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ENT 752643 Bk 982 Pg 88  
DATE 12-JAN-2001 3:29PM FEE 70.00  
MICHAEL L GLEED, RECORDER - FILED BY MG  
CACHE COUNTY, UTAH  
FOR VALLEY VIEW BUSINESS PARK

**DECLARATION OF COVENANTS AND RESTRICTIONS**  
**OF**  
**VALLEY VIEW BUSINESS PARK**  
***A UTAH PLANNED UNIT DEVELOPMENT***

This Declaration of Covenants and Restrictions (hereinafter "Declaration") is made and executed this 8<sup>th</sup> day of January, 2001, by VALLEY VIEW BUSINESS PARK, ARLYN ROUNDS, and JOANNE L. WILLIAMS, as Trustee of the Joanne L. Williams Trust dated Aug 1, 1996, (hereinafter referred to collectively as the "Declarant").

**RECITALS**

A. The Declarant is the record title owner of the following described parcel of land, referred to hereinafter as the "Land", which is located in Logan, Cache County, State of Utah, to-wit:

Beginning in the North line of 200 North Street, at a point by record 297 feet South of the Northeast corner of Lot 2, Block 34, Plat "E", Logan Farm Survey and running thence West in the North line of 200 North Street 550 feet; thence North 322 feet; thence East 85 feet; thence North 153.2 feet; thence East along an existing fence 465 feet, to a point 825.8 feet South and 678.8 feet West of the Northeast corner of Lot 14, said Block 34, Plat "E" Logan Farm Survey; thence South 475.2 feet, more or less, to the point of beginning. Subject to rights of way and easements of record.

B. The Declarant has constructed or will construct on the Land certain buildings and other improvements as shown more specifically on the official plat of the Valley View Business Park, as defined below;

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C. The Declarant shall execute and record in the office of the Cache County Recorder concurrently with the recording of this Declaration, as defined below, an instrument entitled the "Valley View Business Park, a Utah Planned Unit Development";

D. Declarant, by recording this Declaration and the Final Plat, intends to submit the Land, building and other improvements presently existing or to be constructed upon the Land to the provisions hereof, and to impose upon said Land Improvements mutually beneficial covenants, conditions and restrictions pursuant to a general plan of improvement for the benefit of all Units in the Project as well as the Owners thereof;

E. The administration of the Project shall be governed by this Declaration, the Articles of Incorporation and Bylaws of the Valley View Business Park Association as from time to time in effect;

NOW, THEREFORE, Declarant declares that the Land and subsequent improvements are and shall be held, sold, and conveyed subject to the covenants and conditions which are for the purpose of protecting the value and desirability thereof, and that the provisions of this Declaration shall be construed as covenants of equitable servitude, which shall run with the real right, title or interest in the Land or any part thereof, for the benefit of the Owners thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

### DEFINITIONS

Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.

1.01. "Association" shall mean the VALLEY VIEW BUSINESS PARK ASSOCIATES, a Utah non-profit organization, operating pursuant to the Articles of Incorporation and Bylaws thereof, together with this Declaration.

1.02. "Board of Directors" shall mean and refer to the Board of Directors as then constituted of the Association, a Utah non-profit corporation.

1.03. "Common Area" shall mean and refer to:

- a. all physical portions of the Project except the Units;
- b. those portions of the Project specifically set forth and designated on the Final Plat as intended for common ownership;

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c. all exterior retaining walls, exterior walkways and driveways, streets, yards, fences, all parking spaces (provided, however, that the driveway for each Unit, while remaining Common Area, shall be for the exclusive use of the Owner of the Unit to which it relates), installation of central services and installation of all utility service lines, including but not limited to electrical, gas, water, sewer, telephone, cable TV, and such other services and facilities as may be provided for in the future, and all other parts of the real property necessary or convenient to its existence, maintenance, and safety of the common areas or normally in common use;

d. generally all furniture, furnishings, equipment, facilities, and other property (real, personal, or mixed) and interests therein at any time leased, acquired, owned, or held by the Association for the use and benefit of all of the Owners and all other property (real, personal or mixed) hereafter purchased in accordance with this Declaration, with monies from the Common Expense Fund. Common Facilities shall be deemed to be part of the Common Areas, except to the extent otherwise expressly provided in this Declaration.

1.04. "Common Expense Fund" shall mean the fund created or to be created pursuant to the provisions of Article VIII of this Declaration and into which all monies of the Association shall be deposited.

1.05. "Declarant" shall mean VALLEY VIEW PARTNERSHIP, a Utah General Partnership, ARLYN ROUNDS, and JOANNE L. WILLIAMS, as Trustee of the Joanne L. Williams Trust dated August 1, 1996.

1.06. "Declaration" shall mean and refer to this Declaration of Covenants and Restrictions as the same may be hereafter modified, amended, supplemented or expanded in accordance with the provisions hereof.

1.07. "Mortgagee" shall mean a Mortgagee under a mortgage or beneficiary under a trust deed which is a bank or savings and loan association or established mortgage company, other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency which has a mortgage or trust deed lien on any Unit in the Project. "Eligible Mortgagee" shall mean any Mortgagee who has requested notice of those certain matters referred to in Section 12.01.

1.08. "Final Plat" shall mean the Final Plat of Valley View Business Park, a Planned Unit Development, recorded contemporaneously with this Declaration, and any supplemental plats pertaining to the Project and recorded or to be recorded in the office of the County Recorder of Cache County, State of Utah.

1.09. "Improvements" shall mean any one or more of the buildings or other improvements from time to time constituting part of the Project or located upon the Land.

1.10. "Land" shall mean the Land upon which the Project is situated, as more particularly described in Recital A above.

1.11. "Lease" shall mean any agreement for the leasing or rental of the Land.

1.12. "Manager" shall mean the person, firm or company, if any, designated from time by the Association to manage, in whole or in part, the affairs of the Association and the Project.

1.13. "Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a Unit or any part thereof is encumbered.

1.14. "Mortgagee" shall mean (i) any persons or entities named as the mortgagee or beneficiary under any Mortgage or Deed of Trust by which the interest of any Owner is encumbered, (ii) any successor to the interest of such person or entity under such Mortgage or Deed of Trust, or (iii) any insurer or guarantor of such person or entity under such Mortgage or Deed of Trust.

1.15. "Mortgage Servicer" shall mean a Mortgagee who services any Mortgage or Deed of Trust on any individual Unit in the Project on behalf of FHLMC, FNMA, or any other federally associated financing program, including Veterans Administration and/or Federal Housing Administration financing.

1.16. "Owner" shall mean the person or persons including the Declarant, owning in fee simple a Unit in the Project, as such ownership is shown by the records of the County Recorder of Cache County, State of Utah.

1.17. "Project" shall mean the Land and Improvements covered by and discussed in this Declaration and the Final Plat.

1.18. "Total Votes of the Association" shall mean the total number of votes appertaining to all Units in the Project, as shown in Exhibit "A", attached hereto.

1.19. "Unit" shall mean and refer to the fee interest in a structure and numbered plot of land consisting of all standard components thereof intended for the use and occupancy as a single business/commercial building as designated on the Plat hereof by building sites, together with all improvements thereto as described in the Final Plat, together with the undivided interest (expressed as a percentage) in the Common Areas appurtenant to such Unit, as provided in Exhibit "A" hereto.

1.20. "Unit Number" shall mean and refer to the number, letter, or combination thereof which designate a building pad on the Final Plat.

1.21. "Fees" shall have the meaning ascribed to it in Section 5.04.

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**ARTICLE II****SUBMISSION AND DIVISION OF PROJECT  
AND CONVEYANCE OF COMMON AREAS**

2.01. Submission to Declaration. The Declarant hereby submits the Land and all Improvements now or hereafter made in or upon the Land to the provision of this Declaration and the Final Plat. All of said Land is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and improved as a fee simple Planned Unit Development to be known as Valley View Business Park. All of said Land is and shall be subject to the covenants, conditions, restrictions, uses, limitations, and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Land and division thereof into Units; further, each and all of the provisions hereof shall be deemed to run with the Land and shall be a burden and a benefit on the Land and shall be binding upon the Declarant, its successors and assigns, and to any person acquiring, leasing, or owning an interest in the Land and improvements comprising the Project, and to their respective personal representatives, heirs, successors, and assigns.

2.02. Conveyance of Common Areas. The Owners hereby transfer and convey to Valley View Business Park Associates, a Utah Non-Profit Corporation, all right, title and interest in and to the Common Areas and Limited Common Areas.

**ARTICLE III****NATURE AND INCIDENTS OF UNIT OWNERSHIP**

3.01. Interior and Exterior of Units. Each Owner shall have the exclusive right to paint, repair, tile, wax, paper, carpet, or otherwise decorate the interior surfaces of the walls, ceilings, floors, and doors within such boundaries. Each Owner shall also have the right to construct partition walls, fixtures, and improvements within the boundaries of his Unit. However, such partition walls, fixtures and improvements (i) shall comply with all applicable laws, ordinances, and building codes, (ii) shall not interfere with facilities necessary for the support, use, or enjoyment of any other part of the Project, (iii) shall not impair the structural soundness or integrity of the any of the Improvements or structures in which it is located, and (iv) shall not encroach upon the Common Areas or any part thereof, unless the Association shall consent in writing to such encroachment. The Association shall have the sole right to change the appearance or aesthetic features of the exterior of the Units, which exterior is intended to be maintained and improved in a manner that will maintain and preserve a unified and consistent appearance between and among the Units.

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3.02. Maintenance of Units. Each Owner shall keep the interior and exterior of his Unit, including without limitation, walls, windows, ceilings, roof, floors, window coverings and treatments, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. In the event that any such Unit shall develop an unsanitary, unclean, unsafe or unsightly condition or fall into a state of disrepair, and in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice by the Association, the Association shall have the right at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary, unclean, unsafe or unsightly condition or state of disrepair; provided, however, that the Association shall in no event have the obligation to correct or eliminate such condition or state of disrepair.

3.03. Title. Title to a Unit within the Project may be held or owned by any person or entity, or any combination thereof, and in any manner, in which title to any other real property may be held or owned in the State of Utah, including without limitation joint tenancy or tenancy in common.

3.04. Ownership of Common Area. The undivided interest in the Common Areas appurtenant to each Unit in the Project shall be as set forth in Exhibit "A" hereto. The percentages appurtenant to each Unit as shown in said Exhibit "A" shall have a permanent character and shall not be altered except with the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Areas (other than Limited Common Areas) in any manner that does not hinder or encroach upon the rights of the other Owners and is not contrary to any rules and regulations promulgated by the Association. Except as otherwise provided in this Declaration, each Owner shall have the exclusive right to use and enjoy Limited Common Areas that may be designated for exclusive use by such Owner.

3.05. Inseparability. Title to no part of a Unit within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Areas appurtenant to each Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Unit. Every devise, encumbrance, conveyance, or other disposition of a Unit, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Unit; together with all appurtenant rights created by law or by this Declaration, including appurtenant Membership in the Association as hereinafter set forth.

3.06. No Partition. The Common Areas shall be owned in common by the Association and no Owner may bring any action for partition thereof.

3.07. Separate Mortgages by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber his Unit. No Owner shall attempt to or have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the undivided interest therein appurtenant to his Unit. Any mortgage or other encumbrance of any Unit within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the

provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

3.08. Special Taxation. Each Unit within the Project including each Unit and appurtenant undivided interest in the Common Areas, shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in proportion to the undivided interests in Common Areas appurtenant to such Units. All such taxes, assessments, and other charges on each respective Unit shall be separately levied against the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Units.

3.09. Description of Unit. Every contract for the sale of a Unit and every other instrument affecting title to a Unit within the Project may describe a Unit by its identifying number or symbol as indicated in this Declaration or as shown on the Final Plat. Such description will be construed to describe the Unit, together with its appurtenant undivided interest in the Common Areas, and to incorporate all of the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership.

#### ARTICLE IV

#### EASEMENTS

4.01. Easements for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachment shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building or any improvements constructed or to be constructed within the Project, by error in the Final Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction on the Project, or any part hereof, in accordance with the provisions of this Declaration.

4.02. Easements for Maintenance, Cleaning and Repair. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Association and its agents shall have the irrevocable right to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any Common Areas or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas or to any Unit. Such

entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

4.03. Right to Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas as necessary for access to such Owner's Unit and to any Limited Common Areas appurtenant to such Unit, and shall have the right to horizontal, vertical, and lateral support of such Unit, and such rights shall be perpetual and shall be appurtenant to and pass with title to each Unit.

4.04. Association's Right to Use. The Association shall have an easement to make such use of the Common Areas and charge fees ("Fees") for the use thereof as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including without limitation the right to construct and maintain in the Common Areas (other than Limited Common Areas) facilities for use by Owners generally or by the Association and its agents exclusively.

4.05. Blanket Utility Easement. Declarant hereby grants the City of Logan, a blanket utility easement assuring permanent access for installation and maintenance of any and all utilities over the Common Area. The City of Logan shall also have the right to assess the Owners, separately, for all costs and expenses incurred in the repair or replacement of utilities and related service lines servicing the Subject Property.

4.06. Easements Deemed Created. All conveyances of Units within the Project hereafter made, whether by the Declarant or otherwise, shall be constructed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

4.07. Easements of Enjoyment to Common Areas. Each Owner shall have a right and easement of use and enjoyment including, but not limited to the right of ingress and egress to and from his Unit and in and to the Common Area, which easement shall be appurtenant to and shall pass with title to every Unit, subject to the following provisions:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said property; the rights of any such mortgagee in said property to be subordinate to the rights of the Owners hereunder;

(b) The right of the Association to suspend the voting rights of an Owner at any meeting of the Owners (annual or special) for (1) any period during which any Fees or assessment against his Lot remains unpaid and (2) a period of not to exceed sixty (60) days for each separate violation of the Association's rules and regulations. Notwithstanding the foregoing, for any continuing and ongoing violation of the Association's rules and



regulations, the Owner's voting right will be suspended until the rule or regulation is complied with.

(c) With the approval of all the holders of mortgage liens on Units, and two-thirds of the Owners, the right of the Association to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as agreed to by the members. The granting of easements for public utilities or public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by two-thirds (2/3) of each class of Owners and has been recorded.

(d) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.

(e) The right of Declarant and Association to grant and reserve easements and rights-of-way through, under, over and across the Common Area, for installation, maintenance and inspection of lines and appurtenances for public or private utilities and construction of additional Units.

(f) The right of the City of Logan and any other governmental entity or quasi-governmental body having jurisdiction over the Property to access and have rights of ingress and egress over and across any street, parking area, walkway, or open spaces contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service.

(g) The right of Logan City to levy taxes and issue bonds.

(h) The right of the Board of Directors to publish and enforce rules and regulations as provided herein.

#### 4.08. Party Walls.

(a) General Rules of Law to Apply. Each wall built as a part of the original construction of a Unit or Unit garage upon the land and placed between two (2) separate Units intended for use and occupancy as a commercial business shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners of the Units who make use of the wall.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligence or willful acts or omissions causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs with Land. The right of an Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) Encroachment. If any portion of a party wall or other part of a building or structure now or hereafter constructed upon said property encroaches upon any part of the Common Areas or upon the Unit used or designated for use by another Owner, an easement for the encroachment and for the maintenance of same is granted and reserved and shall exist and be binding upon the Declarant and upon all present and future owners of any part of said property for the benefit of the present and future owners of such encroaching building or structure for the purpose of occupying and maintaining the same; in the event a structure consisting of more than one Unit becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements are granted and reserved upon the Common Areas and in and upon each dwelling Unit and lot for the benefit of the Association and the adjacent owner or owners to the extent reasonably necessary or advisable to make repairs and replacements; and minor encroachments resulting from any such repairs or replacements, or both, and the maintenance thereof are hereby granted and reserved for the benefit of the present and future owners thereof. The easements for encroachment herein granted and reserved shall run with the land.

## ARTICLE V

## RESTRICTIONS ON USE

5.01. Business/Commercial Use. All Units within the Project shall be used exclusively for business/commercial purposes and for no other purpose.

5.02. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on, in or upon any part of the Project which is or may become a nuisance or which may cause disturbance or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

5.03. Restrictions on Signs. No signs or advertising devices of any nature, including without limitation, commercial, political, informational, or directional signs or devices, shall be erected or maintained on any part of the Project, without the prior inspection and written approval of the Board of Directors, except as may be necessary temporarily to caution or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Association. All such signs or devices must also comply with applicable zoning ordinances.

5.04. Pets and Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas except that household pets may be kept or housed in Units when expressly permitted in writing by the Board of Directors.

5.05. Parking. Parking shall be permitted only in areas of the Project designated for such use as evidenced by parking stalls painted upon parking surfaces or by signs otherwise designating specified areas for such parking. No parking shall be permitted upon any roadway, upon any lawns or upon any other area of the Project unless such area shall be specifically designated for such purpose. Parking in driveways shall be reserved for the exclusive use of the owners of the Units to which they relate.

5.06. No Alterations. No Owner shall, without the prior written consent of the Board of Directors in each specific instance, make or cause to be made any alteration, addition, removal, or improvement in or to the Common Areas or Limited Common Areas or any part thereof, or do any act that would impair the structural soundness or integrity of the buildings or other improvements, or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Project. The Board of Directors have all designated specific parking stalls for the exclusive use of specific Owners.

5.07. No Obstruction. No Owner shall obstruct the Common Areas or any part thereof. No Owner shall store or cause to be stored in the Common Areas any property whatsoever, unless the Board of Directors shall consent thereto in writing.

5.08. Prohibition of Damage and Certain Activities. Except with the prior written consent of the Board of Directors, nothing shall be done or kept in any Unit, in the Common Areas, or in any other part of the Project that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Project or any part thereof over that which increase the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority or the Association. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or by the guests, tenants, licensees, or invitees of such Owner.

5.09. Rules and Regulations. Each Owner shall comply strictly with all rules and regulations from time to time adopted by the Association for the governance of the Units, the Common Areas, the Limited Common Areas, and the Project, as such rules and regulations may be modified, amended, and construed by the Association in the sole discretion of its Board of Directors.

5.10. Construction Period Exemption. During the course of actual construction of any permitted structures or improvements within the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction.

## ARTICLE VI

### THE ASSOCIATION

6.01. Membership. Each Owner shall be entitled and required to be a Member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the Memberships appurtenant to the Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. Except as provided in the Articles, an Owner shall be entitled to one membership for each Unit owned by him. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association appurtenant thereto, and any attempted devise, encumbrance, conveyance, or other disposition, respectively, of the Owner's membership in the Association and rights appurtenant thereto separate to Unit ownership shall be null and void ab initio. No person or entity other than an Owner may be a Member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Unit.

6.02. Board of Directors. Until such time as the responsibility for appointing the Board of Directors of the Association is turned over to the Owners in accordance with the provisions hereof, the Declarant shall have the exclusive right to appoint and to remove all such Directors. This exclusive right shall terminate after the first to occur of the following:

- (a) Four (4) years from the date on which the first Unit in the Project is conveyed;
- or
- (b) The date of the sale of Units to which three-fourths (3/4) of the undivided interest in the Common Areas in the Project have been conveyed.

The termination of the exclusive right shall not, however, affect Declarant's rights, as a Unit Owner, to exercise the votes allocated to Units which Declarant owns.

6.03. Right to Bind Association. Until such time as the responsibility for electing the Board of Directors of the Association is turned over to the Owners in accordance with Section 6.02., the Board of Directors or officers of the Corporation shall not have any authority to enter into any contracts, agreements or leases on behalf of the Association, either directly or indirectly, unless such contracts, agreements or leases may be terminated by the Association at any time without cause or penalty after such transfer of control upon ninety (90) days prior written notice.

6.04. Votes. The number of votes appurtenant to each respective Unit shall be set forth in Exhibit "A". The number of votes appurtenant to each Unit as set forth in said Exhibit "A" shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration, except as provided in Article XII herein.

6.05. Articles and Bylaws. The provisions of this Article VI are subject to the provisions of the Articles and Bylaws; provided, however, that no such Articles and Bylaws shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

## ARTICLES VII

### CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION AND BOARD OF DIRECTORS

7.01. The Common Areas. The Board of Directors, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in the Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including the Common Facilities), and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair; provided, however, that unless otherwise stated herein, each Owner shall keep the Limited Common Areas designated for use in connection with his Unit, if any, in a clean,

sanitary and attractive condition consistent with the standards from time to time implemented by the Association. The Association shall be responsible for the maintenance, repair and appearance of the Improvements and grounds, including without limitation painting thereof, repair and replacement of exterior trim, roofs and fences, and maintenance of landscaping, walkways and driveways; provided, however, the cost of such repairs, replacements or maintenance to any Unit shall be assessed to and paid by the Owner thereof. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.

7.02. Manager. If desired by the Association, the Association may retain the services of an experienced, professional Manager to manage the Project. The Association may by written contract delegate in whole or in part to a Manager such of the duties, responsibilities, functions, and powers hereunder of the Association as are. The services of any Manager retained by the Association shall be paid for with funds from the Common Expense Fund.

7.03. Miscellaneous Goods and Services. The Association may obtain and pay for the services of such personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may, on behalf of the Association, obtain and pay for the legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Association may, on behalf of the Association, acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, electrical, gas, and other necessary or desirable utility services for the Common Areas (and for the Units to the extent not separately metered or billed), insurance, bonds, and other goods and services common to the Units.

7.04. Real and Personal Property. The Association may acquire and hold real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise; provided that any acquisition or disposition of any real, personal or mixed property by the Association wherein the value of such property exceeds \$5,000.00 must be approved by a vote of at least fifty-one percent (51%) of the Total Votes of the Association at a meeting duly called for that purpose. All such property, including Common Facilities, shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such fund.

7.05. Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Units, the Common Areas, and Limited Common Areas, and all parts of the Project, which rules and regulations shall be consistent with the rights and duties established for any Owner to enforce compliance with such rules and regulations or other obligations of such Owner arising hereunder, or to obtain such damages for noncompliance therewith, as permitted by law. In the event of judicial action, the Association shall be entitled to recover its costs, including reasonable attorney's fees, from the offending Owner.

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7.06. Granting Easements. The Board of Directors may, without the vote or consent of the owners or of any other person, grant or create, on such terms as it deems advisable, easements, licenses and rights-of-way over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the property maintenance or operation of the Project.

7.07. Statutory Duties and Powers. All duties, responsibilities, rights, and powers imposed upon or granted to the Association hereunder shall be duties, responsibilities, rights, and powers of the Board of Directors and/or officers, as provided in the Articles and Bylaws of the Association.

7.08. Implied Rights. The Association may exercise any right, power, or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**ARTICLE VIII.****ASSESSMENTS**

8.01. Agreement to Pay Fees and Assessments. The Declarant, for each Unit owned by it within the Project, and for and as the owner of the Project and every part thereof, hereby covenants and each Owner of any Unit by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all Fees and assessments made by the Association for the purposes provided in this Declaration. Such Fees and assessments shall be fixed, established, and collected from time to time as provided in this Article VIII. So long as a Unit shall be owned by the Declarant and shall remain vacant and not occupied for actual use by Declarant its guest or invitees, whether for compensation or otherwise, the Association may enter into an agreement with Declarant for the payment of such portion of the costs and expenses actually incurred by the Association in the operation of the Project attributable to the existence of such Unit or Units owned by Declarant in lieu of payment of Fees and assessments for Units sold to parties other than Declarant.

8.02. Annual Assessments. Annual Fees and assessments shall be computed and assessed against all Units in the Project as follows:

(a) Common Expense. Annual Fees and assessments shall be based upon advance estimates of the Association's cash requirements to provide for maintenance and operation of the Common Areas and Facilities and/or furnishing utility services and other common items to the Units. Such estimated expenses may include, without limitation, the following: Expenses of management; premiums for all insurance that the Association is required or permitted to maintain including fees for a Manager (if any); utility charges, including charges

for utility services to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve, and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas that must be replaced on a periodic basis, and such reserve shall be funded by monthly payments rather than extraordinary special Fees and assessments; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Common Expense, and all funds received from Fees and assessments under this Section 8.02. shall be part of the Common Expense Fund.

(b) Apportionment. Expenses attributable to the Common Expense or to the Project as a whole shall be apportioned among and assessed to all Owners in proportion to their respective undivided interests in the Common Areas. The Declarant shall be liable for the amount of any Fees or assessments against Units owned by it, after the expiration of four (4) years from the date hereof.

(c) Annual Budget. Annual Fees and assessments shall be determined on the basis of fiscal year beginning January 1 and ending December 31 next following; provided the first fiscal year shall begin on the date of this Declaration. On or before December 15, of each year thereafter, the Board of Directors shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses for such fiscal year, anticipated receipts (if any), and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period. Such budgets shall be unnecessary for annual assessments relative to, or for operation of the Project during, any operating period ending before January 1, 2000.

(d) Notice and Payment. Except with respect to the first fiscal year, the Board of Directors shall notify each Owner as to the amount of the Fees and assessment against his Unit on or before December 31 each year for the fiscal year beginning on January 1 next following. The Fees and assessment shall be payable in twelve (12) equal monthly installments, one (1) such installment due on the first day of each calendar month during the fiscal year to which the Fees or assessment relates; provided, however, the annual assessment for the first fiscal year shall be based upon such portion of the first fiscal year. The Owners shall commence payment of the full monthly assessments against their respective Units no later than sixty (60) days after the conveyance of the first Unit in the Project or phase. All unpaid installments of any assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date each such installment became due until paid. The failure of the Board of Directors to give timely notice of any Fees or assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay any Fees or assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days



after notice of such Fees and assessment shall have been given to the Owner in the manner provided in this Declaration.

(e) Inadequate Funds. In the event that the Common Expense Fund provides inadequate at any time for whatever reason, including non-payment of any Owner's assessment, the Board of Directors may on behalf of the Association levy additional Fees and assessments in accordance with the procedure set forth in Section 8.03. below, except that the vote therein specified shall be unnecessary.

8.03. Special Assessments. In addition to annual assessments authorized by this Article, the Board of Directors may, on behalf of the Association, levy, at any time and from time to time, upon affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association, Special Assessments, payable over such periods as the Board of Directors may determine for the purpose of defraying, in whole or in part, the cost of any or any part thereof, or of any other expenses incurred or to be incurred as provided in this Declaration (including without limitation Common Expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the Owners; no payments shall be due less than thirty (30) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

8.04. Lien for Assessments. All sums assessed to Owners of any Unit within the Project pursuant to the provisions of this Article VIII, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Article VIII, the Board of Directors may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Cache County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law by the Association in the same manner in which mortgages on real property may be foreclosed under the laws of the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings (including reasonable attorney's fees) and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Unit which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of

Directors shall have the right and power in behalf of the Association to bid in at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Unit in the name of the Association.

8.05. Personal Obligation of Owner. The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorney's fees and costs.

8.06. Statement of Account. Upon payment of a reasonable fee not to exceed \$20.00 and upon written request of any Owner, Mortgagee, or prospective purchaser of a Unit, the Board of Directors shall issue a written statement setting forth the following: The amount of the unpaid assessments, if any, with respect to such Unit; the amount of the current annual assessment and the date or dates upon which installments thereof become due; credit for advanced payments or prepaid items, including without limitation the Owner's share of prepaid insurance premiums. Such statements shall be conclusive upon the Association in favor of persons who rely thereon in good faith. In the event that the Board of Directors fails upon written request to issue such a written statement, any unpaid assessments with respect to such Unit which became due prior to the written receipt of such written request by the Board of Directors shall become subordinate to a lien held by the person or entity requesting such statement.

8.07. Personal Liability of Purchaser. Subject to the provisions of Section 8.06., a purchaser of a Unit shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Unit up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

8.08. Reserves and Working Capital. The Association may establish for a proper purpose the following funds:

(a) Capital Reserve Fund. The Association may establish and maintain an adequate capital reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and Facilities and to the Limited Common Areas the Association may be obligated to maintain. The reserve fund shall be maintained out of regular assessments for common expenses. The purpose of the capital reserve fund is to insure that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Association, or to pay the cost of periodic anticipated major repairs or improvements due to normal wear and tear to the Common Areas and facilities. Amounts paid into the capital reserve fund are not to

be considered adverse payment of any regular assessment. Each budget shall disclose that percentage of the annual assessment which shall be added to the capital reserve fund and each owner shall be deemed to make a capital contribution to the Association equal to such percentage multiplied by each installment of the annual assessment paid by such Owner.

(b) Working Expense Fund. The Association may also establish and maintain for the initial months of the Project, a working expense fund equal to at least two (2) months' Common Area charges for each Unit. The purposes of this fund are to provide for the normal day-to-day expenses of operating the Association and the Project. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Unit. The working expense fund must be budgeted for separately and maintained in a segregated account for the use and benefit of the Association. The contribution to the working expense fund for each unsold Unit in a legal phase of the Project shall be paid to the Association within sixty (60) days after the date of conveyance of the first Unit in such legal phase of the Project.

8.09. Amendment of Article. This Article VIII shall not be amended unless seventy-five percent (75%) of the Owners of the Units in the Project consent and agree to such amendment in a duly recorded instrument.

## ARTICLE IX

### INSURANCE

9.01. Hazard Insurance. The Association shall obtain, maintain and pay for as Common Expense a "master" or "blanket" multi-peril policy of property insurance covering the entire Project, including, without limitation, fixtures and Improvements service equipment to the extent that they are part of the Common Areas, Limited Common Areas, common personal property and supplies belonging to the Association, and any fixtures, equipment or other property owned by the Association. Such master policy of hazard insurance shall provide, as a minimum, protection against the following:

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

(ii) all other perils customarily covered with respect to projects similar to the Project in construction, location, and use, and any other perils for which coverage is commonly required by private institutional mortgage investors for such projects, including all perils normally covered by the standard "all risk" endorsement, where such is available. The policy shall be in an amount equal to one hundred percent (100%) of the current replacement cost of the Project and all property covered by the policy.

**ARTICLE X****DAMAGE OR DESTRUCTION**

10.01. Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted.

10.02. Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein mean restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

10.03. Procedures. In the event all or any part of the Project is damaged or destroyed and subject to the provisions of Article XII below, the Association shall proceed in a reasonable manner in restoring and repairing Improvements to protect the respective interest of the Association, the Owners, Mortgagees and others holding an interest in the Project.

10.04. Repair or Reconstruction. If the damage or destruction is to be repaired and reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications, unless other action is first approved in writing by a sufficient number of Eligible Mortgagees pursuant to Section 13.02.(f).

10.05. Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made hereunder shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs

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of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to their respective percentages of Ownership of the Common Areas.

10.06. Amendment of Article. This Article X shall not be amended unless the Owners of all Units in the Project unanimously consent and agree to such amendment by duly executed and recorded instruments.

## ARTICLE XI

### CONDEMNATION

11.01. Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas and facilities or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Directors shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any Mortgagee. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

11.02. Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be distributed by the Board of Directors on behalf of the Association as herein provided.

11.03. Complete Taking. In the event the entire Project is taken by power of eminent domain, Unit ownership pursuant hereto shall terminate and the condemnation award shall be allocated among and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

11.04. Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

(a) Allocation of Award. As soon as practicable, the Board of Directors shall, on behalf of the Association, reasonably and in good faith, apportion the condemnation award between compensation, severance damages, or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:

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(i) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken) in proportion to their respective undivided interests in the Common Areas;

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Units that have not been taken, in proportion to their respective undivided interests in the Common Areas;

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit;

(iv) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) If apportionment or allocation is already established by negotiation, judicial decree, statute, or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

(vii) No provision of this Article XI or any other provisions in this Declaration, the Articles, or the Bylaws shall entitle the Owner of a Unit or other party to priority over any Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement, or proceeds from any eminent domain or condemnation proceedings.

(b) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, Unit ownership pursuant hereto shall not terminate, but shall continue. In such event the Project shall be reorganized as follows:

(i) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a Member of the Association and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Areas;

(ii) If any partial taking results in the taking of a portion of a Unit and if no determination is made by the Board of Directors that such taking makes it impractical

to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then the fair market value of such remaining portion of the Unit shall be determined by the Board of Directors and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reduced in proportion to the diminution in fair market value of such Unit resulting from the taking. The voting rights and undivided interest in the Common Areas so divested from such Unit shall be reallocated to, and shall appertain to, such Unit and the other Units in the Project in proportion to their respective undivided interests in the Common Areas; provided, however, that such Unit shall participate in such reallocation on the basis of the undivided interest reduced in accordance with the preceding sentence;

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board of Directors that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the entire undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to the remaining Units in proportion to their respective undivided interests in the Common Areas, and the remaining portion of such Unit shall thenceforth be part of the Common Area; and

(iv) The Board of Directors shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section 11.04.(b); provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board of Directors shall defer thereto and proceed in accordance therewith.

(c) Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by its provisions specified in Article X hereof for cases of Damage or Destruction; provided, however, that the provisions of said Article dealing with sufficiency or insufficiency of insurance proceeds shall be applicable.

## ARTICLE XII

### MORTGAGE PROTECTION

12.01. Notice of Action. Upon written request made to the Association by a Mortgagee, or an issuer or governmental guarantor of a Mortgage, which written request shall identify the name and address of such Mortgagee, issuer or governmental guarantor, and the Unit Number or address of the Unit, any such Mortgagee issuer or governmental guarantor shall be entitled to timely written notice of:

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(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a mortgage held, insured, or guaranteed by such Mortgagee, issuer or governmental guarantor;

(b) Any default in the performance by the Owner of a Unit which is held or is subject to a Mortgage held, insured, or guaranteed by such Mortgagee, insurer, or governmental guarantor, of any obligation under this Declaration, including, without limitation, any delinquency in the payment of assessments or charges owed by such Owner, which default remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 12.02. below.

12.02. Matters Requiring Prior Eligible Mortgagee Approval. Except as may be required to give effect to the provisions hereof relating to the expansion and phased development of the Project, the prior written consent of Owners entitled to vote a least sixty-seven percent (67%) of the Total Votes in the Association (unless pursuant to a specified provision of this Declaration the consent of Owners entitled to vote a greater percentage of the total votes in the Association is required, in which case such specific provision shall control), and Mortgagees holding Mortgages on Units subject to Mortgages held by Eligible Mortgagees shall be required to:

(a) Abandon or terminate the legal status of the Project (whether by act or omission); provided that any election to terminate the legal status of the Project following the substantial destruction or a substantial taking of the Project through condemnation shall only require the prior written consent of Mortgagees holding Mortgages on the remaining Units, whether such remaining Units are existing in whole or in part, having at least fifty-one percent (51%) of the votes of the remaining Units subject to Mortgages held by Mortgagees;

(b) Establish self-management of the Project by the Association when professional management has been previously required by any Eligible Mortgagee, insurer, or guarantor; and

(c) Add or amend any material provision of the Declaration, Articles, Bylaws or Final Plat which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only):

(i) Voting

(ii) Assessments, assessment liens or subordination of such liens;



- (iii) Reserves for maintenance, repair and replacement of the Common Areas;
- (iv) Insurance;
- (v) Rights to use of Common Areas and Common Facilities;
- (vi) Responsibility for maintenance and repair of the several portions of the Project;
- (vii) Boundaries of any Unit;
- (viii) Any provisions which are for the express benefit of Mortgagees.

Any Mortgagee who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request.

(d) Change the pro rata interest or obligations of any individual Unit for the purpose of:

(i) levying assessments or charges or allocating distribution of hazard insurance proceeds or condemnation awards; or

(ii) determining the pro rata ownership of each Unit in the Common Areas except as permitted by expansion of the Project pursuant to Article XII.

(e) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas. (The granting of easements by the Association for public utilities or for other public purposes consistent with the intended use of the Common Areas by the Owners shall not be deemed a transfer within the meaning of this clause);

(f) Except as provided in Section 12.02(a), use hazard insurance proceeds for losses to any portion of the Project (whether to Units or to Common Areas) for other than the repair, replacement or reconstruction of the Project. In addition, the prior written approval of Eligible Mortgagees holding Mortgages on Units having at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by Eligible Mortgagees shall be required to effect any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, which will not be substantially in accordance with the Declaration and the original architectural plans and specifications of the Project.

12.03. Prior Liens Relate Only to Individual Units. All taxes, assessments and charges which may become liens prior to the mortgage under local law shall relate only to the individual Units and not to the Project as a whole.

12.04. Subordination of Common Expense Lien. Any lien which the Association may have on any Unit in the Project for the payment of common expense assessments attributable to such Unit and any fees, late charges, taxes or interest levied by the Association in connection therewith shall be subordinate to the lien or equivalent security interest of any mortgage on the Unit recorded prior to the date on which any such common expense assessments became due.

12.05. Information Made Available to Owners, Lender, and Holders, Insurers and Guarantors of any Mortgages. Any Owner, lender or holder, insurer or guarantor of any Mortgage shall, upon request, be entitled to inspect current copies of the Declaration, Bylaws, other rules and regulations concerning the Project and the books, records and financial statement of the Association during normal business hours. Additionally, any holder, insurer or guarantor shall, upon request and without cost, receive an annual financial statement of the Association and written notice of all meetings of the Association and may designate a representative to attend such meetings.

12.06. Priority of Mortgagee in Event of Damage. In the event of substantial damage to or destruction of any Unit or any part of the Common Area, no provision of the Declaration, Articles, or Bylaws or any amendment thereto shall entitle the owner of a Unit or other party to priority over any Mortgagee with respect to the distribution to such Unit of any insurance proceeds.

12.07. Priority of Mortgagee in Event of Condemnation. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, no provision of the Declaration, Articles, or Bylaws or any amendment thereto, shall entitle the Owner of a Unit, or any other party to priority over any Mortgagee with respect to the distribution to such Unit of the proceeds of an award or settlement.

12.08. Mortgagee Rights in Event of Foreclosure. Each holder of a first (in regard to priority) mortgage lien on a Unit who obtains title to the Unit pursuant to the remedies provided in the Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments and charges against the Unit which accrue prior to the acquisition of title to such Unit by the Mortgagee, except for claims for a pro rata share of such assessments or charges as a common expense to all Units in the Project, including the mortgaged Unit.

12.09. No Right of First Refusal. No "right of first refusal" shall be included in or added by amendment to the Declaration, Articles or Bylaws.

**ARTICLE XIII****COMPLIANCE WITH DECLARATION AND BYLAWS**

13.01. Compliance. Each Owner shall comply strictly with the provision of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolution of the Association adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Association or, in a proper case, by the aggrieved Owner.

13.02. Enforcement and Remedies. The obligations, provision, covenants, restrictions, and conditions contained in this Declaration, or in any supplemental or amended declaration, with respect to the Association or Units within the Project shall be enforceable by the Declarant or by any Owner of a Unit within the Project, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or in any Supplemental or further Declaration, with respect to a person or entity or property of a person or entity other than the Association shall be enforceable by the Declarant or by the Association or, in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. No summary abatement or similar procedure may be utilized through non-judicial means to alter or demolish items of construction.

**ARTICLE XIV****GENERAL PROVISIONS**

14.01. Intent and Purpose. The provisions of this Declaration, and any Supplemental or amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Planned Unit Development. Failure to enforce any provision, restriction, covenant or condition contained in this Declaration, or in any supplemental or amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

14.02. Construction. The provisions of this Declaration shall be in addition and supplemental to all other provisions of law. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to expand, limit, or otherwise affect the meaning or interpretation of this Declaration or any provision hereof.

The provisions hereby shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provisions hereof.

14.03. Notices and Registration of Mailing Address. Each Owner shall register from time to time with the Association his current mailing address. All notices, demands, and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. mail, postage prepaid, addressed to the owner at his registered mailing address or, if no address has been registered, to the Unit of such Owner. All notices, demands, and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purpose if personally served or if sent by first class U.S. mail, postage prepaid, addressed to the Association as the Association may from time to time specify to the Owners in writing. Any notice, demand, or communication referred to in this Declaration shall be deemed to have been given and received when personally served or when deposited in the U.S. mail, postage prepaid, and in the form provided for in this Section, as the case may be.

14.04. Audit. Any Owner may at any reasonable time and for a proper purpose, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, at the expense of the Common Expense Fund, may obtain an audit, on all books and records pertaining to the Project at no greater than annual intervals, and copies thereof shall be furnished to the Owners.

14.05. Amendment. Except as otherwise provided herein, this Declaration may be amended if Owners holding at least two-thirds (2/3) of the total votes in the Association consent and agree to such amendment by instruments which are duly recorded in the office of the County Recorder of Cache County, State of Utah.

14.06. Effective Date. This Declaration shall take effect upon recording.

14.07. Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in or upon the Project, or resulting from electricity, water, rain, snow, or ice which may leak or flow from outside or from any parts of the building or its drains, pipes, conduits, appliances, or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules, or order of any governmental authority.

14.08. Owner's Obligations. All obligations of an Owner, under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting, or selling under contract his Unit. The Owner of a Unit within the Project shall have no obligation for expenses or other obligations accruing after he conveys such Unit. Further, no Unit Owner may exempt himself from liability for common expenses by waiver of use or enjoyment of any of the Common Areas and facilities or by abandonment of his Unit.

14.09. Termination. In addition to the prior written approval of the percentage of Eligible Mortgagees specified in Section 12.02., the total votes in the Association shall be required before the Project may be abandoned or terminated, except as provided by law and in this Declaration in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation or eminent domain.

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

**DECLARANT:**

VALLEY VIEW BUSINESS PARK  
A Utah General Partnership

By *Timothy R. Higgins*  
Its *Gen Partner*

*Arlyn Rounds*  
Arlyn Rounds

*Joanne L. Williams*  
Joanne L. Williams, as Trustee of the Joanne L.  
Williams Trust dated *Aug 1*, *1996*

STATE OF UTAH )  
: ss.  
County of Cache )

On the 8<sup>th</sup> day of January, 2001, personally appeared before me KENNETH R. THIGPEN, known to me to be one of the partners in the partnership of VALLEY VIEW BUSINESS PARK, a Utah General Partnership, and the partner who subscribed said partnership name to the foregoing instrument, and acknowledged to me that he executed the same in said partnership name and that said partnership executed the same.

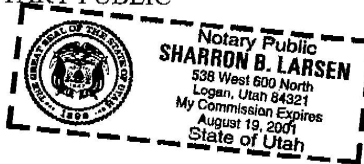
*Mary Lynn Hathaway*  
NOTARY PUBLIC



STATE OF UTAH )  
: ss.  
County of Cache )

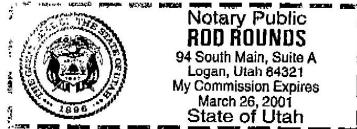
On the 8 day of January, 2001, appeared before me ARLYN ROUNDS, one of the signers of the within instrument, who duly acknowledged to me that he executed the same.

*Sharon B. Larsen*  
NOTARY PUBLIC



STATE OF UTAH )  
: ss.  
County of Cache )

On the 8<sup>th</sup> day of January, 2001, personally appeared before me JOANNE L. WILLIAMS, Trustee, the signer of the foregoing instrument, who duly acknowledged to me that she executed the same, as Trustee.



*Rod Rounds*  
NOTARY PUBLIC

l/bhb/valleyview/covenants

**EXHIBIT "A"**

<u>Unit No.</u>	<u>Size</u>	<u>Sq. Footage</u>	<u>Percentage of Common Areas and Facilities Owned/ Voting Percentage</u>
<b><u>PHASE I</u></b>			
1	40'x60'	10,400	15.42%
2	40'x80'	3,200	4.74%
3	40'x74'	2,960	4.39%
4	40'x84'	3,360	4.98%
5	40'x84'	3,360	4.98%
6	40'x80'	3,200	4.74%
7	40'x80'	3,200	4.74%
8	40'x80'	3,200	4.74%
9	40'x80'	3,200	4.74%
<b><u>PHASE II</u></b>			
10	40'x84'	3,360	4.98%
11		3,785	5.61%
12		3,446	5.11%
13	60'x80'	4,800	7.11%
14	60'x100'	6,000	8.90%
15	60'x60'	3,600	5.34%
16	40'x80'	3,200	4.74%
17	40'x80'	3,200	4.74%
<b>TOTAL</b>			<b>100.00%</b>