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DECLARATION AND BYLAWS OF
SOUTH OGDEN PROFESSIONAL PLAZA
(A COMMERCIAL CONDOMINIUM PROJECT)

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**DECLARATION AND BYLAWS OF
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This Declaration is made this 2nd day of May, 2000, by ROBERT J. ANDERSON and CRAIG SPEECHLY, hereinafter called "Declarant."

RECITALS:

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

Said land is sometimes hereinafter referred to as the "Property."

B. Declarant hereby submits the Property, 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, 1953, as amended) and hereby creates, with respect to the Property a commercial condominium project to be known as SOUTH OGDEN PROFESSIONAL PLAZA.

ARTICLE I

Definitions

Terms not otherwise defined herein or on the Record of Survey Map, 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 shall mean that part of the Property owned in fee simple by Unit Owners for independent use and shall include the elements of the condominium Property 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;

- (b) Any finishing materials applied or affixed to the interior surfaces of the condominium common 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) Units forming a part of the condominium Property are more particularly described in the Map, which show graphically all the particulars of the buildings without limiting the generality of the foregoing, the Unit designations, and locations.

Section 2. Common Areas. Common Areas shall be as defined in the Act and includes landscaped grounds, private streets, walkways, and uncovered parking spaces for Unit Owners, their employees, business guests, and invitees.

Section 3. Other Facilities. (A) Reserved Licensed Common Areas and Facilities. The Management Committee shall have the power, in its discretion, from time to time, to grant revocable licenses in designated Common Areas and facilities to any Unit Owner under reasonable terms and conditions and for use and/or maintenance thereof. Such designation by the Management Committee shall not be construed as a sale or disposition of the Common Areas and facilities.

(B) Contract Amenities. The Owners' Association shall have the power, in its discretion, to lease other property for storage and other facilities and to make the same available to Unit Owners on a contract basis. In this connection, the Owners' Association may deal with an affiliate of Declarant.

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.

ARTICLE II

General Description of the Condominium Property

The project shall consist of two (2) buildings with four (4) Units each for a total of eight (8) Units. The buildings are constructed of frame with brick veneer. 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.* Except with respect to any of the condominium Common Areas located within the bounds of a Unit, each Unit shall be entitled to the exclusive ownership and possession of said Unit and to the ownership of an undivided interest in the condominium Common Areas in equal percentages as provided for hereafter.

Section 2. *Prohibition Against Subdivision of Units.* Units may not be subdivided into smaller parcels.

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 condominium Common Areas shall be maintained except as specifically provided in the Act, and shall be subject to the mortgage protection provisions herein; nor may any Unit Owner otherwise waive or release any rights in the Common Areas.

Section 4. *Use of Common Areas.* Each Unit Owner may use the Common Areas and shall have the exclusive use of the Limited Common Areas adjacent to such Unit in accordance with the purposes for which they are intended, which right of use shall be appurtenant to and run with the Unit.

Each Unit Owner shall have the use of Reserved Common Areas, when, where, and as provided by the Management Committee.

Section 5. *Interest in Common Areas.* The percentage of interest in the condominium Common Areas for each Unit shall be equal.

Section 6. *Use.* The Units shall be used only for commercial, professional, and business purposes. Residential and manufacturing uses are prohibited.

ARTICLE IV

Percentage of Ownership in the Condominium Common Areas

The percentage of ownership in the Common Areas for all purposes attributable to each Unit is 12.5% 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 Weber County, State of Utah, appointed as first agent to receive service of process in matters pertaining to the Property as provided in the Act is: Robert J. Anderson, 5300 South Adams Avenue, Suite 11, Ogden, Utah 84405.

ARTICLE VI

Administration

A

Meetings

Section 1. **Place of Meetings of Owners.** Meetings of the Association of Unit Owners shall be held at the Property or such other suitable place as close thereto as practicable in Weber County, Utah, convenient to the Owners, as may be designated by the Management Committee.

Section 2. **Annual Meeting of Owners.** The first annual meeting of Owners shall be held within sixty (60) days after seventy percent (70%) of the sale of all of the Units have been closed or within one (1) year after the close of the sale of the first Unit, whichever occurs first. Thereafter, the annual meeting of the Unit Owners shall be held on the anniversary date of the first annual meeting; provided, however, that should the anniversary date fall on a legal holiday, then such annual meeting shall be held the next day thereafter which is not a legal holiday. At such annual meeting, there shall be elected by ballot of the Owners, a Management Committee. At the first annual meeting, the members of the Management Committee shall be elected for a term of one (1) year beginning with the first annual meeting. Unless a member of the Management Committee resigns before the expiration of his term of office, each member shall hold office until his successor has been elected and the first meeting involving such successor is held. The term of office of any member elected to fill a vacancy created by the resignation of his predecessor shall

be the balance of the unserved term of his predecessor. The Unit Owners may also transact such other business of the Association as may properly come before them. Each first Mortgagee of a Unit may designate a representative to attend all annual meetings of the Owners.

Section 3. Special Meetings of Owners. Special meetings of Owners may be called at any time by a majority of a quorum of the Management Committee, or upon a petition signed by Owners holding at least twenty-five percent (25%) of the voting power having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice, unless by consent of those Owners holding at least three-fourths (3/4ths) of the voting power of the Association, either in person or by proxy. Each first Mortgagee of a Unit may designate a representative to attend all special meetings of the Owners.

Section 4. Notice of Meetings to Owners. It shall be the duty of the Secretary to mail a notice of each annual or special meeting of Owners, stating the purpose thereof as well as the day, hour, and place where it is to be held, to each Owner of record and to each first Mortgagee of a Unit which has filed a written request for notice with the Secretary, at least ten (10) but not more than sixty (60) days prior to such meeting. The notice may set forth time limits for speakers and nominating procedures for the meeting. The mailing of a notice, postage prepaid, in the manner provided in this section shall be considered notice served, after said notice has been deposited in a regular depository of the United States mail. If no address has been furnished to the Secretary, notice shall be deemed to have been given to an Owner if posted in a conspicuous place at the condominium project.

Section 5. Adjourned Meetings. If any meeting of Owners cannot be organized because a quorum has not attended, the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called, at which meeting the quorum requirement shall be the presence, in person or by proxy, of Owners holding at least twenty-five percent (25%) of the voting power of the Association. Such adjourned meeting may be held without notice thereof, except that notice shall be given by announcement at the meeting at which such adjournment is taken. If a meeting is adjourned for more than thirty (30) days, notice of the adjourned meeting shall be given as in the case of an original meeting.

Section 6. Order of Business. The order of business at all meetings of the Owners shall be as follows:

- (a) Roll call to determine the voting power represented at the meeting;
- (b) Proof of notice of meeting or waiver of notice;

- (c) Reading of Minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees;
- (f) Election of inspector of election;
- (g) Election of Management Committee;
- (h) Unfinished business; and
- (i) New business.

Meetings of Owners shall be conducted by the officers of the Association in order of their priority.

Section 7. Consent of Absentees. The transactions of any meeting of Owners, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice, and a quorum be present either in person or by proxy, and if either before or after the meeting, each of the Owners not present in person or by proxy signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the Minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the Minutes of the meeting.

Section 8. Minutes, Presumption of Notice. Minutes or a similar record of the proceedings of meetings of Owners, when signed by the Chairman or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the Minutes of any such meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

B

Management Committee

Section 1. Number and Qualification. The property, business, and affairs of the Association of Unit Owners shall be governed and managed by a Management Committee composed of three (3) persons, each of whom, except for those appointed and serving as first members, must either be an Owner of a Unit in the condominium project or an agent of Declarant for so long as Declarant owns a Unit in the condominium project. The Management Committee

may increase, by resolution, the authorized number of members of the Committee; provided that the Owners shall have the sole right to elect the new Committee members. Management Committee members shall not receive any stated salary for their service as members; provided, however, that:

- (a) Nothing herein contained shall be construed to preclude any member from serving the Association in some other capacity and receiving compensation therefor; and
- (b) Any member may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 2. Powers and Duties. The Management Committee has the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by this Declaration directed to be exercised and done exclusively by the Owners.

Section 3. Special Powers and Duties. Without prejudice to such foregoing general powers and duties and such other powers and duties as are set forth in this Declaration, the Management Committee is vested with and responsible for, the following powers and duties:

- (a) To select, appoint, and remove all officers, agents, and employees of the Association; to prescribe such powers and duties for them as may be consistent with law and with this Declaration; to fix their compensation and to require from them security for the faithful service when deemed advisable by the Management Committee;
- (b) To conduct, manage, and control the affairs and business of the Association and to make and enforce such rules and regulations therefor consistent with law and with this Declaration, as the Committee may deem necessary or advisable;
- (c) To change the principal office for the transaction of the business of the Association from one location to another within Weber County, and to designate any place within said county for the holding of any annual or special meeting or meetings of Owners consistent with the provisions hereof;
- (d) To borrow money and to incur indebtedness for the purposes of the Association and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and security therefor;

- (e) To fix and levy, from time to time, assessments upon the Owners to determine and fix the due date for the payment of such assessments and the date upon which the same shall become delinquent; provided, however, that such assessments shall be fixed and levied only to provide for the payment of the expenses for labor rendered or materials or supplies used and consumed, or equipment and appliances furnished for the maintenance, improvement, or development of Common Areas or for the payment of any and all obligations in relation thereto, or in performing or causing to be performed any of the purposes of the Association for the general benefit and welfare of the Owners in accordance with the provisions of this Declaration. The Management Committee is hereby authorized to incur any and all such expenditures for any of the foregoing purposes and to provide, or cause to be provided, adequate reserves.
- (f) To enforce the provisions of this Declaration covering the condominium Common Areas, this Declaration or other agreements of the Association;
- (g) To contract for and pay for insurance in accordance with the provisions of this Declaration.
- (h) To contract for and pay maintenance, gardening, utilities, materials, and supplies and services relating to the condominium Common Areas and to employ personnel necessary for the operation of the condominium Common Areas, including legal and accounting services, and to contract and pay for improvements and facilities on the condominium Common Area;
- (i) To delegate its powers according to law and this Declaration;
- (j) To grant easements where necessary for utilities and sewer facilities over the condominium Common Areas;
- (k) To adopt such rules and regulations as the Management Committee may deem necessary for the management of the condominium Common Areas, which rules and regulations shall become effective and binding after:
 - (1) they are adopted by a majority of the Management Committee after a meeting called for that purpose or by the written consent of such number of members attached to a copy of the Rules and Regulations of the Association; and
 - (2) they are posted in a conspicuous place in the condominium Common

Areas.

For so long as Declarant holds or directly controls at least twenty-five percent (25%) of the voting power of the Association, such rules and regulations shall not materially affect the rights, privileges or preferences of any Owner as established by this Declaration, without the prior written approval of the Unit Commissioner of Real Estate. Such rules and regulations may concern, without limitation, use of the Common Areas, signs, parking restrictions, minimum standards of property maintenance consistent with this Declaration and any other matter within the jurisdiction of the Association as provided in this Declaration; provided, however, that such rules and regulations shall be enforceable only to the extent that they are consistent with this Declaration.

- (1) To make available to Unit Owners, prospective purchasers, lenders, and the holders and insurers of the first Mortgage on any Unit, current copies of this Declaration and the Bylaws and other rules governing the condominium project and other books, records, and the most recent annual audited financial statement of the Owners' Association. "Available" shall at least mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

Section 4. Management Contract. The Management Committee may contract with any person, firm, or association for the management of the Common Areas.

Section 5. Election and Term of Office. At the first annual meeting of the Owners' Association and thereafter at each annual meeting of the Owners, new members of the Management Committee shall be elected by secret written ballot by a majority of the Owners as provided herein. In the event that an annual meeting is not held or the Management Committee is not elected thereat, the Management Committee may be elected at a special meeting of the Owners held for that purpose. Each member shall hold office until his successor has been elected or until his death, resignation, removal, or judicial adjudication of mental incompetence. Any person serving as a member may be re-elected and there shall be no limitation on the number of terms during which he may serve.

Section 6. Books, Audit. The Management Committee shall cause to be maintained a full set of books and records showing the financial condition and of the affairs of the Owners' Association in a manner consistent with generally accepted accounting principles, and at no greater than annual intervals and shall obtain an independent certified audit of such books and records. A copy of each such audit shall be delivered to an Owner within thirty (30) days after the completion of such audit upon written request from an Owner. A balance sheet and an audited operating (income) statement for the Owners' Association shall be distributed to each Owner

(and to any institutional holder of a first Mortgage on a Unit upon request) within sixty (60) days of accounting dates as follows:

- (a) An initial balance sheet and an initial operating statement as of an accounting date which shall be the last day of the month closest in time to six (6) months following the date of closing of the first sale on a Unit to an Owner; and
- (b) Thereafter, an annual balance sheet and an annual operating statement as of the last day of the Owners' Association's fiscal year.

The operating statement for the first six (6) month accounting period referred to in (a) above shall include a schedule of assessments received or receivable, itemized by Unit number and by the name of the person or entity assessed.

Section 7. Vacancies. Vacancies in the Management Committee caused by any reason other than the removal of a member by a vote of the Owners of the Association shall be filled by vote of the majority of the remaining members, even though they may constitute less than a quorum. Each person so elected shall be a member until a successor is elected at the next annual meeting of the Owners' Association, or at a special meeting of the Owners' Association, or at a special meeting of the Owners' Association called for that purpose. A vacancy or vacancies shall be deemed to exist in case of death, resignation, removal, or judicial adjudication of mental incompetence of any member or in case the Owners fail to elect the full number of authorized members at any meeting at which such election is to take place.

Section 8. Removal of Members. At any regular or special meeting of the Owners duly called, any one or more of the members may be removed with or without cause by a majority vote of the Owners, and a successor may then and there be elected to fill the vacancy thus created. Any member whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting. If any or all of the members are so removed, new members may be elected at the same meeting.

Section 9. Organization Meeting. The first regular Management Committee ("organization") meeting of a newly elected Management Committee shall be held not less than ten (10) days nor more than fifteen (15) days after the election of the Management Committee, at such place as shall be fixed and announced by the members at the meeting at which such members were elected, for the purpose of organization, election of officers, and the transaction of other business. In addition, notice of such meeting shall be mailed or delivered to such members at least five (5) days prior thereto.

Section 10. Other Regular Meetings. Other regular meetings of the Management

Committee shall be open to the Owners and may be held at such time and place within the Common Areas as shall be determined, from time to time, by a resolution adopted by a majority of a quorum of the members; provided, however, that such meeting shall be held no less frequently than quarterly. Notice of regular meetings of the Management Committee shall be given to each member, personally or by mail, telephone, or telegram, at least seventy-two (72) hours prior to the date named for such a meeting and shall be posted at a prominent place or places within the Common Areas.

Section 11. Special Meetings. Special meetings of the Management Committee shall be open to all Owners and may be called by the Chairman (or, if he is absent or refuses to act, by the Vice-Chairman). At least seventy-two (72) hours' notice shall be given to each member, personally or by mail, telephone, or telegram, which notice shall state the time, place (as hereinabove provided), and the purpose of the meeting and shall be posted at a prominent place or places within the Common Areas. If served by mail, each such notice shall be sent postage prepaid, to the address reflected on the records of the Association and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second day after it is deposited in a regular depository of the United States Mail as provided for herein. Whenever any member has been absent from any special meeting of the Management Committee, an entry in the Minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such meeting was given to such member, as required by law and as provided herein.

Section 12. Waiver of Notice. Before or at any meeting of the Management Committee any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Management Committee shall be a waiver of notice by him of the time and place thereof. If all members are present at any meeting of the Management Committee, no notice shall be required and any business may be transacted at such meeting. The transactions of any meeting of the Management Committee, however called and noticed or wherever held, shall be as valid as though a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the members not present sign such a written waiver of notice, a consent to holding such meeting or an approval of the Minutes thereof. All such waivers, consents, and approvals shall be filed with the records of the Association or made a part of the Minutes of the meeting.

Section 13. Quorum and Adjournment. Except as otherwise expressly provided herein, at all meetings of the Management Committee, a simple majority of the members shall constitute a quorum for the transaction of business and the acts of the majority of the members present at a meeting at which a quorum is present shall be the acts of the Management Committee. If, at any meeting of the Management Committee there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business

which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 14. Action Without Meeting. The members shall have the right to take any action, in the absence of a meeting, which they could take at a meeting by obtaining the vote or written consent of all members. Any action so approved shall have the same effect as though taken at a meeting of the members.

Section 15. Committees. The Management Committee, by resolution from time to time, may designate such committees as it shall desire and may establish the purposes and powers of each such committee created. The resolution designating and establishing the committee shall provide for the appointment of its members as well as a chairman; shall state the purposes of the committee and shall provide for reports, termination and other administrative matters as deemed appropriate by the Management Committee.

C

Officers

Section 1. Designation. The principal officers of the Owners' Association shall be a Chairman, a Vice-Chairman, and a Secretary/Treasurer, all of whom shall be elected by the Management Committee.

Section 2. Election of Officers. The officers of the Owners' Association shall be elected annually by the Management Committee and each officer shall hold his office at the pleasure of the Management Committee until he shall resign or be removed or otherwise disqualified to serve.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the entire Management Committee, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Management Committee, or at any special meeting of the Management Committee called for such purpose. Any officer may resign at any time by giving written notice to the Management Committee or to the Chairman or Secretary/Treasurer. Any such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and unless otherwise specified in said notice, acceptance of such resignation by the Management Committee shall not be necessary to make it effective.

Section 4. Compensation. Officers, agents, and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Management Committee.

Section 5. Chairman. The Chairman shall be the chief executive officer of the Owners' Association. He shall preside at all meetings of the Owners' Association and of the Management Committee. He shall have all of the general powers and duties which are usually vested in the office of the President of a corporation, including, but not limited to, the power to appoint committees from among the members from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Owners' Association. The Chairman shall, subject to the control of the Management Committee, have general supervision, direction, and control of the business of the Owners' Association. The Chairman shall be ex officio a member of all standing committees and he shall have such other powers and duties as may be prescribed by the Management Committee.

Section 6. Vice-Chairman. The Vice Chairman shall take the place of the Chairman and perform his duties whenever the Chairman shall be absent, disabled, refuses, or is unable to act. If neither the Chairman nor the Vice-Chairman is able to act, the Management Committee shall appoint some other member of said Management Committee to do so on an interim basis. The Vice-Chairman shall also perform such other duties as shall, from time to time, be imposed upon him by the Management Committee.

Section 7. Secretary/Treasurer. The Secretary/Treasurer shall keep the Minutes of all meetings of the Management Committee and the Minutes of all meetings of the Owners' Association or such other meetings as the Management Committee may order. The Secretary/Treasurer shall have charge of such books and papers as the Management Committee may direct; the Secretary/Treasurer shall, in general, perform all of the duties incident to the office of Secretary/Treasurer. The Secretary/Treasurer shall give or cause to be given notices of all meetings of the Owners and of the Management Committee required by this Declaration or by law to be given. The Secretary/Treasurer shall maintain a book of record Owners listing the names and addresses of the Owners as furnished to the Owners' Association and such books shall be changed only at such time as satisfactory evidence of a change in ownership of a Unit is presented to the Secretary/Treasurer.

The Secretary/Treasurer shall have responsibility for the Owners' Association's funds and shall be responsible for keeping or causing to be kept, full and accurate accounts, tax records, and business transactions of the Owners' Association, including accounts of all assets, liabilities, receipts, and disbursements in books belonging to the Owners' Association. The Secretary/Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Owners' Association in such depositories as may, from time to time, be designated by the Management Committee. The Secretary/Treasurer shall sign all checks and promissory notes on behalf of the Owners' Association as may be ordered by the Management Committee in accordance with this Declaration; shall render to the Chairman and the members, upon request, an account of all of his transactions as Secretary/Treasurer and of the

financial condition of the Owners' Association, and shall have such other powers and perform such other duties as may be prescribed by the Management Committee.

Section 8. Name of Management Committee. The Management Committee shall be known by such name or designation as it or the Unit Owners, at any meeting, may assign.

Whenever there is a change of ownership of a Unit and its appurtenant rights, for whatever reason, the Management Committee or Manager may require, as condition to recognizing the new Unit Owner or Owners as such, that the new Unit Owner or Owners furnish evidence substantiating the new ownership.

D

Assessments

Every Owner of a Unit which is substantially constructed and ready for occupancy, including Declarant, shall pay his proportionate share of the condominium Common Expenses. Payment thereof shall be in such amounts and at such times as the Management Committee determines in accordance with the Act, this Declaration and the Bylaws. There shall be a lien for non-payment of condominium Common Expenses as provided for in 57-8-20, Utah Code Annotated 1953, as amended.

In assessing Unit Owners or requiring them to pay for the building improvements and other improvements of the condominium Common Areas and facilities following the execution of this Declaration, it is agreed that no assessment for a single improvement in the nature of the capital expenditure exceeding the sum of THREE THOUSAND (\$3,000.00) DOLLARS in cost shall be made without the same having been first voted on and approved by Owners of seventy-five percent (75%) or more of the undivided interests in the condominium Common Areas and facilities. The foregoing sentence shall not apply in connection with the replacement or reconstruction occasioned by fire or other casualty.

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 Management Committee alone are sufficient to repair or reconstruct the damaged or destroyed improvements, 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 Management Committee alone are not 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 Management Committee alone are not sufficient to accomplish repair or reconstruction, and if the Unit Owners, within one hundred (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 Management Committee alone are not sufficient to accomplish repair or restoration and if the Unit Owners do not, within one hundred (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 Management Committee 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 in 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 Management Committee. 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 Management Committee 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

Under Section 57-8-27, Utah Code Annotated, 1953, as amended, each Unit and its percentage of undivided interest in the condominium 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 condominium Common Areas and facilities.

ARTICLE IX

Insurance

Section 1. Type and Scope of Insurance Coverage. (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 elements, limited common elements, and other common personal property belonging to the Owners' Association, including roof mounted heating and air conditioning units and also including all windows and doors in the perimeter walls. All references herein to a "master" or "blanket" type policy of property insurance is intended to denote single entity condominium insurance coverage.

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 and other items normally excluded from coverage.

The name of the insured under such policies must be set forth therein substantially as follows: "Association of Owners of South Ogden Professional Plaza, 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. Losses payable shall be in favor of the Owners' Association (or Insurance Trustee), as a trustee for each Unit Owner and 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 interest 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. Such policies must also provide that they may not be canceled 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 whereby 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.

The policies must also provide for the following:

- (a) Recognition of any Insurance Trust Agreement;
- (b) A waiver of the right of subrogation against Unit Owners individually;
- (c) That the insurance is not prejudiced by any act or neglect of individual Unit Owners; and
- (d) 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:

- (a) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
- (b) In the event the condominium contains a steam boiler, loss or damage resulting from such steam boiler equipment accidents shall be in an amount of not less than FIFTY THOUSAND (\$50,000.00) DOLLARS per accident per location (or such greater amount as deemed prudent based on the nature of the property).
- (c) 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 elements, commercial space owned and leased by the Owners' Association, and public walkways 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 death 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 death of persons in connection with the operation, maintenance, or use of the common elements, and legal liability arising out of lawsuits related to employment contracts of the Owners' Association. Such policies must provide that they may not be canceled or substantially modified, by any party, 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, employer's liability insurance, contractual and all-written contract insurance, and comprehensive automobile liability insurance.

(C) Flood Insurance. In the event the condominium is located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the Owners' Association must obtain and pay the premiums upon, as a common expense, a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy (herein "insurable property"), in an amount deemed appropriate by the Owners' Association, but not less than the lesser of: (1) the maximum coverage available under the NFIP for all buildings and other insurable property within the condominium to the extent that such buildings and other insurable property are within an area having special flood hazards; or (2) 100% of current "replacement cost" of all such buildings and other insurable property within such area.

Such policy shall be in a form which meets the criteria set forth in the most current guidelines on the subject issued by the Federal Insurance Administrator.

(D) 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 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 issuers 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 canceled or substantially modified (including cancellation for non-payment) without at least ten (10) days prior written notice to the Owners' Association or Insurance Trustee.

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. Qualifications 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 condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the common elements, or any part thereof, by the condemning authority. Where appropriate under applicable law, this Declaration should contain a provision whereby each Unit Owner appoints the Owners' Association as attorney-in-fact for such purpose.

In the event of taking or acquisition of part or all of the common elements 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 interests may appear.

ARTICLE X

Assessments Subordinate

The lien or claim against a Unit for unpaid assessments or charges levied by the Management Committee or by the Owners' Association pursuant to the Declaration of the Utah Condominium Ownership Act shall be subordinate to the Mortgage affecting such Unit and the Mortgagee or a successor to the Mortgage 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 Management Committee or the Owners' Association 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 Management Committee 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 any 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 Management Committee shall give written notice to the affected owner of the 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 Management Committee. Otherwise, he shall comply with such request. In the event of objection aforesaid, the Management Committee shall set the matter for hearing no less than ten (10) 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 Management Committee shall take and receive relevant evidence and decide the issues.

With the written permission of the Management Committee, 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 XII

Right of Entry

The Management Committee and its duly authorized agents have the right to enter into 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 Management Committee 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 condominium Common Areas and facilities of the project and for the purpose of performing emergency installations, alterations, or repairs to the mechanical or electrical devices, or installations located therein or thereon. Provided, however, that 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, the rules and regulations, all agreements and determinations lawfully made and/or entered into by the Management Committee or the Unit Owners when acting in accordance with their authority. Any failure to comply with any of the provisions hereof shall be grounds for an action by the Management Committee to recover any loss or damage resulting therefrom, or injunctive relief.

ARTICLE XIV

Indemnification of Management Committee

Each member of the Management Committee 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 Management Committee. Provided, however, a member of the Management Committee 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 free from restriction of any right of first refusal. Provided, however, the following 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 Holders' 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 effecting 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 elements 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 purpose to which any Unit or the common elements 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 fifty-one percent (51%) 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 in condemnation of the condominium Property must require the approval of the eligible holders of first Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by such eligible holders are allocated.

(C) No reallocation of interest in the common elements 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 fifty-one percent (51%) 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 the condominium project which has requested notice in accordance with the provisions of Section 1 above.

ARTICLE XVII

Amendments to Documents

The following provisions do not apply to amendments to constituent documents regarding Destruction or Damage as provided at Article VII.

Amendments to the constituent documents of a material nature must be agreed to by Unit Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Owners' Association. In addition, approval must be obtained by eligible Mortgage holders who represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages or trust deeds held by eligible holders, except (m) below where sixty-seven percent (67%) is required. A change to any of the following are considered material:

- (a) Voting rights;
- (b) Assessments, assessment liens, or the priority of assessment liens;
- (c) Reserves for maintenance, repair, and replacement of the Common Areas;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the general or limited Common Areas, or rights to their use;
- (f) Redefinition of any Unit boundary;
- (g) Convertibility of Units into Common Areas or vice versa;
- (h) Insurance or fidelity bonds;
- (i) Leasing of Units;

- (j) Imposition of any restriction of a Unit Owners' right to sell or transfer his or her Unit;
- (k) A decision by the Owners' Association to establish self-management when professional management had been required previously by the project's documents or by an eligible Mortgage holder;
- (l) Restoration or repair of the project (after hazard damage or partial condemnation) in a manner other than that specified in the documents;
- (m) Any action to terminate the legal status of the project either before or after substantial destruction or condemnation occurs; or
- (n) Any provision that expressly benefits Mortgage holders, insurers, or guarantors.

ARTICLE XVIII

Implied Approval

Implied approval shall be assumed when an eligible Mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it received proper notice of the proposal, provided the proposal was delivered by certified or registered mail.

ARTICLE XIX

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 a 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 elements for the purpose of making repairs required pursuant to the contracts of sale made with Unit purchasers.
- (c) Right to maintain facilities in the project which are reasonably necessary to market the Unit. These may include sales and management offices, model units,

parking areas, and advertising signs.

Section 2. *Transfer of Control.* Declarant shall relinquish all special rights, express or implied, through which Declarant may directly or indirectly control, direct, modify, or veto any action of the Owners' Association, its Management Committee, 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) One hundred twenty (120) days after the date by which seventy-five percent (75%) of the Units have been conveyed to Unit purchasers; or
- (b) Within seven (7) years following recording of this Declaration.

ARTICLE XX

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 restriction.

ARTICLE XXI

Severability

The invalidity of any one or more phrases, sentences, clauses, paragraph, 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. 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, or section or sections, had not been inserted.

ARTICLE XXII

Gender

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

ARTICLE XXIII

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.

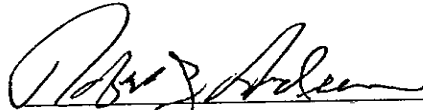
ARTICLE XXIV

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:

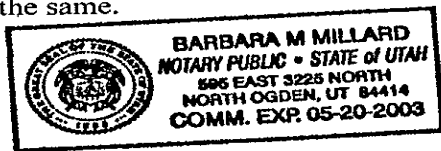

Robert J. Anderson


Craig Speechly

E# 1703669 BK2070 PG1624

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

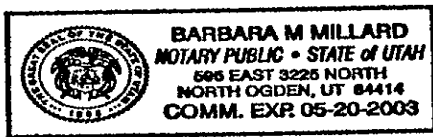
On the 2 day of May, 2000, personally appeared before me ROBERT J. ANDERSON, one of the signers of the foregoing instrument, who duly acknowledged to me that he executed the same.



Barbara M Millard
NOTARY PUBLIC

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

On the 2 day of May, 2000, personally appeared before me CRAIG SPEECHLY, one of the signers of the foregoing instrument, who duly acknowledged to me that he executed the same.



Barbara M Millard
NOTARY PUBLIC

EXHIBIT "A"

Part of the Southwest Quarter of Section 16, Township 5 North, Range 1 West, Salt Lake Base and Meridian: Beginning at a point which is North 0°26' East 3131.6 feet and South 60°50' East 739.4 feet and North 60°40' West 6.10 feet and South 0°26' West 287.99 feet and North 89°30' West 294.7 feet and North 0°26' East 20.0 feet from the Southwest corner of said Section 16, running thence North 89°30' West 2.8 feet to the East line of the State of Utah property; thence North 0°26' East 363 feet, more or less, along said East line to the Southerly right-of-way line of United States Highway 89-30; thence South 60°50' East 3 feet, more or less, along said Southerly line to a point North 0°26' East from the point of beginning; thence South 0°26' West 361.73 feet to the point of beginning

Part of the Northwest Quarter and the Southwest Quarter of Section 16, Township 5 North, Range 1 West, Salt Lake Base and Meridian: Beginning at a point on the Southerly right-of-way line of U.S. Highway 30-S at a point which is North 0°26' East 3131.6 feet and South 60°50' East 739.4 feet from the Southwest corner of said Section 16; said point being the Northwest corner of State of Utah Armory property; running thence North 60°50' West 6.10 feet; thence South 0°26' West 287.99 feet; thence North 89°30' West 170.7 feet and North 0°26' East 20 feet to the true point of beginning; thence North 89°30' West 124.0 feet; thence North 0°26' East 361.73 feet to the South line of the State Highway; running thence Southeasterly along said Southerly line of highway to a point North 0°26' East of beginning; thence South 0°26' West 280.0 feet, more or less, to the point of beginning