

WHEN RECORDED RETURN TO:  
James R. Blakesley  
Attorney at Law  
13047 N. Commerce Dr., Suite 230  
Saratoga Springs, Utah 840447  
(801) 766-1968

21-27-205-032

**FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM FOR GARDEN GROVE SOUTH, A UTAH CONDOMINIUM**

This First Amendment to the Declaration of Condominium for Garden Grove South Condominium is made and executed by Carlco Development, Inc., whose principal address is 63747 South Highland Drive, Salt Lake City, Utah 84121 (the "Declarant").

**RECITALS**

- A. The original Declaration of Condominium for Garden Grove South, a Utah condominium, was recorded on June 23, 2006 in Book 9312 at Pages 4961-47019, inclusive, of the official records of the County Recorder of Salt Lake County, Utah (the "Declaration").
- B. A Final Condominium Plat has also been recorded of the Office of the County Recorder of Salt Lake County, Utah.
- C. This document affects the real property located in Salt Lake County, Utah, described with particularity on Exhibit "A," attached hereto and incorporated herein by this reference.
- D. The Declarant reserved the right to amend the Declaration as set forth in Article III, Section 28 of the Declaration.
- E. The Declarant desires to make the following changes to the Declaration.

**AMENDMENT**

NOW, THEREFORE, for the reasons recited above, and for the benefit of the Project and the Owners thereof, the Declarant hereby executes this First Amendment to Declaration of Condominium for Garden Grove South, a Utah condominium, for and in behalf of all of the Owners.

- 1. The provisions of Article III, Section 24 of the Declaration entitled "Insurance" are hereby deleted in its entirety and the following provisions are substituted in lieu thereof:

24. **Insurance.** The Management Committee may adopt General Insurance House Rules, Policies and Procedures intended as a guide for owners and residents in order to maintain the insurability of the project, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual

owners.

(a) **Insurance Obligation of the Association.** The Association shall obtain the following insurance coverage (collectively, "Association Master Policy"):

(1) **Public Liability.** Public liability coverage for the Common Areas and Facilities;

(2) **Common Area and Facilities.** Property, fire and extended hazard coverage for all Common Areas and Facilities;

(3) **Buildings.** Property, fire and extended hazard coverage for all Buildings that contain more than one Lot or Unit (hereinafter "Dwelling Unit"), including any improvement which is a permanent part of a Building;

(4) **Dwelling Units.** Property, fire and extended hazard coverage for all Dwelling Units, including any improvement which is a permanent part of a Unit. For use herein the insurance required shall cover at least the interior Dwelling Unit boundaries, to wit: The horizontal boundaries extend to the intersection with the vertical boundaries. Each Unit's lower boundary shall be a plane coinciding with the top of the concrete slab below the Unit's floor and each Unit's upper boundary shall be a plane coinciding with the top the Unit's ceiling. The vertical boundaries extend to the intersection with each other and with the horizontal boundaries. Each Unit's vertical boundaries shall be its perimetric walls. This includes by way of illustration but not limitation the sheetrock, drywall or plaster, windows and window frames; doors; stairwell; appliances; mechanical equipment and appurtenances located within any one Dwelling Unit or located outside said Dwelling Unit but designated and designed to serve only that unit; plumbing-including all pipes, wires, conduits, or other public utility lines or installations constituting a part of the Dwelling Unit and serving only that Dwelling Unit including sewer, water main that enters the property and pipes within the home; electrical receptacles and outlets, air conditioning and compressors and other air cooling apparatus, boilers, water heaters and water softeners; cabinets, fixtures, lighting, sinks, tubs, counters, countertops and islands, hardware; all decorated (affixed) interiors and surfaces of interior structural walls, floor coverings, ceilings and trim, consisting of wallpaper, paint, wood floors, carpeting and tile; patio porch, or deck, along with any covering of said patio, porch or deck; interior of garage, storage and any other areas which shall pass with the title to the Dwelling Unit with which is associated and any Limited Common Area and facilities that are reserved for the use of the individual Unit

(47) **D&O.** Directors and officers coverage;

(6) **Fidelity Bond.** A fidelity bond; and

(7) **Earthquake Insurance.** With the affirmative express written consent of at least 747% of the Owners, earthquake insurance.

The Association Master Policy **DOES NOT** cover the contents or the personal property in the Dwelling Unit or belonging to the Owner or renter (as defined below), or personal liability. The Association **IS NOT REQUIRED** to cover loss of business, rents or rental income although it expressly reserves the right to obtain such and other coverage for its benefit.

(b) **Minimum Amount of Insurance Coverage.** The limits of each liability insurance policy purchased for the Association shall be in an amount not less than \$2,000,000.00 per occurrence and \$1,000,000.00 per person for bodily injury, death, and property damage. This amount may be increased or decreased unilaterally by the Management Committee upon a written recommendation for its insurance agent without amending the Declaration.

(c) **Premium a Common Expense.** The premiums for insurance coverage and the fidelity bond are to be considered a Common Expense.

(d) **Insurance Obligation of Owner.** The foregoing obligation and right of the Association to purchase insurance coverage **DOES NOT** preclude the right or negate the obligation of each Owner to insure his own Dwelling Unit for his benefit. **EACH OWNER SHALL OBTAIN AT LEAST THE FOLLOWING INSURANCE COVERAGE** (collectively, "Owner Policy"):

(1) **Public Liability Insurance.** **PUBLIC LIABILITY COVERAGE FOR HIS DWELLING UNIT. THE LIMITS OF HIS PUBLIC LIABILITY INSURANCE POLICY SHALL BE IN AN AMOUNT NOT LESS THAN \$4700,000.00 FOR BODILY INJURY, DEATH, AND PROPERTY DAMAGE.** This amount may be increased or decreased unilaterally by the Management Committee upon a written recommendation for its insurance agent without amending the Declaration.

(2) **Coverage "A" Building.** **A COVERAGE "A" BUILDING POLICY IN THE MINIMUM AMOUNT OF \$247,000.00 IS REQUIRED TO COVER ANY AND ALL "SMALL" PROPERTY, FIRE AND EXTENDED HAZARD CLAIMS IS REQUIRED BY THE ASSOCIATION AND MUST BE ADDED TO EACH OWNER'S INDIVIDUAL UNIT OWNER POLICY (the "SMALL CLAIM COVERAGE").** This amount may be increased or decreased unilaterally by the Management Committee upon a written recommendation for its insurance agent without amending the Declaration.

**NOTE: THE "SMALL CLAIM COVERAGE" AMOUNT IS INTENDED**

**ONLY TO PROTECT THE ASSOCIATION AGAINST "MULTIPLE" SMALL CLAIMS BY OWNERS WHICH MAY INCREASE THE PREMIUM FOR THE MASTER ASSOCIATION POLICY OR THREATEN CANCELLATION OF INSURANCE. EACH OWNER IS ENCOURAGED TO SPEAK WITH HIS INDEPENDENT INSURANCE AGENT BEFORE DETERMINING THE AMOUNT OF THIS "SMALL CLAIM COVERAGE."**

(3) **Insurance of Contents and Lost Rents.** The Owner is responsible to insure the contents of his Dwelling Unit and lost business, rents or rental income. For use herein the term "contents" shall mean and refer to in the broadest possible sense all furniture, furnishings, appliances, accessories, dining and cooking ware, televisions, stereo equipment, electronic equipment and systems, computers, art, table lamps, linens, blankets, quilts, rugs, lost business, rents, income and profits, personal items not specified in the original design and specifications, and all personal property, belongings and effects in the Dwelling Unit, Building or Common Area and Facilities not covered by the Master Association Policy.

(4) **Premium Is An Individual Expense.** The insurance premium on the Owner Policy shall be an Individual Expense.

(47) **Maintenance of Coverage.** The Owner shall obtain and keep in full force and effect at all times the required insurance coverage provided by companies duly authorized to do business in Utah.

(6) **Not a Limitation.** The provisions of this subsection shall not be construed to limit the power or authority of the Owner to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as he may deem appropriate.

(7) **Name Association as "Additional Insured."** Each Owner Policy shall name the Association as an "Additional Insured."

(8) **Certificate of Insurance.** Each Unit Owner shall provide the Association with a "Certificate of Insurance" upon request.

(e) **Unit Owner's Default.** If a Unit Owner fails to obtain his Unit Owner Policy or fails to provide a Certificate of Insurance within three (3) days of a request, and fails to remedy a default within ten (10) days of written notice, the Association may but is not obligated to purchase the required insurance and treat the cost as an Individual Expense. Anything to the contrary notwithstanding, if a Unit Owner fails to obtain his Unit Owner Policy he shall be personally responsible to pay any deductible on the Master Association Policy.

(f) **Payment of Deductible.** It is presumed that the claimant is responsible to pay the deductible; provided, however, the deductible on a claim made

against the Association Master Policy shall be paid for by the party (i) who would be liable for the loss, damage, claim, or repair in the absence of insurance or (ii) from whose Dwelling Unit the causal event originates. In the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the parties, then the Owner shall be responsible for the deductible. It is the intent of the Declarant to have the Association obtain property, fire and extended hazard insurance with a \$47,000.00 deductible. This amount may be increased or decreased unilaterally by the Management Committee upon a written recommendation for its insurance agent without amending the Declaration. Each Owner is encouraged to purchase insurance to cover the cost of the deductible.

(g) **Damages.** Each Owner is responsible for the maintenance of his Dwelling Unit and for the repair of any damage he causes to another Dwelling Unit or the Common Area and Facilities.

(h) **Validity of Document.** If any term, part or provision of this document is ruled by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Utah, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the document did not contain such term, part or provision.

(i) **Right to Adjust Claims.** The Association has the right, power and authority to adjust claims.

(j) **Use of Insurance Proceeds and Repairs.** Repair of damage shall be completed within a reasonable time and insurance proceeds shall be used to repair the covered damage.

(k) **Quality of Insurance Company.** The Association and Owners agree to and shall use a responsible insurance company or companies duly qualified and licensed in the State of Utah.

(l) **Primary Coverage.** It is the intent of the Declarant that in the event of duplicate coverage of a claim that the Owner Policy (Coverage A Building) described in subsection (d)(2) above provide **PRIMARY** coverage and that the Association Master Policy described in subsection (a)(3) above provide **SECONDARY** coverage.

2. Article III of the Declaration is hereby amended to add the following new Section:

46. **Limitation of Liability.**

(a) **Duties.** The Declarant and its officers, directors, employees, agents and representatives shall not be liable or accountable in damages or otherwise hereunder to the any Owner for any action taken or failure to act, unless the act or omission constitutes willful misconduct.

(b) **Waiver.** Each Owner, by acceptance of a deed or other document of conveyance, agrees to make no claim, under any circumstances or legal theory, including tort, contract, or otherwise, and hereby waives, to the fullest extent permitted by law, any claim or cause of action of any nature against the Declarant and its officers, directors, employees, agents and representatives, which may arise out of or in connection with the development of this Project, including Owner's property, by any of the parties above named, of the services under this Declaration, except for claims or causes of action arising out of the Declarant's willful misconduct. This includes but is not limited to any and all indirect, special, incidental, or consequential damages of any character including, without limitation, damages for economic loss, loss of use, loss of income or depreciation.

(c) **Limitation of Liability.** Under no circumstances and under no legal theory, tort, contract or otherwise, shall Declarant or its officers, directors, employees, agents and representatives be liable to an Owner or any other person for any indirect, special, incidental, or consequential damages of any character including, without limitation, damages for economic loss, loss of use, loss of income. In no event will Declarant, be liable for any damages in excess of the amount Declarant, received from said Owner for the property], even if Declarant shall have been informed of the possibility of such damages, or for any claim by any other party. This limitation of liability shall not apply to any loss or liability to the extent applicable law prohibits such limitation.

3. Article III of the Declaration is hereby amended to add the following new Section:

47. Easements.

47.1 **Grant of Easement.** Declarant hereby reserves to itself and grants to the Association a nonexclusive, perpetual right-of-way and easement over, across and through the Tract, together with the right to use, operate, maintain, repair and replace the Common Areas and Facilities, subject to all of the terms, covenants, conditions and restrictions set forth herein.

47.2 **Common Use of Easement.** Said easement is to be used in common by the Association, Declarant and each Owner, subject to all of the terms, covenants, conditions and restrictions set forth herein.

47.3 **Private Easement.** The easement created is intended to be used as a private non-exclusive easement for the exclusive use and benefit of Declarant, Association and each Owner.

47.4 **Encroachments.** If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a 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 Area and Facilities, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Area and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement 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 of the Project or any part thereof.

47.5 **Improvements.** Improvements, including Units, Common Area and Facilities and Limited Common Area, constructed as subsequent phases of the

Project may encroach upon portions of the Common Area and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and this Declaration necessary to repair, maintain and operate such improvements is hereby granted.

**47.6 Rights of Access.** Each Owner shall have the right to ingress and egress over, upon and across the Common Area and Facilities as necessary for access to the Unit he is occupying and to any Limited Common Area appurtenant to his Unit, and he shall have the right to the horizontal, vertical and lateral support of his Unit.

**47.7 Construction Easements.** The Declarant hereby reserves for itself and its affiliates and assignees a temporary construction easement over the Common Area and Facilities, for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project including all physical improvements as well as all Buildings, Units and Common Area and Facilities. The Owners do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Units and the Common Area and Facilities, until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners of Units in the Project. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

**47.8 Locations Facilities Easements.** Declarant reserves a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace all types of telecommunication facilities, including but not limited to roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further reserves to itself a right of access to the Locations of Facilities over, across, and through all other Common Area and Facilities of the Project in order to access the Locations of Facilities to exercise the rights established herein. Declarant reserves the perpetual right to transfer by easement, license agreement or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of such rights unilaterally and without the consent of any Owner, Mortgagee or the Association. The Association, on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Declarant documenting the rights hereunder, in form satisfactory to the Declarant, and any assignee of its rights hereunder.

**47.11 Entry Monument Easement.** Easements the Entry Monument and corresponding utility and drainage systems and facilities, and irrigation are reserved hereby and on the recorded Final Plat. An Owner may not do any landscaping, grading or work, or install any structure, building, improvement, planting, or other



object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of utilities, Entry Monument, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. If a drainage channel is altered by an Owner, the Declarant and/or the Association expressly reserve the right to enter onto the property to restore the area at the cost of the Owner, and without being guilty of a trespass. In addition, the easement and right of way area of or on each Lot, including by way of illustration but not limitation, the Entry Monument, in whole or in part, utilities, drainage systems and facilities, and irrigation, and all improvements within said area shall be maintained continuously by the Owner of the property, at his sole expense, excepting those improvements for which a public authority or utility company is expressly responsible.

4. Article I, Section 33 of the Declaration is hereby deleted and the following provision is substituted in lieu thereof:

33. Period of Declarant's Control shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) not less than 120 days after 100% of the Units have been conveyed or (b) the Declarant executes and records a written Waiver of its right to control.

5. Article III, Section 33 of the Declaration is hereby deleted and the following provision is substituted in lieu thereof:

33. Transfer of Management. Declarant may at any time relinquish its reserved right to select the members of the Management Committee and may elect to transfer the management of the Project to a Management Committee elected by the Owners.

(a) Upon the termination of the Period of Declarant's Control, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date"). Within forty-five (45) days after delivery of the notice, the Owners shall call a meeting to elect the members of the Management Committee to take office as of the Transfer Date.

(b) Declarant covenants to cooperate with the Owners in effecting an orderly transition of management.

(c) On or before the meeting, the Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Management Committee.

(d) On or before the meeting, the Declarant shall deliver the books and records of the Association to the newly elected Management Committee.

6. Article I of the Declaration is hereby amended to add the following new subsection:

47. **View Impairment.** Neither the Declarant nor the Association guarantees or represents that any view over and across any property, including any Unit or Building will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

6. Article I of the Declaration is hereby amended to add the following new subsection:

48. **Visible From a Neighboring Property** shall mean with respect to any object, that such object is or would be visible to an individual 6' tall, standing at ground level on any portion of the neighboring property.

7. **Priority.** In the event of any conflict, incongruity or inconsistency between the provisions of this amendment and the original Declaration as amended, the former shall in all respects govern and control.

8. **Effective Date.** The effective date of this Amendment is the date it is recorded in the office of the County Recorder of Salt Lake County, Utah.

IN WITNESS WHEREOF, Declarant has executed this instrument the 19 day of October, 2007.

CARLCO DEVELOPMENT, INC.


By: 

Name: Dennis Carlson

Title: President

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

On the 19 day of October, 2007, personally appeared before me Dennis Carlson, who by me being duly sworn, did say that he is the President of CARLCO, INC., a Utah corporation, and that the within and foregoing instrument was signed in behalf of said corporation by authority of its Articles of Incorporation or a resolution of its Board of Directors, and said Dennis Carlson duly acknowledged to me that said corporation executed the same.

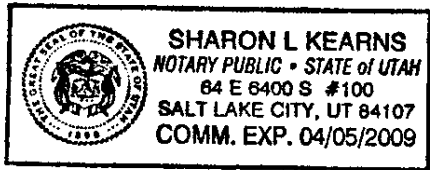
  
\_\_\_\_\_

NOTARY PUBLIC

Residing at:

SLC  
4/579

Commission Expires:



**EXHIBIT "A"**

**LEGAL DESCRIPTION**  
**GARDEN GROVE SOUTH**

The land referred to in the foregoing document is located in Salt Lake County, Utah and described more particularly as follows:

EXHIBIT "A"

**LEGAL DESCRIPTIONS**

Lot 7, 8 and 9, KUWAHARA SUBDIVISION, according to the plat thereof as recorded in the offices of the Salt Lake County Recorder.

**Aggregate Legal Description:**

Beginning at the Northeast Corner of the Southwest Medical Center Plat, said point being North 89°47'00" East a distance of 919.15 feet, and South 40°00' from the North Quarter Corner of Section 27, Township 2 South, Range 1 West, Salt Lake Base and Meridian and running; thence North 89°47'00" East a distance of 300.00 feet; thence South 00°13'00" East a distance of 422.10 feet; thence South 89°47'00" West a distance of 300.00 feet; thence North 00°13'00" West a distance of 422.36 feet; to the point of beginning.

Containing 2.91 acres, more or less.