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RECORDER, SALT LAKE COUNTY, UTAH

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141 E 2ND AVE #501

SALT LAKE CITY UTAH 84103

BY: EEA, DEPUTY - WI 57 P.

**SECOND AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM**

FOR

**GARDEN TOWERS CONDOMINIUMS,
a Utah condominium project**

located in

Salt Lake City, Salt Lake County, Utah

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**SECOND AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR
GARDEN TOWERS CONDOMINIUMS**

This Second Amended and Restated Declaration of Condominium of Garden Towers Condominiums (this “**Declaration**”) is made as of 11.9., 2018, by the Garden Towers Condo-Owners Corporation, a Utah nonprofit corporation (the “**Association**”).

RECITALS

- A. Garden Towers Condominiums, a Utah condominium project more particularly described on Exhibit A attached hereto (“**Garden Towers**”), is subject to that certain Amended and Restated Declaration of Covenants, Conditions, and Regulations of the Garden Towers Condo-Owners Corporation, recorded in the official records of Salt Lake County on September 2, 2008, as Entry No. 10511787, in Book 9639, at Page 6634 (the “**2008 Declaration**”).
- B. The Association is the association of unit owners governing Garden Towers.
- C. Pursuant to a vote of the Owners (as defined herein) , the Association has determined to amend and restate the 2008 Declaration in its entirety.

NOW, THEREFORE, this Declaration amends, restates, supersedes and replaces, in their entirety, (i) that certain Declaration of Condominium of Garden Towers Condominium, recorded in the official records of Salt Lake County on December 15, 1981, as Entry No. 3631766, in Book 5322, at Page 1426 (the “**1981 Declaration**”); (ii) the 2008 Declaration; and (iii) all amendments, supplements, and modifications thereto, as follows:

- 1. **DEFINITIONS** As used herein, the following terms shall have the meanings given them below:

“**Act**” shall mean the Utah Condominium Ownership Act, Utah Code Sections 57-8-1, *et seq.*, as the same may be amended from time to time.

“**Allocated Share**” shall mean, with respect to any Unit, the percentage of the total interests in the Common Areas allocated to such Unit, as set forth in Exhibit B attached hereto.

“**Assessments**” means Regular Assessments, Special Assessments, and Default Assessments, as such terms are defined in Section 12.4 hereof, and any other charge imposed or levied by the Association against an Owner, including but not limited to those for the payment of Common Expenses as well as miscellaneous assessments for capital improvements and for the purpose of restoring and reconstructing Garden Towers in the event of casualty, all as provided in this Declaration.

“Association” shall mean Garden Towers Condo-Owners Corporation, a Utah nonprofit corporation, which comprises all of the Owners acting as a group in accordance with the Act and the Governing Documents.

“Articles” shall mean the articles of incorporation of the Association.

“Board” shall mean the board of directors of the Association, which shall be the “management committee” of Garden Towers, as such term is defined in the Act.

“Building” shall mean the building described in Section 3.1.

“Bylaws” shall mean the bylaws of the Association, a copy of which is attached hereto as Exhibit C, as the same may be amended from time to time.

“Capital Improvement Ceiling” shall have the meaning ascribed to such term in Section 12.5(a) of this Declaration.

“Common Areas” shall mean all portions of Garden Towers which are not contained within Units, including but not limited to:

(a) the land described on Exhibit A attached hereto;

(b) all foundations, columns, girders, beams, supports, mainwalls, roofs, stairways, exterior walkways, driveways, streets, yards, fences, the basement, the service and exits, and in general all other apparatus, installations, and other parts of Garden Towers necessary or convenient to the existence, maintenance and safety of the Common Areas or normally in common use;

(c) the rooftop garden as it may exist at any time;

(d) those areas specifically set forth and designated in the Map as “Common Ownership”; and

(e) all Common Areas as defined in the Act, whether or not expressly listed herein.

“Common Expenses” shall mean all expenses incurred by the Association in accordance with the Act and the Governing Documents, including but not limited to the following:

(a) Expenses of operation (including utilities and services), administration, management, maintenance, repair or replacement of the Common Areas, including a reasonable reserve for the periodic maintenance, repair and replacement of the Common Areas;

(b) Premiums for the insurance obtained by the Board pursuant to Article 11 hereof;

(c) Any other cost, expense or fee properly incurred by the Board in connection with the performance of its obligations under the Governing Documents;

(d) Other expenses agreed on as Common Expenses by a majority of the Owners; and

(e) Other expenses declared Common Expenses by the Act or this Declaration.

“Condominium Unit” shall mean a Unit together with the Allocated Share in the Common Areas appurtenant to such Unit.

“Covered Loss” shall have the meaning ascribed to such term in Section 11.7(b) of this Declaration.

“Default Assessment” shall have the meaning ascribed to such term in Section 12.4(c) of this Declaration.

“Eligible Mortgagee” shall have the meaning ascribed to such term in Section 18.2 of this Declaration.

“Enclosed Limited Common Area” shall have the meaning ascribed to such term in Section .

“Garden Towers” shall have the meaning given it in the Recitals, and as used herein, shall include the Units and the Common Areas, including the Limited Common Areas.

“Governing Documents” means this Declaration, the Articles, the Bylaws, and the Rules, collectively.

“Insurance Trustee” shall have the meaning ascribed to such term in Section 11.9 of this Declaration.

“Limited Common Areas” means those portions of the Common Areas designated in this Declaration or the Map as reserved for the use of a certain Unit or Units to the exclusion of the other Units.

“Map” shall mean and refer to the Record of Survey Map of Garden Towers Condominium recorded in the official records of Salt Lake County concurrently with the recordation of the 1981 Declaration.

“Mortgage” shall mean a deed of trust, mortgage, or other security instrument, recorded in the official records of Salt Lake County, Utah, encumbering a Unit.

“Mortgagee” shall mean a mortgagee under a Mortgage, a beneficiary under a deed of trust, and a beneficiary under any indenture secured by a security interest on any Condominium Unit.

“Notice of Lien” shall have the meaning ascribed to such term in Section 13.5(a) of this Declaration.

“Occupant” shall mean a person or persons, other than an Owner, in possession of, using, entering into, or living in a Unit, including, without limitation, family members, tenants, guests or invitees. Occupants shall include any trespassers in a Unit if the Owner fails to secure the Unit against trespass, fails to take all action necessary and appropriate to remove trespassers immediately upon notice of the trespass, or fails to take reasonable measures to be made aware of any unauthorized Occupants in the Unit or any unauthorized entry and use of the Unit.

“Owner” shall mean the person who is, or the persons who are, the owner of record of a Unit in fee simple as shown in the official records of the Salt Lake County Recorder. The term “Owner” does not mean a person obligated to purchase a Unit pursuant to a so-called earnest money agreement, contract for deed or other agreement for the purchase of a Unit and shall not refer to any mortgagee (unless such mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Unit under contract (until legal title is conveyed of record to such person or persons).

“Owner’s Area of Control” shall have the meaning ascribed to such term in Section 4.3 of this Declaration.

“Rules” shall mean such rules and regulations pertaining to the use and operation of the Units and the Common Areas as may be promulgated by the Board from time to time.

“Special Assessment” shall have the meaning ascribed to such term in Section 12.4(b) of this Declaration.

“Trust” shall have the meaning ascribed to such term in Section 7.3(e) of this Declaration.

“Unit” shall mean any of the separately numbered and individually described units now or hereinafter shown on the Map as they are specifically defined on the Map and herein. The interior portions of the Units are bounded by the interior surfaces of the walls, floors, and ceilings, along the perimeter boundaries of such interior portions, together with all fixtures and improvements contained within such interior portions. Windows and exterior doors in or to a Unit shall be part of the Unit. Paint and other wall, ceiling and floor coverings on interior surfaces shall be deemed to be a part of the Unit. Notwithstanding the fact that they may be within the boundaries of a Unit, the following are not part of a Unit insofar as they are necessary for the support or the use and enjoyment of another Unit, and shall be part of the Common Areas: (a) bearing walls; (b) common walls, floors and ceilings between Units or between a Unit and a portion of the Common Areas (except for the paint, floor coverings, and other interior surface finishes of walls, floors and ceilings, which interior surface finishes shall be part of the Unit, as described above); (c) roofs; (d) foundations; (e) ceiling equipment; and (f) tanks,

pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets of any of the foregoing when located within a Unit.

“**Unit Damage**” shall have the meaning ascribed to such term in Section 11.7(b) of this Declaration.

“**Unit Damage Percentage**” shall have the meaning ascribed to such term in Section 11.7(b) of this Declaration.

“**Unit Number**” shall mean the number designating the Unit in this Declaration and in the Map.

Those definitions contained in the Act, to the extent they are applicable to this Declaration and not inconsistent herewith, shall be and are hereby incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part thereof.

2. **SUBMISSION TO ACT; COVENANTS TO RUN WITH THE LAND.** It is the intention of the Association and this Declaration that the Act shall apply to Garden Towers and all portions thereof. The covenants, conditions, and restrictions contained in this Declaration shall be enforceable as equitable servitudes which shall run with the land, and this Declaration and its servitudes shall be binding upon the Association, its successors and assigns, and upon all Unit Owners or subsequent Unit Owners, their grantees, mortgagees, successors, heirs, executors, administrators, devisees and assigns.

3. **DESCRIPTION OF PROPERTY; PURPOSE.**

3.1 **Description of Improvements.** The significant improvements contained in Garden Towers consist of a nine-story concrete building. The first two levels of the building contain parking stalls and storage areas for the Units. The third level contains five Units designated as Units 301, 303, 304, 305, 306, together with a common room that is part of the Common Areas. Each of the fourth, fifth, sixth, seventh, and eighth levels contains six Units designated as Units 401-406; 501-506, etc. The ninth level contains four Units designated as Units 901-904, and the roof of the building is part of the Common Areas. These improvements are more particularly described and depicted on the Map, which contains diagrammatized floor plans.

3.2 **Description of Units.** The Map shows the Unit Number of each Unit, its location, its square footage, and the Limited Common Areas that are appurtenant to such Unit.

3.3 **Description of Limited Common Areas.** Without limiting the definition of Limited Common Areas set forth in Article 1, the Limited Common Areas appurtenant to any given Unit shall include the balcony(ies) adjacent to such Unit and at least one (1) parking space.

3.4 **Parking Spaces.** All parking spaces have been officially identified as being appurtenant to a specific Unit. There are no additional parking spaces available. If an Owner owns more than one (1) parking space, such Owner may enter into an agreement allowing another Owner to use a parking space. Under no circumstances shall a parking space be made available for the use of anyone other than an Owner or Occupant of a Unit.

3.5 **Nature of Units.** Each Condominium Unit shall for all purposes constitute real property and may be individually conveyed, leased, encumbered, inherited or devised by will. Any Condominium Unit may be held and owned by more than one (1) person as joint tenants, as tenants in common or in any other real property tenancy relationship recognized under the laws of the State of Utah. Each Owner shall be entitled to the exclusive ownership and possession of such Owner's Unit and, to the extent applicable, the exclusive use of any Limited Common Areas appurtenant only to such Owner's Unit subject to the provisions of this Declaration. Each Owner may separately mortgage or otherwise encumber such Owner's Condominium Unit, provided that each Mortgage of any Condominium Unit shall be subordinate to this Declaration. No Owner may mortgage or otherwise encumber the Common Areas, except to the extent of the Allocated Share appurtenant to its Unit.

3.6 **Nature of Allocated Shares.** Each Owner shall be entitled to an Allocated Share in the percentage expressed in the attached Exhibit B. Each Owner may use the Common Areas on a nonexclusive basis, but only in accordance with the purposes for which they were intended, subject to the Governing Documents. Neither an Allocated Share nor the right of exclusive use of any Limited Common Areas shall be separated from the Unit to which it is appurtenant. The Common Expenses shall be charged to, and the voting rights shall be available to, the Owners in the same percentages as their respective Allocated Shares.

4. **RESTRICTION ON USE.** The Units and the Common Areas shall be subject to the restrictions set forth in this Declaration and in the Rules, including but not limited to the following.

4.1 **Single Family Use.** Each Unit is intended to be used for single family residential housing, and is restricted to such use. No person shall use any portion of Garden Towers for commercial purposes or to conduct a business of any kind, except that a Unit may be used for "home office" purposes so long as no clients, customers, or suppliers enter Garden Towers in connection therewith. No Unit may be further divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to joint tenancy, tenancy in common, or other form of joint undivided ownership).

4.2 **Prohibited Uses.** No Owner shall do or permit anything to be done in its Unit which may: (a) increase the existing rate or violate the provisions of any insurance carried with respect to Garden Towers; (b) create a public or private nuisance, commit waste or unreasonably interfere with, annoy or disturb any other Owner or occupant of Garden Towers; (c) overload the floors or otherwise damage the structure of Garden Towers; (d) violate any law, ordinance, regulation or requirement; or (e) otherwise detract from the appearance or value of Garden Towers.

4.3 **Telecommunications Equipment.** No radio or television antennae, satellite dish receiver, or other telecommunications equipment or facilities ("**Telecommunications Equipment**") may be placed by an Owner in any area other than within the Owner's Unit or Limited Common Areas appurtenant to the Owner's Unit (the "**Owner's Area of Control**"), and may not extend outside of the Owner's Area of Control, without the prior consent of the Board, which consent may be withheld in the sole discretion of the Board. Telecommunications Equipment placed within an Owner's Area of Control that is visible from the exterior of the

Building or from any other Unit may be subject to reasonable screening requirements to protect the aesthetics of the Building, which requirements shall be consistent with applicable governmental regulations and shall not significantly impair the functionality of the Telecommunications Equipment. If a satellite dish is used, such dish shall be installed in such a manner that it will not be accidentally dislodged or pose a safety hazard to any person. No Telecommunications Equipment may be affixed to any exterior railing or the exterior of the Building without the prior written consent of the Board. Any damage to property or injury to persons caused by any Telecommunications Equipment shall be the responsibility of the Owner of the Unit in or for which the Telecommunications Equipment was installed.

4.4 No Smoking or Noxious Odors; No Unreasonable Noise. There shall be no smoking inside any Unit or any other portion of the Building or anywhere on Garden Towers property, and each Owner shall keep such Owner's Unit free of objectionable noises and odors, including, without limitation, cigarette, cigar, pipe and similar smoke odors. Without limiting the generality of the foregoing, no Occupant of any Unit shall engage in any activity that generates unreasonable noise within a Unit that is audible within any other Unit.

4.5 No Noxious Activities. No noxious activity shall be carried on in any part of Garden Towers, nor shall anything be done therein, either willfully or negligently, which may be or become a nuisance to the other Owners or Occupants.

4.6 No Structural Impairment. Nothing shall be done in, on, or to any part of Garden Towers which will impair the structural integrity of the Building or any part thereof or which would structurally change the Building or any part thereof except as is otherwise provided herein.

4.7 No Loitering. Children shall not be permitted to loiter or play on the stairways or in the halls, lobbies, elevators, parking ramps, or any other Common Areas.

4.8 No Pets. No dogs, cats, reptiles, animals, or pets of any kind are permitted in any Unit or in any other part of the Common Areas. Notwithstanding the foregoing, the Association shall grant reasonable accommodations for service or emotional support animals when necessary to afford persons with disabilities the equal opportunity to use and enjoy housing at Garden Towers to the full extent required by applicable law, in accordance with the Rules and Regulations of Garden Towers, provided however that such permitted animals shall be allowed in the owner's unit, and may be in the Common Areas solely for the purpose of exiting the building, and then returning to the owner's unit. In no case are such animals permitted on the Roof Garden, or in the Social Room.

5. PERSONS TO RECEIVE SERVICE OF PROCESS. The person to receive service of process in the cases provided herein or in the Act shall be the registered agent of the Association.

6. OWNERSHIP OF UNITS AND COMMON AREAS.

6.1 Ownership of a Unit. Except with respect to any of the Common Areas located within the bounds of a Unit, each Owner shall be entitled to the exclusive ownership and possession of such Owner's Unit and to the ownership of the Allocated Share appurtenant to such Unit.

6.2 Ownership of Common Areas. The Common Areas contained within Garden Towers shall be owned by the Owners as tenants in common. No undivided interest in the Common Areas shall be separated from the Unit to which such undivided interest appertains. Additionally, each Allocated Share shall be conveyed or encumbered with the conveyance or encumbrance, respectively, of the Unit, even though such interest is not expressly mentioned or described in the conveyance or other instrument. The Common Areas shall remain undivided, and no Unit Owner may bring any action for partition or division of any part thereof while Garden Towers is subject to this Declaration. Any covenant to the contrary is void.

7. LEASING RESTRICTIONS.

7.1 Restriction on Leasing or Rentals. Subject only to exceptions expressly set forth in this Article 7, no Owner may rent or lease such Owner's Unit, and any attempt by an Owner to rent or lease a Unit except as in compliance with this Article 7 shall be void. The Association, by rule or resolution, shall create procedures to determine and track the number of leased Units at any given time and to ensure consistent administration and enforcement of the rental restrictions contained in this Article 7.

7.2 Definition of Lease or Rental. For purposes of this Article 7, and in accordance with Section 57-8-10.1 of the Act, a Unit shall be deemed to be "leased" or "rented" if: (i) the Unit is owned by an individual or individuals and is occupied by someone while no Owner occupies the Unit as the Owner's primary residence; (ii) the Unit is owned by a trustee acting as the trustee of a Trust or other entity created for estate planning purposes, regardless of who occupies the Unit; or (iii) the Unit is owned by a business entity, regardless of who occupies the Unit.

7.3 Exceptions. Notwithstanding anything to the contrary herein, in accordance with and to the extent provided by Section 57-8-10.1(2) of the Act, the following leases shall not be prohibited by this Article 7:

- (a) a lease by an Owner in the military for the period of the Owner's deployment;
- (b) a lease by an Owner to the Owner's parent, child, or sibling;
- (c) a lease by an Owner whose employer has relocated the Owner for no more than two (2) years;
- (d) a lease of a Unit owned by an entity to an individual who: (1) has voting rights under the entity's organizing documents; and (2) has a twenty-five percent (25%) or greater share of ownership, control, and right to profits and losses of the entity; or
- (e) a lease of a Unit owned by a trust or other entity created for estate planning purposes (or by a trustee acting as trustee of such trust or other entity) (as applicable, a "Trust") if the Trust was created for the estate of: (1) a current resident of the Unit; or (2) the parent, child, or sibling of the current resident of the Unit. This means, among other things, that a Unit owned by a Trust qualifies for the exemption set forth in this Section

7.3(e) only if the Occupant of the Unit is at the time of such occupancy (1) the person for whose estate the Trust was created, or (2) the parent, child, or sibling of that person.

7.4 Exception for Current Rentals. Notwithstanding anything to the contrary herein, and in accordance with Section 57-8-10.1 of the Act, an Owner whose Unit was rented on the date on which the original Declaration was recorded in the Official Records of Salt Lake County will be grandfathered in and may continue renting until the Owner either transfers ownership of the Unit or again occupies the Unit. If a Unit is owned by a business entity, then, for purposes of this Article 7, the Owner shall be deemed to have transferred ownership of the Unit if more than seventy-five percent (75%) of the ownership interest in such entity is transferred within a five-year period.

7.5 Hardship Exception. Notwithstanding anything to the contrary herein, the Board shall retain the discretion to grant an exception to the rental restrictions set forth in this Article 7 to avoid undue hardship, as determined by the Board in its sole discretion. Such an exception shall be strictly on and subject to the terms and conditions imposed by the Board, including, but not limited to, terms and conditions limiting the duration of any such exception. For purposes of clarification, and not in limitation of the Board's discretion, increased taxes which may be payable due to the timing of the sale of a Unit shall not constitute undue hardship. A decision of the Board as to whether to grant an exception will be final.

7.6 Lease Requirements. Any lease permitted under this Article 7 shall be in writing, and each lease shall expressly require the tenant to comply with all the provisions of the Governing Documents and shall provide that failure to so comply will constitute a default under the lease. Notwithstanding anything in any lease permitted hereunder, the Owner shall remain responsible for payment of all Assessments, including any fines levied as a result of violations of the Governing Documents by a tenant, and no Owner may delegate voting rights in the Association to a tenant. No lease permitted hereunder shall be for a period of less than thirty (30) days or pertain to less than an entire Unit.

7.7 Remedies for Violation. If an Owner rents or leases a Unit in violation of this Article 7, or fails to comply with a condition imposed under Section 7.5, the Board may:

- (a) assess fines against the Owner in an amount to be determined by the Board pursuant to a schedule of fines adopted by the Board;
- (b) require the Owner to terminate the rental or lease agreement and to evict the tenant; and
- (c) regardless of whether any fines have been imposed, proceed with any other available legal remedies available to the Association under the Governing Documents, the Act, or otherwise, including, without limitation, an action to require the Owner to terminate the rental or lease agreement and evict the tenant.

7.8 Costs and Attorney Fees.

- (a) In the event of a violation by a tenant of any provision of the Governing Documents, any fines levied for such violation and all charges and expenses incurred by

the Association in enforcing the Governing Documents against such tenant, including any costs incurred by the Association in connection with any action under Section 7.7, including reasonable attorneys' fees, shall constitute Assessments against the Owner and the Unit, which may be collected and foreclosed by the Association as provided under Section 57-8-44 of the Act.

(b) In addition to the Assessment under Section 7.8(a), the Association is entitled to recover from an Owner determined by the Board to be in violation of this Article 7 its costs and attorneys' fees incurred for enforcement of this Article 7, regardless of whether any lawsuit or other action is commenced. The Association may assess the costs and attorneys' fees against the Owner and the Unit as an Assessment pursuant to Section 57-8-44 of the Act.

7.9 Adoption of Rules. The Board shall adopt by resolution rules, consistent with this Article 7, which establish the process for review and approval or denial of applications for hardship exceptions submitted under Section 7.5 and any other rules deemed necessary by the Board to implement this Article 7. The rules so adopted may, among other things:

(a) require that the rental or lease agreement contain specific provisions regarding compliance by the tenant or lessee with the Governing Documents, and remedies for violation of the same; and

(b) require the owners to provide the tenant copies of the Governing Documents, and to provide the Association a receipt evidencing such delivery.

8. THE ASSOCIATION AND THE BOARD.

8.1 Voting; Multiple Ownership. The vote attributable to and exercisable with a Unit shall be the same percentage as the Allocated Share appurtenant to such Unit. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine amongst themselves. The vote cast at any meeting by any of such Owners as shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

8.2 Authority of the Board of Directors. Subject to the provisions of the Act and the Governing Documents, the business, property, and affairs of Garden Towers shall be managed, operated, and maintained by the Board on behalf of the Owners. The cost of such maintenance and all costs incurred by the Board in performing its obligations under the Governing Documents and the Act shall be part of the Common Expenses. The Board, acting on behalf of the Association, shall be vested with, and shall have the following authority and powers, in addition to all other rights, authority and powers granted to it under the Act and the Governing Documents, provided that in taking any such actions, the Board shall be acting for the Association:

(a) To acquire and hold real and personal property (in the name of the Association) of all types for the use and benefit of all of the Owners and to dispose of such property by sale or other method;

(b) To obtain and pay for the services of such personnel as are necessary or appropriate for the proper operation, management, maintenance, repair and replacement of Garden Towers;

(c) To pay for services, insurance and goods common to the Units;

(d) To grant or create (and/or to relocate), on such terms as it deems advisable, reasonable permits, licenses, rights-of-way and easements over, under, across and through the Common Areas and/or Limited Common Areas for utilities and other purposes reasonably necessary or useful for the proper operation and maintenance of Garden Towers, and granting easements for access and support to adjoining property owners;

(e) To execute and record, on behalf of the Owners, any amendment to this Declaration, the Bylaws, or the Map, that has been approved by the vote or consent necessary to authorize such amendment;

(f) To sue and be sued;

(g) To levy and collect Assessments for the payment of Common Expenses as provided in Article 12;

(h) To make such use of the Common Areas, including the Limited Common Areas, as may be necessary or convenient to perform the duties and functions that the Board is obligated to perform pursuant to this Declaration; and

(i) To perform any other acts and to enter into any other transactions which may be reasonably necessary for the Board to perform its functions on behalf of the Owners.

8.3 Election of Board. The Board shall consist of not less than five (5) members, who shall be elected by a vote of the Unit Owners in accordance with the Bylaws.

8.4 Qualifications.

(a) Only natural persons in one of the categories described below may be members of the Board:

(i) a Unit Owner;

(ii) the spouse of a Unit Owner;

(iii) the Occupant of a Unit owned by a Trust if the Occupant is a person described in Section 7.3(e).

(iv) the trustee of a Trust which owns a Unit; and

(v) the Occupant of a Unit owned by an entity if the Occupant is a person described in Section 7.3(d).

(b) No more than two (2) persons not actually living in Garden Towers can serve on the Board at any given time.

8.5 Right of Association to Enter Units. The Association, acting through the Board or its duly authorized agent, shall have the right at all times upon reasonable notice (and at any time in case of an emergency) to enter upon or into any Unit, and in connection therewith shall further have the right to assess all costs incurred against the applicable Owner, such Assessment to be secured by lien provided in Section 12.1.

8.6 Rules. The Board may adopt and administer reasonable Rules for the regulation and operation of Garden Towers. The Rules may address any issues, including those addressed in this Declaration and the Bylaws. The Rules may supplement, clarify, and add detail to issues otherwise addressed in this Declaration and the Bylaws so long as they do not contradict the same. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive.

8.7 Remedies Available to the Board. In addition to any other remedies allowed or provided in this Declaration for any violation of the Declaration, Bylaws, or Rules, the Board may:

(a) impose fines for violation of the Declaration, Bylaws, or Rules, in an amount to be determined by the Board pursuant to a schedule of fines adopted by the Board;

(b) terminate the Owners' rights to receive utility services paid as a Common Expense;

(c) terminate Owners' rights to access and use recreational facilities; and

(d) take any other action or seek any other remedy allowed by the Act or other applicable Utah law. All such actions shall be conducted in accordance with any requirements in the Act, if any, and any other applicable law, if any.

8.8 Reserve Fund. The Association shall maintain a reserve fund for maintenance, repair, and replacement of the Common Areas and the Limited Common Areas. The Board shall cause a reserve analysis to be performed by a person qualified to perform such an analysis, and shall have such analysis updated, at such intervals as may be required by the Act. Such reserve analysis shall be for the purpose of estimating the need for reserve funds to pay the cost of repairing, replacing, or restoring Common Areas that have a useful life of three (3) years or more and a remaining life of less than thirty (30) years, and shall include:

(a) a list of the components identified in the reserve analysis that will reasonably require reserve funds;

(b) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis;

(c) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis;

(d) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and

(e) a reserve funding plan that recommends how the Association may fund the annual contribution described in Section 8.8(d).

The Association shall provide a summary of the most recent reserve analysis (as updated, if applicable) to each Owner at least once per year, and a copy of the full reserve analysis to any Owner upon request. Each annual budget shall include a line item for deposits into the reserve funds, in an amount as determined by the Board to be prudent based on the most recent reserve analysis or update, and such line item shall be included in the regular Assessments levied in accordance with this Declaration.

8.9 Garden Towers Documents, Books, and Records.

(a) The Board shall keep accurate records in chronological order of the receipts and expenditures of the Association. Such records shall be available for examination by the Owners at convenient hours on weekdays. The Board shall maintain up-to-date records showing (a) the name of each person who is an Owner, the address of the Unit owned by such Owner, and the mailing address and electronic mail address (if any) of such Owner; and (b) the name and address of each Eligible Mortgagee and the Unit that is encumbered by such Eligible Mortgagee.

(b) On any transfer of a fee interest in a Condominium Unit, the transferee shall furnish the Board with evidence that the transfer has occurred and that the deed or instrument of conveyance is of record in the County Records. The Board may rely on such information or, at its option, on current ownership information that is obtained from the official records of Salt Lake County. The mailing address of an Owner shall be deemed to be the address of the Unit owned by such Owner unless such Owner provides written notice to the Association of a different mailing address.

(c) The Association shall make available for inspection on request during normal business hours or under other reasonable circumstances to Owners and Eligible Mortgagees, current copies of the Governing Documents and the books, records and financial statements of the Association. The Association will maintain current copies of the Governing Documents and the Association's own books, records, and financial statements available for inspection, upon request, during normal business hours by any Owner or Eligible Mortgagee (or any insurer or guarantor of an Eligible Mortgagee).

8.10 Managing Agent. The Board may contract with a professional management agent to assist the Board in the management and operation of Garden Towers and may delegate such of its powers and duties to the management agent as it deems appropriate; provided, however, that only the Board shall have the right to approve the Association budgets and make Assessments. The Board may revoke any powers and duties delegated to any management agent at any time, with or without cause. Any management agreement must be terminable without penalty and with or without cause upon thirty (30) days' notice and have a term not to exceed two (2) years, which term may be renewed by the Board.

8.11 Hearing before the Board. The Board shall have the authority to create a reasonable hearing process applicable in case the Board or the Association shall take adverse action related to any particular Owner or group of Owners. The Board shall not be under any obligation to offer a hearing process, except as required by the Act or by this Declaration, and in any such process, except as required by law or by this Declaration, shall have the absolute authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process.

8.12 Liability. No member of the Board or any officer of the Association shall be liable to the Owners for any mistake of judgment, for negligence or on other grounds, except for such member's own willful misconduct, gross negligence, bad faith or more culpable conduct, subject to the following:

(a) Members of the Board and officers of the Association: (i) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as Board members or officers; and (ii) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts or omissions in their capacity as Board members, except for their own willful misconduct, gross negligence, bad faith or more culpable conduct, and (iii) shall have no personal liability arising out of the use, misuse or condition of Garden Towers which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as members of the Board.

(b) Without limiting the generality of subsection (a) above, and notwithstanding any provision of the Governing Documents to the contrary, neither the Board, the Association, nor any member of the Board shall be liable for any loss, injury, death or damage (including any consequential damage) to persons, property or business resulting from any theft, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, order of governmental body or authority, fire, explosion, falling object, steam, water, rain, snow, ice, breakage, leakage, obstruction or other defects of utility equipment, appliances, plumbing, air conditioning or lighting fixtures, construction, repair or alteration of Garden Towers or other cause beyond such person's reasonable control.

9. EASEMENTS AND RIGHT OF ENTRY.

9.1 **Access to Units.** The Association and its duly authorized agents and contractors shall have a non-exclusive easement and the irrevocable right to have access to each Unit and to all Common Areas, including Limited Common Areas, at reasonable times and under reasonable circumstances as may be necessary for (a) the maintenance, repair, replacement and cleaning of the Common Areas (including the Limited Common Areas); or (b) making emergency repairs necessary to prevent damage to the Common Areas or to any Unit; provided that the Board shall make a reasonable effort to provide notice to the occupant(s) of the Unit prior to entry. Such entry shall be made so as to minimize the inconvenience caused thereby, and the cost to repair any resulting damage shall be a Common Expense. In addition, the Association and its duly authorized agents and contractors shall have the right to enter any Unit to abate or correct any violation of any of the provisions of the Governing Documents by the Owner or Occupant of such Unit, and the cost of any such abatement or correction shall be charged to such Owner as a Default Assessment.

9.2 **Encroachments.** In the event that, by reason of the construction, reconstruction, repair, settlement, movement, or shifting of any part of the Building, any part of the Common Areas, or any Unit, encroaches or shall hereafter encroach upon any part of any other Unit or any part of the Common Areas, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and the Common Areas, as the case may be, so long as all or any part of the Building shall remain standing; provided, however, that in no event shall a valid easement or any encroachment be created in favor of any Unit Owner or in favor of the Unit Owners as owners of the Common Areas if such encroachment occurred due to the willful conduct of such Unit Owner or Owners.

10. **DESTRUCTION; DAMAGE; CONDEMNATION.** In the event of a destruction or damage by fire or other disaster or a condemnation of part of all of the improvements of Garden Towers, the procedures of this Article 10 shall apply.

10.1 **Definitions.** As used herein, each of the following terms shall have the meaning indicated:

“**Available Funds**” means any proceeds of insurance, Condemnation awards, payments in lieu of Condemnation and other uncommitted funds held by the Board, including amounts contained in any reserve or contingency fund. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a Mortgagee, or that portion of any Condemnation award or payment in lieu of Condemnation payable to an Owner or its Mortgagee for the Condemnation of the Condominium Unit in which it is interested.

“**Condemnation**” means any action or proceeding in which any interest in Garden Towers is taken for any public or quasi-public purpose by any lawful authority through exercise of the power of eminent domain or by purchase or other means in lieu of such exercise.

“**Estimated Cost of Restoration**” means the estimated cost of Restoration as determined by the Board in its sole discretion.

“Partial Condemnation” means the occurrence of any Condemnation that is not a Substantial Condemnation.

“Partial Destruction” means the occurrence of any damage or destruction to Garden Towers that is not a Substantial Destruction.

“Restoration” means restoration of Garden Towers to the extent reasonably possible in accordance with this Declaration, the Map, and the original plans and specifications for Garden Towers and to substantially the same condition in which Garden Towers existed prior to the damage or destruction concerned (except to the extent such original plans and specifications or the original condition are impracticable or not in conformance with current laws, ordinances, building codes or other governmental rules or regulations then in effect, in which event Restoration shall be of a kind and quality substantially equivalent to the original construction of Garden Towers), with each Unit and the Common Areas having the same vertical and horizontal boundaries as before, and to the extent not so possible, “Restoration” means restoration of Garden Towers to an attractive, sound and desirable condition. Notwithstanding anything to the contrary in this Declaration, “Restoration” shall not include the restoration, reconstruction or repair by the Association of any portion of any Enclosed Limited Common Area, except that the Association shall restore such Limited Common Areas as originally constructed, prior to enclosure.

“Restored Value” means the value of Garden Towers after Restoration.

“Substantial Condemnation” means the occurrence of: (a) the Condemnation of all of Garden Towers; or (b) the Condemnation of part of Garden Towers where the Estimated Costs of Restoration is 75% or more of the estimated Restored Value.

“Substantial Destruction” means the occurrence of any damage or destruction of Garden Towers where the Estimated Cost of Restoration is 75% or more of the estimated Restored Value.

10.2 Board Determinations and Actions.

(a) On the occurrence of any Condemnation of, or damage or destruction to, Garden Towers, the Board shall ascertain (i) the Estimated Cost of Restoration by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds, and (ii) whether the Estimated Cost of Restoration is seventy-five percent (75%) or more of the estimated Restored Value. In making such determinations, the Board may (but is not obligated to) retain and rely on one or more qualified appraisers or other professionals.

(b) The Board shall determine the amount of Available Funds..

(c) Pursuant to Section 57-8-30 of the Act, if the Available Funds are sufficient to complete Restoration, the Board shall proceed with Restoration, and such proceeds shall be applied to such Restoration.

(d) If such determination cannot be made within ninety (90) days after the date of such destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Board shall immediately call a special meeting of the Owners and all Eligible Mortgagees pursuant to Section 10.3.

(e) If the Board determines that any Unit is uninhabitable by reason of its total or partial destruction, the Board may abate Assessments against the Owner thereof until the Board determines that habitability has been restored.

10.3 Restoration by Vote. If the Board does not proceed with Restoration pursuant to Section 10.1(c), then as soon as practicable after making such determination, the Board shall call a special meeting of the Owners by mailing a notice of such meeting to each such Owner. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of Owners holding not less than seventy-five percent (75%) of the Allocated Shares determine not to proceed with Restoration, the Board shall proceed with Restoration and shall levy a Special Assessment at such time and in such amount as the Board shall determine is necessary to cover the costs of Restoration in excess of the Available Funds.

10.4 Procedure for Minor Restoration. If the cost of reconstruction is equal to or less than ten percent (10%) of the Restored Value, then the Board shall collect the insurance proceeds on behalf of the Association and proceed with Restoration without a vote of the Owners.

10.5 Procedure for Major Restoration; Insurance Trustee. If the Estimated Cost of Restoration is greater than ten percent (10%) of the Restored Value, all Available Funds and/or Special Assessments as are needed to complete Restoration, shall be paid directly to an Insurance Trustee, to be designated by the Board, as trustee for all Owners and Eligible Mortgagees. The Insurance Trustee shall be a bank or savings and loan association with an office in Salt Lake County, Utah, whose accounts are insured by the Federal Deposit Insurance Corporation or the successor to such agency. Such proceeds shall be received, held, and administered by the Insurance Trustee subject to the provisions of an insurance trust agreement, which agreement shall be entered into between the Insurance Trustee and the Board. Disbursement of such funds shall be made only upon the signatures of two (2) members of the Board and upon the terms and conditions provided in this Section 10.5. As soon as practicable after notification of the receipt of insurance proceeds by the Insurance Trustee, the Board shall enter into a contract with a licensed contractor or contractors for the Restoration of all of the damaged or destroyed Units and Common Areas. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors a specified sum for performance and execution of the work therein described, and shall have provisions for periodic disbursement of funds by the Insurance Trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Salt Lake County, Utah. Such periodic disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Board shall furnish to the Board before the commencement of construction a full performance and lien payment bond written by a good and responsible corporate surety. The Board shall make disbursements to the contractor subject to the prior presentation as may be appropriate in the circumstances and deemed suitable. The Board may employ a licensed

architect to supervise the Restoration to insure that all work, services, and supplies are in conformity with the requirements of the construction contract.

10.6 Determination Not to Reconstruct without Termination. If all or any portion of one or more Units is damaged or destroyed or is taken in a Condemnation but is not the subject of Restoration (even though this Declaration will not be terminated and the remainder of Garden Towers will continue as a condominium project), then the Allocated Share(s) of such Unit or Units shall immediately be reallocated to the remaining Units in accordance with the method set forth in Section 10.11 below.

10.7 Sale of Property. Following the occurrence of Substantial Condemnation or Substantial Destruction, unless Restoration is accomplished pursuant to this Article 10, Garden Towers shall be sold. On such sale, condominium ownership under this Declaration and the Plat shall terminate, and the Board shall distribute the proceeds of sale and any Available Funds to the Owners in proportion to their respective Allocated Shares. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

10.8 Negotiations with Insurers and Others.

(a) The Board shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed portion of Garden Towers, and to make settlements with the insurer for less than full insurance coverage on the damage to the Building or any other portion of the Common Areas. Any settlement made by the Board in good faith shall be binding upon all Owners and Eligible Mortgagees.

(b) The Board, as attorney-in-fact for each Owner, shall represent all of the Owners in any Condemnation or in negotiations, settlements and agreements with the condemning authority for the acquisition of all or any part of Garden Towers. The award in any Condemnation and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their Mortgagees as their respective interests may appear.

(c) The Board, as attorney-in-fact for each Owner, shall have and is granted full power and authority to restore or to sell Garden Towers wherever Restoration or sale, as the case may be, is undertaken as provided above. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale.

10.9 Repair of Units. In the event of a Restoration, repair of any damage to those portions of the Units that are not required to be insured by the Association shall be made by and at the individual expense of the Owner of that Unit and shall be completed as promptly as practicable and in a lawful and workmanlike manner.

10.10 Priority. Nothing contained in this Article shall entitle an Owner to priority over any Mortgagee under a lien encumbering the Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

10.11 Reallocation of Interests on Condemnation. If any Unit is taken by Condemnation, then the Allocated Share appurtenant to such Unit shall thereafter be appurtenant to the remaining Units, being allocated to the remaining Units in proportion to their respective Allocated Shares. The court shall enter a decree reflecting the reallocation of the Allocated Shares, and the award shall include, without limitation, just compensation to the Owner of any Unit taken for its Allocated Share as well as for its Unit. If any portion of any Unit is taken by Condemnation and the Unit is restored to an architecturally complete Unit, then the court shall determine the fair market value of the portion of the Unit not taken, and the Allocated Share appurtenant to such Unit shall be reduced in proportion to the diminution in the fair market value of such Unit resulting from such Condemnation. The Allocated Share thus divested from the Owner of such Unit shall be reallocated among such Unit and the other Units in proportion to their respective Allocated Shares, with any Unit partially taken in Condemnation participating in the reallocation on the basis of its Allocated Share as reduced in accordance with the preceding sentence. The court shall enter a decree reflecting the reallocation of the Allocated Share so produced, and the award shall include, without limitation, just compensation to the Owner of any Unit partially taken for both (a) the portion of the Unit taken, and (b) the reduction in such Owner's Allocated Share. If, however, the Condemnation of a portion of any Unit makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then the entire Allocated Share appurtenant to such Unit shall thereafter be appurtenant to the remaining Units, being allocated to the remaining Units in proportion to their respective Allocated Shares, and the remaining portion of such Unit shall thereafter be part of the Common Areas. The court shall enter a decree reflecting the reallocation of Allocated Shares, and the award shall include, without limitation, just compensation to the Owner of such Unit for its entire Allocated Share and for its entire Unit.

10.12 Allocation of Proceeds upon Partial Condemnation. If a portion of the Common Areas is taken by Partial Condemnation, then the award for it shall be allocated to the Owners in proportion to their respective Allocated Shares; provided, however, that the Board may elect to retain the award to defray Common Expenses rather than to distribute the award to Owners.

10.13 Disposition of Excess Funds. If Restoration is undertaken and Condemnation awards, payments in lieu of Condemnation or insurance proceeds actually received by the Association exceed the cost of Restoration, then the excess shall be paid and distributed to the Owners in proportion to their respective Allocated Shares, or, in the discretion of the Board, shall be held to defray future Common Expenses. Payment to any Owner whose Unit is then the subject of a Mortgage held by an Eligible Mortgagee shall be made jointly to such Owner and the Eligible Mortgagee.

11. INSURANCE.

11.1 Insurance. The Association shall obtain insurance as required in this Declaration and as required by the Act. In addition, the Association may, as the Board considers appropriate, obtain additional types of insurance, or greater coverage, than the insurance and coverages required below.

11.2 Property Insurance. The Association shall obtain and maintain at all times blanket property insurance or guaranteed replacement cost insurance on the physical structures in Garden Towers, including the Common Areas, Limited Common Areas, and the Units, insuring against all risks of direct physical loss commonly insured against, including fire, hail, windstorm, smoke, vandalism, and extended coverage perils, with total coverage not less than one hundred percent (100%) of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding only items normally excluded from property insurance policies. Such property insurance shall include coverage for any fixture, improvement, or betterment installed at any time to a Unit, whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a Unit or to Limited Common Areas. Notwithstanding the foregoing, the Association shall not be required to insure any Limited Common Areas that have been enclosed by an Owner and functionally made a part of such Owner's Unit ("**Enclosed Limited Common Area**"), except that the Association shall insure the replacement of such Limited Common Areas as they were originally constructed.

11.3 Liability Insurance. The Association shall obtain and maintain at all times liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas, in an amount determined by the Board but not less than Two Million Dollars (\$2,000,000) for any single occurrence. Each Owner shall be an insured person under such liability insurance policy, but only for liability arising from (i) the Owner's ownership interest in the Common Areas; (ii) maintenance, repair, or replacement of Common Areas; and (iii) the Owner's membership in the Association.

11.4 Flood Insurance. If any part of Garden Towers is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering Garden Towers or, at a minimum, that portion of Garden Towers located within the Special Flood Hazard Area, in an amount deemed appropriate, but not less than the lesser of: (a) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of Garden Towers located within a designated flood hazard areas; or (b) one hundred percent (100%) of the insurable value of Garden Towers.

11.5 Directors and Officers Insurance; Theft and Embezzlement Insurance. The Board may, but shall not be obligated to, obtain: (a) directors' and officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Association's governing documents, and/or breach of contract; and (b) insurance covering the theft or embezzlement of funds from the Association.

11.6 Waiver of Subrogation against Owners and Association. All property and liability policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

11.7 Loss; Deductibles.

(a) If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner, then the Association's policy provides primary insurance coverage, the Owner is responsible for the Association's policy deductible, and the Owner's policy applies to that portion of the loss attributable to the Association's policy deductible.

(b) An Owner that has suffered damage to a Unit ("**Unit Damage**") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy (a "**Covered Loss**") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to the Unit Damage ("**Unit Damage Percentage**") for that Unit to the amount of the deductible under the Association's property insurance policy.

(c) If an Owner does not pay the amount required under Section 11.7(a) within thirty (30) days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Areas appurtenant to the Unit, the Association may levy a Default Assessment against the Owner for that amount.

(d) The Association shall keep in its reserve fund an amount equal to the Association's property insurance policy deductible or Ten Thousand Dollars (\$10,000), whichever is less. Such amount shall be reserved exclusively for the purposes set forth in the Association's property insurance policy and the Act. This requirement shall not apply to any earthquake or flood insurance deductible.

(e) If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's property insurance policy deductible: (i) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (ii) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (iii) the Association need not tender the claim to the Association's insurer.

(f) The Association shall provide notice to each Owner of the Owner's obligation under this Article 11 for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, then it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, then it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

11.8 Association's Right to Negotiate Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated by the Board, or to the Association, and shall not be payable to a holder of a security interest in any Unit or any part of Garden Towers. An Insurance

Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged portions of Garden Towers, if Garden Towers is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged portions of Garden Towers have been completely repaired or restored, any remaining proceeds shall be paid to the Association. If Garden Towers is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to Garden Towers has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: (a) the collection, receipt of, and appropriate disposition of all insurance proceeds; (b) the execution of releases of liability; and (c) the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of an Owner.

11.9 **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners entitled to vote at least fifty percent (50%) of the total votes of the Association, the Board shall hire and appoint an insurance trustee ("**Insurance Trustee**"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require.

11.10 **Compliance with Applicable Law.** The foregoing insurance provisions are intended to comply with current Utah law. It is further intended that any future changes to the insurance law applicable to condominium associations shall apply to this Declaration and to the Association. Notwithstanding anything contrary in this Declaration, the Board shall comply with current law applicable to insurance obtained by the Association.

11.11 **Insurance Obtained by Owners.** In addition to the foregoing, each Owner shall obtain and maintain insurance coverage insuring its personal property inside its Unit, liability insurance covering such Owner and such Owner's Unit, and, to the extent reasonably possible, such coverage shall insure such Owner's obligations with respect to payment for damage to an Owner's Unit up to the deductible under the insurance carried by the Association. No failure of a Unit Owner to comply with the foregoing requirement shall excuse such Owner from payment of amounts owed by such Owner under this Article 11.

12. **ASSESSMENTS.**

12.1 **Creation of Lien and Personal Obligation for Assessments.** Each Owner of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed by an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree with each other Owner and with the Association to pay to the Association such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due. A lien to secure unpaid

Assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a prior recorded encumbrance is involved, in which case:

(a) the foreclosure will extinguish the lien for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further Assessments; and

(b) the prorated share of any extinguished Association lien may be redistributed to the other Units in Garden Towers.

12.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of: (a) promoting the health, safety and welfare of the Owners; (b) the management, maintenance, care, preservation and protection of Garden Towers; (c) enhancing the quality of life in Garden Towers and the value of Garden Towers including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area; or (d) in furtherance of any other duty or power of the Association.

12.3 Budget. The Board is expressly authorized to adopt and amend budgets from time to time. Not later than thirty (30) days prior to the beginning of each fiscal year, the Board shall adopt a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Board may, but is not required to, send a written summary of the budget to all Owners within thirty (30) days after the adoption of the proposed budget. The Owners shall have no right to ratify any budget, or amendment thereof, adopted by the Board.

12.4 Types of Assessments.

(a) *Regular Assessments.* Based on the budget, and prior to the beginning of each fiscal year, the Board shall determine the amount to be assessed to the Owners for the payment of Common Expenses for such fiscal year, and shall allocate the amount so determined among the Owners proportionate to their respective Allocated Shares ("**Regular Assessments**") Each Owner shall thereafter pay to the Association the Owner's Regular Assessment in equal monthly installments on the first day of each month. In the event the Board determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of the Regular Assessment against each Owner, and the date or dates when due.

(b) *Special Assessments.* Subject to the provisions of Section 12.5 below pertaining to capital improvements, the Board may levy in any calendar year one or more special assessments (each, a "**Special Assessment**"), applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement within Garden Towers, or to make up any shortfall in the current annual budget. Notice of the amount and due dates for any Special Assessment shall be sent to each Owner at least thirty (30) days prior to the due date.

(c) *Default Assessments.* The following may be charged to an Owner and shall constitute a “**Default Assessment**”: (a) all fines, penalties, interest or other charges or fees levied against the Owner pursuant to the Governing Documents; (b) costs incurred in bringing the Owner or the Owner’s Unit into compliance with the provisions of the Governing Documents; (c) any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents; and (d) any expense (including without limitation attorneys’ fees) incurred by the Association as a result of the failure of an Owner to comply with the Governing Documents.

12.5 Capital Improvements. All expenses for capital improvements shall be governed by and subject to the following conditions, limitations, and restrictions:

(a) *Board Discretion/Expenditure Limit.* Any capital improvement to Garden Towers that costs twenty percent (20%) or less of the total annual budget of the Association for all expenses, and does not materially alter the nature of the Project, may be authorized by the Board alone (the “**Capital Improvement Ceiling**”). For example purposes, a material alteration to the project includes but is not limited to the first time installation of or the permanent removal of a swimming pool, tennis court, playground, or parking area. Landscaping alterations are not material unless they cause other material changes such as those listed above.

(b) *Homeowner Approval/Expenditure Limit.* Any capital improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least forty percent (40%) of the total votes of the Association.

(c) *Homeowner Approval, Changing the Nature of Garden Towers.* Any capital improvement that would materially alter the nature of Garden Towers must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven percent (67%) of the total votes of the Association.

(d) *Emergencies and Livability of the Project.* Notwithstanding anything to the contrary, in case of emergencies or capital improvements necessary to preserve the ability of people to comfortably live in the Units, the Board may authorize any necessary capital improvement.

12.6 Estoppel Certificate. The Association shall, within ten (10) business days after written demand, furnish to any Owner liable for Assessments or to a Mortgagee or a potential Mortgagee with respect to such Unit, a recordable written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. To the extent permitted by law, a reasonable charge not to exceed One Hundred Fifty Dollars (\$150) may be collected by the Board for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

12.7 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board, in its discretion, may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners in proportion to the Allocated Shares of each Unit in the Common Expenses of Garden Towers, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

12.8 No Exemptions or Offsets. No Owner may be exempted from liability for such Owner's Assessment obligations by waiver of the use or enjoyment of any of the Common Areas or abandonment of such Owner's Unit. 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 Garden Towers, from the exercise of any easements or rights under this Declaration, or from any action taken to comply with the Governing Documents or any applicable law, ordinance, rule, regulation or order. No offsets against Assessments 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 this Declaration.

12.9 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

13. EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES.

13.1 Due Date and Delinquency. The Board may establish and assess reasonable charges for delinquent payments of any Assessment or any installment thereof. A late fee equal to five percent (5%) of the delinquent amount and interest at the rate of eighteen percent (18%) per annum on the delinquent amount shall be deemed to be reasonable, and such late fees and interest shall constitute a Default Assessment. The failure of the Board to give timely notice of any Assessment shall not be deemed a waiver, modification or release of the obligation of any Owner to pay any Assessment, but the date when payment shall become due in such case shall be deferred to a date that is fifteen (15) days after notice of such Assessment or installment is given to the Owner concerned; provided, however, that such deferral shall not have the effect of deferring any subsequent installment. All payments made by an Owner under this Declaration shall be applied first to pay any costs of collection, next to outstanding fines and late charges, next to interest and finally to Assessments or other amounts due from the Owner.

13.2 Action at Law. The Association may bring an action to for a judgment for unpaid Assessments, without foreclosing or waiving the lien securing such Assessments. The prevailing party in such action is entitled to recover its costs of suit and reasonable attorneys' fees.

13.3 Cessation of Services. If an Owner shall be in default for the period of one month in the payment of Assessments, then, subject to applicable requirements of the Act, the Board may, at its option, and for so long as such default shall continue, cease to provide any or

all utility services provided by the Association to such Owner's Unit and to any Limited Common Areas or Facilities pertaining to such Unit.

13.4 Collection of Rent. If an Owner shall at any time lease or rent its Unit (subject to the provisions of Article 7 hereof) and shall default for a period of one month in the payment of Assessments, then the Board may, at its option and subject to the applicable requirements of the Act, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and each Owner hereby authorizes and consents to the payment of such rent by any tenant to the Board. The payment of net rent to the Board shall discharge such tenant for rent due and shall discharge the Owner for such Assessments to the extent of the amount so paid.

13.5 Notice of Lien; Foreclosure Sale.

(a) If any Owner fails or refuses to pay any Assessments when due, then the amount then or thereafter due (together with any applicable late charges and interest) shall constitute a lien on such Owner's Condominium Unit, and on the recording of a notice of lien (the "**Notice of Lien**") by the Board in the official records of Salt Lake County, shall be a lien on such Owner's Condominium Unit prior to all other liens and encumbrances, recorded or unrecorded, except for: (a) tax and special assessment liens on such Condominium Unit in favor of any assessing unit or special improvement district; and (b) encumbrances on such Condominium Unit recorded on or prior to the date such Notice of Lien is recorded which by law would be a lien prior to subsequently recorded encumbrances. Each Notice of Lien: (a) shall set forth the amount of the unpaid Assessment, the date due, the name of the Owner and a description of the Condominium Unit concerned; (b) shall be executed and acknowledged by the Board; and (c) may be recorded in the Official Records.

(b) The Association's lien for delinquent Assessments may be enforced by sale or foreclosure of the Condominium Unit concerned. Such sale or foreclosure shall be conducted in the same manner as the exercise of a private power of sale or a foreclosure under a deed of trust pursuant to the Utah Trust Deed Act, as a foreclosure of a mortgage, as the exercise of any other remedy under a mortgage or in any other manner permitted by law. In any such sale or foreclosure, the Owner concerned shall pay the costs and expenses of such proceedings and reasonable attorneys' fees, which shall be secured by the Notice of Lien. In the case of foreclosure, the Owner shall pay a reasonable rental for the Unit, and the plaintiff in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board may credit bid on such Condominium Unit at foreclosure or other sale and, if successful, hold, lease, mortgage or convey such Condominium Unit.

(c) The Association appoints First American Title Insurance Company, having an address of 2180 S 1300 E Suite 130, Salt Lake City, UT 84106, to have and exercise the power of the trustee and the power to bid on a Unit at a foreclosure or other sale and to acquire, hold, lease, mortgage, and convey such Unit. An Owner's acceptance of interest in a Unit constitutes a simultaneous conveyance of the Unit in trust, with power of sale, to the designated trustee. The Board may at any time appoint another qualified trustee by

executing and recording a substitution of trustee in the official records of Salt Lake County.

13.6 Suspension of Votes. The Board may suspend a delinquent Owner's right to vote on any matter at regular or special meetings of the Association and the Owner's right to use all or any portion of the Common Areas (excluding those Common Areas providing access to such Owner's Unit and the Limited Common Areas appurtenant to such Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent. Prior to suspending the Owner's right to vote or to use the Common Areas, the Board shall afford the Owner the right to a hearing before the Board.

14. MAINTENANCE.

14.1 Common Areas. The Board shall be responsible for the operation, management, maintenance, repair and replacement of the Common Areas (except as provided in Section 14.3 below regarding Limited Common Areas) and the making of any additions or improvements to the Common Areas as may be reasonably necessary to keep them clean, safe, functional, attractive and generally in good condition and repair. The maintenance of the outdoor portions of the Common Areas shall include but not be limited to the removal of weeds and debris and periodic cleaning, sweeping, and removal of ice and snow. Notwithstanding the foregoing, if any repair of Common Areas is required as a result of the action of any Owner or such Owner's tenants or guests, the Association may charge the cost of such repair to such Owner as a Default Assessment.

14.2 Units. Each Owner of a Unit at its own expense shall keep the interior of such Unit and its equipment, fixtures, and appurtenances in good order, condition and repair and in a clean and sanitary condition. In addition, the Owner shall be responsible for the maintenance or replacement of (a) all plumbing fixtures, refrigerators, air conditioning and heating equipment, dishwashers, disposals, ranges, and other appliances that may be in or connected with the Unit, and (b) all windows and doors, the same being part of the Unit. No Owner shall make or permit to be made any alteration (a) in or to a Unit if such alteration would impair the structural integrity of the Building, or (b) to the exterior of the Building, and shall not paint or decorate any portion of the exterior of the Unit or of the Building. The exterior windows and doors of each Unit shall be maintained in good condition and repair by the Owner of such Unit. If the condition of any window or door is such that damage to the Building or any other Unit may result, the Board may require, by written notice to the Owner of the Unit of which such window or door is a part, that such window or door be replaced; provided, however, that no Owner shall replace any window or door without the prior consent of the Board as to the appearance and quality of the proposed replacements, which consent may be conditioned on the use of windows and doors which will maintain a generally uniform appearance from the exterior of the Unit.

14.3 Limited Common Areas.

(a) *Maintenance by Owners – Patios and Balconies.* Each Owner shall ensure that any patio or balcony appurtenant to such Owner's Unit is kept clean and reasonably clutter free. Storage of any materials or items, which is readily visible from the ground level, shall not be allowed at any time on patios and balconies, except with the prior

consent of the Board. No Owner shall perform or cause drilling or nailing into wood or masonry on or around any patio or balcony at any time without the prior consent of the Board. Grills or barbeques of any type may not be used on balconies or stored in any part of Garden Towers at any time.

(b) *Maintenance by Association.* Structural maintenance, including, but not limited to, preventative maintenance (e.g., waterproofing/sealing), of, repairs to Limited Common Areas, including patios and balconies, so long as the same have not be altered from the original construction (e.g., by the addition of tile, or other surfacing, or enclosure of the Limited Common area, in which event maintenance, waterproofing and/or repair of such alterations shall be the obligation of the current unit owner), shall be the responsibility of the Association; provided, however, that (i) the Association shall have no obligation to maintain any Enclosed Limited Common Area except the structural elements of such Enclosed Limited Common Area as they were originally constructed, and (ii) if such maintenance, repair or repainting is required as a result of any action of any Owner or such Owner's tenants or guests, the Association may charge the costs of such maintenance, waterproofing, repair, or repainting to such Owner as a Default Assessment.

15. **OBLIGATION TO COMPLY WITH GOVERNING DOCUMENTS.** Each Owner and Occupant and their guests and invitees shall comply strictly with the Governing Documents. Failure to comply with the Governing Documents shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association on behalf of the Owners, or in a proper case, by an aggrieved Owner or Owners.

16. **AMENDMENTS.**

16.1 **General Amendment Requirements.** Except as otherwise provided herein, this Declaration may be amended only by an instrument in writing signed by the owners who own undivided percentage interests totaling not less than sixty-seven percent (67%) of the total votes of the Association. The amendment shall be effective upon recordation in the office of the recorder of Salt Lake County, State of Utah. If more than one Owner owns a Unit, the signature of any one owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit is owned by an entity or Trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this Section. No acknowledgment of any signature shall be required.

16.2 **Execution and Recordation of Amendments.** An amendment that requires the affirmative written assent or vote of the Owners, as provided above, shall be effective when executed by the Board, who shall certify that the amendment has been so approved, and when the amendment has been recorded in the office of the County Recorder of Salt Lake County, Utah.

16.3 **Removal of Property from Act.** The Owners may remove Garden Towers from the provisions of the Act by an affirmative vote of all (but not less than all) of the Owners, at a meeting of Owners duly called for such purpose, provided that the holders of all liens affecting the Condominium Units consent or agree by instruments duly recorded that their liens may be transferred to the undivided interest of the Owner concerned in Garden Towers. On removal of Garden Towers from the provisions of the Act, Garden Towers shall be deemed to be owned in

common by the Owners. The undivided interest in Garden Towers owned in common by each Owner shall be equal to the Allocated Share previously owned by such Owner. Any removal so authorized shall be accomplished through the recordation of an instrument in the County Records executed (solely) by the Board. In such instrument the Board shall certify that the vote required by this Section for removal has occurred. The removal provided for in this Section shall not bar the subsequent resubmission of Garden Towers to the provisions of the Act.

16.4 Sale of Property. The Owners may, by an affirmative vote of not less than seventy-five percent (75%) of the total votes of the Association, at a meeting of Owners duly called for such purpose, elect to sell or otherwise dispose of Garden Towers in its entirety. Such action shall be binding upon all Owners, and it shall thereupon become the duty of every Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale. Notwithstanding the foregoing, sale of Garden Towers in the event of damage, destruction, or condemnation shall be governed by the provisions of Article 10 above.

17. ENFORCEMENT.

17.1 Certain Actions. Without limiting the rights of any Owner, actions may be brought by the Board, in its discretion, on behalf of two or more of the Owners, as their respective interests may appear, with respect to any cause of action relating to the Common Areas or any portion thereof or more than one Unit.

17.2 Payment of Costs and Expenses. If there is a dispute concerning any Governing Document or if the Board or any Owner seeks to enforce its rights under a Governing Document against the Association, the Board or any Owner, then the non-prevailing party shall pay all costs and expenses, including reasonable attorneys' fees, that the prevailing party reasonably incurs in connection with the dispute or enforcement or in pursuing any remedy provided hereunder or by relevant statutes or other laws, whether such costs and expenses are incurred with or without suit; before or after judgment; in any appeal; in any proceedings under any present or future federal bankruptcy act or state receivership act; or in connection with any mediation, arbitration or other alternative dispute resolution proceeding initiated by the parties.

17.3 Right to Cure. If any Owner fails to perform any obligation under this Declaration, then the Board may proceed to cure the default after thirty (30) days' written notice and failure of the Owner to commence, and thereafter diligently to prosecute, such cure, and the Board shall be entitled to a reimbursement of all costs incurred in effecting such cure together with interest at the rate of eighteen percent (18%) per annum from the date such costs were paid, plus collection costs. Furthermore, the Board shall have a lien on the Unit of the defaulting Owner for all such amounts in the same manner as if it were a lien for nonpayment of Assessments.

17.4 Fines. The Board may assess a fine against an Owner for a violation of this Declaration or the Rules in accordance with procedures set forth in the Rules.

17.5 Association's Right to Pay Delinquent Utilities and Winterize Units.

(a) The Association may request that a utility provider supplying electricity or gas to Garden Towers provide notice to the Association at least ten (10) days before the day on which such utility provider discontinues service to any Unit, by sending to the utility provider a written request including the address of each Unit in Garden Towers, the name, mailing address, email address, and phone number of the Association, and the address to which the requested notice should be sent.

(b) If the Association receives notice that service will be discontinued to a Unit, the Association may (but shall not be obligated to) provide notice to the Owner of the Unit and then pay the delinquent utility charges if doing so would reasonably protect the Common Areas and the other Units from possible damage due to freezing water pipes or other causes. If the Association pays such delinquent charges, the amount of such payment shall be a Default Assessment against the Unit involved.

(c) If the Association decides not to pay the delinquent charges, then the Association shall have the right to enter into the Unit for the purpose of "winterizing" the Unit for the purpose of preventing possible damage to the Common Areas or the other Units. In such event, the actual, reasonable costs incurred by the Association in entering and winterizing the Unit shall constitute a Default Assessment against the Unit involved.

18. MORTGAGEE PROTECTION.

18.1 **Priority of Assessments.** The lien or claim against a Unit for unpaid Assessments levied by the Board pursuant to the Act or this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, and shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise of a power of sale available thereunder shall extinguish a subordinate lien for such Assessments which became payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the immediately preceding sentence may be reallocated and assessed to all Units as Common Expenses, including the Unit that is the subject of such sale or transfer. Any such sale or transfer pursuant to a foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit from the lien of, any Assessments or charges becoming due thereafter or reallocated pursuant to the immediately preceding sentence.

18.2 **Eligible Mortgagees.** On written request to the Board by any Mortgagee (which request identifies the name and address of such Mortgagee and the Unit number or address of the Unit encumbered by the Mortgage concerned), such Mortgagee shall thereafter be deemed to be an "**Eligible Mortgagee**" and shall be included on the appropriate lists maintained by the Board, and shall be entitled to timely written notice of any of the following:

(a) Any condemnation or casualty loss that affects a material portion of Garden Towers or any Unit on which there is a Mortgage held by such Eligible Mortgagee;

(b) Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage held by such Eligible Mortgagee, which delinquency 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 Board; and

(d) Any proposed action under Section 19.3 that would require the consent of a specified percentage of Eligible Mortgagees as set forth in such Section.

(e) Notwithstanding anything to the contrary in this Declaration, the consent of Eligible Mortgagees holding Mortgages on Units which have appurtenant at least fifty-one percent (51%) of the Allocated Shares which are then subject to Mortgages held by Eligible Mortgagees shall be required to amend any material provision of this Declaration that provides for any of the following: (i) voting; (ii) Assessments, assessment liens or subordination of assessment liens; (iii) reserves for maintenance, repair and replacement of the Common Areas; (iv) insurance; (v) responsibility for maintenance and repair of Garden Towers; (vi) the allocation of Allocated Shares; (vii) imposition of any restrictions on the right of an Owner to sell, transfer or otherwise convey a Unit; and (viii) express protections or rights of Mortgagees or Eligible Mortgagees. An addition or amendment shall not be considered material for purposes of this Section if it is for the purpose of correcting technical errors or for clarification only. Any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration (or to approve a decision of the Owners or the Board with respect to the nature of Restoration or a decision not to undertake Restoration pursuant to Article 20) is mailed in the United States mail, postage prepaid, certified and return receipt requested, to the address for such Eligible Mortgagee shown on the list maintained by the Board who has not delivered to the Board a negative response within thirty (30) days from the date of such mailing shall be deemed to have approved such request.

19. DISPUTE RESOLUTION.

19.1 **Agreement to Encourage Resolution without Litigation.** The Association and all persons bound by this Declaration agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Garden Towers without the emotional and financial costs of litigation. Accordingly, each person bound by this Declaration agrees that it shall not file any action in any court with respect to a Claim (as defined below) unless and until it has first submitted the Claim to the dispute resolution procedures set forth in this Section and engaged in a good faith effort to resolve the Claim. As used in this Article, “**Claim**” means any claim, grievance, or dispute arising out of or relating to (a) the interpretation, application, or enforcement of the Governing Documents, (b) the rights, obligations, and duties of any person bound by this Declaration; (c) the design or construction of the improvements on Garden Towers; provided, however that none of the following shall be considered “Claims” or be subject to the provisions of this Section: (i) any suit by the Association to collect Assessments, to obtain a temporary restraining order or other emergency relief as a court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the Governing Documents; (ii) any suit between Owners which does not include the Association as a party, if such suit asserts a claim which would constitute a cause of action independent of the Governing Documents; (iii) any suit in which any indispensable party is not bound by this Declaration; and (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 20.2(a), unless the party or parties against whom the Claim

is made agree to toll the statute of limitations as to such Claim for such period as may be reasonably necessary to comply with this Article 20.

19.2 Dispute Resolution Procedures.

(a) *Notice.* The party asserting a Claim (the “**Claimant**”) against another party (the “**Respondent**”) shall give written notice (“**Notice**”) to each Respondent and to the Board stating plainly and concisely: (i) the nature of the Claim, including the persons involved and the Respondent’s role in the Claim, (ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises), (iii) the Claimant’s proposed resolution or remedy, and (iv) the Claimant’s desire to meet with the Respondent to discuss in good faith possible resolutions of the Claim.

(b) *Negotiation.* The Claimant and the Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(c) *Mediation.* If the parties cannot resolve the Claim within thirty (30) days after the date of the Notice despite good faith negotiation, the Claimant shall have an additional thirty (30) days to submit the Claim to mediation through an independent agency providing dispute resolution services in the Salt Lake City area. If the Claimant does not submit the Claim for mediation within such additional thirty (30) days, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not to third parties) on account of the Claim. If the parties fail to resolve the Claim within thirty (30) days after submitting the Claim to mediation, or within such longer period determined to be reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and stating the date on which the mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each party shall bear its own costs of mediation, including attorneys’ fees, and each party shall share equally all fees charged by the mediator.

(d) *Settlement.* Any settlement of a Claim shall be documented in writing and signed by the parties. If any party thereafter fails to comply with the terms of such settlement, then any other party may file suit or initiate administrative proceedings to enforce the settlement agreement without the need to comply with the procedures of this Article 20. In such event, the prevailing party shall be entitled to recover from the non-prevailing party all costs incurred in such enforcement, including but not limited to reasonable attorneys’ fees and court costs.

20. **SECURITY.** The Association shall in no way be considered an insurer or guarantor of security within or relating to Garden Towers, including any Common Areas which the Association may have an obligation to maintain, and the Association shall not be held liable for

any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Each Owner, by accepting title to a Unit, and each Occupant, by moving in to a Unit, agree that neither the Association nor the Board is responsible for the safety or wellbeing of Owners or Occupants or of their personal property, and that each Owner and Occupant assumes all risks for loss or damage to persons, the Units, the Common Areas, and to the contents of Units to the extent not insured by the Association pursuant to Article 11 above. Each Owner and Occupant understands and acknowledges that the Association and the Board have not made any representations or warranties of any kind, and that such Owner or Occupant has not relied upon any such representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, pertaining to the security of Garden Towers or any portion thereof.

21. GENERAL PROVISIONS.

21.1 Severability. The invalidity of any one or more phrases, sentences, subparagraphs, paragraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any portion or portions of this instrument should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections, or section or sections had not been inserted.

21.2 Waivers. Failure by the Association or by any Owner to enforce any provision of the Governing Documents, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other provision.

21.3 Cumulative Rights. All rights, options, and remedies of the Association, the Owners or the Eligible Mortgagees under this Declaration are cumulative, and no one of them shall be exclusive of any other, and the Association, the Owners and the Eligible Mortgagees shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law, whether or not stated in this Declaration.

21.4 Allocation upon Termination. Unless provided otherwise herein, upon any liquidation or termination of all or part of Garden Towers, the Association shall represent Owners in any proceedings, negotiations, settlements, or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Eligible Mortgagees. Owners shall share in the proceeds of such termination or liquidation in the same proportion as their respective Allocated Shares (or as otherwise provided by the Act), but in such event, the liens and provisions of all Eligible Mortgagees or Assessment liens encumbering Units within Garden Towers shall extend to each applicable Owner's interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Eligible Mortgagee encumbering such proceeds.

21.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the operation of a residential condominium community and for the maintenance of Garden Towers. The section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions or interpretation or construction. References in this Declaration to section numbers, unless otherwise expressly provided, are to the sections of this Declaration.

21.6 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease or other conveyance of an interest in a Unit, each Owner or Occupant of such Owner's Unit consents to the right reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Map and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

21.7 Conflicts among Documents. In case of conflict between this Declaration and the Articles or the Bylaws, this Declaration will control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

Signature Page Follows

CERTIFICATION

The undersigned, on behalf of the Board of Directors of Garden Towers Condo-Owners Corporation, a Utah nonprofit corporation (the "Association"), hereby certify that the foregoing Second Amended and Restated Declaration of Condominium was duly proposed, voted on and passed at a duly called and noticed meeting of the Association.

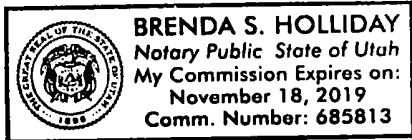
DATED: 11.9., 2018.

Neil Glover

Name:
Secretary ¹¹⁹
PRESIDENT

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

The foregoing certification was acknowledged before me this 9th day of NOVEMBER, 2018, by Neil Glover, Secretary of Garden Towers Condo-Owners Corporation, a Utah nonprofit corporation.



[Signature]
NOTARY PUBLIC
Residing at: SLC UT

My Commission Expires:
11-18-19

Executed the day and year first above written.

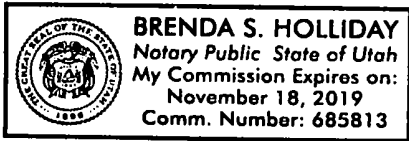
GARDEN TOWERS CONDO-OWNERS CORPORATION

BY: Neil Glover

TITLE: PRESIDENT

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

The foregoing instrument was acknowledged before me this 9th day of NOVEMBER, 2018, by NEIL GLOVER, of Garden Towers Cond-Owners Corporation, a Utah nonprofit corporation.



[Signature]
NOTARY PUBLIC
Residing at: St. Vt.

My Commission Expires:
11-18-19

EXHIBIT A

LEGAL DESCRIPTION OF GARDEN TOWERS

All that certain land situation in Salt Lake County, Utah, as follows:

Beginning at the southeast corner of the Canyon Road Towers Condominium Project as recorded in the office of the Salt Lake County Recorder, said point being south 89° 41' 21" east 372.484 feet from southwest corner of Lot 4, Block 3, Plat I, Salt Lake City Survey, and running thence south 89° 40' 21" east 140.25'; thence north 0° 21' 06" east 165.00 feet; thence north 89° 40' 21" west 140.25; thence south 0° 21' 06" west 165.00 feet to the point of beginning.

Subject to any and all existing right-of-ways and easements.

Being a condominium apartment located at 141 Second Avenue, Salt Lake City, Utah, and commonly known as GARDEN TOWERS CONDOMINIUM.

**EXHIBIT B
ALLOCATED SHARES**

GARDEN TOWERS CONDOMINIUM SCHEDULE "A"			
<u>UNIT</u>	<u>BEDROOM</u>	<u>EST. MONTHLY MAINTENANCE</u>	<u>UNDIVIDED INTEREST IN COMMON AREAS AND FACILITIES</u>
301	2 BED	84.00	84/3132
303	1 BED	60.00	60/3132
304	1 BED	60.00	60/3132
305	3 BED	84.00	84/3132
306	2 BED	84.00	84/3132
401	2 BED	84.00	84/3132
402	3 BED	84.00	84/3132
403	1 BED	60.00	60/3132
404	1 BED	60.00	60/3132
405	3 BED	84.00	84/3132
406	2 BED	84.00	84/3132
501	2 BED	84.00	84/3132
502	3 BED	84.00	84/3132
503	1 BED	60.00	60/3132
504	1 BED	60.00	60/3132
505	3 BED	84.00	84/3132
506	2 BED	84.00	84/3132
601	2 BED	84.00	84/3132
602	3 BED	84.00	84/3132
603	1 BED	60.00	60/3132
604	1 BED	60.00	60/3132
605	3 BED	84.00	84/3132
606	2 BED	84.00	84/3132
701	2 BED	84.00	84/3132
702	3 BED	84.00	84/3132
703	1 BED	60.00	60/3132
704	1 BED	60.00	60/3132
705	3 BED	84.00	84/3132
706	2 BED	84.00	84/3132
801	2 BED	84.00	84/3132
802	3 BED	84.00	84/3132
803	1 BED	60.00	60/3132
804	1 BED	60.00	60/3132
805	3 BED	84.00	84/3132
806	2 BED	84.00	84/3132
901	3 BED PENTHOUSE	120.00	120/3132
902	3 BED PENTHOUSE	120.00	120/3132
903	3 BED PENTHOUSE	120.00	120/3132
904	3 BED PENTHOUSE	120.00	120/3132

P-1 through P-60 inclusive are all parking stalls, which shall be assigned to each private owner at the time of each escrow closing.

BOOK 5322 PAGE 1447

EXHIBIT C

BYLAWS OF THE ASSOCIATION

[Attached beginning on the following page]

**AMENDED AND RESTATED
BYLAWS
OF GARDEN TOWERS CONDO-OWNERS CORPORATION**

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**AMENDED AND RESTATED BYLAWS OF
GARDEN TOWERS CONDO-OWNERS CORPORATION**

The following shall be the Bylaws of Garden Towers Condo-Owners Corporation, a Utah nonprofit corporation (the “**Association**”). All capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Declaration of Condominium and Covenants, Conditions, and Restrictions for Garden Towers Condominiums, recorded simultaneously herewith, pertaining to the Property (the “**Declaration**”), as it may be modified or amended from time to time

1.

CONDOMINIUM OWNERSHIP

- a. **Condominium Ownership.** The Property is located at 141 2nd Avenue, Salt Lake City, in the State of Utah, The Property is also subject to the provisions of the Utah Condominium Ownership Act, Utah Code annotated, Section 57-8-1, et. seq., under the Declaration, to be known as the Garden Towers Condominium (the “**Project**”).
- b. **Applicability of Bylaws.** The provisions of these Bylaws are applicable to the Project and to the use and occupancy thereof. All present and future owners, mortgagees, lessees, and their employees, and any other person who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and the Rules. The acceptance of a deed or conveyance of a Unit or the entering into of a lease or the act of occupancy of a Unit or other interest in the Project or the use of any of the facilities of the Project shall constitute an agreement that these Bylaw, the Rules and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with. In the event of a conflict between these Bylaws and the Declaration, the provisions of the Declaration shall prevail.
- c. **Office.** The office of the Project and of the Board of Directors (hereinafter called the “**Board**”) and of the Association of owners (hereinafter called the “**Association**”) shall be located at 141 East 2nd Avenue, Salt Lake City, Utah. All meetings of the Association and of the Board shall be held at said address unless some other location is designated.

2.

PURPOSES OF THE ASSOCIATION

- a. **Purposes.** The specific purposes for which the Association is formed are: (i) to provide for the operation, administration, use, and maintenance of the Units and the Common Areas within the Property; (ii) to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby and under the Declaration; (iii) to levy, collect, and enforce the Assessments, charges and liens imposed pursuant to the Declaration and these Bylaws; (iv) to preserve, protect, and enhance the values and amenities of the Property; and (v) to promote the health, safety, and welfare of the Owners, occupants, and users of the Property.

3.

BOARD OF DIRECTORS

- a. Management - Board of Directors.
- i. Authority of Board of Directors. The business, property, and affairs of the Garden Towers Condominium are to be managed, operated, and maintained by the Board.
 - ii. Qualifications for Board.
 - a) The Board shall consist of not less than five members.
 - b) Only natural persons in one of the categories described below may be members of the Board:
 - i) a Unit Owner;
 - ii) the spouse of a Unit Owner;
 - iii) the occupant of a Unit owned by a Trust if the occupant is (1) a current resident of the Unit, or (2) the parent, child, or sibling of the current resident of the Unit;
 - iv) the trustee of a Trust which owns a Unit; and
 - v) the occupant of a Unit owned by an entity if the occupant is a person who (1) has voting rights under the entity's organizing documents, and (2) has a twenty-five percent (25%) or greater share of ownership, control, and right to profits and losses of the entity.
 - c) No more than two Directors not living in the Project can serve on the Board at the same time.
 - d) Any Board member not residing in the Project must be able to attend the monthly Board meetings and the annual meeting of the Association.
 - iii. The Board member have a fiduciary duty to act in the best interests of the Unit Owners: The Board shall have and is hereby granted, the authority and powers set forth in these Bylaws and in the Declaration.
- b. Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Project, and may conduct all the business of the as delegated by the Unit Owners, except as limited by applicable law, the Declaration, or by these Bylaws. The powers and duties of the Board shall include, but shall not be limited to, the following:

- i. Operation, care, upkeep and maintenance of the Project;
 - ii. Collection of assessments for Common Expenses of the Project;
 - iii. Employment and dismissal of the personnel necessary for the maintenance, repair, replacement and operation of the Project;
 - iv. Keeping of detailed, accurate records of the receipts and expenditures affecting the Project. Such records and vouchers authorizing payment shall be available for examination within a reasonable time period, after a request by a Unit Owner;
 - v. Obtaining of insurance for the Project, pursuant to the provisions of the Declaration;
 - vi. Determination of Common Expenses and fixing of common charges.
- c. **Manager.** The Board, on behalf of the Association, may employ a Manager, at a compensation established by the Board. The Manager may perform, but is not limited to, the duties listed in Section 3.2 above, as appropriately delegated by the Board. The duties conferred upon the Manager by the Board may at any time be revoked, modified or amplified. The Board may employ any other employee or agent to perform such duties at such salaries as the Board may establish.
- d. **Election and Term of Office.** Election of Directors shall be by majority vote. Each Unit Owner shall have a vote equal to the percentage of undivided interest in the Common Areas appurtenant to such Owner's Unit, as set forth in the Declaration, both at the Annual Meeting of owners and at any special meeting. The Directors shall hold office for a period of two years.
- e. **Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association. Death, incapacity, or resignation of any Director or his continuous absence from the State of Utah for more than six months shall cause his office to become vacant.
- f. **Removal of Directors.** At any regular or special meeting duly called, any one or more of the Directors may be removed with or without cause by a majority of the Unit Owners and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Unit Owners shall be given an opportunity to be heard at the meeting.
- g. **Compensation.** No compensation shall be paid to Directors for their services as Directors.
- h. **Organization Meeting.** The first meeting of a newly elected Board of Directors shall be held within one week of the election. The place for this first meeting shall be fixed by the

Directors at the meeting at which the new Directors are elected. No notice to the newly elected Directors is necessary in order to legally set the first Board meeting, provided that a majority of the Board members are present at the election meeting.

- i. Regular Meetings. Regular meetings of the Board may be held at such times and places as shall be determined by a majority of the Directors. Notice of regular meetings of the Board shall be given to each Director, personally or by mail addressed to his residence, or by telephone, at least one (1) day prior to the day of the meeting.
- j. Special Meetings. Special meetings of the Board may be called by the president on one day's notice to each Director, given personally or by mail, addressed to his residence, or by telephone, which notice shall state the time, place (as herein-above provided) and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice on the written request of at least three Directors.
- k. Waiver of Notice. Before or at any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board, unless he object to the calling of the same, shall be considered waiver of notice of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.
- l. Board of Directors' Quorum. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at the meeting at which a quorum is present shall be the acts of the Board, If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.
- m. Bonds of Officers and Employees. The Board shall require that all officers and employees handling or responsible for Association funds shall furnish adequate bonds. The premium on such bonds shall be paid by the Association.

4.

ASSOCIATION OF OWNERS

- a. Membership. Each Owner of a Unit shall be, and no person or entity other than an Owner of a Unit may be, a member of the Association ("**member**"). Membership in the Association for each Owner shall be mandatory, and not optional, and shall be appurtenant to and may not be separated from the ownership of a Unit. Membership in the Association shall begin immediately and automatically upon acquisition of a Unit and shall terminate immediately and automatically upon ceasing to be an Owner of a Unit, but such termination shall not relieve or release any such former Owner from any liability or obligation incurred under the Declaration during the period of such ownership.

Neither the issuance nor the holding of shares of stock shall be necessary to evidence membership in the Association. The rights and duties appertaining to membership in the Association, including voting rights, shall be governed by the Declaration.

- b. **Annual Meeting.** The annual Meeting of the Association shall be held on the third Wednesday following the close of the Association's fiscal year, December 31, unless a change of date is determined to be necessary by the Board and notification is sent to all members.
- c. **Special Meetings.** The President may call a Special Meeting at any time. Upon receipt of such call, the Secretary shall send out notices of the meeting to all members of the Association.
- d. **Notice of Meetings.** Notices of meetings shall state whether the meeting is a Special or Annual Meeting, the authority to call the meeting, the place, day and hour, and purpose thereof. Notice shall be given by the Secretary at least three days before the date set for the meeting. Such notices shall be given to the members in any of the following ways: (a) electronic mail; (b) personal delivery to members living in the Project, or (c) first class U.S. mail, postage prepaid. So long as notice is provided as required herein, the failure of any member to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings thereat.
- e. **Waiver of Notice.** The presence a member, in person or by proxy, at any meeting shall constitute a waiver by such member of any defect in the notice of the meeting, unless such member shall, at the opening of such meeting, objects to such notice.
- f. **Quorum.** At any meeting of the Association, the members holding, in the aggregate, a majority of the total interest in the Common Areas, present in person or by proxy, shall constitute a quorum, and the concurring vote of said majority shall be valid and binding upon the Association, except as otherwise provide by law or these bylaws. "Majority" as used herein, means more than fifty percent (50%).
- g. **Voting.** The vote attributable to and exercisable by each member shall be in the percentage of the undivided interests in the Common Areas attributable to such member's Unit, as set forth in the Declaration. In the even there is more than one owner of a particular Unit, the vote relating to such Unit shall be exercised as such owners may determine among themselves. The vote cast at any meeting by any of such owners may determine conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.
- h. **Voting - Proxies and Pledges.** The authority given by a member to another person to represent such member at meetings of the Association shall be in writing, signed by such member, or, if such member is a corporation, by the proper officers thereof, and shall be filed with the Secretary prior to the beginning of the meeting. Unless limited by its terms, such authority shall be deemed good until revoked in writing. An executor,

administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association with respect to any Unit owned or held by him in such capacity, whether or not the same shall have been transferred to his name by a duly recorded conveyance. In case such Unit shall not have been so transferred to his name, he shall satisfy the Secretary that he is the executor, administrator, guardian or trustee holding two or more persons, natural or legal, jointly, according to the records of said office of Salt Lake County Recorder, the vote therefore may be exercised by any one of the owners present to the absence of protest by the other or others.

- i. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the members present, whether a quorum be present or not, without notice other than the announcement at the meeting. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.
- j. Action Taken Without a Meeting. Any action that may be taken at any regular or special meeting of the Association may be taken without a meeting if the following requirements are met:
 - i. a written ballot is distributed to every member entitled to vote, setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal, and providing a reasonable time (not to exceed sixty (60) days) for the member to return the ballot to the Association;
 - ii. the votes cast by ballot within the specified time period equals or exceeds the quorum required to be present at a meeting authorizing the action; and
 - iii. the number of approvals of the action equals or exceeds the percentage of votes required to approve the action at a meeting at which the total percentage of votes cast was the same as the percentage of votes cast by written ballot.

5.

OFFICERS

- a. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be Directors. The Directors may appoint an Assistant Treasurer, an Assistant Secretary, and such other officers as they, in their judgment, deem necessary.
- b. Election of Officers. The officers of the Association shall be elected annually by the Board at the organization meeting. Each new officer shall hold office at the pleasure of the Board.

- c. **Removal of Officers.** Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.
- d. **President.** The President shall be the chief executive officer of the Association and a member of the Board. He shall preside at all meetings of the Association and of the Board. He shall have all of the general powers and duties which are usually vested in the office of President of a non-profit corporation, including but not limited to the power to appoint committees from among the Unit Owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.
- e. **Vice-President.** The Vice-President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Board shall appoint some other member of the Board to so do on an interim Basis. The Vice-President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.
- f. **Treasurer.** The Treasurer shall supervise the Manager's Custody of all funds of the Association, maintenance of accounts and records thereof, and preparation of final reports thereof.
- g. **Secretary.** The Secretary shall attend and keep the minutes of all meetings of the Board and of the Association, shall give all notices as provided by these bylaws, and shall have such other powers and duties as may be incidental to the office of the Secretary, given him by these Bylaws or assigned to him from time to time by the Directors. If the Secretary is not present at any meeting, the presiding officer shall appoint a secretary pro tempore who shall keep the minutes of such meeting and record them in the books provided for that purpose.
- h. **Auditor.** The Association may at any meeting appoint some person, firm or corporation engaged in the business of audits and fiscal duties to audit the financial records of the Association.

6.

OBLIGATION OF THE OWNERS

- a. **Determination of Common Expenses and Fixing of Common Charges.** The Board shall from time to time, and at least annually, prepare a budget for the Project, determine the amount for the common charges payable by the Unit Owners to meet the Common Expenses of the Project, and allocate and assess such common charges among the Units. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board pursuant to the Declaration, The Board shall advise all Unit Owners, promptly, in writing, of the amount of common charges payable by each of them, respectively as determined by the Board. Such charge shall be due and payable monthly, in advance, on

the first day of every month. If a Unit Owner fails to pay any maintenance fee or gas usage fee within ten (10) days of the time when the same becomes due, the Owner shall pay a late charge in an amount set by the Board of Directors and shall also pay interest thereon at the rate of eighteen (18%) per annum from the date of the payment due, together with all cost and expenses, including attorney's fees, incurred in any proceeding brought to collect such unpaid expenses. This late charge and interest shall be added to each month of non-payment.

- b. **Maintenance and Repair.** (a) All maintenance of or repairs to the Common Areas, structural or nonstructural, ordinary or extraordinary, limited or general, shall be performed by the Association unless the damage was caused by the acts or negligence of an occupant of a particular unit, in which case the Unit Owner of the particular Unit shall be paid for the repairs. The Association shall also repair any damage to individual units that results from the negligence or acts of the Association or its agents, (b) Maintenance of or repairs to any Unit, shall be made consistent with the provisions of Section 14.2 and/or 14.3 of the Declaration by the Unit Owner of the Unit, unless caused by the negligence, misuse or neglect of the Common Areas, in which case such expense shall be charged to the Association and as a Common Expense. Each Unit Owner shall be responsible to pay for all damages to any and all other Units and/or to the Common Areas, caused by acts or his failure to maintain or repair his unit, whether or not that damage is located inside or outside of the Unit.
- c. **Representation.** The Manager, the Board, or any duly appointed agent subject to the direction of the Board, shall represent the Association in an action, suit, hearing, or other proceeding concerning the Association, the Common Areas, or more than one Unit. The Manager, the Board, or such agent on the Association's or Unit Owners' behalf, may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any Unit Owners individually to appear, sue or be sued. Service of process on two or more Unit Owners in any such action, suit or proceeding may be made on the Manager.
- d. **Foreclosure of a Lien.** In any suit to foreclose a lien against any Unit Owner, the Association may be represented through its Manager or Board in like manner as any mortgagee of real property. The Manager or Board, acting in behalf of the Unit Owners, shall have the power to bid for and acquire any such Unit at the foreclosure sale. The delinquent Unit Owner shall be required to pay the Association a reasonable rent for such Unit until sale or foreclosure, together with all costs and reasonable attorney's fees. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable with all costs and reasonable attorney's fees without foreclosing or waiving the lien securing the same.
- e. **Rules and Regulations.** With a vote of two thirds of the directors, the Board may, from time to time, adopt, amend, modify, and/or revoke, in full or in part, such reasonable rules and regulations ("**Rules**") governing the conduct of persons using the Project, as it may deem necessary. Copies of the Rules, upon adoption, amendment, modification, and/or revocation hereof shall be delivered to each Unit in the Project and shall be binding upon all members of the Association, occupants of the Unit and other users of the Project.

- f. Mortgages. Any mortgagee of a Unit may file a copy of his mortgage or a certificate thereof containing the name and address of such mortgagee and the affected Unit and other pertinent data to the Manager, who shall maintain the information in the Associations' records of ownership. After such filing, the Board or the Manager shall notify such mortgagee if the owner of the affected Unit defaults in the payment of any Assessments under the Declaration. The mortgagee, at its option, may pay the delinquent Assessments, and the Association shall accept such payment as if it were made by the Unit Owner.

7.

EXECUTION OF INSTRUMENTS

All checks, drafts, notes, bonds, acceptances, contracts, and all other instrument, except conveyances, shall be signed by such person or persons as shall be provided by general or special resolution of the Board. And in the absence of any such resolution applicable thereto such instrument shall be signed by the President or the Vice-President and by the Treasurer or Secretary.

8.

INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall provide indemnification required by the laws of Utah and shall indemnify directors, officers, agents, and employees as follows:

- a. Third Party Litigation. The Association shall indemnify any director or officer of the Association who was or is a party or is threatened to be made a party to any action, suit or proceedings, 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 or she is or was a director or officer of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner which he or 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 or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, 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 or she reasonably believed to be in or not opposed to the best interest of the Association, or with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.
- b. Associated Litigation. The Association shall indemnify any director or officer of the Association who was or is a party or is threatened to be made a party to any 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 or she is or was a director or officer of the Association, against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection

with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Association, 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 negligence or misconduct in the performance of his or her duty to the Association unless and only to the extent that the court in which such action or suit was brought, or any other court having jurisdiction in the premises, 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.

- c. Expenses. To the extent that a director or officer of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 6.1 or 6.2 above, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith, without the necessity for the determination as to the standard of conduct as provided in Section 6.4 below.
- d. Determination of Right to Indemnity. Any indemnification under Section 6.1 or 6.2 above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 6.1 or 6.2 above. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable, and such a quorum of disinterested directors so directs, by independent legal counsel (who may be regular counsel for the Association) in a written opinion; and any determination so made shall be conclusive.
- e. Advance of Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized in the particular case, upon receipt of an undertaking by or on behalf of the director or officer to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article.
- f. Other Indemnification Rights. Agents and employees of the Association who are not directors or officers of the Association may be indemnified under the same standards and procedures set forth above, in the discretion of the Board.
- g. Benefitted Parties. Any indemnification pursuant to this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.
- h. Exculpation. No director or officer of the Association or Board shall be liable for acts or defaults of any other director or officer. No director or officer of shall be liable for any

loss sustained by the Association unless that loss is the result of the director's or officer's willful misconduct or willful negligence.

9.

AMENDMENT OF BYLAWS

- a. Amendment. These Bylaws may be amended, modified or revoked in any respect from time to time by a majority vote of the Unit Owners at a meeting duly called for such purpose or by written ballot without a meeting as allowed in these Bylaws. No amendment to the Bylaws shall be effective until such amendment is duly recorded in the Office of the Salt Lake County Recorder, State of Utah.
- b. Conflict. In the event of any conflict between these Bylaws and the provisions of Utah Code Annotated 57-8-1, et. seq. as amended, the latter shall govern and apply.

CERTIFICATION

The undersigned, on behalf of the Board of Directors of Garden Towers Condo-Owners Corporation (the "Association"), hereby certify that the foregoing Amended and Restated Bylaws of Garden Towers Condo-Owners Corporation were duly proposed, voted on and passed at a duly called and noticed meeting of the Association.

DATED: 11.9., 2018.



Name:

Secretary ~~ng~~ PRESIDENT