

DECLARATION OF CONDOMINIUM

OF

"THE AVENUE CONDOMINIUMS"

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RECORDED FOR JAMES GIBBONS

This Declaration is made and executed this 28th day of December, 1989, by Western Continental Properties, Inc., a Utah corporation hereinafter referred to as the "Declarant", and is made pursuant to the Condominium Ownership Act, Utah Code Annotated 57-8-1 et seq. (1953), as amended.

WHEREAS, the Declarant is the owner of the following described real property in Provo, Utah, and more particularly described as follows:

Beginning 188.25 feet North 1 degree 00'00" East along the East right-of-way line of University Avenue, Provo, Utah from the Northwest corner of Block 8, Plat "D", Provo City Survey of Building Lots, which beginning point is also 110.00 feet North 1 degree 00'00" East along said right-of-way line from the intersection of the North line of 800 North Street with the East line of University Avenue, (which beginning point is also South 608.75 feet and West 502.37 feet based upon the Utah State Coordinate System, Central zone, Bearings of Section lines, from the Northeast corner of Section 1, Township 7 South, Range 2 East, Salt Lake Base and Meridian); thence continuing along the East line of said University Avenue North 1 degree 00'00" East (North 0 degrees 25'25" East) 155.40 feet; thence along a fence line extended and a fence line on the South line of the Lamarr F. Moon and Gordon Thiebault property South 88 degrees 49'20" East (South 89 degrees 23'55" East) 114.00 Feet; Thence South 1 degree 00'00" West 155.40 feet; thence North 88 degrees 49'20" West (North 89 degrees 23'55" West) along a fence line and fence line extended on the North line of the Gordon Thiebault and Madison Merrill properties, which property line is 110.00 feet Northerly from and parallel with the North line of 800 North Street 114.00 feet to the point of beginning.

AREA = 0.407 ACRES

NOTE: The bearing base of the description above is North 1 degree 00'00" East along the East line of University Avenue, which bearing equals North 0 degrees 25'25" East according to the Utah State Coordinate System, Central zone, bearings of Section lines. (The bearings shown above in parentheses are based upon said State Coordinate System bearings).

hereinafter referred to as the "Real Property", and

WHEREAS, Declarant is also the record owner or holds options to purchase that certain real property in Utah County, Utah, and more particularly described as follows:

Beginning 188.25 feet North 1 degree 00'00" East along the East right-of-way line of University Avenue, Provo, Utah and South 88 degrees 49'20" East 114.00 feet from the Northwest corner of Block 8, Plat "D", Provo City Survey of Building Lots, which beginning point is also 110.00 feet North 1 degree 00'00" East along said right-of-way line and South 88 degrees 49'20" East 114.00 feet from the intersection of the North line of 800 North Street with the East line of University Avenue, (which beginning point is also South 608.75 feet and West 502.37 feet and South 88 degrees 49'20" East 114.00 feet based upon the Utah State Coordinate System, Central zone, Bearings of Section lines, from the Northeast corner of Section 1, Township 7 South, Range 2 East, Salt Lake Base and Meridian); thence North 1 degree 00'00" East (North 0 degrees 25'25" East) 155.40 feet; thence South 88 degrees 49'20" East (South 89 degrees 23'55" East) partially along a fence line 160.82 feet to a point on the westerly boundary of 50 East Street; thence South 1 degree 07'08" West along said street boundary 165.39 feet; thence North 88 degrees 49'20" West (North 89 degrees 23'55" West) 110.38 feet along the North line of the Ross Denham and Axel Johnson properties, which property line is 100.00 feet Northerly from and parallel with the North line of 800 North Street; thence North 0 degrees 06'02" East (North 0 degrees 28'33" West) 10.00 feet to a fence corner; thence North 88 degrees 49'20" West (North 89 degrees 23'55" West) along a fence line and fence line extended 49.94 feet to the point of beginning,

AREA = 0.598 ACRES

NOTE: The bearing base of the description above is North 1 degree 00'00" East along the East line of University Avenue, which bearing equals North 0 degrees 25'25" East according to the Utah State Coordinate System, Central zone, bearings of Section lines. (The bearings shown above in parentheses are based upon said State Coordinate System bearings).

hereinafter referred to as the "expandable land" or the "additional land", and

WHEREAS, the Real Property consists of the land above described, together with certain residential buildings hereafter to be constructed upon said premises, and

WHEREAS, the Declarant will construct said residential buildings and other improvements upon the real property in accordance with the plans and drawings set forth in the record of survey map filed for record concurrently herewith, consisting of 2 sheets, prepared and certified by Dudley and Associates, Utah Registered Land Surveyors, and

WHEREAS, the Declarant desires and intends to sell the fee title to the individual units contained in such condominium project, together with an undivided ownership interest in the common areas and facilities appurtenant thereto, to various purchasers, subject to the covenants, limitations and restrictions herein contained.

DECLARATION

NOW, THEREFORE, the Declarant hereby declares and certifies as follows:

1. Definitions. The terms used herein shall have the meaning stated in the Utah Condominium Ownership Act as follows unless the context otherwise requires:

(a) The term the "Act" shall mean and refer to the Utah Condominium Ownership Act as the same may be amended from time to time;

(b) The term the "Condominium Project", or some times the "Project" shall mean and refer to the entire parcel of Real property referred to in this Declaration.

(c) The term "Map" shall mean and refer to the Record of survey Map of "The Avenue" Condominiums filed for record simultaneously herewith by the Declarant;

(d) The term "Common Areas and Facilities" or simply the "Common Areas", shall mean and refer to:

(1) The above-described land, as defined and delineated on the Map.

(2) Those Common Areas and Facilities specifically set forth and designated as such on the Map;

(3) That part of the condominium project not specifically included in the respective units as hereinafter defined;

(4) All foundations, columns, girders, beams, supports, main walls, retaining walls, roofs, halls, corridors, stairs, stairways, entrances and exits of the buildings, exterior walkways, service streets, yards, gardens, fences, all open parking spaces, installations of central services such as power, light, gas, all apparatuses and installations existing for common use, such community facilities as may be provided for, and all other parts of the Real Property necessary or convenient to its existence, maintenance and safety of the Common Areas or normally in Common Areas;

(5) All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein;

(e) The term "Unit Owner" or "Owners" shall mean and refer to any person or entity, including the Declarant, at any time owning a condominium unit including a proportionate share of the Common Areas as defined herein. The term "Unit Owner" or "Owner" shall not refer to any mortgagee as herein defined, unless such mortgagee has acquired title pursuant to foreclosure, or any proceeding in lieu of foreclosure;

(f) The term "Property" shall mean and refer to the land above described, the buildings, all other improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles or personal property intended for use in connection therewith;

(g) The term "Unit" shall mean and refer to one of the residential units, owned in fee simple by Unit Owner which is designated as a Unit on the Map and in Exhibit "A" attached hereto (and incorporated herein by this reference). A Unit shall include any walls, partitions, and floors which are wholly contained within its vertical and horizontal perimeters and the surfaces of any floors, ceilings, or coverings which bound it. A Unit shall not include pipes, wires, conduits, or other utility lines running through it which are utilized for or which serve more than one Unit;

(h) The term "Common Expenses" shall mean and refer to all items, things and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration, the By-Laws, such rules and regulations and other determinations and agreements pertaining to the Condominium Project as the Management Committee may from time to time adopt;

(i) The term "Management Committee" shall mean and refer to those persons duly elected thereto by the Unit Owners in accordance with the By-Laws hereto attached as Exhibit "B" and the provisions of paragraph 7 hereof;

(j) The term "Manager" shall mean and refer to the person, persons, corporation, or other entity engaged by the Management Committee to manage the affairs of the Condominium Project;

(k) The term "Mortgagee" shall mean and refer to any person named as the Mortgagee or beneficiary under any Deed of Trust under which the interest of any Unit Owner is encumbered;

(l) The term "Expandable Property" shall mean and refer to the additional land set forth in the record of survey map, the buildings, all improvements and the structures thereon, and all easements and property intended for use in connection therewith.

The Expandable Property, if and when included in the project, shall be known as "The Avenue Condominiums".

(m) Limited Common Areas. The words "Limited Common Areas and Facilities" or sometimes simply "Limited Common Areas" shall mean those common areas designated herein as reserved for the use of the particular Units to which they are adjacent, attached, assigned in Exhibit "C", or appurtenant and/or as designated on the Map to the exclusion of the other Units;

(n) To the extent applicable to the tenure hereof and not inconsistent herewith, the definitions contained in the Act are incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

(o) The term "Additional Land" shall mean and refer to and consist of the real property described in the record of survey map identified as Expandable Property, but reserved from submission to this Declaration.

2. Submission to Condominium Ownership. The Declarant hereby submits the above-described property, excluding the expandable property, together with the land, the buildings, and other improvements constructed thereon, together with all appurtenances thereto, to the provisions of that Act as a Condominium Project to be known as "The Avenue Condominiums". Declarant hereby declares that the Project and every part thereof is held and shall be held, conveyed, devised, leased, granted, encumbered, used, occupied and otherwise affected in any manner, subject to the provisions of this Declaration and the Act. Each and all of the provisions hereof are hereby declared to be in furtherance of the general plan and scheme of condominium ownership, and are further declared to be for the benefit of the Project and every part thereof, and for the benefit of each Unit Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land, or as equitable servitude, as the case may be, and shall bind all persons hereafter acquiring or owning any interest in the Project, however, such interest may be obtained.

All present and future owners, tenants, visitors, mortgagees, and occupants of units shall be subject to, and shall comply with the provisions of this Declaration. Acceptance of a deed of conveyance, or the entering into a lease, or the entering into occupancy of any unit or accepting a mortgage on one of the units, shall constitute an agreement that the provisions of the Declaration, as the same may be amended from time to time, are accepted and ratified by such owner, tenant, mortgagee, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage, or lease thereof.

3. The Buildings and Facilities.

(a) The Project (in addition to other improvements provided therefore) consists of 1 residential building containing a total of 12 units as shown on the map.

(b) The exterior of the building is stucco.

(c) All other details involving the description and location of the Building, Units, the number of stories, number of Units and other like details are shown on the Map which is filed of record simultaneously herewith.

(d) The common areas consists of landscaped areas and some common parking spaces, as denoted on the Map.

4. Nature and Incidents of Condominium Ownership.

(a) The project is hereby divided into 12 Condominium Units, each consisting of a fee simple interest in a Unit and an undivided fee simple interest in the Common Areas in accordance with the attached Exhibit "A", setting forth the respective undivided interest in the Common Areas appurtenant to each Unit. Such undivided interest in the Common Areas are hereby declared to be appurtenant to the respective units. The proportionate share of the Unit Owners in the Common Areas is based on the proportionate value that each of the Units bears to the total value of the Property. The percentage of ownership in the Common Areas shall be for all purposes including, but not limited to, voting and assessment for common expense.

(b) The limited Common Areas shall consist of two parking places per Unit, being located as shown on the Map.

(c) Title to a Unit may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common.

(d) No part of the Unit or of the legal rights comprising ownership of the Unit may be separated from any other part thereof during the period of condominium ownership prescribed herein, so that each unit, the undivided interest in the Common Areas appurtenant to such Unit, and the exclusive right to use and occupy the Limited Common Area appurtenant to such Unit, shall always be conveyed, devised, encumbered, and otherwise affected only together and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of the Unit or any part thereof shall constitute a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Unit, together with all appurtenant right created by law or by this Declaration.

(e) The Common Areas shall be owned in common by all the Owners of Units, and no Unit Owner may bring any action for partition thereof, except as provided by law.

(f) Subject to the limitations contained in this Declaration, any Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas, and shall have the exclusive right to use and enjoy the Limited Common Areas designated herein for exclusive use by such Unit Owner.

(g) Each Owner shall have the exclusive right at his sole cost and expense to maintain, repair, paint, repaint, tile, wax, paper or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair, or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in, or connected with, his Unit.

(h) Each owner shall keep the Limited Common Areas designed for use in connection with his Unit in a clean, sanitary and attractive condition.

(i) If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building on the Property, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

(j) Some of the Common Areas, are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the right, to be exercised by the Management Committee as their agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units. The Management Committee shall also have such right independent of any agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of

the Common Areas or as a result of emergency repairs within another Unit at the insistence of the Management Committee or of Unit Owners shall be an expense of all the Unit Owners; provided, however, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Management Committee by assessment, pursuant to Paragraph 8 below.

(k) Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and to the Limited Common Areas designated for use in connection with his Unit; and each Owner shall have the right to the horizontal and lateral support of a Unit, and such rights shall be pertinent to and pass with the title to each Unit.

(l) The Management Committee shall have a non-exclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the Common Areas maintenance and storage facilities for the use by the Management Committee.

(m) Easements are reserved through the Project as may be required for utility services.

(n) All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to sub-paragraphs (i), (j), (k), (l), and (m), above even though no specific reference to such easements or to those sub-paragraphs appears in any such conveyance.

(o) Parking of any recreational vehicles on the premises is prohibited, including but not limited to, trailers, campers, motor homes, boats, snowmobiles, etc.

5. Description of a Unit. Every conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown on the Map with the appropriate reference to the Map and to this Declaration, as each shall appear on the records of the County Recorder of Utah County, Utah, in substantially the following fashion:

UNIT _____ IN BUILDING _____, as shown in the Record of Survey Map for "The Avenue Condominiums", appearing in the records of the County Recorder of Utah County, Utah, in Book _____, Page _____, of Declaration of Condominium for "The Avenue Condominiums", appearing in such records in Book _____, Page _____, of Records, together with an undivided interest in and to the common areas, as

the same is established and identified in the Declaration and Map referred to herein above.

Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Areas, and to incorporate all the rights incident to ownership of a Unit and all the limitations on such ownership as described in this Declaration.

6. Reservation of Option to Expand. Declarant hereby reserves an option to expand the project, pursuant to the applicable provisions of the Condominium Ownership Act of the State of Utah and the provisions of this Declaration. This option relates to the additional land described herein and may be exercised any time within a period of six (6) years from recordation of the Declaration.

The exercise of Declarant's option to include the additional land in the project does not and shall not require the consent of any unit owners. There are no limitations or assurances in the exercise of the option as to the following:

- (a) Whether all or part of the additional land is included,
- (b) Whether portions of the additional land are added at different times,
- (c) As to the location of improvements on the additional land,
- (d) As to the compatibility of structures erected on any portion of the additional land in terms of quality, of construction, principal materials used or architectural style.
- (e) As to any description or limitation on other improvements made on the additional land,
- (f) As to any units on the additional land being substantially identical to units on the original land, Declarant reserves the right to create or not create limited common areas and facilities on all or any portion of the additional land.

Declarant states that there will be a maximum of thirty (30) additional units created on the additional land and a maximum of forty-two (42) units per acre as to any portions or additional land which may be added to the property. A maximum percentage of 10% of the aggregate land and floor area of all units in the expandable property may be used for nonresidential use, the balance shall be exclusively residential.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by reservations and exclusions; and mineral reservations of record and rights incident thereto; all instruments of record which

affect the above-described tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Survey Map or otherwise existing; an easement for every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described tract at such time as construction of all Project improvements are complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

7. Management Committee, Rights and Obligations.

(a) The business, property and affairs of the Project shall be managed by the Management Committee composed of three members (President, Vice-President, and Secretary/Treasurer). At the first regular Owners meeting one member shall be elected to the office of President, who's term of office shall be for eighteen months for the very first term. Thereafter, the term of office of President will be for one year. Only Unit Owners and Officers, Directors, agents, and employees of owners other than individuals shall be eligible for Committee membership. At the annual meeting each Unit Owner may vote his percentage of undivided interest in favor of as many candidates for Committee Membership as there are seats on the Committee to be filled; provided, however, that until the annual owners meeting occurs, the Declarant alone shall be entitled to select the three Committee members. Until the first annual meeting of the Owners, the members of the Committee shall be as follows:

James D. Gibbons, President
 Rendol L. Gibbons, Vice-President
 John R. Gibbons Secretary/Treasurer

The first annual meeting of the Owners shall be held on the first Tuesday of the month following the sale of 75% of the undivided interest in the common areas and facilities have been conveyed or within six years of the date of this Declaration, whichever comes first.

In the event a Committee seat which was filled by Declarant becomes vacant, Declarant shall have the right to select a replacement member to sit on the Committee for the balance of the term associated with the vacated seat. In all other cases of vacancy the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected.

(b) The Management Committee, subject to the rights of the Owners set forth in Paragraph 4 hereof, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and

sanitary condition, order and repair; provided, however, that each Owner of a Unit shall keep the Limited Common Areas designated for use in connection with his Unit, in a good, clean, sanitary and attractive condition. The Management Committee shall be responsible for the maintenance and repair of roofs, the maintenance and repair of other Common Areas and all other improvements of material located within or used in connection with the Common Areas. The Management Committee shall have the exclusive right to contract for all goods, services, and insurance payment of which is to be made from the common expense fund, subject to the provisions of sub-paragraph (f) below. The specification of duties of the Management Committee with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas, as set forth in the first sentence in this paragraph. The cost of such management, operation, maintenance, and repair by the Management Committee shall be borne as provided in paragraph 8 of this Declaration.

(c) The Management Committee may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Management Committee shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Management Committee or by any person or entity with whom or which it contracts. The Management Committee may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Management Committee may arrange with others to furnish lighting, water, snow removal, grounds maintenance and other common services to each Unit. The cost of such services shall be borne as provided in Paragraph 8 of the Declaration.

(d) The Management Committee may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in the Common Areas. Such interest shall not be transferable except with the transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto, and such beneficial interest may in no event be reserved by the transferor of the Unit. Each owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

(e) The Management Committee may make reasonable rules and regulations governing the use of the Units and of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Management

Committee may suspend any Owner's voting rights in the meeting of Unit Owners during any period or periods during which such Owner fails to comply with such rules and regulations, or with any other obligations of such Owner under this Declaration, after sending such Owner a notice of non-compliance, at least ten (10) days prior to the meeting of the committee at which action may be taken. The Management Committee may also take judicial action against any Owner to enforce compliance with such rules, regulations or other obligations or to obtain damages for non-compliance, all to the extent permitted by law. The Owner may appear at such meeting to present evidence supporting his position.

(f) The Management Committee may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

8. Assessments.

(a) Declarant, for each Unit owned by it within the Project, and for and as the Owner of the Project and every part thereof, hereby covenants, and each Owner of any Unit by the acceptance of a deed therefore, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Management Committee to pay to the Management Committee for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided hereunder.

(b) The total annual assessments against all Units shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas or furnishing among other things, expenses of Management; grounds maintenance; taxes and special assessments levied by governmental authorities until the Units are separately assessed as provided herein; premiums for all insurance which the Management Committee is required or permitted to maintain pursuant hereto; common lighting and heating; water charges; trash collection; sewer service charges; repairs and maintenance; wages for Management Committee employees legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Management Committee for the benefit of the Owners under or by reason of this Declaration.

Each condominium unit shall be separately metered for gas and electricity. Costs of gas and electric service shall be paid by the individual Unit Owners. Water, sewer, and garbage shall be metered jointly for the entire project. The Owners' Association

shall pay the costs of water, sewer and garbage and shall pay the costs of water, sewer and garbage and shall prorate the costs to Unit Owners on an equitable basis. Unit Owners are hereby advised that failure of the Owners' Association to pay water, sewer and garbage bills may result in loss of such service.

(c) Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among all Units in proportion to their respective undivided interests in the Common Areas. For this purpose Declarant shall be considered to own only the undivided interest in Common Areas based upon Units not conveyed by Declarant.

(d) Annual assessments shall be made on a calendar year basis. The Management Committee shall give written notice to each Owner as to the proposed budget and the amount of the annual assessment with respect to his unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year, provided, however that the first annual assessment shall be for the balance of the calendar year remaining after the date fixed by the Management Committee as the date of commencement of the Project. Each annual assessment shall be due and payable in monthly installments on the 1st day of each and every month and no separate notices of such monthly installment shall be required. Each monthly assessment shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

(e) In addition to the annual assessments authorized hereunder, the Management Committee may levy in any assessment year a special assessment, payable over such a period as the Management Committee may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This paragraph shall not be construed as an independent source of authority for the Management Committee to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other paragraphs hereof which shall make specific reference to this paragraph. Any amounts assessed pursuant hereto shall be assessed to the Owners in proportion to their respective undivided interest in Common Areas shall be determined on the same basis set forth in subparagraph (c). Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

(f) All sums assessed to any Unit pursuant to this section, together with interest thereon as provided herein shall be secured by a lien on such Unit in favor of the Management Committee. Such

lien shall be superior to all other liens and encumbrances on such Unit, except only for: (a) valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; and (b) encumbrances on the interest of the Unit Owner recorded prior to the date notice of the lien provided for herein is recorded which by law would be a lien prior to subsequently recorded encumbrances. All other lienors acquiring liens on any Unit after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence a lien for sums assessed pursuant to this section, the Management Committee may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by the Management Committee and may be recorded in the office of the County Recorder of Utah County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Management Committee in the same manner in which mortgages on real property may be foreclosed in Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses of filing the notice of lien and all reasonable attorney's fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The lien shall also secure, and the Owner shall also be required to pay to the Management Committee any assessments against the Unit which shall become due during the period of foreclosure. The Management Committee shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

A release of lien shall be executed by the Management Committee and recorded in the office of the County Recorder of Utah County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

An encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Management Committee with respect to such lien, including priority.

The Management Committee shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for longer than ninety days after the same shall have become due; provided, however, that such encumbrancer first shall have furnished to the Management Committee written notice of such encumbrance.

(g) The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Management Committee. Suit to recover a money judgment for such personal obligation shall be maintainable by the Management Committee without foreclosing or waiving the lien securing the same. No Owner may void or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit.

(h) Upon payment of a reasonable fee not to exceed ten dollars (\$10) and upon written request of any Owner of any Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Management Committee shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit; the amount of the current yearly assessment and the portion thereof which has theretofore been paid; credit for advanced payments or prepaid items, including, but not limited to, an Owners' share of prepaid insurance premiums; and such statement shall be conclusive upon the Management Committee in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, all unpaid assessments which become due prior to the making of such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within ten (10) days provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Unit.

(i) Subject to the provisions of subparagraph (h), a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the Purchaser's right to recover from the Seller the amount paid by the Purchaser for such assessments.

9. Use of Condominium Units.

(a) Each of the 12 units in the Project is intended and restricted to be used for single families or limited to four bacheling singles in the case of the 4 bedroom units and in the case of the two bedroom units, occupancy is restricted to single families or limited to 2 bacheling singles.

(b) There shall be no obstruction of the Common Areas by the Owners and/or their guests without the prior written consent of the Management Committee. The Management Committee may by rules and regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Management Committee, except as

specifically provided herein. Nothing shall be altered on, constructed in, or removed from, the Common Areas except upon the prior written consent of the Management Committee.

(c) Nothing shall be done or kept in any Unit or in the Common Areas or any part hereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Management Committee, but for such activity, would pay, without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Management Committee and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

(d) The Management Committee may by rules and regulations prohibit or limit the raising, breeding, or keeping of animals in any Unit or on the Common Areas or any part thereof.

(e) No Owner shall violate the rules and regulations for the use of the Units and of the Common Areas as adopted from time to time by the Management Committee.

(f) Each Owner shall keep the interior of his Unit, including, without limitation, interior walls, windows, glass, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean, sanitary and attractive condition, and good state of repair.

(g) No structural alterations to any Unit shall be made, and no plumbing, electrical or similar work within the Common Areas shall be done, by any Owner without the prior written consent of the Management Committee, except emergency repair.

(h) Notwithstanding anything herein to the contrary, until the Declarant has completed and sold all of the Units neither the Unit Owners who have purchased Units from the Declarant nor the Management Committee shall interfere with the completion of the contemplated improvements and sale of the Units. The Declarant may make such use of the unsold Units and the Common Areas as may facilitate such completion and sale, including but not limited to,

the maintenance of a sales office, the showing of the Units, and the display of signs.

10. Insurance.

(a) The Management Committee shall obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Utah. The provisions of this section shall not be construed to limit the power or authority of the Management Committee to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Management Committee may deem appropriate from time to time.

(b) The Management Committee shall obtain insurance on the Project in such amounts as shall provide for full replacement thereof in the event of damage of destruction from the casualty against which such insurance is obtained, all in the manner in which a corporation owning similar multiple family residential buildings in the vicinity of the Project would, in the exercise of prudent business judgement, obtain such insurance. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, war risk insurance if available and if deemed appropriate by the Management Committee, and such other risks and hazards against which the Management Committee shall deem it appropriate to provide insurance protection. The Management Committee may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Management Committee's opinion are consistent with good business practice.

(c) The Management Committee shall purchase broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Management Committee, and activities in connection with the ownership, operation, maintenance and other use of the Project.

(d) The Management Committee shall carry workman's compensation and employer's liability insurance and all other similar insurance in respect to employees of the Management Committee in the amounts and in the forms now or hereafter required by law.

(e) The Management Committee may purchase a fidelity bond in the amount of 150% of the association's estimated annual operating expenses and reserves, to insure against dishonesty of employees, destruction or disappearance of money or securities, and forgery.

(f) The Management Committee may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including any personal property of the Management Committee located thereon.

(g) The Management Committee may in its discretion elect to obtain insurance on the personal property and furnishings initially placed in the Units of Owners by Declarant upon completion of construction of the Project in such amounts as shall provide for the full replacement thereof in the event of damage or destruction from casualty against which such insurance is obtained.

(h) Casualty insurance shall be carried in a form or forms naming the Management Committee the insured, as trustee for the Owners and for Declarant, whether or not it is an Owner, which policy or policies shall provide a standard, non-contributory mortgages clause in favor of each first Mortgagee which from time to time shall give notice to the Management Committee of such first mortgage. Each policy also shall provide that it cannot be cancelled by either the insured or the insurance company until after ten days prior written notice is first given to each Owner, to Declarant and to each first Mortgagee. All policies of insurance shall, if possible, provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that Owners interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall, if possible, provide further that the insurance under any such policy as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Public liability and property damage insurance shall name the Management Committee the insured, as trustee for the Owners and for Declarant, whether or not it is an Owner, and shall protect each Owner and Declarant against liability for acts of the Management Committee in connection with the ownership, operation, maintenance or other use of the Project. Such policies of insurance shall provide that all insured (including, but without limitation, the Declarant, Owners, Management Committee, and officers of the Management Committee) shall be considered as separate insured and coverage shall be afforded each such insured and in the same manner as though separate policies had been issued to each such insured and the insurance afforded any person or organization as insured under this policy shall not in any way be prejudiced by the inclusion therein of more than one person and/or organization as insured, but the inclusion of more than one insured under the policy shall not operate to increase the limits of the company's total liability under the policy.

(i) Insurance coverage on the furnishings initially placed in the Unit by Declarant, except to the extent that the Management

Committee pursuant to subparagraph (b) hereof elects to arrange for casualty insurance, and, regardless of the Management Committee's election, insurance coverage on items of personal property placed in the Unit by Owner, and casualty and public liability insurance coverage within each individual Unit shall be the responsibility of the respective Owners.

(j) The Management Committee shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained pursuant to this section. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose.

(k) Notwithstanding the provisions of subparagraph (a) and (b) above, each Owner may obtain insurance at his own expense providing coverage upon his Unit, his personal property for his personal liability, and covering such other risks as he may deem appropriate, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Management Committee, the other Owners, and the servants, agents, guests of any of them, if such insurance can be obtained in the normal practice without additional premium charge for the waiver of rights of subrogation.

11. Casualty Damage or Destruction.

(a) Title to each Unit is hereby made subject to the terms and conditions hereof which bind the Declarant and all subsequent Owners, whether or not it be so expressed in the deed by which any Owner acquired his Unit.

(b) All of the Owners irrevocably constitute and appoint the Management Committee their true and lawful agent in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute appointment of the attorney in fact herein provided.

(c) As attorney in fact, the Management Committee shall have full and complete authorization, right and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of a Unit Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs mean restoring the project to substantially the same condition in which it existed prior to damage, with each Unit and the common areas having substantially the same vertical and horizontal boundaries as before.

(d) In the event any Mortgagee should not agree not to rebuild, the Management Committee shall have the option to purchase such Mortgage by payment in full of the amount secured thereby if 80% of the Owners are in agreement not to rebuild. The

Management Committee shall obtain the funds for such purpose by special assessments under paragraph 8 of this Declaration.

(e) As soon as practicable after receiving these estimates the Management Committee shall diligently pursue to complete the repair or reconstruction of the part of the project damaged or destroyed if the Project is damaged or destroyed to the extent of 75% or less than the value thereof. The Management Committee may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be substantially in accordance with the original plans and specifications of the Project or may be in accordance with any other plans and specifications the Owners may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Unit may not vary by more than 5% from the number of cubic feet and the number of square feet for such Unit as originally constructed pursuant to such original plans and specifications, and the location of the building shall be substantially the same as prior to damage or destruction. The same easements for encroachments as declared in Section 4 (i) shall and do hereby apply under the provisions of this Section. In the event the Project is destroyed or damaged to the extent of more than 75% of the value thereof, the Unit Owners shall, at a meeting within 100 days after such damage or destruction duly called by the Management Committee for the purpose, determine whether or not said premises should be rebuilt, repaired or disposed of. Unless Owners representing not less than 80% of the undivided interest in the Common Areas agree to the withdrawal of the Project from the provisions of the Act and to its subsequent disposal, the premises shall be repaired, rebuilt or restored to substantially the same condition they were in immediately prior to such destruction or damage.

(f) The proceeds of any insurance collected shall be available to the Management Committee for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Management Committee, pursuant to paragraph 7 hereof, may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in that paragraph. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

(g) The insurance proceeds held by the Management Committee and the amounts received from the assessments provided for in paragraph 11 (f) constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or

reconstruction, such balance shall be distributed to the Unit Owners in proportion to the contributions each Owner made pursuant to the assessments the Management Committee made under paragraph 11 (f) of this Declaration.

(h) If 75% of the Unit Owners and all holders of first mortgages on units agree not to rebuild, as provided herein, the project may be removed from the provisions of the Act as prescribed therein. Withdrawal shall be in accordance with Section 57-8-31 of the Utah Statutes.

12. Duty of Owner to Pay Taxes on Unit Owned. It is understood that under the Act each Unit (and its percentage of interest in the Common Areas) in the Project is subject to separate assessment and taxation of each taxing authority and the special district(s) for all types of taxes and assessments authorized by law, and that a result thereof no taxes will be assessed or levied against the Project as such. Accordingly, each Unit Owner will pay and discharge any and all taxes and assessments which may be assessed against him on his Unit.

13. Alterations. For the two (2) years following the recordation hereof, the Declarant reserves the right to change the interior design and interior arrangement of any Unit and to alter the boundaries between Units, so long as the Declarant owns the Units so altered. Any such changes shall be reflected by an amendment of this Declaration and of the Map which may be executed by the Declarant alone, notwithstanding the procedures for amendment described in this Declaration. Such change may decrease the number of Units and alter the boundaries of the Common Areas and Facilities. If the boundaries between Units are altered or the number of Units decreased, in the amendment related thereto the Declarant shall reapportion the percentage of ownership in the Common Areas and Facilities which are allocated to the altered Units on the Basis of the change in floorspace which results from the boundary alteration.

14. Computation of Percentage Interest. Within the seven year period during which Declarant may expand the project by inclusion of the additional land, there shall be no allocation of undivided ownership interest in the common areas as provided in 57-8-13.10, U.C.A. (1975), as amended, unless the additional land is added to the project and an amended declaration is made. After the expiration of the six-year period or after an amended declaration which includes the additional land in the project is made, the percentage of undivided ownership interest in the Common Areas which, at any point in time is appurtenant to a Unit, shall be equal to the ratio of the Par Value or size of such Unit and the aggregate Par Value or size of all units included in the Project. The Par Value or size of each unit is shown in Exhibit "A".

15. Amendment of this Declaration. The Unit Owners at any time, and from time to time, have the right to amend this Declaration and/or the Map upon the approval of Unit Owners representing not less than two-thirds of the undivided interests in the Common Areas, which approval shall be by duly recorded instrument.

(a) Notwithstanding anything to the contrary contained in the Declaration, until all but five (5) Units of the entire Project have been sold, Declarant shall have, and is hereby vested with, the right to unilaterally amend this Declaration or the Map, so long as the amendment involved is consistent with Law and does not attempt to divest any vested property rights of any Owner or first Mortgagee.

16. Service of Process. The name of the person to receive service of process in the cases contemplated by the Act and the place of his residence is:

James D. Gibbons
79 West 4500 North
Provo, Utah

17. Mortgage Protection. Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any Unit shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage or a trust deed with first priority over other mortgages) upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Paragraph 8 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

(b) No amendment to this paragraph shall affect the rights of the holder of any such amendment who does not join in the execution thereof.

(c) By subordination agreement executed by a majority of the Management Committee, the benefits of (a) and (b) above may be extended to mortgages not otherwise entitled.

18. Indemnification of Management Committee. Each member of the Management Committee shall be indemnified and held harmless by the Unit Owners against all cost, expenses, and liabilities whatsoever, including, without limitation, attorney's fees, reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said committee.

19. Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the singular, and the use of any gender shall include all genders.

20. Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, or word or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

21. Topical Headings. The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning or intent of this Declaration of any paragraph or provision hereof.

22. Effective Date. This Declaration shall take effect upon recording in the office of the County Recorder of Utah County, Utah.

23. Conflict. In case any provisions hereof shall conflict with Utah law, Utah law shall be deemed to control.

DATED this 28th day of December, 1989.

WESTERN CONTINENTAL PROPERTIES

BY: J. D. Gibbons
JAMES D. GIBBONS, PRESIDENT

STATE OF UTAH)
) ISS.
COUNTY OF)

On the 28th day of December, 1989, personally appeared before me James D. Gibbons the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

Tamara J. Furman
Notary Public

My commission expires: _____ Residing at: Provo, Utah

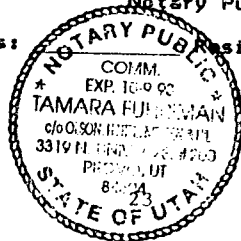


EXHIBIT "A"

| <u>UNIT NUMBER</u> | <u>SQUARE FOOTAGE</u> | <u>PERCENTAGE OF COMMON SPACE OWNERSHIP</u> |
|--------------------|-----------------------|---|
| 100 | 1,250 | 8.60 |
| 101 | 1,250 | 8.60 |
| 102 | 1,250 | 8.60 |
| 103 | 800 | 5.70 |
| 200 | 1,250 | 8.60 |
| 201 | 1,250 | 8.60 |
| 202 | 1,250 | 8.60 |
| 203 | 800 | 5.70 |
| 300 | 1,250 | 10.00 |
| 301 | 1,250 | 10.00 |
| 302 | 1,250 | 10.00 |
| 303 | 800 | 7.00 |

EXHIBIT "B"

BY-LAWS

OF

THE AVENUE CONDOMINIUMS

I. IDENTITY

These are the By-Laws of The Avenue Condominiums.

II. APPLICATION

All Unit Owners, tenants, or any other person(s) who might use the facilities of The Avenue in any manner are subject to the regulations set forth in these By-Laws. The mere acquisition or rental of any of the Units or the Common Areas will signify that these By-Laws are accepted, ratified, and will be complied with by such persons.

III. ADMINISTRATION

1. Place of Meeting. Meetings of the Unit Owners shall be held at such place within the State of Utah as the Management Committee may specify in the Notice, except as herein otherwise specified.

2. Annual Meetings. The first annual meeting of the Unit Owners shall be held on the first Tuesday of the month following the sale of 75% of the Units, or within 3 years of the date of this declaration, whichever comes first, at such place as the Management Committee shall specify. Thereafter, the annual meeting shall be held on such day of each succeeding year; provided, however, that whenever such date falls on a legal holiday, the meeting shall be held on the next succeeding business day, and provided further, that the Management Committee may by resolution fix the date of the annual meeting on such date and at such place as the Management Committee may deem appropriate.

3. Special Meetings. Special meetings of the Unit Owners may be called at any time by written notice served by the Management Committee, or by Unit Owners having 35% of the total votes, delivered not less than seven (7) days prior to the date fixed for such meeting. Such meeting shall be held on the Project or such other place as the Management Committee may specify and the notice thereof shall state the place, date, time and matters to be considered.

4. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited in

the United States mail, postage prepaid, addressed to each Unit Owner at the address given by such person to the Management Committee or the Manager for the purpose of service of such notice or to the Unit of such person if no address has been given. Such address may be changed from time to time by notice in writing to the Management Committee or Manager.

5. Quorum. At any meeting of the Unit Owners, the owners of more than fifty (50) percent in the aggregate in interest of the undivided ownership of Common Areas shall constitute a quorum for any and all purposes, except where by express provisions a greater vote is required, in which event a quorum shall be the number required for such vote. In the absence of a quorum the Chairman of the meeting may adjourn the meeting from time to time, without notice other than by announcement at the meeting, until holders of the amount of interest requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.

6. Voting. When a Quorum, as provided in the Utah Condominium Ownership Act is present at any meeting, the vote of Unit Owners representing at least fifty-one (51) percent, or more, of the undivided ownership of Common Areas and Facilities, present in person or represented by proxy, shall decide any question of business brought before such meeting, including the election of the Management Committee, unless the question is one upon which, by express provision of the statutes, the Declaration, or of these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question. All votes may be cast either in person or by proxy. All proxies shall be in writing, and in the case of proxies for the annual meeting, they shall be delivered to the Secretary at least three days prior to said annual meeting. Proxies for special Unit Owners meetings must be of record with the Secretary at least three days prior to said special meeting.

7. Waivers of Notice. Any Unit Owner may at any time waive any notice required to be given under these By-Laws, or by statutes or otherwise. The presence of a Unit Owner in person at any meeting of the Unit Owners shall be deemed such waiver.

IV. MANAGEMENT COMMITTEE

1. Purpose and Powers. The business, property and affairs of the Condominium shall be managed and governed by the Management Committee pursuant to paragraph 7 of the Declaration. The Management Committee, as it deems advisable, may enter into such management agreement or agreements with a third person, firm, or corporation to act as the manager of the Project.

The Board of Managers shall have the powers and duties necessary for administration of the affairs of the Condominium and

may do all such acts and things except as by law or by the Declaration or by these By-Laws may not be delegated to the Board of Managers by the unit owners. Such powers and duties of the Board of Managers shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the common areas.
- (b) Collection of the common areas charges from the unit owners.
- (c) Employment and dismissal of the personnel necessary for the maintenance and operation of the common areas.
- (d) Obtaining insurance for the Property, including the units pursuant to the provisions of the Declaration.
- (e) Making of repairs, additions and improvements to or alterations of the Property and repairs to and restoration of the Property in accordance with the provisions of the Declaration and these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.
- (f) Determination of the common expenses required for the affairs of the Condominium, including, without limitation, operation and maintenance of the Property.
- (g) Adoption and amendment of rules and regulations covering the details of the operation and use of the Property, as authorized in the Declaration.
- (h) Opening of bank accounts on behalf of the Condominium project and designating the signatories required therefor.
- (i) Purchasing or leasing or otherwise acquiring in the name of the Board of Managers, or its designee, corporate or otherwise, on behalf of all unit owners, units offered for sale or lease or surrendered by their owners to the Board of Managers.
- (j) Selling, leasing, mortgaging, voting the votes appurtenant to, or otherwise dealing with units acquired by, and subleasing units leased by, the Board of Managers or its designee corporate or otherwise, on behalf of all unit owners.
- (k) Organizing a corporation to act as designees of the Board of Managers in acquiring title to or leasing of units on behalf of all unit owners.
- (l) Levying sanctions against unit owners for violation of any Rules and Regulations established by it to govern the conduct of the unit owners.

(m) Controlling the use of all common elements adjoining the spaces therein for use by the respective unit owners and leasing such common elements to third parties, provided, however, that no lease or other legal transaction shall be entered into without the approval of a majority of the unit owners.

(n) Taking all other necessary and proper actions for the sound management of the Condominium and fulfillment of the terms and provisions of the Condominium Declaration and By-Laws.

2. **Regular Meetings.** A regular meeting of the Management Committee shall be held immediately after the adjournment of each annual Unit Owners meeting. Regular meeting, other than the annual meeting, shall or may be held at regular intervals at such places and at such times as either the President or the Management Committee may from time to time designate.

3. **Special Meetings.** Special meetings of the Management Committee shall be held whenever called by the President, the Vice President, or by thirty-five (35) percent of the members of the Association. By unanimous consent of the Management Committee, special meetings may be held without call or notice at any time or place.

4. **Quorum.** A quorum for the transaction of business at any meeting of the Management Committee shall consist of a majority of the Management Committee then in office.

5. **Compensation.** Members of the Management Committee, as such, shall not receive any stated salary or compensation; provided that nothing herein contained shall be construed to preclude any member of the Management Committee from serving the Project in any other capacity and receiving compensation therefore. When a member of the Management Committee is to receive compensation for any purpose he shall excuse himself from voting as to the resolutions approving and enabling his employment, furthermore at least one bid will be invited on the work in question in addition to the bid submitted by the Committee member and said bid shall become a permanent record of the Committee's proceedings.

6. **Waiver of Notice.** Before or at any meeting of the Management Committee, any member thereof, may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Management Committee at any meeting thereof shall be a waiver of notice by him of the time and place thereof.

7. **Adjournments.** The Management Committee may adjourn any meeting from day to day or for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

8. Fidelity Bonds. The Management Committee may require that all officers and employees of the Management Committee handling or responsible for funds shall require adequate fidelity bonds. The premium on such fidelity bonds shall be paid by the Management Committee.

V. OFFICERS

1. DESIGNATION AND ELECTION. The principle officers of the Management Committee shall be a President, a Vice President, and a Secretary/Treasurer, all of whom shall be elected by the members of the Association. Such election shall regularly take place at each annual meeting. The Management Committee may appoint such other officers, as in its judgment may be necessary or desirable.

2. OTHER OFFICERS. The Management Committee may appoint such other officers, in addition to the officers hereinabove expressly named, as it shall deem necessary, who shall have authority to perform such duties as may be prescribed from time to time by the Management Committee.

3. REMOVAL OF OFFICERS AND AGENTS. All officers and agents shall be subject to removal, with or without cause, at any time by the affirmative vote of the majority of the members of the Association.

4. PRESIDENT. The President shall be the chief executive of the Management Committee, and shall exercise general supervision over its property and affairs. He shall sign on behalf of the Condominium Project all instruments and contracts of material importance to its business, shall do and perform all acts and things which the Management Committee may require of him. He shall preside at all meetings of the Unit Owners and Management Committee. He shall have all of the general powers or duties which are normally vested in the office of the president of a corporation, including, but not limited to, the power to appoint committees from among the members from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Condominium Project.

5. 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 members of the Association, at a special meeting, shall elect some other member thereof to perform the duties of the President on an interim basis. The Vice-President shall also perform such other duties as shall from time to time be prescribed by the Management Committee.

6. SECRETARY/TREASURER. The Secretary/Treasurer shall keep the minutes of all meetings of the Management Committee and of the Unit Owners; he shall have charge of the books and papers as the Management Committee may direct; and he shall in general, perform all the duties incident to the office of Secretary. He shall also

have the responsibility for the funds and securities of the Management Committee and shall be responsible for keeping full and accurate accounts of all receipts and of all disbursements in books belonging to the Management Committee. He shall be responsible for the deposit of all monies and all other valuable effects in the name, and to the credit of, the Management Committee in such depositories as may from time to time be designated by the Management Committee.

7. **COMPENSATION.** No compensation shall be paid to the officers for their services as officers. No remuneration shall be paid to an officer for services performed by him for the Management Committee in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Management Committee before the services are undertaken.

VI. ACCOUNTING

1. **BOOKS AND ACCOUNTS.** The books and accounts of the Management Committee shall be kept under the direction of the Treasurer and in accordance with the reasonable standards of accounting procedures.

2. **REPORT.** At the close of each accounting year, the books and records of the Management Committee shall be reviewed by a person or firm approved by the Unit Owners. Report of such review shall be prepared and submitted to the Unit Owners at or before the annual meeting of the Unit Owners; provided, however, that a certified audit by a certified public accountant approved by the Unit Owners shall be made if at least 90% of the owners of undivided interest in the Common Areas determine to do so.

3. **INSPECTION OF BOOKS.** Financial reports, such as are required to be furnished, shall be available at the principal office of the Management Committee or the Manager for inspection at reasonable times by any Unit Owners.

VII. BUILDING RULES.

The Management Committee shall have the power to adopt and establish, by resolution, such building, management and operational rules and regulations as it may deem necessary for the maintenance, operation, management and control of The Avenue Condominium Project, and it may from time to time by resolution, alter, amend, and repeal such rules and regulations. Unit Owners shall at all times obey such rules and regulations and use their best efforts to see that they are faithfully observed by their Lessees and the persons over whom they have or may exercise control or supervision, it being clearly understood that such rules and regulations shall be binding upon all Unit Owners of the Condominium Project. Provisions of the Act pertaining to rules and regulations are incorporated herein by reference and shall be deemed a part hereof. Unit Owners shall have the authority to

approve or amend such rules and regulations by majority vote at the annual meeting of the Unit Owners.

VIII. AMENDMENT OF BY-LAWS

These By-Laws may be amended at any duly constituted meeting of the Unit Owners called for that purpose by the affirmative vote of at least two-thirds of the ownership in the Common Areas. Notice of such meeting shall be sent to each Unit owner at least ten days prior to such meeting.

DATED this 11 day of December, 1989.

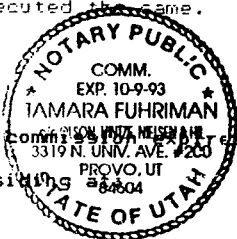
WESTERN CONTINENTAL PROPERTIES, INC.

BY: [Signature]
JAMES D. GIBBONS, PRESIDENT

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

On the 11 day of December, 1989, personally appeared before me Tamara J. Fuhriman, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

My Comm. Expires: 10-9-93
3319 N. UNIV. AVE. #200
PROVO, UT 84604
Residing at: 84604
STATE OF UTAH



Tamara J. Fuhriman
Notary Public