

When Recorded, Mail To:
Carl W. Barton, Esq.
Holland and Hart LLP
60 East South Temple, Suite 2000
Salt Lake City, UT 84111

ENT 160823;2003 PG 1 of 24
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2003 Oct 03 9:07 am FEE 111.00 BY KH
RECORDED FOR SHADOWBROOK CONDOMINI

**AMENDMENT AND RESTATEMENT OF BYLAWS FOR SHADOWBROOK
CONDOMINIUM OWNERS ASSOCIATION, A UTAH NON-PROFIT
CORPORATION**

THIS AMENDMENT AND RESTATEMENT OF BYLAWS is made and executed effective the 3rd day of October, 2003, by Shadowbrook Condominium Owners Association, a Utah non-profit corporation (the "Association").

RECITALS:

1. As provided for in the Utah Condominium Ownership Act (the "Act") and Article IX of the Shadowbrook Bylaws, at a meeting on September 18, 2003, more than 75% of the Members (49 out of 56 units) voted to amend those certain Bylaws recorded in 1973 with the Utah County Recorder in Book No. 1342 at Page 475 and that certain amendment thereto recorded March 8, 1999 with the Utah County Recorder as Entry No. 27738 in Book No. 5003 at Page 179, and that certain amendment thereto recorded January 30, 2003 with the Utah County Recorder as entry No. 14398:2003, (collectively, the "Bylaws"), by restating them as follows:

**ARTICLE I
NAME, PRINCIPAL OFFICE AND ASSENT OF MEMBERS**

1.1 Name. The name of the nonprofit corporation is Shadowbrook Condominium Owners Association, Inc., hereinafter referred to as the "Association."

1.2 Offices. The principal address of the Association shall be at 3300 North Shadowbrook Circle, Provo, Utah 84604.

1.3 Assent. All present or future Owners, tenants, future tenants, or any other person using the facilities of the Association in any manner, are subject to these Bylaws and any rules adopted by the Board of Directors pursuant to these Bylaws. The mere acquisition or rental of any of the Units in Shadowbrook or the mere act of occupancy of one of those Units shall constitute an acceptance and ratification of these Bylaws and an agreement to comply with said rules.

**ARTICLE II
DEFINITIONS**

2.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in the Declaration of Covenants, Conditions and

Restrictions of Shadowbrook Condominium Owners Association, hereinafter referred to as the "Declaration," shall have such defined meanings when used in these Bylaws. "Owners" and "members" refer to unit owners and are used interchangeably herein.

ARTICLE III MEMBERS

3.1 Responsibilities of Members. Any person, on becoming an Owner of a Unit, shall automatically become a member of the Association and shall be subject to these Bylaws. Such membership shall terminate without any formal action by the Association whenever such person ceases to own a unit, but such termination shall not relieve or release any such former Owner from any liability or obligation incurred under, or in any way connected with, the Association during the period of such Ownership, or impair any rights or remedies which the Board of Directors of the Association or others may have against such former Owner arising out of Ownership of the unit and membership in the Association and the covenants and obligations incident thereto.

3.2 Annual Meetings. The annual meeting of Members shall be held within the first 60 days of each year at the Shadowbrook Clubhouse on a week day at 7:00 p.m., the specific date to be fixed by the Board of Directors ("Board" or "Directors"), beginning with the year following the year in which the Articles of Incorporation are filed, for the purpose of transacting such business as may come before the meeting. The annual meeting notification shall be distributed to Members at least 14 days before the meeting date and shall include an agenda of the meeting and information on specific items to be voted upon. It shall also include a copy of the year's financial reports and a list of significant decisions made by the Board during the previous year. Board elections will be conducted by written ballot which shall be distributed at least 28 days before the annual meeting. Ballots shall be returned by the date fixed by the Board to an Owner who is not a current or nominated Board member. Ballots shall be opened and counted by two Owners selected by the Board in the presence of the Secretary of the Board and the results announced at the annual meeting. The newly elected Board members shall begin their terms immediately following the annual meeting.

3.3 Special Meetings. Special meetings of the Members may be called by the Board, the President, or upon the written request of Members holding not less than twenty-five percent (25%) of the voting power of the Members of Association, such written request to state the purpose or purposes of the meeting and to be delivered to an officer of the Board.

3.4 Place of Meetings. The Shadowbrook Clubhouse shall serve as the place of meeting for any annual meeting or for any special meeting called by the Board. If for any reason the Clubhouse is not available, the meeting shall be held at a place chosen by the Board within the city boundaries of Provo/Orem.

3.5 Notice of Meetings. The Board shall cause written or printed notice of the time, place, and purposes of all meetings of the Members (whether annual or special) to be delivered, not more than sixty (60) nor less than fourteen (14) days prior to the meeting, to each Member of record. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Member at his registered address, with first-class postage thereon prepaid. Each Member shall register with the Association such Member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a Member's unit address shall be deemed to be his registered address for purposes of notice hereunder.

3.6 Members of Record. Upon purchasing a unit in Shadowbrook, each Owner shall promptly furnish to the Association a copy of the recorded instrument by which Ownership of such unit has been vested in such Owner, which copy shall be maintained in the records of the Association. For the purpose of determining Members entitled to notice of or to vote at any meeting of the Members, or any adjournment thereof, the Board may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for determining Members entitled to notice of or to vote at any meeting of the Members. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining Members entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the Owners of record of each unit shall be deemed to be the Members of record entitled to notice of and to vote at the meeting of the Members.

3.7 Quorum. 40% of the total number of Members (units), either in person, by proxy or voted ballot/affidavit (for those specific items of business) shall constitute a quorum for the purpose of any duly called and noticed meeting for the purpose of transacting business on behalf of the Association.

(a) Should a quorum not be present or represented by proxy or voted affidavit, the meeting shall be adjourned and rescheduled no earlier than 48 hours after all unit Owner/voting members shall be notified of the meeting and not more than 30 days from the original meeting date and time. A quorum for the purpose of transacting business at the rescheduled meeting shall be 25% of the voting members/Owners as represented in person, by proxy or voted ballot/affidavit.

(b) Should the rescheduled meeting fail to meet the definition of a quorum, a third meeting shall be rescheduled, with the same notification and time frame requirements as the second, and whatever voting members attend or are represented shall by definition constitute a quorum and be empowered to transact business on behalf of the Association.

(c) Any business transacted without a majority vote of all voting members, shall be ratified by a majority of the members/votes within 30 days of the meeting. For this purpose, any action not objected to by 25% of the voting members

within the ratification period shall be deemed ratified. No additional positive vote will be necessary.

(d) However, should a petition of objection be initiated during the ratification period containing more than 25% of the members/votes, the item shall be deemed to be not ratified and require a majority vote of all members/votes, which shall be obtained in a manner determined by the Board and in accordance with the Bylaws, Articles of Incorporation and Utah state statutes.

3.8 Proxies. Owners may assign their voting rights to other Owners by use of a proxy. The proxy will be durable in nature and continue in force for no longer than two years. Proxies may be either directed (telling the proxyholder how to vote) or general (the proxyholder votes as he/she chooses).

(a) Should a member, who has granted a proxy to another member, attend a meeting or vote on a ballot or affidavit in person, it shall supercede the proxy for that meeting or item of business.

(b) The original, signed copy of all proxies shall be kept by the secretary of the Board, who will also be responsible for authorizing and validating the voting of proxies at all meetings, on all ballots/affidavits, and in any other form authorized by the Board. (The person exercising the proxy may request a copy of the proxy from the secretary.)

(c) Proxy forms may designate a primary and secondary proxy. The primary and secondary proxies may not be from the same family; however, a primary or secondary may be either spouse in the specified family, if so designated by the member in writing.

(d) A person voting a proxy must be of legal age.

(e) Should a person who has issued a proxy become legally incapacitated or pass away, the proxy is null and void.

(f) No member may vote for more than 5 units in total, including any/all units they own and all the proxies granted to them.

3.9 Votes. With respect to each matter submitted to a vote of the members, each member entitled to vote shall have the right to cast, in person, by proxy or ballot/affidavit, one vote per each unit owned.

(a) The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy or by ballot/affidavit at a meeting at which a quorum is present/represented (see section 3.06 of these by laws) shall be necessary for the adoption of any matter voted on by the members, unless a greater

proportion is required by the Articles of Incorporation, these Bylaws, the Declaration or Utah law or regulations.

(b) If Ownership of a unit is jointly held, all or any of the holders may attend each meeting of the members, but such Owners must act unanimously to cast votes relating to their joint Ownership (1 unit = 1 vote).

3.10 Action by Written Ballot. Any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if a written ballot is delivered to every member entitled to vote on the matter. All solicitations for votes by written ballot shall state the percentage of approvals necessary to approve each matter (other than election of Directors); specify the time by which a ballot must be received in order to be counted; and be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter. A written ballot may not be revoked.

3.11 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the Members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by a simple majority of the Members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration, or Utah law.

3.12 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting form of proxies, and method of ascertaining Members present, shall be deemed waived if no objection thereto is made at the meeting.

ARTICLE IV BOARD OF DIRECTORS

4.1 General Powers. The property, affairs, and business of the Association shall be managed by its Board. The Board may exercise all of the powers of the Association, whether derived from law or the Articles of Incorporation, except such powers as are by law, by the Articles of Incorporation, by these Bylaws, or by the Declaration, vested solely in the Members. The Board may by written contract delegate, in whole or in part, as Managing Agent a professional management organization or person such of its duties, responsibilities, functions, and powers as are properly delegable. The powers of the Board of Directors shall include, but not be limited to, the following:

(a) To provide the necessary management and accounting and other services required in connection with operation and maintenance of the Common Areas and Facilities.

(b) To enforce liens against units in the event of default by an Owner in payment of money under the Declaration, and to enforce any other provisions thereof.

(c) To authorize in their discretion the use of monies from Assessments, Special Assessments, fines collected, or any other income of the Association.

(d) To enforce such Association Rules pertaining to use and occupancy of the Units and Common Areas and Facilities as may be adopted by the Association and which are consistent with these Bylaws, the Articles and the Declaration. The Members shall be provided with copies of all rules and regulations adopted by the Board of Directors, and with copies of all amendments and revisions thereof. For infraction of published rules and regulations the Board, following a notice and hearing, if requested, may fine the Owner and/or suspend the right to use the pool and the clubhouse for a period not to exceed 90 days.

(e) To declare the position of a Director of the Board to be vacant in the event such Director shall be absent for more than three (3) regular meetings of the Board in one fiscal year. In the event such a vacancy occurs, the Board shall elect a new Director who shall serve until the next regular election.

4.2 Number, Tenure, Qualifications and Nominations. The number of Directors of the Association shall be five (5). The initial Board shall be made up of three (3) members whose terms shall expire in January 2005, and two (2) members whose terms shall expire in January 2004. Each Director shall hold office for 2-year terms until his successor shall have been duly elected or appointed. Directors must be Members of the Association. Only one Director from any one Unit shall be elected or appointed to serve at any time. Notice of upcoming Board vacancies shall be given to Members at least 60 days before the Directors' terms expire and nominations for the Board shall be submitted by Members in writing by a date set by the Board.

4.3 Regular Meetings. The regular annual meeting of the Board shall be held without other notice than this Bylaw immediately after, and at the same place as, the annual meeting of the Members. The Board may provide by resolution the time and place for holding of additional regular meetings without other notice than such resolution.

4.4 Special Meetings. Special meetings of the Board may be called by or at the request of the President or any three (3) Directors. Notice of any special meeting shall be given at least three (3) days prior thereto by verbal or written notice delivered personally, or e-mailed, or mailed to each Director at his registered address, by the President or Secretary of the Board.

4.5 Emergencies. In the event of an emergency situation requiring immediate action to avoid or mitigate damage to Association property, any Director may take such

immediate action, providing he or she has made a good faith attempt to reach the other Directors before taking such action. Such action taken by any Director will be presented for ratification by the Directors at the next Board meeting.

4.6 Quorum and Manner of Acting. A majority of the then authorized number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board. The Directors shall act only as a Board, and individual Directors shall have no powers as such, except as outlined in 4.5 above.

4.7 Compensation. Directors will be compensated as outlined below, unless management of Shadowbrook has been delegated to a management company, in which case no Director shall receive compensation for any services that he/she may render to the Association as a Director.

(a) The President, Secretary and Treasurer of the Board shall be compensated as the Board may fix or approve.

(b) The other two (2) Directors shall be compensated as the Board may fix or approve, but such compensation will be limited to a maximum of one-half that of the officers of the Board.

(c) Directors shall be reimbursed for expenses incurred in performance of their duties as Directors to the extent such expenses are approved by the Board and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in their capacity as a Directors.

4.8 Resignation and Removal. A Director may resign at any time by delivering a written resignation to the President, Secretary, or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director may be removed at any time, for or without cause, by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the Members of the Association at a special meeting of the Members duly called for such purpose. If a Board member is unable or refuses to serve, but also refuses to resign from the Board, the Board shall inform the Owners of the situation so that they may take action as appropriate.

4.9 Vacancies and Newly Created Directorships.

(a) If vacancies shall occur on the Board by reason of health, death, resignation or removal of a Director, the Directors then in office shall continue to act, and such vacancies shall be filled by a vote of the Directors then in office, though less than a quorum, in any way approved by such Directors at the meeting.

(b) Any vacancy in the Board occurring by reason of removal of a Director by the Members may be filled (pursuant to 4.8 above) by election at the meeting at which such Director is removed.

4.10 Informal Action by Directors. Any action that is required or permitted to be taken at a meeting of the Board, may be taken without a meeting if verbal or written consent of four Directors shall be obtained. Such action shall be ratified at the next Board meeting.

ARTICLE V OFFICERS

5.1 Officers. The officers of the Association shall be a President, Secretary, and Treasurer. Each officer shall be a Director and shall be elected by the Directors.

5.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Board annually at the regular annual meeting of the Board. Each such officer shall hold his office until the next ensuing regular annual meeting of the Board and until his successor shall have been chosen and qualified, or until his death, or until his resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. The President, Secretary and Treasurer shall be and remain Directors of the Association during the entire term of their respective offices.

5.3 Subordinate Officers. The Board may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine. Such officers or agents need not be Members.

5.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board at any time, for or without cause. A Director in an officer position who is removed by the Board from that officer position will remain a member of the Board until his or her term ends or he or she is removed from the Board by the Members of the Association as provided for in 4.8 above.

5.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices shall be filled by the Board.

5.6 The President. The President shall be the chief executive officer of the Association and shall exercise general supervision over its property and affairs.

(a) The President shall preside at meetings of the Board and at meetings of the Members.

(b) At the Board's direction, the President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that the Board may require of him or her.

(c) The President shall be invited to attend meetings of each committee.

5.7 The Secretary. The secretary shall keep the minutes of the Association (board meetings, general meetings, etc), be responsible for all correspondence to members (including meeting notifications, ballots, etc.), and maintain such books and records as these Bylaws, the Declaration or any resolution of the board may require. The secretary shall also:

(a) act in the place and stead of the president in the event of the president's absence or short term inability to perform said duties.

(b) be the custodian of the files and seal of the Association and shall affix the seal to any papers, documents or instruments requiring a seal.

(c) be responsible for maintaining all proxy records and determining who is authorized to vote proxies and when.

(d) perform other duties as the board may assign.

5.8 The Treasurer. The Treasurer shall have the custody and control of the funds and the financial records of the Association, subject to the action of the Board. The financial records shall be maintained in the manner prescribed by the Board.

(a) Additionally, the Treasurer shall report the state of the finances of the Association in the notice of the annual meeting and respond to any financial questions at each annual meeting of the Members and at any meeting of the Board.

(b) He or she shall perform such other duties as the Board may require of him or her.

ARTICLE VI ASSESSMENTS AND TAXES

6.1 Regular Assessments. Each unit Owner shall pay the Association his pro rata share of the cash requirements deemed necessary by the Board to manage and operate Shadowbrook, upon the terms, at the times, and in the manner herein provided.

(a) The cash requirements for each year or portion of the year shall be deemed to be such aggregate sum as the Board from time to time shall determine in its judgment.

(b) Regular monthly assessments are to be paid by all Owners to enable the Board to pay all estimated expenses and outlays of the Association to the close of such year in connection with the maintenance and operation of such land and buildings and improvements, which sum may include, among other things, the cost of management, fire, casualty, and public liability insurance premiums; common lighting

and heating; pool expenses; landscaping and care of grounds; repairs and renovations to common areas and facilities; capital improvements, wages, water charges; legal and accounting fees; management fees, expenses and liabilities incurred by the Association; the payment of any deficit remaining from a previous period; the creation of a reasonable contingency or other reserve or surplus fund; and all other costs and expenses related to Shadowbrook.

(c) The Board may at its discretion increase or decrease the amount of regular assessments.

(d) The Board may include in the cash requirements for any year any liabilities or items of expense which accrued or became payable in a previous year, or which might have been included in the cash requirements for a previous year, but were not included therein, and also any sums which the Board may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

6.2 Special Assessments. The Board may from time to time deem it necessary to assess each Unit Owner additional amounts to cover large or unexpected expenses which are not covered by the annual budget. Such special assessments are payable by unit Owners upon the terms, at the times, and in the manner specified by the Board.

6.3 Board's Discretion. The Board shall have discretionary powers to prescribe the manner of maintaining and operating Shadowbrook, and to determine the cash requirements of the Association to be paid as aforesaid by the Owners under the Declaration and these Bylaws. Every such reasonable determination by the Board, within the bounds of the Condominium Ownership Act, the Declaration, and these Bylaws, shall be final and conclusive as to the Owners, and any expenditures made by the Board, within the bounds of the Condominium Ownership Act, the Declaration, and these Bylaws, shall, as against the Owner, be deemed necessary and properly made for such purpose.

6.4 Determination of Pro Rata Portion. The pro rata portion payable by the Owner in and for each year or portion of a year shall be such sum as shall be determined by the Board from time to time, to be calculated on such basis or bases as the Board may determine.

(a) For example, the basis of such calculation may be, but need not be, equal division among the 56 units; or may be, but need not be, the ratio of square footage of an Owner's unit to the total adjusted square footage of all units.

(b) If at any time at least 66 2/3% of all unit Owners, in a vote at a regular or special meeting duly called or in writing, either of which all unit Owners and the Board have had at least thirty days notice, shall agree on a basis for calculation of pro rata assessment, such basis shall replace the method used by the Board until such time as 66 2/3% of the unit Owners shall change the method.

6.5 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Declaration, with the exception of compensation for Board members.

6.6 Non-Payment of Assessments. Any Assessment which is not paid within 15 days after it becomes due shall be delinquent. Whenever an Assessment is delinquent, the Association may, at its option, invoke any or all of the sanctions provided for herein in order to collect its prompt payment.

(a) Late Payment Fee. A late fee of \$25 is due if regular monthly assessments are received after the 15th of the month. An additional \$25 is charged for each month that assessment remains unpaid.

i. A \$25 late fee is due if any special assessments are received more than 30 days after the due date. An additional \$25 is charged for each month any special assessment remains unpaid.

ii. Alternative payment terms for any assessment may be allowed at the discretion of the Directors.

iii. A lien may be placed on the property for any assessments which are 60 or more days late.

(b) Enforcement of Lien. The Association may proceed as authorized in the Declaration to enforce the lien up to sale and foreclosure of the Owner's interest as provided in the Act.

(c) Suspension for Non-Payment. The Association may suspend the Owner's right to use all or any portion of the Common Areas and Facilities (exclusive of the Limited Common Areas and Facilities appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due to the Association remains delinquent.

(d) Default by Lessee or Sublessee. If an Owner shall at any time let or sublet the unit, and shall default for a period of one (1) month in the payment of any assessments, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant or sub-tenant of the Owner occupying the unit the rent due or becoming due from such tenant or sub-tenant up to an amount sufficient to pay all sums due from the Owner to the Association. Any such payment or such rent paid to the Board satisfies the tenant's or sub-tenant's obligation to the Owner to the extent of the amount so paid and may not be recovered by the Owner from the tenant. If this Bylaw provision conflicts with any lease provisions, this Bylaw provision shall prevail.

(e) **Ownership Transfer Fee.** When any unit is sold, a transfer fee of \$250.00 shall be paid to the Association out of the closing monies by the title company handling the sale. Such transfer fee may be paid by the Buyer or Seller, or split between them, as they may determine. A check made out to the Association shall be forwarded within 3 days of closing. If the title company fails to pay this transfer fee, it shall be paid by the new Owner within a week of notification by the Board.

6.7 **Taxes.** It is acknowledged that under the Utah Condominium Ownership Act, each of said unit's percentage of the undivided interests in the common areas and facilities of the project are subject to separate assessment and taxation by each assessing body and 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 member will, therefore, pay and discharge any and all taxes which may be assessed against any of said units of which he is the Owner, against the percentage of undivided interests in the common areas and facilities of any such unit, and/or against any items of personal property located in or upon any unit of which he is the Owner.

ARTICLE VII INDEMNIFICATION

7.1 **Indemnification: Third-Party Actions.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he/she is or was a Director or officer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him/her in connection with such action, suit, or proceeding, if he/she acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his/her conduct was unlawful.

The termination of any action, suit, or proceeding by an adverse judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he/she reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was unlawful.

7.2 **Indemnification: Association Actions.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he/she is or was a Director or officer of the Association, or is or was serving at the request of the Association as a director,

trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorney's fees) actually and reasonably incurred by him/her in connection with the defense or settlement of such action or suit, if he/she acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of his/her duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

7.3 Determinations. To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Sections 7.1 or 7.2 hereof, or in defense of any claim, issue, or matter therein, he/she shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him/her in connection therewith.

Any other indemnification under Sections 7.1 or 7.2 hereof shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he/she has met the applicable standard of conduct set forth respectively in Sections 7.1 or 7.2 hereof. Such determination shall be made by any of the following procedures as determined by the Board: (i) by the Board by a majority vote of disinterested Directors, or (ii) by independent legal counsel in a written opinion, or (iii) by the Members by the affirmative vote of at least sixty-six and 2/3 percent (66 2/3%) of the voting power of the Members of the Association at any meeting duly called for such purpose.

7.4 Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a quorum of the Board and upon receipt of a written agreement signed by the person to repay such amount or amounts unless it ultimately be determined that he/she is entitled to be indemnified by the Association as authorized by this Article or otherwise.

7.5 Scope of Indemnification. The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, Bylaws, agreements, insurance policies, vote of disinterested Members or Directors, or otherwise, both as to action in his/her official capacity and as to action in another capacity while holding such office. The indemnification authorized by this Article is for actions relating to Association business and shall apply to all present and future directors, officers, managers, employees, and agents of the Association and shall continue as to such persons who cease to be directors, officers, managers, employees, or

agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

7.6 Insurance. The Association may purchase and maintain insurance on behalf of any person who was or is a trustee, director, officer, employee, or agent or was or is serving at the request of the Association as a trustee, director, officer, manager, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit).

7.7 Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute an expense of the Association and shall be paid with funds from the Assessments referred to in the Declaration.

ARTICLE VIII INSURANCE

8.1 Insurance on Common Areas and Facilities. The Association shall maintain the following types of insurance for the benefit of the Owners to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. Notwithstanding any of the specific insurance requirements contained in this Article 8, the Association must also consider and comply with, in determining the types and amounts of insurance it needs to obtain, the then-existing applicable requirements of the Agencies with respect to their insurance, guaranty, or purchase of First Mortgages.

(a) A policy of property insurance covering all insurable improvements located within the Project (including the units, but not including furniture, wall trimmings, improvements within each unit, equipment, fixtures, additional or other personal property supplied or installed by Owners) except for land, foundation, excavation and other matters normally excluded from coverage, in an amount not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date. Further, said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and include an "Inflation Guard Endorsement" (if obtainable). The Association will also purchase endorsements and/or coverage on personal property owned by the Association, including fixtures and building service equipment, furnishings, common personal property and supplies. Such insurance shall afford protection against at least the following:

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

ii. such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

(b) A comprehensive policy of public liability insurance covering the Project insuring the Association in an amount not less than Two Million Dollars (\$2,000,000.00) covering bodily injury, including death to persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas or Facilities of the Project, legal liability arising out of lawsuits related to employment contracts of the Association and liability for property of others, host liquor liability, water damage liability, contractual liability, and such other risks as may customarily be required by private institutional mortgage investors with respect to condominium projects similar in construction, location and use.

(c) Workmen's compensation insurance shall be procured as determined necessary by the Board.

(d) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, in an amount at least equal to two months current assessments. Such fidelity coverage or bonds shall meet the following in the aggregate requirements:

(i) all such fidelity coverage or bonds shall name the Association as an obligee;

(ii) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Directors shall be covered as non-employees.

In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association must require the managing agent to purchase at its own expense, a policy of fidelity insurance or bonds which fully comply with the provisions of this subparagraph (d), unless the Association names such agent as an insured employee under a policy of fidelity insurance or fidelity bonds in accordance with subparagraph (d) above.

(e) A policy providing personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

(f) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available.

8.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners and First Mortgagees, and each Owner shall be an insured person under such policies with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association. The policy or policies shall recognize any applicable Insurance Trust Agreement and shall contain a standard non-contributory First Mortgagee's clause in favor of and specifically naming each First Mortgagee (including any Agency or the servicers of First Mortgagees and their successors and assigns) and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and each First Mortgagee, insurer or guarantor of a First Mortgage under the Declaration. The Association's insurance carrier shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including First Mortgagees under the Declaration, upon request. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner or the Association. The policies shall also contain a waiver by the insurer of any right to claim by way of subrogation against the Owners, the Association, and their respective officers, directors and members. The liability insurance policy provided for under Section 8.1(b) shall insure the Board of Directors, the Association, any management agent and their respective employees, agents and all persons acting as agents. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the Ownership, existence, use or management of the Common Elements. Such liability insurance shall cover claims of one or more insured parties against the other insured parties.

8.3 Deductibles. Any deductible clause amount will be determined by the Board, but shall not be more than \$15,000. Any loss falling within the deductible portion of such policy shall be a Common Expense shared by the Owners in accordance with the applicable provisions of Article 7 of this Declaration. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner, and assess such loss as a default assessment against such negligent Owner and his unit, subject to all provisions of this Declaration applicable to such assessments.

8.4 Insurance Trustee. The Board shall have authority to authorize an insurance trustee to assist and consult on matters concerning the insurance required under this Declaration; to negotiate and compromise settlement of losses under any insurance; and to collect the proceeds from any insurance, hold such proceeds in trust

for the Owners and their First Mortgagees as their interest may appear, and dispose of such proceeds.

8.5 Association Insurance as Primary Coverage. Property and casualty insurance carried by the Association will be considered the primary insurance in the event of loss, should similar coverage also be provided by an individual Owner or tenant's policy.

(a) The above notwithstanding, the Association is responsible for insuring the building structures, exteriors, and common areas and facilities; the Owners are responsible for insuring all contents, including their personal property, interior finish, appliances and other fixtures, etc. Any damage to a unit caused by anything commonly owned (such as broken sprinklers or falling trees that are in the common area) shall be covered by the Association's insurance.

(b) In the case where overlapping coverage by the Association and the Owner or tenant exists, the insurance companies' policy requirements will apply in settlement of claims, pursuant to these articles of insurance, and the Utah insurance statutes and regulations.

(c) If a unit Owner has adequate individual insurance for any damages, as described above, in the event of loss, the unit Owner will need to restore the property; but have no additional liability to the Association once the property is restored.

(d) Should the property not be restored with the insurance proceeds, the Owner will be liable to the Association for the amount necessary to repair/restore the property, which the Association may collect pursuant to these Bylaws, the Declaration and Utah state statutes.

(e) Should the scope of the Association's insurance policy/coverage be broader than the scope of its primary responsibility and it pay claims as the primary insurer, neither the insurance company nor the Association will have claim against an individual Owner for repayment or damages, except in the cases of fraud, intentional damage, illegal activity, violations of host liquor liability, etc., unless there is a failure to comply with the above.

(f) Should the Association's policy pay a claim because of an Owner's failure to have adequate insurance or the Association be required to pay for repairs or restoration to any property for which the Owner has primary responsibility and lack of economic means or failure to repair/restore the property, the Association will have a claim against the Owner for repayment, subject to the above conditions.

8.6 Acceptable Insurance Companies. Any hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports (or a comparable rating by any successor or

generally accepted substitute for Best's) of B+ or better, or a financial rating of Class V provided it has a general policy holder's rating of at least A, and is authorized by law to do business in the State of Utah. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, Bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee or (b) under the terms of the carrier's charter, Bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

8.7 Specific Exclusions. Damages inside units caused by frozen water pipes or leaking roofs are specifically excluded from coverage under the Association's policies. Shadowbrook is not located in a designated flood plain and thus the Owners are not required by mortgage holders to have flood insurance. Individual Owners may obtain flood insurance at their own expense if they so desire.

8.8 Insurance to be Maintained by Owners. Insurance coverage on all personal property and furnishings, including carpet, draperies, kitchen and other appliances, paint, wallpaper and other items of personal property belonging to an Owner of a condominium unit, and public liability coverage within each condominium unit, shall be the sole and direct responsibility of the respective Owner(s) thereof, and the Association, its Board of Directors and/or the managing agent of the Association shall have no responsibility therefor; provided, however, that the Board of Directors of the Association may elect to include any such coverage in any Association policy and any costs of such coverage not allocable to the Owners on a uniform basis (or in respect of Ownership of Resident or Commercial Units) shall be assessed as an Individual Purpose Assessment.

8.9 Annual Review of Insurance Policies. The Board shall insure that the Association pays a competitive rate for all insurance coverage. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association. Prior to obtaining any policy of fire insurance or renewal thereof, the Board of Directors or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or other person knowledgeable as to replacement costs, which appraiser shall reasonably estimate the full replacement value of the improvements to the insured for the purpose of determining the amount of insurance required pursuant to the provisions of this Article. Any First Mortgagee shall be furnished with a copy of such appraisal upon request, if available.

8.10 Notice of Cancellation. If any insurance required in this Article 8 to be obtained by the Association is not reasonably available or is cancelled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by U.S. Mail to all Owners.

ARTICLE IX
FISCAL YEAR, SEAL, BOOKS OF ACCOUNT AND CONTRACTS

9.1 Fiscal Year. The fiscal year of the Association shall begin on the first day of January each year and end on the 31st day of December next following, except that the first fiscal year shall be a partial year and shall begin on the date of incorporation.

9.2 Seal. The Board may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, and the words "Corporate Seal".

9.3 Books of Account. Books of account of the Association shall be kept by the Treasurer on a consistent basis determined by the Board and in accordance with good accounting practices.

9.4 Contracts. Unless otherwise provided herein or by the Board, all contracts shall be executed on behalf of the Association by the President, and may be countersigned by the Treasurer.

ARTICLE X
RULES AND REGULATIONS

10.1 Rules and Regulations. The Board may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Project, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration, or these Bylaws. Unit Owners shall at all times obey such rules and see that they are faithfully observed by the residents of their units and their visitors. The Members shall be provided with copies of all rules and regulations adopted by the Board, and with copies of all amendments and revisions thereof. If at any time at least 75% of all unit Owners, in a vote at a regular or special meeting duly called, or by petition in writing, shall alter, amend or repeal a community rule or regulation adopted by the Board, such alteration, amendment or repeal shall supersede Board action.

10.2 Fines for Violations. The Board may assess fines against an Owner or tenant for violation of the rules and regulations by occupants or visitors.

(a) Owners and their tenants are responsible for the behavior of, and any damages to Association property caused by, their occupants or visitors.

(b) Owners are responsible for any fines assessed against, but not paid by, their tenants.

10.3 Lease Language. Owners who lease their units must include as a lease provision an acknowledgement by the Lessees that Lessees agree to abide by all rules and regulations promulgated by Shadowbrook; that Lessees will pay any fines assessed

against them; and that failure to do so is a default on their lease. In the event that there is no formal lease, Owners will obtain a signed statement in this regard from their tenants.

Any lease language that conflicts with, or is inconsistent with, Shadowbrook's Declaration, Bylaws, Rules and Regulations, or Utah statutes, is null and void.

ARTICLE XI RIGHT OF ENTRY

11.1 By the Board. The Board and its duly authorized agents shall have the right to enter any and all of the said units in case of an emergency originating in or threatening such unit or any other part of the project, whether the Owner or occupant thereof is present at the time or not.

The Board and its duly authorized agents shall also have the right to enter any and all of said Units at all reasonable times as required for the purpose of making necessary repairs upon all the common areas and facilities of the project. Except in an emergency, Owners shall be given at least 24 hours advance notice.

11.2 By Unit Owners. All Owners and their duly authorized agents and representatives shall have the right to enter any of said units contained within the project for the purpose of performing emergency installations, alterations, or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alternations, or repairs shall be necessary to prevent damage or threatened damage to other units in the project; and provided further, that the Owners affected by such entry shall first be notified thereof if available and if time permits.

ARTICLE XII USE AND OCCUPANCY

12.1 Obstruction of Common Areas and Facilities. No Owner shall cause or allow nor permit any person for whom he or she is responsible to cause or allow any foyer, stairway, hallway, exit, entrance, breezeway, fire escape, roadway, or sidewalk in or on the Project to be obstructed or to be used for any purpose other than for ingress to or egress from said units of the project. No one may block access to a driveway or garage, except the residents or their guests in the units where parking is permitted in the driveway.

12.2 Use of Unit.

(a) Shadowbrook units are single-family dwellings and may not be used for any purpose other than a private single-family dwelling as defined by Provo City.

(b) No Owner or occupant will permit or suffer anything to be done or kept in or upon any of said units which would constitute a nuisance or a violation of any law, ordinance, or regulation, which would increase the rate of fire insurance on the project, or which might otherwise interfere with the rights of other Owners or occupants of the project.

(c) No sign, signal, advertisement, illumination, or lawn sign shall be inscribed or exposed anywhere on Shadowbrook property, including on units and in windows, except as allowed by Shadowbrook Rules or upon specific written approval of the Board.

12.3 Maintenance of Units. It is expected that each unit Owner, at his own expense, shall keep the interior of his unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition.

(a) Except to the extent that the Association is protected by insurance against such injury, the Owner shall repair all injury or damage to the building or buildings caused by the act, negligence or carelessness of the Owner or that of any lessee or sublessee or any member of the Owner's family or the family of any lessee or sublessee, or of any guest, employee or agent of the Owner or his lessees or sublessee. All such repairs, redecorating, painting and varnishing shall be of a quality and kind equal to the original work.

(b) In addition to decorating and keeping the interior of the unit in good repair, the Owner shall be responsible for the maintenance or replacement of any plumbing fixtures, heating and air conditioning equipment, compactors, dishwashers, disposals, ranges, etc. that may be in or connected to the unit.

(c) The Owner shall be entitled to the exclusive use of the patio, front and back door entryways, and garage areas attached to his unit and shall be responsible for the maintenance, repair, and upkeep of said areas. However, prior written permission must be obtained from the Board for any work done on the exterior of the Units, including the patio, entryway and exterior garage areas. Further, the Owner shall not make or permit to be made any structural alterations, improvements or additions to the unit, nor any painting to the exterior of the building, without prior written permission from the Board.

(d) A unit Owner shall not make any alteration to the interior of his unit which may affect an adjoining unit without the prior written approval of the adjoining unit Owner and the Board.

(e) Any and all exterior repairs, including but not limited to painting, roofing, masonry, concrete and foundation work, shall be made at the discretion and/or permission of the Board, but any and all such costs shall be the sole responsibility of each Owner.

(f) Failure to make repairs directed by the Board in writing shall result in the Board having the work done at the Owner's expense. Failure by the Owner to pay for such work done will result in the monies being recouped by the remedies provided the Association by the Declaration, Bylaws and Utah statutes, and may result in a lien being placed against the Owner's unit. Lessees of units may be directed by the Board to pay rents directly to the Association until all monies due the Association have been paid.

(g) During winter months all unit Owners shall maintain a minimum temperature of 65 degrees Fahrenheit, and units having an outside faucet shall have a shut-off valve on the inside which shall be turned off and the drain line to the outside left open. Units being left vacant for two or more consecutive weeks during the winter shall have water lines drained and turned off.

(h) Garage doors shall be kept closed when not in use.

(i) Each unit Owner shall promptly perform or cause to be performed all maintenance and repair work within any of said units owned by him which, if omitted, will adversely affect the building in which said unit is located in its entirety, or any part of the project, and shall be liable in damages for any failure on his part to do so.

(j) Each Owner shall reimburse to the Association for full value of any repairs or replacements to the common areas and facilities made necessary through the negligence or fault of such unit Owner or such unit Owner's tenants, agents, guests or employees.

12.4 Radio and TV Antennae and Satellite Dishes. No radio or TV antennae shall be installed on the outside of any building contained within the project without the prior written consent of the Board. Satellite dishes less than 32 inches in diameter may be installed in limited common areas or in other areas which may be approved by the Board. Camouflaging or other mitigating measures may be required by the Board for satellite dishes.

12.5 Pets. No dogs or cats shall be kept or harbored in Shadowbrook by anyone. Other small indoor pets which do not pose a danger to residents, such as birds and fish, may be kept with written permission by the Board. Permission may be withdrawn by the Board at any time. No Owner, occupant, visitor or neighbor may walk dogs on Shadowbrook property.

12.6 No Waiver of Strict Performance. The failure on the part of the Association to insist, in one or more instances, upon a strict performance of any of the terms, covenants, or conditions of the aforesaid Act, Declaration, record of survey map, rules, regulations, agreements, determinations, and/or these Bylaws, or to exercise any right or option therein contained, shall not constitute, nor be construed as, a waiver or

relinquishment of any other right which the Board may have thereunder or which may thereafter acquire.

ARTICLE XIII
AMENDMENTS TO BYLAWS

13.1 Amendments. Except as otherwise provided by law, by the Articles of Incorporation, by the Declaration, or by these Bylaws, these Bylaws may be amended, altered, or repealed and new Bylaws may be made and adopted by the Members upon the affirmative vote of at least 75% of the voting power of the Members of the Association; provided, however, that such action shall not be effective unless and until a written instrument setting forth (i) the amended, altered, repealed, or new bylaw, (ii) the number of votes cast in favor of such action, and (iii) the total voting power of the Members of the Association, shall have been executed and verified by the current President of the Association and such instrument has been filed with the County Recorder's Office.

These Bylaws may not be amended in a manner which is inconsistent with or conflicts with the terms of the Declaration or Articles of Incorporation of the Association, and in the event of any such amendment which is inconsistent or conflicting, the amendment shall be considered void.

IN WITNESS WHEREOF, the undersigned, constituting all of the Directors of the Shadowbrook Condominium Owners Association, Inc., have executed these Bylaws on the 3rd day of October, 2003.

Lewis L. Miller

Director

Otto R. [unclear]

Director

[unclear]

Director

Marian [unclear]

Director

Dorothy Z. Boggs

Director and President

STATE OF UTAH)
 :SS
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 2nd day of October, 2003, by Dorothy L. Boggs, the President of the Shadowbrook Condominium Owners Association, a Utah nonprofit corporation.



Michelle Thompson
NOTARY PUBLIC
Residing at: Salt Lake City
My Commission Expires: 8/1/05