

**DECLARATION OF
THE NEW BRIGHAM BUILDING CONDOMINIUM
A CONDOMINIUM PROJECT**

This Declaration is made this 15th day of June, 1998, by THE NEW BRIGHAM BUILDING, a Utah Limited Partnership and JAMES W. STACEY, Declarant.

W_I_T_N_E_S_S_E_T_H:

Declarant is the owner in fee simple of land in Ogden City, Weber County, State of Utah, described at the attached Exhibit "A", which by this reference is made a part hereof.

The land and premises consist of an existing building, landscaped areas, patio, parking areas and other areas and facilities. Formerly known as the Toone and later The New Brigham Hotel, the three-story, red brick building has been restored and renovated for mixed use of residential and commercial space.

Declarant hereby submits the land together with all improvements, easements, rights and appurtenances thereunto belonging to the provisions of the Utah Condominium Ownership Act (57-8-1, et seq.) Utah Code Annotated, as amended, and hereby creates, with respect to the land, a residential-commercial condominium project to be known as The New Brigham Building Condominium. The Covenants, Conditions and Restrictions contained in this Declaration and the Exhibits hereto shall be enforceable equitable servitudes and shall run with the land.

The commercial part is located at the West part of the building on the main-ground floor with three entrances from Wall Avenue. The residential part is the East part of the building and the upper-stories with the entrance from the East side of the building. The commercial part of the building has Common Areas and Facilities used exclusively for the Commercial Units (Commercial Limited Common Areas) and with the exception hereafter mentioned. The Residential Units have Common Areas and Facilities used exclusively for the Residential Units (Residential Limited Common Areas). The exception is that the entry-way and lobby on the main-ground floor for the use of the Residential Units may also be for the use of the Commercial Unit for emergency purposes.

E# 1553080 BK 1935 PG 2178
DOUG CROFTS, WEBER COUNTY RECORDER
17-JUN-98 9:18 AM FEE \$69.00 DEP NB
REC FOR: ASSOCIATED TITLE

01-086-0001 to 0019

ARTICLE I

Definitions

Terms not otherwise defined herein or on the Record of Survey Map, or as the same may be amended from time to time, shall have the meanings specified in the Utah Condominium Ownership Act.

Section 1. "Unit." Unit (Residential and Commercial) shall mean that part of the property owned in fee simple by Unit Owners for independent use and shall include the areas of the condominium property which are not owned with the Owners of other Units, as shown on the Map and shall consist of:

(a) The space contiguous to the undecorated interior surfaces of common bearing walls, ceilings, and floors, and the walls within a Unit. Provided, however, the three bearing walls located within the Commercial Unit are Common Areas and Facilities and are not part of the Unit and for which an easement exists for the common maintenance thereof;

(b) Any finishing materials applied or affixed to the interior surfaces of the condominium common walls and bearing walls, floors, and ceilings, including, without limitation, paint, lacquer, varnish, wallpaper, tile, and paneling;

(c) Non-supporting interior walls;

(d) Windows and doors in the perimeter walls, whether located within the bounds of a Unit or not, not including any space occupied thereby to the extent located outside the bounds of a Unit;

(e) Residential and Commercial Units forming a part of the condominium property are more particularly described in the Map, which shows graphically all the particulars of the buildings, without limiting the generality of the foregoing, the Unit designations and locations.

(f) The Units have the square footage, the percentage of ownership and the percentage of maintenance obligations as follows:

<u>RESIDENTIAL UNITS</u>	<u>SQUARE FOOTAGE</u>	<u>PERCENTAGE OF OWNERSHIP IN THE COMMON AREAS AND FACILITIES</u>
Unit R-201	893.06	5.4%
Unit R-202	512.59	3.1%
Unit R-203	591.78	3.6%
Unit R-204	429.54	2.6%
Unit R-205	447.11	2.7%

Unit R-206	341.04	2.1%
Unit R-207	895.05	5.4%
Unit R-208	298.30	1.8%
Unit R-209	460.40	2.8%
Unit R-301	893.06	5.4%
Unit R-302	512.59	3.1%
Unit R-303	591.78	3.6%
Unit R-304	429.54	2.6%
Unit R-305	447.11	2.7%
Unit R-306	341.04	2.1%
Unit R-307	893.06	5.4%
Unit R-308	298.30	1.8%
Unit R-309	460.40	2.8%

COMMERCIAL UNIT

Unit C-1	6,788.38	41.0%
TOTAL		100%

(g) Maintenance Obligations of Limited Common Areas are as follows:

<u>RESIDENTIAL UNITS</u>	<u>SQUARE FOOTAGE</u>	<u>PERCENTAGE OF MAINTENANCE OBLIGATIONS OF RESIDENTIAL LIMITED COMMON AREAS</u>
Unit R-201	893.06	9.1%
Unit R-202	512.59	5.3%
Unit R-203	591.78	6.1%
Unit R-204	429.54	4.4%
Unit R-205	447.11	4.6%
Unit R-206	341.04	3.5%
Unit R-207	895.05	9.2%
Unit R-208	298.30	3.1%
Unit R-209	460.40	4.7%
Unit R-301	893.06	9.1%
Unit R-302	512.59	5.3%
Unit R-303	591.78	6.1%
Unit R-304	429.54	4.4%
Unit R-305	447.11	4.6%
Unit R-306	341.04	3.5%
Unit R-307	893.06	9.2%
Unit R-308	298.30	3.1%
Unit R-309	460.40	4.7%
TOTAL		100%

<u>COMMERCIAL UNIT</u>	<u>SQUARE FOOTAGE</u>	<u>PERCENTAGE OF MAINTENANCE OBLIGATIONS OF COMMERCIAL LIMITED COMMON AREAS</u>
Unit C-1	6,788.38	100%
	TOTAL	100%

Section 2. "Common Areas." Common Areas shall be as defined in the Act, and consist of the property, except the Units and are as shown on the Map.

Section 3. "Limited Common Areas." Reference herein to Limited Common Areas shall be in two categories: Residential Limited Common Areas, the use of which is restricted to the Residential Units are appurtenant to the Residential Units and Commercial Limited Common Areas, the use of which is restricted to the Commercial Unit.

The Residential Limited Common Areas include the entry-way, parking spaces, patio, utilities, lobby, elevator, stairways, hallways and the basement area beneath the residential part of the building appurtenant to the Residential Units and as shown on the Map.

The Commercial Limited Common Areas include the entry-ways, utilities and basement area beneath the Commercial Unit appurtenant to the Commercial Unit and as shown on the Map.

Section 4. "Mortgage-Mortgagee-Mortgagor." Reference herein to a mortgage shall be deemed to include a Deed of Trust; reference to a mortgagee shall be deemed to include the beneficiary of a Deed of Trust; reference to a mortgagor shall be deemed to include the trustor of a Deed of Trust.

Section 5. Emergency Easement. Anything to the contrary notwithstanding, for the benefit of the Residential Units and the Commercial Unit, for emergency purposes only, there shall be and is an easement for ingress and egress from the Residential Limited Common Area entry-way on the East through the Residential Limited Common Area lobby area and into and through the Commercial Unit to and through the Northwest entry-way of the Commercial Limited Common Area and from the Northwest entry-way of the Commercial Limited Common Area into and through Commercial Unit 1 into and through the Residential Limited Common Area lobby area to and through the Residential Limited Common Area entry-way on the East.

Section 6. Owners Association. The New Brigham Building Owners Association, a Utah non-profit corporation, an association of the Unit Owners formed to govern the property, business and affairs of the Association through its Board of Trustees.

ARTICLE II

General Description of Condominium Property

The project consists of one (1) three-story building with a total of nineteen (19) Units. There are eighteen (18) Residential Units and one (1) Commercial Unit for a total of nineteen (19) Units. The building is constructed of concrete, frame and brick. The Unit number of each Unit is as designated on the Record of Survey Map.

ARTICLE III

Ownership and Use

Section 1. Ownership of a Unit. Subject to the Emergency Easement and except with respect to any of the Common Areas located within the bounds of a Unit, the Owner of each Unit shall be entitled to the exclusive ownership and possession of said Unit and to the ownership of an undivided interest in the Common Areas, in the percentages as provided for at Article I, Section (f).

Section 2. Prohibition against Subdivisions of Units. Units may not be subdivided into smaller parcels. However, the Commercial Unit may be partitioned off into smaller spaces to accommodate appropriate authorized uses. The Residential Units may not be partitioned into smaller spaces.

Section 3. Ownership of Common Areas. The Common Areas shall be owned by the Unit Owners, as tenants in common, and ownership thereof shall remain undivided. No action for partition of any part of the Common Areas shall be maintained, except as specifically provided in the Act, and shall be subject to the mortgage protective provisions herein; nor may any Unit Owner otherwise waive or release any rights in the Common Areas.

Section 4. Use of Common Areas. Subject to the Emergency Easement, each Unit may use the Common Areas which right of use shall be appurtenant to and run with the Unit. Provided, however, the Residential Limited Common Areas are reserved for the exclusive use of the Residential Units, provided, further, however, the Commercial Limited Common Areas are reserved for the exclusive use of the Commercial Unit.

Section 5. Interest in Common Areas. The percentage of interest in the Common Areas for each Unit shall be as provided at Article I, Section 1 (f) above.

Section 6. Use. Units 201, 202, 203, 204, 205, 206, 207, 208, 209, 301, 302, 303, 304, 305, 306, 307, 308 and 309 are Residential Units and shall be used for residential purposes only and shall be

occupied by no more than three (3) persons regarding the studios and one-bedroom Units and no more than five (5) persons regarding the two-bedroom Units. Provided, that in no event shall the use of any residential Dwelling Unit shall be for other than single family as defined in the zoning ordinances of Ogden City. Unit C-1 is a Commercial Unit and shall be used only for the following lawful purposes or any combination thereof: commercial, professional, business, cabaret, including without limitation, tavern, restaurant and private club.

Section 7. Common Expenses. The Common Expenses shall be assessed against all Units in the percentage of Common Areas attributable to it, provided, however, the Common Expenses attributable to the Residential Limited Common Areas shall be assessed against the Residential Units only and in the percentage of the Residential Limited Common Areas attributable to it. The Common Expenses attributable to the Commercial Limited Common Areas shall be assessed against the Commercial Unit only in the percentage of the Commercial Limited Common Areas attributable to it. The percentages of Common Expenses, Common and Limited, is as provided at Article I, Section 1 (f) and (g).

ARTICLE IV

Percentage of Ownership in the Common Areas

The percentage of ownership in the Common Areas attributable to each Unit, is as provided at Article I, Section 1 (f) above and shall be appurtenant to each Unit and shall pass with the title to each Unit. The percentage interest for each Unit for voting purposes shall not be fractionalized.

ARTICLE V

Agent for Service of Process

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

Glenn C. Gonzales
c/o GCG Investments
51 East 400 South #210
Salt Lake City, UT 84111

ARTICLE VI

Management

It is hereby ordained and established that the property, business and affairs of The New Brigham Building Owners' Association shall be governed by The New Brigham Building Owners' Association, Inc., through its Board of Trustees, a Utah non-profit corporation, to be formed or formed for such purposes and the said Association and its Board shall have actual authority with regard thereto.

Each member of the Board of Trustees, except for those appointed and serving as first members, must either be an Owner of a Unit or a designee of such Owner as provided in the Bylaws of the Owners' Association, or an agent of Declarant, for so long as Declarant owns a Unit in the condominium project.

Until Declarant transfers control of the Owners' Association to it as provided at Article XVIII, Section 2, Declarant shall have the right to direct, modify or veto any action of the Owners' Association, its Board of Trustees or the Unit Owners. The members of the Board of Trustees shall not receive any stated salary for their services as members, provided, however, that any member may be reimbursed for his or her actual expenses incurred in the performance of authorized duties.

A copy of the Articles of Incorporation and Bylaws of The New Brigham Building Owners' Association are attached hereto as Exhibits "B" and "C."

ARTICLE VII

Destruction or Damage

In the event of damage to or destruction of part or all of the improvements in the condominium project, the following procedures shall apply:

(a) If proceeds of the insurance maintained by the Board of Trustees are alone, sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

(b) If less than seventy-five percent (75%) of the project's improvements are destroyed or substantially damaged and if proceeds of the insurance maintained by the Board of Trustees are not alone, sufficient to accomplish repair or reconstruction, restoration shall be carried out and all the Unit Owners shall be assessed for

any deficiency on the basis of their respective percentages of undivided interest in the Common Areas and facilities.

(c) If seventy-five percent (75%) or more of the project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Board of Trustees are not alone, sufficient to accomplish repair or reconstruction, and if the Unit Owners, within 100 days after the destruction or damage, by a vote of at least seventy-five percent (75%), elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subparagraph (b) above.

(d) If seventy-five percent (75%) or more of the project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Board of Trustees are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage and by vote of at least seventy-five percent (75%), elect to repair or reconstruct the affected improvements, the Board of Trustees shall promptly record, with the Weber County Recorder, a notice setting forth such facts. Upon the recording of such notice, the provisions of subsections (1) through (4) of Section 57-8-31, Utah Code Annotated, 1953, as amended, shall apply and shall govern the rights of all parties having an interest in the project or any of the Units.

Any reconstruction or repair which is required to be carried out by this paragraph shall be accomplished at the instance and direction of the Board of Trustees. Any determination which is required to be made by this paragraph regarding the extent of damage to or destruction of project improvements shall be made as follows: The Board of Trustees shall elect three (3) appraisers; each appraiser shall independently arrive at a figure representing the percentage of project improvements which have been destroyed or substantially damaged; the percentage which governs the application of the provisions of this paragraph shall be the average of the two closest appraisal figures.

ARTICLE VIII

Taxes

It is understood that under 57-8-27, Utah Code Annotated, 1953, as amended, each Unit and its percentage of undivided interest in the Common Areas and facilities in the project are subject to separate assessments and taxation by each assessing unit and the special district, for all types of taxes authorized by law, and that as a result thereof, no taxes will be assessed or payable against the project as such. Each Unit Owner will, accordingly, pay and discharge any and all taxes which may be assessed against him

and his percentage of undivided interest in the Common Areas and facilities.

ARTICLE IX

Insurance

Section 1. Type and Scope of Insurance Coverage Required.

(A) Insurance for Fire and Other Perils. The Owners' Association must obtain, maintain, and pay the premiums upon, as a common expense, a "master" or "blanket" type policy of property insurance covering all of the Common Areas (except land, foundation, excavation, and other items normally excluded from coverage), including fixtures, to the extent they are part of the Common Areas of the condominium, and building service equipment and supplies and other common personal property belonging to the Owners' Association. All references herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity condominium insurance coverage. In addition, any fixtures, equipment, or other property within the Units which are to be financed by a mortgage to be purchased or guaranteed by HUD, VA, FNMA, or FHLMC (regardless of whether or not such property is a part of the Common Areas), must be covered in such "master" or "blanket" policy.

Such policy must be consistent with state and local insurance laws and at least equal to such coverage as is commonly required by prudent, institutional mortgage investors in the area. The policy shall be in an amount equal to 100% of current replacement costs of the condominium, exclusive of land, foundation, excavation, and other items normally excluded from coverage.

The name of the insured under such policies must be set forth therein, substantially as follows:

"THE NEW BRIGHAM BUILDING CONDOMINIUM OWNERS' ASSOCIATION, INC. for use and benefit of the individual owners (designated by name if required by law)".

The policies may also be issued in the name of an authorized representative of the Owners' Association, including any insurance trustee with whom the Owners' Association has entered into an Insurance Trust Agreement, or any successor trustee, as insured, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Owners' Association (or Insurance Trustee), as a trustee, for each Unit Owner, and each such Owner's mortgagee. The Owners' Association or Insurance Trustee, if any, must be required to hold any proceeds of insurance, in trust, for Unit Owners and their first mortgage holders, as their interests may appear. Each Unit Owner and each Unit Owner's mortgagee, if

any, shall be beneficiaries of the policy, in the percentage of common ownership. Certificates of Insurance shall be issued to each Unit Owner and mortgagee, upon request.

Such policies shall contain the standard mortgage clause or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area, and which appropriately names HUD, VA, FNMA, and FHLMC, if such corporations are holders of first mortgages on Units within the condominium project. Such policies must also provide that they may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Owners' Association, and to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policies.

Policies are unacceptable where:

(1) Under the terms of the insurance carrier's charter, bylaws, or policy, contributions or assessments may be made against borrowers, HUD, VA, FNMA, FHLMC, or the designee of HUD, VA, FNMA or FHLMC; or

(2) By the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders, or members; or

(3) The policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC or the borrowers from collecting insurance proceedings.

The policies must also provide for the following:

(1) Recognition of any Insurance Trust Agreement;

(2) A waiver of the right of subrogation against Unit Owners, individually;

(3) That the insurance is not prejudiced by any act or neglect of individual Unit Owners; and

(4) That the policy is primary in the event the Unit Owner has other insurance covering the same loss.

The insurance policy shall afford, as a minimum, protection against the following:

(1) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;

(2) In the event the condominium contains a steam boiler, loss or damage resulting from steam boiler equipment

accidents, in an amount not less than \$50,000.00 per accident per location (or such greater amount as deemed prudent based on the nature of the property);

(3) All other perils which are customarily covered with respect to condominiums similar in construction, location, and use, including all perils normally covered by the standard "all-risk" endorsement, where such is available.

In addition, such policies shall include an "Agreement Amount Endorsement" and, if available, an "Inflation Guard Endorsement."

(B) Liability Insurance. The Owners' Association must obtain and maintain comprehensive general liability insurance coverage covering all of the Common Areas, commercial space owned and leased by the Owners' Association and public ways of the condominium project. Coverage limits shall be in amounts generally required by private, institutional mortgage investors for projects similar in construction, location, and use. However, such coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts of the Owners' Association. Such policies must provide that they may not be cancelled or substantially modified, in any part, without at least ten (10) days prior written notice to the Owners' Association and to each holder of a first mortgage on any Unit in the condominium which is listed as a scheduled holder of a first mortgage in the insurance policy. Such coverage must include protection against such other risks as are customarily covered with respect to condominiums similar in construction, location, and use, including, but not limited to, host liquor liability, employers liability insurance, contractual and all-written contract insurance, and comprehensive automobile liability insurance.

(C) Fidelity Bonds. Fidelity bonds shall be required to be maintained by the Owners' Association for all officers and employees of the Owners' Association, and all other persons handling or responsible for, funds of or administered by the Owners' Association. Where the management agent has the responsibility for handling or administering funds of the Owners' Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees, and agents handling or responsible for funds of, or administered on behalf of, the Owners' Association. Such fidelity bonds shall name the Owners' Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Owners' Association or the management agent, as the case may be, at

any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months aggregate assessments on all Units, plus reserve funds. The bonds shall contain waivers by the issuer of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The premiums on all bonds required herein, except those maintained by the management agent, shall be paid by the Owners' Association, as a Common Expense. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment) without at least ten (10) days prior written notice to the Owners' Association or Insurance Trustee. Such bonds must also provide that the FNMA Servicer, on behalf of FNMA, also receive such notice of cancellation or modification.

Section 2. Insurance Trustee; Power of Attorney. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named, as an insured, on behalf of the Owners' Association, the Owners' Association's authorized representative, including any trustee with whom such Owners' Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance, and to perform such other functions as are necessary to accomplish this purpose.

Each Unit Owner appoints the Owners' Association, or any Insurance Trustee or substitute Insurance Trustee, designated by the Owners' Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including:

- (a) The collection and appropriate disposition of the proceeds thereof;
- (b) The negotiation of losses and execution of releases of liability;
- (c) The execution of all documents; and
- (d) The performance of all other acts necessary to accomplish such purposes.

Section 3. Qualification of Insurance Carriers. The Owners' Association shall use generally acceptable insurance carriers.

Section 4. Condemnation and Total or Partial Loss or Destruction. The Owners' Association shall represent the Unit Owners in the condemnation proceedings or in negotiations, settlements, and agreements, with the condemning authority for acquisition of the Common Areas, or any part thereof, by the

condemning authority. Each Unit Owner appoints the Owners' Association as attorney-in-fact for such purposes.

In the event of taking or acquisition of part or all of the Common Areas by a condemning authority, the award or proceeds of settlement shall be payable to the Owners' Association, or any Trustee, to be held in trust for the Unit Owners and their first mortgage holders, as their interest may appear.

ARTICLE X

Assessments Subordinate

The lien or claim against a condominium Unit for unpaid assessments or charges levied by the Board of Trustees or by the Association of Condominium Unit Owners, pursuant to this Declaration or the Utah Condominium Ownership Act, shall be subordinate to the mortgage affecting such Unit, and the mortgagee or successor to the mortgagee thereunder which comes into possession of the Unit, shall take the same free of such lien or claim for unpaid assessments or charges, which accrue prior to foreclosure of the mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a mortgage or as not to burden a mortgagee which comes into possession, shall be collected or enforced by either the Board of Trustees or the Association of Unit Owners from or against a mortgagee, a successor in title to a mortgagee or the condominium Unit affected or previously affected by the mortgage concerned.

ARTICLE XI

Maintenance of Units

Each Unit Owner, at his own expense, shall keep the interior of his Unit, and its appurtenances and equipment, in good order, condition and repair, and in a clean and sanitary condition, and shall do all redecoration and painting which may, at any time, be necessary to maintain a good appearance for his Unit.

Except to the extent that the Board of Trustees is protected by insurance against such injury, the Unit Owner shall repair all injury or damage to the Unit or condominium project caused by the act or negligence of a lessee or any member of the Unit Owner's family, or the family of any lessee or sublessee, and all such repairs, decorating, and painting shall be of a quality and kind equal to the original work.

In addition to decorating and keeping the interior of the Unit in good repair, the Unit Owner shall be responsible for the

maintenance and/or replacement of any plumbing fixtures that may be in or connected with the Unit. In connection with the foregoing responsibilities of Unit Owners, the Board of Trustees shall give written notice to the affected Owner of a Unit, stating specifically that which is required and setting a time within which to complete the same. If the Unit Owner disagrees with said requirements, or any part thereof, he shall have ten (10) days from the date of the notice within which to object thereto, in writing, mailed or delivered to the Board of Trustees, otherwise, he shall comply with such request. In the event of objection aforesaid, the Board of Trustees shall set the matter for hearing no less than ten (10) days nor more than thirty (30) days from the date of the objection, and give the Unit Owner at least ten (10) days written notice of the time and place of the hearing. At the hearing, the Board of Trustees shall take and receive relevant evidence and decide the issues.

With the written permission of the Board of Trustees, the Unit Owner may make, or permit to be made, structural alterations, improvements, or additions in or to the Unit, which said permission shall be liberally granted. However, the Unit Owner shall not alter, paint, or decorate any portion of the exterior of the building where his Unit is located.

ARTICLE XIII

Right of Entry

The Board of Trustees, and its duly authorized agents, have the right to enter any and all of the Units in case of an emergency originating in or threatening such Unit, or any other part of the project, whether or not the Unit Owner or occupant thereof is present at the time. The Board of Trustees, and its duly authorized agents, shall also have the right to enter into any and all of said Units, at all reasonable times, as required for the purpose of making necessary repairs upon the Common Areas and facilities of the project, for the purpose of performing emergency installations, alterations, or repairs to the mechanical or electrical devices, or installations located therein or thereon, provided, however, such emergency installations, alterations, or repairs are necessary to prevent damage or threatened damage to other 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 permits.

ARTICLE XIII

Obligation to Comply Herewith

Each Unit Owner, tenant or occupant of a Unit, shall comply with the provisions of the Act, this Declaration, and the Rules and Regulations, all agreements and determinations lawfully made and/or

entered into by the Board of Trustees, or the Unit Owners, when acting in accordance with their authority, and any failure to comply with any of the provisions thereof shall be grounds for an action by the Board of Trustees to recover any loss or damage resulting therefrom or injunctive relief.

ARTICLE XIV

Indemnification of Board of Trustees

Each member of the Board of Trustees shall be indemnified and held harmless by the Unit Owners against all costs, expenses, and liabilities whatsoever, including, without limitation, attorney's fees reasonably incurred by them in connection with any proceeding to which it may become involved by reason of its being or having been a member of such Board of Trustees. Provided, however, a member of the Board of Trustees shall not be indemnified under this paragraph for any acts which constitute gross negligence or wilful misconduct.

ARTICLE XV

Transfer or Lease of Units

Any Unit Owner may transfer or lease his Unit, provided, however, the following leasing restrictions shall apply:

- (a) All leases shall be in writing and shall be subject to this Declaration; and
- (b) All leases must have an initial term of at least one (1) year.

ARTICLE XVI

First Lien Holder's Rights

Section 1. Notice of Action. A holder, insurer, or guarantor of a first mortgage, upon written request to the Owners' Association (such request to state the name and address of such holder, insurer, or guarantor, and the Unit number), will be entitled to timely written notice of:

- (a) Any proposed amendment of the condominium instruments affecting a change in:
 - (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto;

(ii) the interests in the general or limited Common Areas appertaining to any Unit, or the liability for Common Expenses appertaining thereto;

(iii) the number of votes in the Owners' Association appertaining to any Unit; or

(iv) the purposes to which any Unit or the Common Areas are restricted.

(b) Any proposed termination of the condominium regime;

(c) Any condemnation loss or any casualty loss which affects a material portion of the condominium, or which affects any Unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;

(d) Any delinquency in the payment of assessments or charges owed by a Unit Owner, subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days; and

(e) Any lapse, cancellation, or material modification of any insurance policy maintained by the Owners' Association pursuant to paragraph 14(a), (i) and (ii).

Section 2. Other Provisions for First Lien Holders.

(A) Any restoration or repair of the condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications, unless the approval of the eligible holders of first mortgages on Units to which at least sixty-seven percent (67%) of the votes of Units subject to mortgages held by such eligible holders are allocated, is obtained.

(B) Any election to terminate the condominium regime, after substantial destruction or a substantial taking on condemnation of the condominium property, must require the approval of the eligible holders of first mortgages on Units to which at least sixty-seven percent (67%) of the votes of Units subject to mortgages held by such eligible holders are allocated.

(C) No reallocation of interests in the Common Areas resulting from a partial condemnation or partial destruction of the condominium project may be affected without the prior approval of the eligible holders of first mortgages on Units to which at least sixty-seven percent (67%) of the votes of Units subject to mortgages held by such eligible holders are allocated. *NOTE:* As used in this section, the term "eligible holder, insurer or guarantor" shall mean a holder, insurer, or guarantor of a first

mortgage on a Unit in a condominium which has requested notice in accordance with the provisions of Section 1 above.

ARTICLE XVII

Amendments to Documents

The following provisions apply to amendments to the constituent documents except in the case of termination of the condominium regime made as a result of destruction, damage or condemnation as provided at Article VII and Section 4 of Article IX:

(a) The consent of the Owners of Units to which at least sixty-seven percent (67%) of the votes in the Owners' Association are allocated and the approval of the eligible holders of first mortgages on Units to which at least sixty-seven percent (67%) of the votes of Units, subject to a mortgage appertain, shall be required to terminate the condominium regime.

(b) The consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Owners' Association are allocated and the approval of eligible holders of first mortgages on Units to which at least sixty-seven percent (67%) of the votes of Units, subject to a mortgage appertain, shall be required to materially amend any provision of this Declaration, or equivalent documents of the condominium, or to add any material provision thereto, which establish, provide for, govern, or regulate any of the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of the Common Areas;
- (4) Insurance or fidelity bonds;
- (5) Right to use of the Common Areas;
- (6) Responsibility for maintenance and repair of the several portions of the condominium;
- (7) Boundaries of any Unit;
- (8) Convertibility of Units into Common Areas or of Common Areas into Units, or the partitioning or subdividing of any Unit;

(9) Leasing of Units;

(10) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his Unit in the condominium project;

(11) Establishment of self-management by the condominium Association where professional management has been required by any of the agencies or corporations;

(12) Seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas by act or omission. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas by the condominium project is not a transfer within the meaning of this clause; and

(13) Use hazard insurance proceeds for losses to any condominium property (whether units or Common Areas) for other than the repair, replacement or reconstruction of the condominium property.

(c) The consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Owners' Association are allocated, and the approval of eligible holders of first mortgages on Units to which at least sixty-seven percent (67%) of the votes of Units, subject to a mortgage appertain, shall be required to amend any provision included in this Declaration, or equivalent documents of the condominium which are for the express benefit of holders or insurers of first mortgages on Units in the condominium project.

(d) This Declaration may not be amended or merged with a successor condominium regime without prior written approval of each of HUD, VA, FHLMC and/or FNMA, which holds, insures or guarantees any existing condominium Unit at the time of such amendment or merger.

ARTICLE XVIII

Declarant's Rights and Restrictions

Section 1. Declarant's Rights. The following rights in the Common Areas are reserved by Declarant for a reasonable period of time, subject to concomitant obligation to restore:

(a) Easement over and upon the Common Areas and upon lands appurtenant to the condominium project for the purpose of completing necessary contemplated improvements, but only if access thereto is otherwise not reasonably available.

(b) Easement over and upon the Common Areas for the purpose of making repairs required pursuant to this Declaration or contracts of sale made with Unit purchasers.

(c) Right to maintain facilities in the project which are reasonably necessary to market the Units. These may include sales and management offices, model Units, parking areas, and advertising signs.

Section 2. Transfer of Control. The Declarant shall relinquish all special rights, express or implied, through which the Declarant may directly or indirectly control; direct, modify, or veto, any action of the Owners' Association, its Board of Trustees, or a majority of Unit Owners, and control of the Owners' Association shall pass to the Unit Owners within the project not later than the earlier of the following:

(a) 120 days after the date by which seventy-five percent (75%) of the Units have been conveyed to Unit purchasers; or

(b) Within six (6) years following the first conveyance to a Unit Owner.

ARTICLE XIX

No Right of First Refusal

The right of a Unit Owner to sell, transfer, or otherwise convey his Unit shall not be subject to any right of first refusal, or similar restrictions.

ARTICLE XX

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 inserted conditionally on their being held valid in law, and in the event that one or more of the phrases, sentences, clauses, paragraphs, or sections contained herein should be invalid or should operate to render this Declaration invalid, 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.

ARTICLE XXI

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 corporate or individuals, men or women, shall, in all cases, be assumed as though in each case fully expressed.

ARTICLE XXII

Topical Headings

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

ARTICLE XXIII

Effective Date

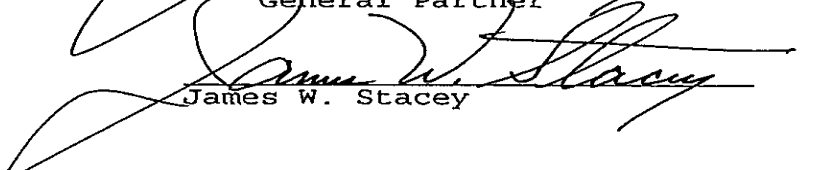
This Declaration shall take effect upon recording in the office of the Weber County Recorder, Ogden, Utah.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:

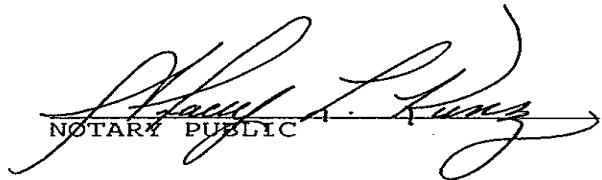
THE NEW BRIGHAM BUILDING,
a Utah Limited Partnership

By: 
James W. Stacey
General Partner


James W. Stacey

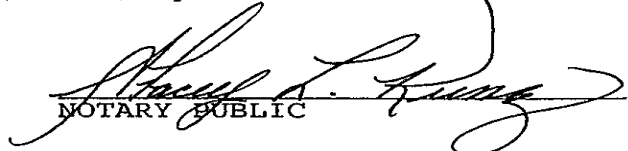
STATE OF UTAH)
 :SS.
COUNTY OF WEBER)

On the 15th day of June, 1998, personally appeared before me JAMES W. STACEY, personally known to me to be a General Partner of THE NEW BRIGHAM BUILDING, a Utah Limited Partnership, and to me known to be the person described in and who executed the foregoing instrument in the General Partnership name of THE NEW BRIGHAM BUILDING, and he acknowledged that he executed the same as teh act and deed of said General Partnership for the uses and purposes therein mentioned.


NOTARY PUBLIC

STATE OF UTAH)
 :SS.
COUNTY OF WEBER)

The foregoing instrument was acknowledged before me this 15th day of June, 1998, by JAMES W. STACEY.


NOTARY PUBLIC



E# 1553080 BK1935 PG2198

EXHIBIT "A"

Part of Lots 5 and 6, Block 23, Plat A, Ogden City Survey: Beginning at a point South 0 degrees 58' West 15 feet from the Northwest corner of said Lot 6, and running thence South 0 degrees 58' West 119.25 feet, more or less, to a point 1.4 feet South 0 degrees 58' West from the Northwest corner of said Lot 5 and to a point on the North lien of an existing building; thence South 89 degrees 13'18" East 187.5 feet along said North building line (and lines extended); thence North 0 degrees 58' East 119.25 feet, more or less, to a point on the South line of 24th Street which is South 0 degrees 58' West 15 feet and North 89 degrees 09' West 145.5 feet from the Northeast corner of said Lot 6; thence North 89 degrees 09' West 187.5 feet, more or less, to the point of beginning

Subject to a non-exclusive right-of-way for purposes of ingress and egress over and across the East 21 feet of above described parcel