Building Unit and the Owner. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

6.4. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it had or should have had prior actual notice of the problem or deficient condition and in respect to that problem or that condition and/or others like it has been negligent in the performance of its maintenance responsibilities.

Article VII  
INSURANCE; CASUALTY LOSSES

7.1. Association Insurance. The Association, acting through its Board or its duly authorized agent, may obtain and continue in effect insurance with such policy limits as it may determine in its business judgment:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements which are the property of the Association on the Common Area and on other portions of the Area of Common Responsibility to the extent of a casualty. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf.

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law.

(d) Directors and officers liability coverage.

(e) Fidelity insurance covering all Persons responsible for handling Association funds; and/or

(f) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable, which may include, without limitation, flood insurance, and building ordinance coverage.

7.2. Owner Insurance for Condominium Building Unit. The primary insurance responsibility shall lie with the Owners. Each Owner shall obtain a broad form of comprehensive liability insurance coverage for each Condominium Building Unit owned by such Owner, and the Buildings located thereon, to provide protection against liability for bodily injury, death and property damage, in the amount (in 1998 Dollars) of at least Two Million (\$2,000,000.00) Dollars per person and Twenty-Five Million (\$25,000,000.00) Dollars per occurrence, with an insurance company reasonably acceptable to the Board. The insurance shall name the Association as an additional insured, and shall therefore protect the Owner, the Association, and each Member against liability for the acts or omissions of the Owner, the Association, the Occupants, and the Members, and all other persons and entities in connection with the ownership, operation, management, maintenance or other use or activity associated with the Common Areas and Common Facilities, in addition to the Building on the Condominium Building Unit and other improvements thereon. Each such policy shall provide that it cannot be canceled either by the insured or by the insurance company until after

thirty (30) days prior written notice to the Association. The Owner's obligations in the event of a casualty are governed by Section 4.4, without limitation intended.

7.3. Damage and Destruction to Property Insured by or for Association. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the votes in the Association decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed. If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

## Article VIII ASSESSMENTS

### 8.1. Creation of Assessments.

8.1.1. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Condominium Building Units; (b) Special Assessments as described in Section 8.4; and (c) Specific Assessments as described in Section 8.5. Each Owner, by signing this Declaration, accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments to the Association.

8.1.2. All assessments, together with interest (at a rate not to exceed 18% or the highest rate allowed by Utah law, if less than 18%) as computed from the date the delinquency first occurs, a late charge equal to 5% of the principal amount past due, plus costs, and reasonable attorneys fees, shall be a charge and continuing lien upon each

Condominium Building Unit against which the assessment is made until paid, as more particularly provided in Section 8.6. Each such assessment, together with interest, late charges, costs, and reasonable attorneys fees, also shall be the personal obligation of the Person who was the Owner of such Condominium Building Unit at the time the assessment arose. Upon a transfer of title to a Condominium Building Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Condominium Building Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

8.1.3. Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments, and in such case, may include a time-price differential charge, in the Board's discretion. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year and shall be considered delinquent if not paid within the time specified by the Board. If any Owner is delinquent in paying any assessments or other charges levied on his Condominium Building Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. The Association shall not be deemed to have waived any default nor to have released or in any way compromised any rights which may accrue upon the occurrence of a default by its acceptance of a partial payment of an unpaid assessment or other monetary obligation.

8.1.4. No Owner shall be exempt from liability for assessments due to non-use of the Common Area or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making or repairs or improvements, or from any other action it takes.

8.2. Computation of General Assessment.

8.2.1. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses for the coming year, including, in its business judgment, a capital contribution to establish a reserve fund in accordance with a budget separately prepared pursuant to Section 8.3. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board may take into account the number of Condominium Building Units subject to assessment under Section 8.7 on the first day of the fiscal year for which the budget is prepared and the number of Condominium Building Units reasonably anticipated to become subject to assessment during the fiscal year, and accordingly anticipate the Common Expenses which may result.

8.2.2 General Assessments shall be levied equally on all Condominium Building Units subject to assessment under Section 8.7, and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted expenses, including reserves.

8.2.3. The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by the vote of a majority of the Members of the Association. There shall be no obligation to call a meeting to consider the budget unless the Members petition the Board as provided in law or the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments. If the Board fails for any reason to determine the budget for any year, or the budget is disapproved, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

8.3. Reserve Budget and Capital Contribution. The Board may annually prepare a reserve budget which takes into account the duties and responsibilities of the Association. The reserve budget may take into account the expected life of replaceable assets for which the Association is responsible, and the expected repair or replacement cost. The Board may set a required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by General Assessments over the budget period. Assessments for the reserve budget may be made as Specific Assessments of Owners of Condominium Building Units which have not been issued certificates of Occupancy, but which may be reasonably projected to share in the use of or benefit from the assets which are projected to need repair or replacement.

8.4. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments shall be payable in such manner and at such times as determined by the Board, and if so determined by the Board, may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.5. Specific Assessments. The Board shall have the power to levy a Specific Assessment against any Condominium Building Unit or Condominium Building Units for monetary fines authorized by this Declaration or the By-Laws, and for expenses of the Association incurred in providing benefits, items, or services not provided to all Condominium Building Units within the Properties, whether such expenses are or are anticipated to be incurred (a) upon request of the Owner of a Condominium Building Unit for specific items or services relating to the Condominium Building Unit, (b) as a consequence of the conduct of less than all Owners, their tenants, invitees, or guests, or (c) on any other basis which, in fairness, should be borne by a particular Condominium Building Unit. The Association may also levy a Specific Assessment against any Condominium Building Unit to reimburse the Association for costs incurred in bringing the Condominium Building Unit into compliance with the provisions of the Declaration, any applicable Supplemental

Declaration, the Articles, the By-Laws, and Rules, subject to prior notice to the Condominium Building Unit Owner and a reasonable opportunity for the Owner to be heard before the Board.

8.6. Lien for Assessments; Remedies for Nonpayment.

8.6.1. The Association shall have a lien against each Condominium Building Unit to secure payment of delinquent assessments, as well as interest, the late charges, and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, and (c) the lien for assessments or other charges of the Association. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

8.6.2. The sale or transfer of any Condominium Building Unit shall not affect the assessment lien or relieve such Condominium Building Unit from the lien for any subsequent assessments. However, the sale or transfer of any Condominium Building Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Condominium Building Unit who obtains title pursuant to foreclosure of the *first* Mortgage shall not be personally liable for assessments on such Condominium Building Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Condominium Building Units subject to assessment including such acquirer, its successors and assigns.

8.7. Date of Commencement of General Assessments. The obligation to pay General Assessments shall commence as to each Condominium Building Unit on the first day of the first month following the issuance of a Certificate of Occupancy for the Condominium Building Unit by the City of West Jordan or any other governmental entity with such jurisdiction. The first General Assessment levied on each Condominium Building Unit shall be adjusted according to the number of months remaining in the fiscal year at the time the obligation for assessments commences on the Condominium Building Unit.

8.8. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

Article IX  
EXPANSION

9.1. Annexation of Properties, Condominium Building Units and/or Common Area. The Association may annex any real property to the provisions of this Declaration as additional Condominium Building Units or Common Area of the Development with the consent of the owner of such property and the majority vote of Members representing a majority of the Association represented at a meeting duly called for such purpose. Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

9.2. Addition of Property to Existing Condominium Building Units. An Owner may acquire additional real property adjacent to the Properties, which shall be joined with that Owner's Condominium Building Unit, for the purpose of providing additional area for Building and/or Common Parking Area or Common Facilities to be associated with that Condominium Building Unit, and governed by this Declaration. By the joinder of the parcel of additional real property to the Condominium Building Unit, the additional property shall become automatically subject to the provisions of this Declaration, and the Owner agrees to join with the Association in the filing of a Supplemental Declaration describing such property being annexed and any affect on the Master Plan which is necessitated by the addition. The expenses associated with the preparation of such documents and the filing of the Supplemental Declaration shall be the responsibility of the Owner.

Article X  
GENERAL PROVISIONS

10.1. Duration.

10.1.1. Unless terminated as provided in Section 10.1.2., this Declaration shall have perpetual duration. If Utah law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

10.1.2. Unless otherwise provided by Utah law, in which case such law shall control, this Declaration may not be terminated within the first 20 years after the date of recording without the consent of all Condominium Building Unit Owners. Thereafter, it may be terminated only by an instrument signed by Owners of at least 75% of the total



Condominium Building Units within the Properties, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

10.2. Amendment. This Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners of not less than 75% of the total number of Condominium Building Units within the Properties. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. A procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

10.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

10.4. Use of the Words "West Jordan Gateway". No Person shall use the words "West Jordan Gateway" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "West Jordan Gateway" in printed or promotional matter where such terms are used solely to specify the Development and the Association shall be entitled to use the words "West Jordan Gateway" in its name.

10.5. Enforcement. The Association and any aggrieved Owner, Occupant, or Member shall have a right of action either at law or in equity against the Association or any Owner, Occupant, or Member for any failure by such person to comply with this Declaration, the Master Plan, the Articles, the By-Laws, or the provisions of any rulings, supplements, amendments or determinations expressly contemplated by this Declaration. In the event that the Association or any such Person fails to comply with this Declaration and it becomes necessary for any of such persons to employ the services of a attorney in connection therewith, the prevailing party in any such action shall be entitled to recover all costs incurred in connection with such action to enforce the provisions of this Declaration, including reasonable attorneys' fees. Failure by the Association or any such Person to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.6. Rules and Regulations. The Association shall have the authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to ensure that the Development is maintained and used in a manner consistent with the interests of the provisions of this Declaration.

10.7. No Severance of Right from Ownership of a Condominium Building Unit. No Owner, nor any Person shall convey, transfer, sell, assign, or otherwise dispose of its Membership rights in the Association without at the same time conveying, selling, transferring or otherwise disposing of its interest in the Condominium Building Unit to which its Membership attaches. The Membership shall be transferred only to a new Owner of the Condominium Building Unit to which the Membership is attached.

10.8. Captions. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall not be deemed to be a part of this Agreement, and in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts of this Declaration.

10.9. Gender, Singulars and Plurals. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof, and gender, including neutral, shall include all other genders. Each of the foregoing genders and plurals is understood to refer to a corporation, partnership, limited liability company, or other legal entity when the context so requires.

10.10. Liberal Construed. This Declaration shall be liberally construed to effect all of its purposes, and shall be governed by and in accordance with the laws of the State of Utah. In the event of any conflict between this Declaration and the Articles of the Association, this Declaration shall control.

10.11. Counterparts. This Declaration may be executed in counterparts, all of which taken together shall constitute one (1) agreement, binding on all of the parties hereto, their successors and assigns, notwithstanding that all of the parties are not signatories to the original or the same counterpart.

10.12. Notices; Service of Process. Any notice required to be given under this Declaration shall be given by registered mail, return receipt requested, and postal charge prepaid, or by hand delivery, with delivery to be effective on the date of delivery if hand delivered, or if mailed, three (3) days after the same is deposited in the mail, addressed to the recipient according to the records of the Association or to the address of the recipient if an Occupant of a Condominium Building Unit, within that Condominium Building Unit. The person to receive service of process for the Association in the cases provided for herein or in the Utah Condominium Ownership Act shall be the Registered Agent of the Association, according to the official records of the Department of Commerce, State of Utah.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration for the purposes expressed in the foregoing, including the expressed purpose of superseding the previous declaration which related to the Properties, on this \_\_\_\_ day of \_\_\_\_\_, 1999.

WEST JORDAN GATEWAY L.L.C.

Christopher K. McCandless, President  
By: C.K.M. Development Corporation,  
Its: Manager

Gary Cannon  
GARY CANNON, an Individual

C.K.M. DEVELOPMENT CORPORATION

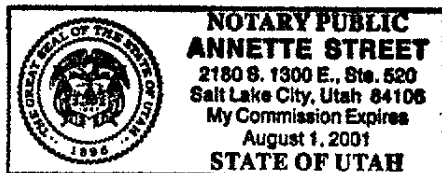
Christopher K. McCandless  
By: \_\_\_\_\_  
Its: President

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

On this 29 day of APRIL, in the year 1999, before me CHRISTOPHER K. McCANDLESS personally appeared known or identified to me to be the PRESIDENT OF C.K.M. DEVELOPMENT CORPORATION a duly authorized manager of the WEST JORDAN GATEWAY L.L.C. that executed the above instrument on behalf of said limited liability company and acknowledged that such limited liability company executed the same.

Annette Street  
NOTARY PUBLIC

My Commission Expires:

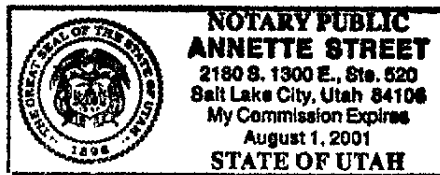


STATE OF UTAH )  
 )ss.  
COUNTY OF SALT LAKE )

On this 29 day of APRIL, in the year 1999, before me GARY CANNON, an Individual, personally appeared known or identified to me that he executed the above instrument and acknowledged he executed the same.

Annette Street  
NOTARY PUBLIC

My Commission Expires:



STATE OF UTAH )  
 )ss.  
County of Salt Lake )

On this 29 day of APRIL, in the year 1999, before me CHRISTOPHER K. McCLANDLESS personally appeared known or identified to me to be the PRESIDENT OF C.K.M. DEVELOPMENT a duly authorized officer of C.K.M. DEVELOPMENT CORPORATION, a Utah corporation, that he executed the above instrument on behalf of said corporation and acknowledged that such corporation executed the same.

Annette Street  
NOTARY PUBLIC

My Commission Expires:

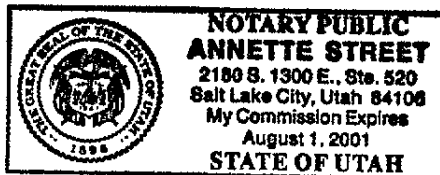


EXHIBIT "A"

LEGAL DESCRIPTION

Beginning at a point on the Easterly Right-of-Way line of 1300 West Street, said point being South 00 degrees 01'25" West 388.01 feet and South 89 degrees 58'35" East 40.00 feet from the West Quarter Corner of Section 2, Township 3 South, Range 1 West, Salt Lake Base and Meidian; and running thence South 00 degrees 01'25" West along said Easterly Right-of-Way line 252.18 feet; thence North 89 degrees 55'10" East 115.09 feet; thence South 00 degrees 10'25" West 23.74 feet; thence North 89 degrees 55'10" East 572.25 feet; thence North 00 degrees 10'25" East 260.08 feet; thence North 89 degrees 55'10" East 0.59 feet; thence North 00 degrees 01'25" East 139.92 feet; thence South 89 degrees 55'10" West 313.82 feet; thence South 00 degrees 05'00" West 18.51 feet; thence West 151.41 feet; thence South 00 degrees 01'25" West 105.79 feet; thence South 89 degrees 55'10" West 223.30 feet to the point of beginning. Contains 5.55 acres or 241,949 square feet.

27-02-301-045

" " " DSS

" " " DSS

Now

27-02-301-062

" " " D59

" " " D57

27-02-302-01

" " " D2