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COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE CAROLEE CONDOMINIUM PROJECT  
(An Expandable Condominium Project)

This Declaration of Covenants, Conditions and Restrictions, hereinafter the "Declaration" is made and executed this 18th day of December, 1996, by GJ & R Investments General Partnership ("GJ & R"), hereinafter the "Declarant."

RECITALS:

A. Declarant is the Owner of real property located in Salt Lake County, Utah, described as follows:

(hereinafter "the Real Property")

Declarant has improved or intends to improve the Real Property in the manner hereinafter described.

B. Record of Survey Map. The Declarant has executed and recorded in the office of the County Recorder for Salt Lake County, State of Utah, a certain instrument pertaining to the Project and entitled the Carolee Condominiums. Declarant shall amend such Record of Survey Map in a manner consistent with this Declaration, if necessary.

C. Declarant has improved, or intends to improve, real property by converting and renovating apartments thereon into Condominium Units and related facilities, and to establish a Condominium project under the provisions of the Utah Condominium Ownership Act, Title 57, Chapter 8, Utah Code Annotated, 1953 as amended.

D. The Real Property constitutes eleven (11) Townhouse Units and one house. The Owners (as hereinafter defined) of units will receive title to a Unit together with an undivided fractional interest as tenant-in-common to the Common Area (as hereinafter defined) located within the Project. In the event the Development is expanded, this Declaration shall be appropriately amended to

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provide Owners within the Initial Phases and subsequent phases, an undivided fractional interest as tenants-in-common to all Common Areas included in the initial and subsequently annexed phases. Each Condominium shall have appurtenant to it a membership in the Association.

E. The Common Area will include the landscaping, parking areas, and Limited Common Areas appurtenant to the Units consisting of patios or balconies.

F. Title to the Subject Land is vested in GJ & R, a general partnership.

#### DECLARATION:

Declarant declares that the Real Property is held, and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of the project depicted upon the Record of Survey Map as described in Title 57, Chapter 8, of the Utah Code Annotated 1953, as amended for the subdivision, improvement, protection, maintenance, and sale of condominiums upon the Real Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Real Property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title, or interest in the Development, and shall be binding on and inure to the benefit of the successors in interest of such parties. Declarant further declares that it is its express intent that this Declaration satisfy the requirements of Title 57, Chapter 8, Utah Code Annotated 1953, as amended.

#### 1. DEFINITIONS

1.1 The "Articles" means the Articles of Incorporation of Carolee Condominiums, Inc.

1.2 The "Association" means the Association of Homeowners for Carolee Condominiums, Inc., a Utah nonprofit mutual benefit corporation, its successors and assigns.

1.3 The "Bylaws" means the Bylaws of Carolee Condominiums, Inc., as amended.

1.4 The "Common Area" or "Common Areas and Facilities" means and includes: the land on which the building is located and all portions of the property not contained within any unit, including, but not by way of limitation: the foundations, columns, girders,

beams, supports, main walls, roofs, halls, and exits of the building; the grounds, basements, gardens, parking areas used for storage of janitorial supplies, maintenance equipment and materials; installations of all central services, including power, light, water, hallway heating and air conditioning, and garbage collection, and in general all apparatus and installations existing for common use; all patios, garages, courts and driveways; any utility pipe lines or systems servicing more than a single unit and all wires, conduits and other accessories and utility installations to the outlets used outdoors and for the common areas and not used in units or limited common areas therewith; all limited common areas and facilities as hereinafter described; all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally common in use, or which have been designated as common areas and facilities upon the Record of Survey Map, and all repairs and replacements of any of the foregoing.

1.5 A "Condominium" means an estate in real property consisting of (i) a separate fee interest in a single Unit, (ii) an undivided interest as a tenant-in-common in the Common Area and (iii) membership in the Association and as defined in Utah Code Annotated, Section 57-8-3(1).

1.6 The "Record of Survey Map" means the plats of survey of land and recorded pursuant to Utah Code Annotated, Section 57-8-13.

1.7 The "Declarant" means GJ & R Investments, a general partnership.

1.8 The "Development" means the Real Property, together with all structures and improvements thereon which is subject to this Declaration including additional real property and improvements annexed pursuant to Section 14 of this Declaration. The Development shall constitute a statutory condominium project as defined in Utah Code Section 57-8-3(2).

1.9 The "Limited Common Areas and Facility" shall mean and include those common areas and facilities designated in this Declaration or on the Record of Survey Map, as amended, as reserved for the specific use of a certain unit or units to the exclusion of other units.

1.10 The "Management Committee" means the committee as provided for herein authorized and empowered pursuant to Section 5 of this Declaration to make and enforce the rules and regulations prescribed in the Articles and Bylaws of the Association. The "Management Committee" and the members thereof shall also be known as the Board of Directors and Directors, respectively as provided under the Articles and Bylaws,

1.11 A "Member" means every person or entity who holds a membership in the Association.

1.12 A "Mortgage" means a mortgage or deed of trust encumbering a Condominium or other portion of the Development. A "Mortgagee" shall include the beneficiary under a deed of trust, including assignees of any original beneficiary. An "institutional" Mortgagee is a Mortgagee that is a bank or savings and loan association, or established mortgage company or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency. A "First Mortgagee" is a Mortgagee which is prior and senior to all other Mortgagees encumbering the same property.

1.13 An "Owner" or "Unit Owner" as defined in Utah Code Annotated, Section 57-8-3(8) as amended means each person or entity holding a recorded ownership interest in a Condominium, including Declarant. "Owner" or "Unit Owner" shall not include persons or entities who hold an interest in a Condominium merely as security for the performance of an obligation or as a contract purchaser.

1.14 A "Unit" means the physical part of a Condominium that is not owned in common with the other Owners of Condominiums in the Development. Such Units and their respective elements are more particularly described in the Record of Survey Map. The existing physical boundaries of a Unit of a Unit reconstructed in substantial accordance with the Record of Survey Map shall be conclusively presumed to be its boundaries rather than the description expressed in the deed or Record of Survey Map, regardless of minor variances between boundaries shown upon the Record of Survey Map or in the deeds and those of the building, regardless of settling or lateral movement of the building. Whenever reference is made in this Declaration, in the Record of Survey Map, in any deed or elsewhere to a Unit or Condominium it shall be assumed that such reference is made to the Unit as a whole, including such of its component elements.

## 2. DESCRIPTION OF COMMON INTERESTS, PROPERTY RIGHTS, RIGHTS OF ENJOYMENT AND EASEMENTS

2.1 Elements of Condominium; Easements. Ownership of each Condominium within the Development shall include (i) for use and enjoyment in, to, and throughout the Common Area of the Development, and (ii) for ingress, egress and support over and through the Common Area. However, such nonexclusive easements shall be subordinate to, and shall not interfere with, exclusive easements over the Common Area, if any, appurtenant to Units. Each such easement shall be appurtenant to and pass with the title to every Unit, subject and subordinate to the following rights and restrictions:

2.2.1 The right of the Association to limit the number of guests, and to adopt Association rules and regulations ("Association rules") regulating the use and enjoyment of the Common Area;

2.2.2 The right of the Association to borrow money to improve the Common Area;

2.2.3 The right of the Association to assign, rent, license or otherwise designate and control use of parking and storage spaces within the Common Area, but not parking and storage spaces assigned to a specific unit and designated as Limited Common Area. The Management Committee shall have the right to revoke any such assignments;

2.2.4 The right of Declarant or its designees to enter the Development together with any expendable areas, to construct the Development, including additional lands, and to make repairs and remedy construction defects if such entry shall not interfere with the use of any occupied Unit unless authorized by the Unit Owner. Any damage caused by an entry onto a Unit by the Declarant or its designees shall be repaired by the entering party;

2.2.5 The right of the Association, or its agents, to enter any Unit and/or Limited Common Area or Facility to perform its obligations under this Declaration, including obligations with respect to construction, maintenance or repair for the benefit of the Common Area or the Owners in common or to make necessary repairs that the Unit Owner has failed to perform. The Association shall request the right to enter in advance and such entry shall be at a time convenient to the Owner whose Unit is being entered. The right shall be immediate in case of any emergency originating in or threatening such Unit, and the obligation can be performed whether or not the Owner is present. Such action shall be made with as little inconvenience to the Unit Owner as possible and exterior access, if reasonably available, shall be used and any damage caused thereby shall be repaired by or at the expense of the Association;

2.2.6 The right of any Owner or his representatives, to enter the Unit or Limited Common Area or Facility of any other Owner to perform permissible installations, alterations or repairs to heating, plumbing, mechanical or electrical services, including installation of television antennas and related cables, if requests for entry are made in advance and such entry is at a time convenient to the Owner whose Unit is being entered. In case of emergency such right of entry shall be immediate. Such action shall be made with as little inconvenience to the Unit Owner as possible and any damage caused thereby shall be repaired by the entering Owners.

2.3 Delegation of Use, Contract Purchasers, Tenants. Any Owner may delegate his rights of use and enjoyment in the Development to the members of his family, his guests, and invitees, and to such other persons as may be permitted by the Bylaws and the Association rules, subject, however, to this Declaration, to the Bylaws and to the Association rules. However, if an Owner of a

Condominium has sold his Condominium to a contract purchaser or rented it, the Owner, members of his family, his guests and invitees shall not be entitled to use and enjoyment of the facilities of the Development while the Owner's Condominium is occupied by such contract purchaser or tenant. Instead, the contract purchaser or tenant, while occupying such Condominium, shall be entitled to use and enjoy the facilities of the Development and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser, or tenant were the Owner of such Condominium. Each Owner, contract purchaser or tenant also shall notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights of use and enjoyment in the Development and the relationship that each such person bears to the Owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners.

2.4 Encroachments. If any portion of the Common Area encroaches on any Unit or if any portion of a Unit encroaches on the Common Area, regardless of the cause, a valid easement exists of such encroachment and for the maintenance of it as long as it remains and all Units and the Common Area are made subject to such easements. If any structure containing a Unit is partially or totally destroyed and then rebuilt and any encroachment results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains and all Units and the Common Area are made subject to such easements.

2.5 Easements Granted by Association. The Association shall have the power to grant and convey to any third party and the Declarant hereby reserves unto itself easements and rights-of-way in, on, over or under the Common Area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities. Further, Declarant reserves unto itself a transferable easement over or upon the Common Areas and Facilities, access roads or similar property within the Development for the purpose of constructing, developing, maintaining, improving or expanding the Development or properties owned by the Declarant, its successors or assigns which are adjacent to the Development. Such easement shall entitle Declarant the use of all access roads within the Development and to tie into all utility lines, sewage and drainage systems within or traversing the project. Such retained easements shall permit the Declarant, its successors or assigns to maintain a sales office and model units for each phase of the development together with signs, landmarks and similar promotional material and rights of ingress and egress as may be reasonably necessary for the marketing,

development and sale of the Development. Each Owner who accepts a deed to a Condominium, expressly consents to such easement. Any damage to the Development caused under this provision shall be repaired by the Association or the Declarant as applicable.

### 3. USE, RESTRICTIONS AND MAINTENANCE

3.1 Residential Use. Units shall be used for residential purposes only. Nothing in this Declaration shall prevent an Owner from leasing or renting his Condominium. No Owner may lease less than his entire Condominium. However, any lease or rental agreement shall be in writing and any tenant shall abide by and be subject to all provisions of this Declaration, the Articles, the Bylaws, and the Association rules and any lease or rental agreement must specify that failure to abide by such provisions shall be a default under the lease or rental agreement. With the exception of a Mortgagee in possession of a Condominium following a default under a first Mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Owner shall rent, lease or let his Unit for transient or hotel purposes. Any lease or rental which is either for a period of less than thirty (30) days or pursuant to which the Lessor provides any services primarily associated with a hotel or is a "time share" disposition, shall be deemed to be for transient or hotel purposes.

3.2 Commercial Use. Except as otherwise provided in this Declaration, including paragraph 3.1, no part of the Development shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, mineral excavation or other such non-residential purpose.

3.3 Right to Decorate. Each Owner shall have the right at his sole expense to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim, perimeter walls of the Units and surfaces of the bearing walls and the partitions located within such Unit. Each Owner shall also have the right to substitute new finished surfaces in place of those existing on the ceilings, floors and walls. The Owner shall have the right to maintain floors and walls. The Owner shall have the right to maintain, repair, paint, finish, alter, substitute and add or remove any fixtures attached to such ceiling, floors and walls. Notwithstanding the foregoing, windows can be covered only by drapes, shades and/or blinds and cannot be painted or covered by foil, paper or other similar materials.

3.4 Offensive Conduct, Nuisances. No noxious or offensive activities, including but not limited to, repair of automobiles or other motorized vehicles (other than emergency repairs) and the use of amplified or other instruments or sound speakers which can be heard in adjoining or proximate Units, shall be carried on, or

within the Development. Nothing shall be done on or within the Development that may be or may become an annoyance or nuisance to the residents of the Development, or that in any way interferes with the quiet enjoyment of occupants of Condominiums. Unless otherwise permitted by the Association, no Owner shall (i) use power tools or maintain a hobby shop and/or (ii) serve food or beverages, cook, barbecue or engage in similar activities, except within such Owner's Unit or Limited Common Area or Facility appurtenant to such Unit.

3.5 Parking Restrictions, Use of Parking Area. Unless otherwise permitted by the Management Committee, no automobile, boat trailer, recreational vehicle, camper, truck or commercial vehicle shall be parked or left on any street or any part of the Development other than in any parking area designated by the Management Committee for the parking and storage of such vehicles. However, parking (i) for passenger vans and trucks not larger than the parking area assigned to each Unit and (ii) for commercial vehicles for the purpose of making deliveries, shall be permitted in accordance with the Association rules. Except with the written consent of the Management Committee, no Owner shall have or maintain more motor vehicles than there are parking spaces owned by, or assigned to, such Owner.

3.6 Signs. No sign of any kind shall be displayed to the public view on or from any Condominium or any portion of the Development without the approval of the Management Committee, except such signs as may be used by the Declarant or its designees, for the purpose of developing, selling and improving Condominiums within the Development. However, one sign of customary and reasonable dimension, advertising a Condominium for sale or for rent, may be placed within each Unit or within the Common Area immediately adjacent thereto by the Owner of such Unit, the location and design of such sign to be subject to approval by the Management Committee.

3.7 Antennas and External Fixtures. No television or radio poles, antennas, flag poles, clotheslines, or other external fixtures other than those originally installed by Declarant or approved by the Management Committee, and any replacements, shall be constructed, erected or maintained on or within the Development, or any structures on it. Each Owner shall have the right to maintain television or radio antennas within completely enclosed portions of his Unit, provided, if cable television is or becomes available to such Owner, his right to maintain television antennas within completely enclosed portions of his Unit shall terminate immediately unless the Management Committee continues to authorize their maintenance of such antennas by the Owners thereof.

3.8 Fences. No fences, awnings, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Development except those that



are installed in accordance with the original construction of the Development, and their replacements, or as are authorized and approved by the Management Committee.

3.9 Animals. No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept in any Condominiums or elsewhere within the Development except that two (2) domestic dogs (not over 20 pounds in weight) or two (2) cats (or one of each), fish in aquariums and birds inside bird cages may be kept as household pets within any Unit, if (i) they are not kept, bred or raised for commercial purposes, and (ii) their maintenance is approved by the Management Committee. Each person bringing or keeping a pet on the Development shall be liable pursuant to laws of the State of Utah to other Owners, their family members, guests, invitees, tenants, and contract purchasers, and their respective family members, guests and invitees for any damage to persons or property caused by any pet brought on or kept on the Development by such person or by members of his family, his guests or invitees.

3.10 Restricted Use of Recreational Vehicles. No boat, truck, trailer, camper, recreational vehicle or tent shall be used as a living area while located on the Development. However, trailers or temporary structures for use incidental to the construction of the Development or the sales of Units may be maintained within the Development until Declarant has conveyed the last Condominium, including any Phase of development which may be annexed to and made a part of the Development pursuant to Section 14.

3.11 Trash Disposal. Trash, garbage or other waste shall be kept only in sanitary containers. No Owner of a Condominium shall permit or cause any trash or refuse to be kept on any portion of the Development other than in the receptacles customarily used for it, which shall be located only in places specifically designated for such purpose (including trash chutes) or within the Owner's Unit (except on the scheduled day for trash pickup).

3.12 Outside Drying and Laundering. No exterior clothesline shall be erected or maintained and there shall be no exterior drying or laundering of clothes on balconies, patios, porches, railings or other areas.

3.13 Structural Alterations. No structural alterations to the interior of any Unit shall be made and no plumbing or electrical work within any bearing or common walls shall be made by any Owner or permitted to be made, without the prior written consent of the Management Committee.

3.14 Exterior Alterations. No Owner shall, at his expense of otherwise, make or permit to be made, any alterations or modifications (including painting) to the exterior of the buildings, fences, railings, walls or landscaping situated within the Development without the prior written consent of the Management

Committee (who shall consider harmony with external design, color and location within the Development as a whole).

3.15 **Patio and Balcony - Limited Common Areas.** The Development has been designed to include in the Common Area, an open patio or balcony appurtenant to some of the Units. The Owner of each such Unit shall have an exclusive appurtenant easement to use such patio, balcony, or Limited Common Area, as set forth in this Declaration. The general location of such patios, balconies, and garages or similar Limited Common Area shall be subject to the terms of this Declaration. Each Owner shall have the right to place furniture and potted plants upon his patio or balcony, if any. Except as provided in this Section 3.15, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Limited Common Areas without the prior written consent of the Management Committee.

3.16 **Owner's Obligation to Repair.** Each Owner at his expense shall be responsible for the maintenance and repair of the interior of his Unit, his Limited Common Areas and Facilities (if any), the windows of his Unit, the appliances and equipment located in his Unit, and the plumbing, heating and cooling systems servicing his Unit, whether such systems or structures are located within, above, underneath or are detached from the Unit or within the exterior or interior bearing walls of such Unit. The Association shall be responsible for the maintenance and repair of any of the above-described systems if such work would affect the structural integrity of any portion of the Common Area or if such work involves equipment or facilities used in common by all or any of the Owners, provided, however, that in the event such maintenance or repair is attributable to the extraordinary use or abuse of any Owner or a few Owners, the cost of such work may be assessed to such Owner or Owners.

3.17 **Association's Obligation to Repair.** The Association shall maintain and repair the Common Area and all improvements, landscaping, equipment, furnishings and facilities thereon, except any Limited Common Areas and Facilities for which the respective Owners thereof have the duty to maintain and repair.

3.18 **Right of Entry.** In making repairs or effecting maintenance, each Owner and the Association shall have the rights of entry on the terms and in the manner provided in paragraphs 2.2.6 and 2.2.7.

3.19 **Compliance with Laws.** Nothing shall be done or kept in any Unit or in the Development that might increase the rate of, or cause the cancellation of, insurance on the Development, of any portion of the Development, without the prior written consent of the Management Committee. No Owner shall permit anything to be done or kept in his Unit that violates any permit, law, ordinance, statute, rule or regulation of any local, county, state or federal

body. No Owner shall allow furniture, furnishings, or other personal property belonging to such Owner to remain within any portion of the Development except in such Owner's Unit or Limited Common Area or Facility and except as may otherwise be permitted by the Management Committee.

3.20 Indemnification. Each Owner shall be liable pursuant to the laws of the State of Utah to the remaining Owners for any damage to the Development that may be sustained by reason of the negligence of that Owner, members of his family, his contract purchasers, tenants, guests or invitees.

3.21 Owner's Obligation for Taxes. To the extent allowed by law, each Unit shall be separately assessed and taxed so that all taxes, assessments and charges which may become liens prior to the first Mortgages under local law, shall relate only to the individual Units and not to the Development as a whole. Each Owner shall be obligated to pay any taxes or assessments assessed by the county assessor against his Condominium and against his personal property.

3.22 Future Construction. Nothing in this Declaration shall limit the right of Declarant, or its successors and assigns, to complete construction of or improvements to, the development of the Common Area, and to Units owned by Declarant, or to alter them or to construct additional improvements as Declarant deems advisable before completion and sale of the entire Development. The rights of Declarant in this Declaration may be assigned by Declarant to any successor as to all or any part of the Declarant's interest in the Development as developer, by an express assignment incorporated in a recorded deed that transfers an interest to a successor.

3.23 Enforcement. The failure of any Owner or the Association to comply with any provision of this Declaration or the Articles or Bylaws shall give rise to a cause of action in the Association and/or any aggrieved Owner for the recovery of damages or for injunctive relief, or both, and for attorneys' fees incurred thereby.

#### 4. THE ASSOCIATION

4.1 Purpose. The purpose of the Association is to manage, maintain and preserve the Common Areas and to perform such other duties as specifically set forth in this Declaration, the Articles and Bylaws of the Carolee Condominiums, Inc.

4.2 Association Action; Management Committee and Officers. Except as to matters requiring the approval of Members set forth in this Declaration, the Articles or the Bylaws, the affairs of the Association shall be conducted by the Management Committee and such officers as the Management Committee may elect or appoint. Such election or appointment shall be in accordance with this

Declaration or the Bylaws and any amendments thereto.

#### 4.3 Powers and Duties of Association.

4.3.1 Powers. The Association shall be a nonprofit corporation organized under the Nonprofit Corporation Act of Utah subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the following:

4.3.1.1 Assessments. The Association shall have the power to establish, fix, and levy assessments against the Owners of Condominiums and to enforce payment of such assessments in accordance with the provisions of Article 6 of this Declaration.

4.3.1.2 Right of Enforcement. The Association, in its own name and on its own behalf, or on behalf of any Owner who consents, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provisions of this Declaration or of the Articles or Bylaws, or of the Association rules or any resolutions of the Management Committee, and to enforce by mandatory injunction, or otherwise, all of those provisions.

4.3.1.3 Delegation of Powers. The Association, acting by and through the Management Committee, can delegate its powers, duties and responsibilities to committees or employees and may employ a professional managing agent for the Development ("manager"). Any agreement for professional management of the Development shall be terminable by either party with or without cause and without payment of a termination fee on thirty (30) days' written notice. The term of any such agreement shall not exceed one (1) year (although such agreement may be renewed from year to year by the Management Committee) unless the terms thereof have been approved by the Federal Housing Administration and the Veterans Administration. The Management Committee may appoint an executive committee and any other committees or may hire employees and delegate to such committees or employees any of the powers and duties of the Management Committee, subject to any limitations contained in the Bylaws.

4.3.1.4 Association Rules. The Association shall have the power to adopt, amend and repeal its rules as it deems reasonable. The Association rules shall govern the use of the Common Area (including, but not limited to, the use and assignment of all parking areas, any recreational facilities and private streets), by the Owner or his family, guests, invitees or by any

contract purchaser, or tenant or their respective family members, guests or invitees. However, the Association rules shall not be inconsistent with or materially alter any other provisions of this Declaration, the Articles or the Bylaws. A copy of the Association rules as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Development. In case any conflict between any Association rules and any other provisions of this Declaration, the Articles or Bylaws, such provisions of the Association rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

4.3.1.5 Actions. The Association may prosecute or defend, in the name of the Association, any action affecting or relating to the Common Area, or property owned by the Association, and any action in which all or substantially all of the Owners have an interest.

4.3.2 Duties of the Association. In addition to the powers delegated to it by its Articles or the Bylaws, and without limiting their generality, the Association, acting by and through the Management Committee, or persons or entities described in Section 4.3.1.3, has the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties:

4.3.2.1 Operation and Maintenance of Common Area. The Association shall operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Area, and all its facilities, improvements, and landscaping, including but not limited to, the use and assignment of any undesignated parking areas, any private driveways and private streets, and any other property acquired by the Association, including personal property, in a good condition and in a good state of repair. In this connection, the Association may enter into contracts for services or materials for the benefit of the Association or the Common Area, including contracts with Declarant. The terms of any such service contract shall not exceed one (1) year and shall be terminable by either party with or without cause and without payment of a termination fee upon thirty (30) days' written notice.

4.3.2.2 Water and Other Utilities. The Association shall acquire, provide and pay for water, sewer, garbage disposal, electrical, telephone, gas and other necessary utility services for the Common Areas and Facilities. The term of any contract to supply any of the listed services shall not exceed one (1) year for which the supplier will contract at the applicable regulated rate.

4.3.2.3 Insurance. The Association shall obtain, from reputable insurance companies, and maintain the insurance

described in Section 8.

4.3.2.4 Enforcement of Restrictions and Rules. The Association shall perform such other acts, including the maintenance of reserve for legal fees and costs, whether or not expressly authorized by this Declaration, that may be reasonably necessary to enforce any of the provisions of this Declaration, the Articles and Bylaws, and the Association rules and Management Committee resolutions.

4.3.2.5 Reserves. The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those common elements that must be replaced on a periodic basis, and such reserve shall be funded by monthly assessments.

4.4 Document Availability. A current copy of the Declaration, Articles, Bylaws, rules and regulations governing the Condominiums, and the most recent annual financial statement, together with all other books, records and financial statements of the Association, shall be made available for inspection, upon request, at the office of the Association during normal business hours by any prospective purchaser of a Unit, Owners, first Mortgagee and any holders, insurers, or guarantors of a first Mortgagee.

## 5. MEMBERSHIP AND VOTING RIGHTS AND MANAGEMENT COMMITTEE

### 5.1 Membership.

5.1.1 Qualifications. Each Owner of a Condominium, including Declarant shall be a Member of the Association. No Owner shall hold more than one membership in the Association, even though such Owner may own an interest in more than one Condominium. Ownership of a Condominium or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his ownership or ownership interest in any Condominium in the Development ceases, at which time his membership in the Association shall automatically cease. Persons or entities who hold an interest in a Condominium pursuant to an executory contract of sale shall not be considered the Unit Owner entitled to membership in the Association, unless the contract parties shall so agree and the Contract Seller shall notify the Management Committee of such agreement in writing.

5.1.2 Members' Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in this Declaration, the Articles, the Bylaws and the Association rules and all amendments thereto. Except as set forth in this Declaration, rights, interests and privileges of each Owner in good standing shall be equal. Each Owner shall be and become a Member of the Association contemporaneously with his acquisition of a Unit

without further documentation of any kind.

5.1.3 Transfer of Membership. The Association membership of each person or entity who owns an interest in one or more Condominium(s) shall be appurtenant to each such Condominium and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Condominium or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium or interest in it shall operate automatically to transfer the appurtenant membership rights in the Association to the new Owner.

## 5.2 Voting.

5.2.1 Number of Votes. The Association shall have two (2) classes of voting membership:

Class A: Class A Members shall be all Owners, with the exception of Declarant. Each Class A Member shall be entitled to the number of votes for each Condominium in which such class Member owns an interest as set forth on Exhibit A hereof. However, when more than one Class A Member owns an interest in a Condominium, the vote of such Condominium shall be exercised as they themselves determine, but in no case shall have more than the number of votes set forth on Exhibit A.

Class B: The Class B Member shall be the Declarant who shall be entitled to three times (3X) the number of votes for each Condominium owned, as set forth on Exhibit A.

5.2.2 Joint Owner Votes. The voting rights for each Condominium may not be cast on a fractional basis. If the joint owners of a Condominium are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercises the voting rights of a particular Condominium, it will be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Condominiums. If more than one (1) person or entity exercises the voting rights for a particular Condominium, their votes shall not be counted and shall be deemed void.

5.3 Management Committee. The Management Committee shall consist of three (3) members. Members of the Management Committee may be removed at any time without cause by the person appointing or electing such member as provided herein.

#### 5.4 Rights of Appointment.

5.4.1 By Declarant. Declarant reserves the right to appoint some or all of the management committee and to exercise all powers and responsibilities associated with committee membership until the first of the following occurs:

(a) Six (6) years from the date of the Declaration,  
or;

(b) Seventy-five percent (75%) of the undivided interest in the common areas and facilities have been conveyed to Unit Owners other than the Declarant.

5.4.2 By the Owners. The Owners shall have the right to elect those members of the Management Committee which Declarant is not authorized to appoint until such time as Declarant's rights of appointment shall have expired, and thereafter the Owners shall have the right to elect and remove all members of the Management Committee.

#### 6. ASSESSMENTS

6.1 Agreement to Pay. Declarant, for each Condominium owned by it, covenants and agrees, and each purchaser of a Condominium by his acceptance of a deed, covenants and agrees, for each Condominium so owned, to pay to the Association regular assessments and special assessments, such assessments to be established, made and collected as provided in this Declaration. However, for purposes of this Section 6.1, the Declarant shall not be deemed the Owner of a Condominium nor otherwise assessable for such Condominium until after the construction of the Condominium Unit has been completed to the extent that it is ready for occupancy.

6.2 Personal Obligations. Each assessment or installment, together with any interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of the person or entity who was an Owner at the time such assessment, or installment, became due and payable, except as provided in Section 6.2. If more than one person or entity was the Owner of a Condominium at the time the assessment or installment accrued, the personal obligation to pay such assessment, or installment, respecting such Condominium shall be the joint and several obligation of all owners. The grantee of a voluntary conveyance of a unit shall be jointly and severally liable with the grantor(s) of the unit for all unpaid assessments against the unit pursuant to Section 6 of this Declaration accruing up to and including the time of conveyance. However, the grantee shall be entitled to a statement from the management committee setting forth the amounts of the unpaid assessment against the grantor, and the grantor shall not be liable for, nor shall the unit conveyed be subject to, a lien for any unpaid assessments against the grantor in excess of



the amount set forth. No Owner of a Condominium may exempt himself from payment of assessments, or installments, by waiver of the use or enjoyment of all or any portion of the Common Area or by waiver of the use or enjoyment of, or by abandonment of, his Condominium.

6.3 Purpose of Assessments, Maintenance of Reserves. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the Members of the Association, the improvement, replacement, repair, operation and maintenance of the Common Area and the performance of the duties of the Association as set forth in the Declaration. Assessments may also be used to cover expenses for repair of defects or failures in the Development. The regular assessments shall include adequate reserve funds for contingencies and for maintenance, repairs and replacement of the Common Area improvements that must be replaced on a periodic basis sufficient to satisfy the requirements of any first Mortgage. This limitation shall not affect the liability of any supplier or manufacturer of any product included in the Development. Unless the Association is exempt from federal or state taxes, all reserves shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the Utah State Tax Commission that will prevent such funds from being taxed as income of the Association.

#### 6.4 DETERMINATION OF AMOUNT OF ASSESSMENTS

6.4.1. Regular Assessments. Regular Assessments shall be computed and assessed against all Condominiums in the Project as follows:

##### (a) Common Expenses

(1) Annual Budget. On or before the 1st day of December of each year, the Association shall prepare, or cause to be prepared, an operating budget setting forth an itemized statement of the anticipated receipts and disbursements for the coming calendar year and taking into account the general condition of the Project. Each such budget, together with a written statement from the Association will outline a plan of operation for the year in question and justifying in every important particular the estimates made, shall be submitted to the Members in final draft on or before the 15th day of December of each year. Such budget, with any changes therein, shall be adopted by the Members at each annual meeting of the Members. Said operating budget shall serve as the basis for the schedule of proposed monthly assessments for the annual period for which it is prepared. Said budget shall also constitute a major guideline under which the Association shall operate during such annual period.

(2) Basis of Annual Budget. The annual budget shall be based upon the Association's advance estimates of the

Association's cash requirements to provide for payment of estimated expenses, arising out of or connected with maintenance and operation of the Common Areas and provision of utility services (to the extent not separately metered or billed) and other common items to the Units. Such actual expenses and estimated expenses may include, among other things, the following: expenses of management, governmental taxes and special assessments, unless and until Condominiums are separately assessed; premiums for all insurance that the Association is required or permitted to maintain; repairs and maintenance; wages for Association employees, including fees for a Manager, if any; utility charges (including charges for utility services to the Units to the extent not separately metered or billed); legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve; surplus and/or sinking funds; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Declaration.

(3) Annual Assessments. The Annual Assessment shall be payable in one of two options as follows: (1) the full assessment may be paid prior to the 25th day of January of each year, or (2) the assessment may be paid in monthly installments equal to one-twelfth (1/12) of the amount of the Annual Assessment, so apportioned to the Owner. The dates and manner of payment shall be determined by the Association. The foregoing method of assessing the Common Expenses to the Owners may be altered by the Association so long as the method it adopts is consistent with good accounting practice and requires that the portion of Common Expenses borne by each Owner during a twelve (12) month period be determined on the basis of his undivided ownership interest. Each monthly installment of the Annual Assessment not paid within fifteen (15) days after the first of the month shall bear interest at the rate of one and one-half (1 1/2) percent per month from the date it becomes due and payable until paid. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Condominium for such assessment.

(b) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Section 9.3 below, except that the vote therein specified shall not be necessary.

6.4.2 Special Assessments. In addition to the annual regular assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area (except as provided

in Section 9 hereof), including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of a majority of the members pursuant to Section 5.2 hereof. However, following the conversion of the Class B membership to Class A membership, any such assessment shall have the vote or written assent of (i) holders of a majority of the voting power of the Association, and (ii) holders of a majority of the voting power of the Association excluding the Declarant. All proceeds from any special assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service and the Utah State Tax Commission in order to avoid, if possible, its taxation as income of the Association.

6.4.3 Member Action. Any action authorized under Sections 6.4.1 or 6.4.2 above requiring membership approval shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting. A quorum for such meeting shall be ten percent (10%) of membership as determined by voting rights of the Association. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than required, Members who were not present in person or by proxy, may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

6.5 Uniform Rate of Assessment. Except as provided in this Declaration, regular and special assessments must be fixed at a uniform rate for all Condominiums based upon the undivided percentage ownership for each Unit as set forth on Exhibit A. Regular and special assessments for insurance, gas, water and reserves for roofing, painting, water heaters or such other areas as the Declaration or Management Committee may deem necessary, shall be based upon the undivided percentage ownership for each Unit as set forth on Exhibit "A" hereof, as amended as necessary due to the expansion of the Project, and may be collected on a monthly basis or otherwise as the Management Committee may determine. A special assessment against Members to raise funds for the rebuilding or major repair of a portion of the structural Common Area shall be levied upon the basis of the ratio of the square footage of the aggregate floor area of living Units in all Condominiums to be assessed.

6.6 Assessment Period. The initial assessment period for all Units, including those owned by Declarant, shall commence on the

first day of the calendar month following the date on which the first sale of a Condominium to a purchaser is closed and recorded (the "initiation date") and shall terminate on December 31 of the year in which the initial sale is closed and recorded. Thereafter, the regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year, and regular assessments shall be payable in equal monthly installments unless the Management Committee adopts some other basis for collection. Voting rights attributable to the respective Condominiums shall not vest until assessments against such Condominiums have been paid.

6.7 Assessment Installment Due Date. The due dates for the payment of installments normally shall be the first day of each month unless some other due date is established by the Management Committee. Each installment of regular assessments and special assessments shall become delinquent if not paid within fifteen (15) days after its due date. Delinquent assessment payments shall accrue interest at an annual rate of eighteen percent (18%) until paid. All payments shall be applied first to interest then to principal. No such interest charge shall exceed the maximum amount allowable by law.

6.8 Estoppel Certificate. The Management Committee or manager, on not less than twenty (20) days' prior written request and upon the payment of a handling fee not exceeding \$10.00 per certificate, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default as to his Condominium under the provisions of this Declaration and further stating the dates to which installments of assessments, regular or special, have been paid as to such Condominium. Any such certificate delivered pursuant to this Section 6.8 may be relied on by any prospective purchaser of Mortgagee of the Condominium, but reliance on such certificate may not extend to any default not involving the payment of assessments of which the signer had no actual knowledge.

## 7. COLLECTION OF ASSESSMENTS, LIENS

7.1 Right to Enforce. The right to collect and enforce assessments is vested in the Management Committee acting by and on behalf of the Association. The Management Committee or its authorized representative, including any manager, can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law of inequity, or the Management Committee may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 7.2 to enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other amounts described in Section 6.2 shall be maintainable without foreclosing or waiving the lien rights.

7.2 Creation of Lien. If there is a delinquency in the payment of any assessment or installment on a Condominium, as described in Section 6.7, any amounts that are delinquent, together with a late charge computed in accordance with Section 6.7, and all costs that are incurred by the Management Committee or its authorized representatives in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against such Condominium upon recordation in the office of the County Recorder of Salt Lake County of a notice of lien executed by an authorized representative of the Association pursuant to Utah Code Annotated, Section 57-8-20, as amended.

### 7.3 Notice of Default, Foreclosure

7.3.1 Each assessment or installment, together with any interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of the person or entity who was an Owner at the time such assessment or installment became due and payable. If more than one person or entity was the Owner of a Condominium, the personal obligation to pay such assessment or installment, respecting such Condominium shall be both joint and several. The grantee of a voluntary conveyance of a unit shall be jointly and severally liable with the grantor(s) of the unit for all unpaid assessments against the unit pursuant to Section 6 of this Declaration accruing up to and including the time of conveyance. However, the grantee shall be entitled to a statement from the Management Committee setting forth the amounts of the unpaid assessment against the grantor, and the grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for any unpaid assessments against the grantor in excess of the amount set forth. No Owner of a Condominium may exempt himself from payment of assessments, or installments, by waiver of the use or enjoyment of all or any portion of the Common Area or by waiver of the use or enjoyment of, or by abandonment of, his Condominium.

7.3.2 Assessment. Each Owner shall be liable for a proportionate share of the common expenses, such shares being the same as the percentage of undivided interest in the common areas and facilities appurtenant to the Unit owned by the Unit Owner as set forth in Appendix "A". Such assessment shall accrue from the date the first unit is conveyed to a purchaser and will be due and payable in advance. Declarant shall not be liable for such assessment until the unit is completed to the extent it is suitable for occupancy.

7.3.3 Lien. A lien for unpaid assessments shall also secure reasonable attorneys' fees and all costs and expenses, if any, incurred by the Management Committee incident to the collection of such assessment or enforcement of such a lien.

7.3.4 Foreclosure. In any foreclosure of a lien

for assessments, the Unit Owner subject to the lien shall be required to pay a reasonable rental for the Unit, and the Management Committee shall be entitled to the appointment of a receiver to collect the same. Foreclosure of liens for unpaid assessments shall proceed as authorized by the rules of the Association and Utah law.

7.4 Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Section 7, the benefit of any homestead or exemption laws of Utah in effect at the time any assessment or installment becomes delinquent or any lien is imposed.

## 8. INSURANCE

8.1 Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah.

(a) Fire and Casualty Insurance. A policy of policies of insurance on the Project in such amounts as shall provide for full replacement thereof, determined annually, in the event of damage or destruction from the casualty against which such insurance is customarily maintained by other condominium projects similar in construction, design and use. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

(b) Public Liability and Property Damage Insurance. The Association shall obtain a broad form of comprehensive liability insurance coverage, in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death and property damage. Coverage shall include without limitation, liability for operation of automobiles on behalf of the Association and all activities in connection with the ownership, operation, maintenance and other use of the Project.

(c) Flood Hazard Insurance. If the Project is or comes to be situated in a locale identified by the Secretary of Housing and Urban Development as an area having special flood hazard and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Condominium Project shall be obtained and maintained. The minimum amount of coverage afforded by such policy shall be the lesser of the maximum amount of insurance available under the said Act or the aggregate of the unpaid principal

balances of the Mortgages affecting the individual Units. Such policy shall be in the form of the standard policy issued by members of the National Flood Insurers Association or in the form of a policy which meets the criteria established by the Flood Insurance Administration.

(d) Workmen's Compensation Insurance. Workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(e) Fidelity Insurance or Bond. Fidelity insurance or a bond in such amounts and in such forms as the Association deems appropriate to cover against dishonesty of employees, destruction or disappearance of money or securities, and forgery.

8.1.2 Form of Insurance. Insurance coverage on the Project, insofar as possible, shall be in the following form:

(a) Casualty and Flood Hazard Insurance. Casualty and flood hazard insurance in a form or forms naming the Association as the insured, as trustee for the Owners and for the Declarant, whether or not the Declarant is an Owner, and which policy or policies shall specify the interest of each Owner (Owner's name, unit number and the appurtenant undivided interest in the Common Areas) and shall contain a standard, noncontributory mortgagee clause in favor of each Mortgagee which from time to time shall give notice to the Association of its Mortgage. The Association shall furnish to each Owner and to each Mortgagee requesting in writing the same, a certificate of coverage, including an identification of the Owner's interest.

(b) Public Liability and Property Damage Insurance. Public liability and property damage insurance which names the Association as the insured, as trustee for each Owner, for the Manager, if any, and for the Declarant, whether or not the Declarant is an Owner, and which protects each Owner, the Manager, if any, and the Declarant against liability for acts of omissions for any of them in connection with the ownership, maintenance, or other use of the Project.

(c) Policies. Insurance policies which provide for the following:

(i) That the insurer shall waive subrogation as to any claims against the Association, the Manager, if any, the Owners, the Declarant and their respective servants, agents and guests;

(ii) That the policy or policies cannot be canceled, invalidated, or suspended on account of the conduct of

any one or more individual Owners;

(iii) That the policy or policies cannot be canceled, invalidated or suspended on account of the conduct of any trustee, officer or employee of the Association, without a prior demand in writing that the Association cure the defect;

(iv) That any "no other insurance" clause in the policy or policies shall not apply to individual Owners' policies of insurance; and

(v) That the policy or policies cannot be canceled either by the insured or the insurance company until after ten (10) days' written notice to the Association, to each Owner, to the Declarant and to each Mortgagee who has made a written request for such notice.

8.1.3 Additional Coverage. The provisions of this Declaration shall not be construed to limit the power of authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration in such amounts and in such forms as the Association may from time to time deem appropriate.

8.1.4 Adjustment and Contribution. Exclusive authority to adjust losses under the insurance policies hereafter in force on the Project shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchase by individual Owners or their Mortgagees.

8.1.5 Owner's Own Insurance. Notwithstanding the provisions of this Article VIII, each Owner may obtain insurance at his own expense providing coverage upon his Condominium, his personal property, for his personal liability, and covering such other risks as he may deem appropriate; provided that if the insurer under said policy is the insurer under any policy issued pursuant to Section 18.1 through 18.3 above, then any insurance policy obtained by an Owner shall provide that it does not diminish the insurance carrier's coverage for liability arising under any of the insurance policies obtained by the Association pursuant to this Article. If such insurance obtained by an Owner can be obtained in the normal practice without additional premium charge for a waiver of subrogation rights, then all such insurance shall waive the insurance company's right of subrogation against the Association, other Owners, the Manager, if any, the Declarant, and the servants, agents, and guests of any of them.

8.1.6 Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and shall adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the



Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or such other qualified appraisers as the Association may select.

## 9. DESTRUCTION OF IMPROVEMENTS

9.1 Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means 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.

9.2 Procedure. In the event of damage to or destruction of any part of the Project, the following procedures shall apply:

(a) Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the project, the Association shall obtain complete and reliable estimates of the costs of repair or reconstruction of that part of the Project damaged or destroyed.

(b) Insurance Sufficient. If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair or reconstruct the damaged part of the Project.

(c) Insurance Insufficient - Less than Seventy-five Percent (75%) Destroyed. If less than seventy-five percent (75%) of the Project is destroyed or damaged, and if the proceeds of the insurance maintained by the Association do not equal or exceed the estimated costs to accomplish repair or reconstruction, restoration shall be carried out and all the Owners shall be assessed a special assessment for any deficiency. Such special assessment shall be allocated and collected as provided in Section 6.4.2 hereof, except that the vote therein specified shall not be necessary. Further assessments may be made in a like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

(d) Insurance Insufficient - Seventy five Percent (75%) or More Destroyed. If seventy-five percent (75%) or more of the Project is destroyed or damaged, if the proceeds of the insurance maintained by the Association do not equal or exceed the estimated costs to accomplish repair or reconstruction, and if the Owners within one hundred-twenty (120) days after the destruction or damage by a vote of at least seventy-five percent (75%) of the total votes of the Association elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subsection (c) above. In the event that Owners holding at least seventy-five percent (75%) of the total votes of the Association do not vote within one hundred-twenty (120) days after destruction of or damage to three-fourths of the

Project, to repair or rebuild the affected improvements, the Association shall file with the County Recorder for Salt Lake County, State of Utah, a notice setting forth such facts. Upon filing of such notice, the following shall occur:

(i) The Project shall be deemed to be owned in common by the Owners;

(ii) The undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of undivided interest of the respective Owner in the Common Areas;

(iii) Any liens affecting any of the Condominiums shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and

(iv) The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance on the Project, if any, shall be considered as one fund and shall be divided among all the Owners in a percentage equal to the percentage of undivided interest owned by each respective Owner or affected portion thereof in the Common Areas, as set forth in Exhibit "A" attached hereto, after first paying out of the respective share of each Owner, to the extent sufficient for such purpose, all liens on the undivided interest in the Project owned by such Owner.

9.3 Repair or Reconstruction. As soon as practicable after receiving estimates on the cost of repair or reconstruction, the Association shall, if repair or restoration is to occur, diligently pursue to completion, the repair or reconstruction of that part of the Project damaged or destroyed. The Association 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. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the fire or other disaster, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before such fire or disaster.

9.4 Disbursement of Funds for Repair or Reconstruction. If repair or reconstruction is to occur, then the insurance proceeds held by the Association and any amounts received from assessments made pursuant to Section 9.3(c) hereof shall constitute a fund for the payment of the costs of such repair and reconstruction. It shall be deemed that the first amount disbursed in payment for the costs of such repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all of the costs of such repair or reconstruction, such balance

shall be distributed to the Owners in proportion to their respective percentages of ownership of the Common Areas, as applicable.

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

## 10. CONDEMNATION

10.1 Sale by Unanimous Consent. If an action for condemnation of all or a portion of the Development is proposed or threatened by any governmental agency having the right of eminent domain, timely written notice shall be given all first Mortgagees. On unanimous written consent of all the Owners and after written notice to all Mortgagees, the Development, or a portion of it, may be sold.

10.2 Distribution of Proceeds of Sale or Award. On a sale or award occurring under Section 10.1 or 10.3 (below), the proceeds shall be distributed to the Owner and the Mortgagees of each Condominium affected as to their respective interest may appear in proportion to the relative value of each affected Unit as determined by reference to an appraisal of the value of all such affected Units (as of the date immediately prior to the condemnation), conducted by an independent appraiser selected by the Management Committee. The cost of such appraisal shall be deducted from the proceeds or award.

10.3 Distribution of Condemnation Award. If the Development, or a portion of it is not sold, but is instead taken, the judgment or agreement of condemnation shall, by its terms, apportion the award among the Owners and their respective Mortgagees, and if it does not, then the proceeds shall be apportioned pursuant to Section 10.2 above.

10.4 Revival of Right to Partition. On sale or on taking that renders more than fifty percent (50%) of the Units on the Development uninhabitable, the right of any Owner to partition through legal action shall revive immediately.

## 11. PARTITION

11.1 Suspension. The right of partition is suspended pursuant to Utah Code Annotated Section 57-8-7(3) as to the Development. The Development cannot be partitioned unless the subject property has been removed from the provisions of these Articles and the Utah Condominium Ownership Act pursuant to Utah Code Sections 57-8-22 and 57-8-31. Nothing in this Declaration shall prevent partition or division of interest between joint or common Owners of one (1) condominium.

Proceeds of property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees in accordance with Section 10.2.

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

## 12. NON-SEVERABILITY OF COMPONENT INTERESTS IN A CONDOMINIUM

12.1 Prohibition Against Severance. An Owner shall not be entitled to sever his Unit in any Condominium from his membership in the Association, and shall not be entitled to sever his Unit and his membership from his undivided interest in the Common Area for any purpose. None of the component interests can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any Limited Common Area or Facility appurtenant to his Unit over the Common Area from his Condominium, and any attempt to do so shall be void.

12.2 Conveyances. After the initial sales of the Condominiums, any conveyance of a Unit, or of the component interest in the Common Area, by the Owner of any Condominium, shall be presumed to convey the entire Condominium.

## 13. MORTGAGE PROTECTION.

13.1 Breach of Covenants, Lien on Mortgage. No breach of any of the covenants, conditions, restrictions or limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions or limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure or Trustee's sale. At least eighty percent (80%) of the Units sold in the Development shall be sold to individuals for use as their primary year-round residence.

13.2 Priority of Liens. No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions hereto shall constitute a lien on each respective Condominium prior

and superior to all other liens except (1) all taxes, bonds, assessments and other levies, which, by law, would be superior thereto; and (2) the lien or charge of any recorded Mortgage on such Condominium made in good faith and for value and recorded prior to the date on which any such assessment or assessments become due.

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

13.4 Mortgage Holder Rights in Event of Foreclosure. Whenever the Mortgagee of a Mortgage of record obtains title to a Condominium by the foreclosure of the Mortgage on the Condominium Unit or by deed of assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, such acquirer shall take the Condominium free of any claims for unpaid assessments and charges against the Condominium which accrued prior to the date of the acquisition of title to such Condominium by such acquirer except for claims for the pro-rata reallocation of such assessments or charges to all Condominiums in the Project, including the mortgaged Condominium. Such unpaid share of assessments, shall be deemed to be common expenses, collectible prospectively pro rata from all of the Condominiums in the Project, including the Condominium that has been acquired in accordance with the provisions of this Section.

13.5 Notice to First Mortgage Holders. Upon appropriate request, the Association shall give the applicable holder of the first Mortgage, if any, prompt notice of any default in the Condominium mortgagor's obligations under the Condominium documents not cured within thirty (30) days of default. From and after the time a mortgagee makes written request to the Management Committee or the Association of Unit Owners therefore, the Committee or the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of: (1) the Common Areas involving the amount in excess of, or reasonably estimated to be in excess of Ten Thousand Dollars (\$10,000.00); or, (2) any Unit encumbered by the mortgage held by such mortgagee, if the amount involved in such damage, loss, or taking is in excess of, or reasonably estimated to be in excess of, One Thousand Dollars (\$1000.00). Said notice shall be given within ten (10) days after the Management Committee or said Association learns of such damage, loss, taking or anticipated condemnation. No provision of this Declaration gives or may give a Unit Owner or any other party priority over any rights of mortgagees pursuant to their respective Mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for loss to or taking of Units and/or Common Areas and Facilities.

Any Mortgagee which obtains title to the Unit encumbered

by its Mortgage pursuant to the remedies provided for in said Mortgage, pursuant to foreclosure of said Mortgage, pursuant to exercise of a power of sale available under said mortgage, or pursuant to deed or assignment in lieu of foreclosure, shall be exempt from and shall in no way be governed by or subject to any "right of first refusal" which may be contained in or provided for in this Declaration.

13.6 Matters Requiring Mortgagee Approval. Notwithstanding any other provision contained in this Declaration, at least two-thirds (2/3) (based upon one vote for each first Mortgage owned per Condominium Unit) of the first Mortgagees of any Condominium, as then appear on the official records of Salt Lake County, Utah, shall have given their prior written approval before the Association shall be entitled to:

(a) By act or omission, seek to abandon or terminate the Development;

(b) Change the pro rata interest or obligations of any individual Condominium for the purpose of:

(i) Levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or

(ii) Determining the pro rata share of ownership of each Condominium in the Common Areas and Common Facilities;

(c) By act or omission, seek to abandon, encumber, sell or transfer the Common Areas (the granting rights of use by other Phases or of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas and Common Facilities by the Project shall not be deemed a transfer within the meaning of this clause);

(d) Use hazard insurance proceeds for losses to the Project (whether to Units, Common Areas or Common Facilities) for other than the repair, replacement or reconstruction of such condominium property, except as provided by the Condominium Act and Article XI in case of substantial loss to the Units, Common Areas and/or Common Facilities of the Project.

13.7 Amendment. No provision of this Article XVI shall be amended without the prior written consent of at least two-thirds (2/3) (based on one vote for each Mortgage) of all Mortgagees as appears on the official records of Salt Lake County, State of Utah, as of the date of such amendment.

14. SUBMISSION AND DIVISION OF PROJECT, EXPANDABLE CONDOMINIUM.

14.1 Submission to Condominium. The Declarant hereby submits the Subject Land, the Buildings, and all other improvements now or hereafter made in or upon the Subject Land to the provisions of the Condominium Act and the Condominium Act shall apply thereto. All of said property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used and improved as a condominium project to be known as the Carolee Condominium Project. All of said property is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of said property and division thereof into condominiums; further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns, and any person acquiring, leasing or owning an interest in the real property and improvements comprising the Project, their assigns, lessees, heirs, executors, administrators, devisees and successors.

14.2 Division into Condominiums. The Project is hereby divided into condominiums, each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Areas and Facilities appurtenant to each Unit shall be the fraction whose numerator equals the square footage of the applicable Unit and whose denominator equals the aggregate square footage of all Units within the Project and any Units on Additional Lands, if annexed hereto.

14.3 Easements. The Declarant, its successors and assigns, shall have a transferable easement over and on the Common Areas and facilities, including roads providing ingress and egress to the Project, for the purpose of making improvements on the land within the Condominium Project or in any additional land under the Declaration, or upon lands owned or subsequently owned by the Declarant appurtenant to the Project, for the purpose of doing all things reasonably necessary and proper for the construction, completion and expansion of such lands. Such easement shall entitle Declarant to the use of all access roads within the project and to tie into, and if necessary, to install and construct upon the real property of the Development, all utility lines, sewage and drainage systems and any other similar public or quasi-public improvements or facilities within or traversing the project.

## 15. GENERAL PROVISIONS

15.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

15.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity, or partial invalidity, illegality or unenforceability of any provision hereof

shall not affect or invalidate any other provisions hereof, and all other provisions shall remain in full force and effect.

15.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver thereof.

15.4 Violations as Nuisance. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies set forth herein, may be abated or enjoined by any Owner, by Member of the Management Committee, or the Association.

15.5 Number, Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall include the masculine, feminine or neuter, as the context requires.

15.6 Exhibits. All exhibits referred to are attached to this Declaration and incorporated by reference.

15.7 Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Condominium.

15.8 Binding Effect. This Declaration shall inure to the benefit of, and be binding on, the successors and assigns of the Declarant and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

15.9 Unsegregated Real Estate Taxes. Until such time as real property taxes have been segregated by the Salt Lake County Assessor, they shall be paid by the respective Owners of Condominiums. The proportionate share of the taxes for a particular Condominium shall be determined by dividing the initial sales price or offered initial sales prices of all Condominiums within the Development (the term "offered initial sales price means the price at which an unsold Condominium is then being offered for sale by Declarant). If, and to the extent, that the taxes are not paid by any Owner of a Condominium and taxes are allowed to become delinquent, they shall be collected from the delinquent Owner by the Association.

15.10 Notice to Owner. In each instance in which a notice is given to an Owner and/or Owners, the same shall be in writing and may be delivered personally, in which case personal delivery of such notice to one or two or more co-Owners or to any general partner of a partnership, as the case may be, and personal delivery of the notice to any officer or agent for the service of process of a corporation owning such Condominium, shall be deemed to be



delivered to the corporation or such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner and/or Owners at the most recent address furnished by such Owner to the Association or if no notice, shall be deemed to be delivered forty-eight (48) hours after the time of such mailing, except for notice of a meeting of Members or Directors in which case the notice provisions of the Bylaws shall control.

15.11 Notice to Association. Any notice to be given to the Association may be delivered personally to any Member of the Management Committee at such address as it shall fix from time to time and is circulated to all Owners. Such notice shall be deemed to be delivered forty-eight (48) hours after the time of such mailing.

15.12 Notice to Declarant, Registered Agent. Notice to Declarant shall be delivered by United States mail, postage prepaid, addressed to Declarant at the address shown on the signature page of this Declaration, or such other address as it shall designate to the Management Committee from time to time. Such notice shall be deemed to be delivered forty-eight (48) hours after the time of such mailing. The Registered Agent for the Declarant shall be Gary Jense, 4885 South 900 East, Suite 208, Salt Lake City, Utah 84107.

15.13 Allocation of Interests in Common Area. The fee Ownership of interests in the Common Area of each Owner shall be equal.

Declarant has executed this instrument as of December 18, 1996  
1996.

GJ & R INVESTMENTS

BY: Gary W. Jense

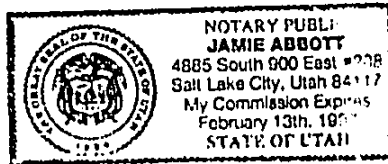
STATE OF UTAH )  
 )  
 ) : ss.  
COUNTY OF SALT LAKE )

On this 18 day of December, 1996, appeared before me, Garry W. Tense, who proved to me on the basis of satisfactory evidence, that he is the person who executed the within instrument on behalf of the partnership and acknowledged to me that the partnership executed it.

WITNESS my hand and official seal, this 18 day of December, 1996.

Jamie Abbott  
NOTARY PUBLIC  
Residing at: Salt Lake

My Commission Expires: 2-13-97



**EXHIBIT "A"**

**Allocation of Limited Common Area  
and Common Area**

Units 1 - 11

942 Square Feet

8.2% or 456 Square Feet of Limited Common

8.3% or 1381 Square Feet of Common

House

1412 Square Feet

9.8% or 568 Square Feet of Limited Common

8.3% of 1381 Square Feet of Common

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EXHIBIT "E"

ARTICLES OF INCORPORATION

FOR THE

CAROLEE CONDOMINIUMS HOMEOWNERS ASSOCIATION, INC.

We, the undersigned Incorporators, being natural persons over the age of 18 years, execute these Articles of Incorporation to form and establish a not-for-profit corporation under the provisions of the Utah Business Corporations Act, Section 16-6-1 et seq. of the Utah Code, and adopt the following Articles of Incorporation:

1. Name. The name of the corporation is Carolee Condominiums Homeowners Association, Inc. (the "Association").

2. Duration. The duration of the Association shall be perpetual, unless dissolved by the action of the Association or by operation of law.

3. Purposes. The purposes of the Association are to function as the homeowners association for the Carolee Condominiums located in Salt Lake County, Utah and to enforce the Declaration of Covenants, Conditions, and Restrictions for the Lots within that Subdivision as set forth in the Declaration, and to provide the other services, and perform all of the other functions set forth in the Declaration as may become desirable or necessary for the benefit of the Owners. The Association shall have all power, rights, and privileges available to non-profit corporations under the laws of the State of Utah.

4. Membership. The Members of the Association shall be the Owners of Units in the Carolee Condominiums, Salt Lake County, Utah. Membership is deemed an appurtenance to the Unit, and shall pass automatically to the Owner of that Unit upon conveyance of title. The Association shall not have stock or issue shares.

5. Voting Rights. Each Member is entitled to cast one vote for each Lot he or she owns on all matters presented to the Members for approval. In the election of Trustees, Members may accumulate their votes.

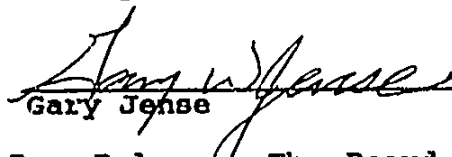
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6. Registered Agent. The initial registered agent of the Association is:

Gary Jense, President  
4585 South 900 East  
Suite 208  
Salt Lake City, Utah 84107

Acceptance of Appointment

I, Gary Jense, hereby accept the appointment as the registered agent for Carolee Condominiums Homeowners Association, Incorporated.

  
\_\_\_\_\_  
Gary Jense

7. Bylaws. The Board of Trustees will adopt bylaws consistent with these Articles at its first meeting. Therefore, bylaws may be adopted, amended, or repealed by the vote of the Members.

8. Principal Place of Business. The principal place of business of the Association, and its initial offices are located at: 4885 South 900 East Suite 235, Salt Lake City, Utah 84117. The Association may establish such other offices and locations as it deems appropriate for the operation of its business.

9. Board of Trustees. There will be three Trustees of the Association. The initial Board of Trustees, who will serve until the election of Officers and Trustees at the first annual Members meeting, are:

<u>Name</u>	<u>Address</u>
Gary Jense	4585 South 900 East Suite 208 Salt Lake City, Utah 84117
Douglas Rex	4585 South 900 East Suite 208 Salt Lake City, Utah 84117

The Trustees will elect one of them to act as Chairman until the first annual Members meeting in which the Board is formally elected.

10. Officers. The initial Officers of the Association are:

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President: Gary Jense  
Secretary/Treasurer Douglas Rex

Officers serve at the pleasure of the Board of Trustees.

11. Annual Meeting. The annual meeting of Members will be held on the third Monday in April at the offices of the corporation at the hour of 6:00 p.m., or at such other time or place as may be stated in the notice of annual meeting.


12. Limitations on Liability. The Officers, Trustees and Members of the Association shall not be held personally liable for the debts and obligations of the Association.

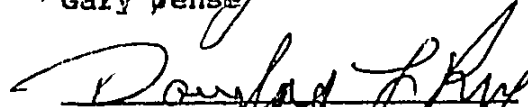
13. Incorporators. The three Incorporators of the Association are:

<u>Name</u>	<u>Address</u>
Gary Jense	4585 South 900 East Suite 208 Salt Lake City, Utah 84117
Douglas Rex	4585 South 900 East Suite 208 Salt Lake City, Utah 84117

14. Amendment. These Articles of Incorporation may be amended from time to time as authorized by the shareholders and as permitted by law.

Wherefore the Incorporators have executed and verified these Articles this 18th day of December 1996.

  
Gary Jense

  
Douglas Rex


STATE OF UTAH            )  
                                  : ss.  
COUNTY OF Salt Lake )

On the 18 day of December, 1996, the foregoing instrument was acknowledged and verified before me by Gary Jense, and Douglas Rex, who personally appeared before me, and being by me duly sworn, declared under penalty of perjury that they are the Incorporators of Carolee Condominiums Homeowners Association, Inc.,

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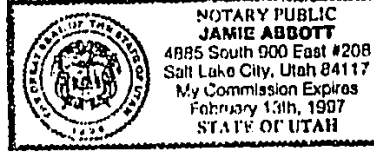
and that they signed the foregoing Articles of Incorporation of Carolee Condominiums Homeowners Association, Inc., and that the statements contained therein are true and correct.

18 day of December, 1996. In witness whereof, I have set my hand and seal this

  
NOTARY PUBLIC

Residing at: Salt Lake

My Commission Expires: 2-13-97



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**EXHIBIT "F"**

**BYLAWS OF THE Carolee Condominiums**

**HOMEOWNERS ASSOCIATION, INC.**

A Non-Profit Corporation of the State of Utah

Pursuant to the provisions of the Utah Non-Profit Corporations Act, the Board of Trustees of the Carolee Condominiums Homeowners Association, Inc., hereby adopts the following bylaws.

**ARTICLE I**

**Name and Principal Office**

1.1 Name. The name of the corporation is "Carolee Condominiums Homeowners Association, Inc." and it is referred to below as the "Association".

1.2 Offices. The initial office of the Association will be at 4885 South 900 East, Salt Lake City, Utah 84117.

**ARTICLE II**

**Members and Meetings**

2.1 Annual Meetings. The annual meeting of the Members of the Association shall be held on the third Monday in April at 6:00 p.m. at the offices of the Association, beginning in the year following the year in which the Association is incorporated. The Board of Trustees may designate some other time, date and place for the annual meeting by giving proper notice of the change in advance of the meeting. The purpose of the annual meeting is to elect the Officers and Trustees, and to consider such other business that comes before the meeting. If the Trustees are not elected at the annual meeting, the existing Trustees shall continue to serve until their successors are named in a special meeting called for that purpose, or until the next annual meeting. The Trustees may change the date, time and place of the annual meeting as they see fit by formal resolution.

2.2 Special Meetings. Special meetings of the Members may be called by the Board of Trustees or by the President as they see fit, or by the Members of the Association representing not less than 33% of the total votes of the Association. Any notice of special meeting shall state the time, place and date of the meeting and the matters to be considered at the meeting. When a special meeting is called by the Members of the Association, the notice shall be in writing and delivered to the President or the Chairman

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of the Board.

2.3 Place of Meetings. All meetings will be held in Salt Lake City, Utah, unless the Members have authorized a meeting to be held elsewhere by written waiver.

2.4 Notice of Meeting. The Board of Trustees shall cause written or printed notice of the date, time, place and purposes of all meetings of the Members to be sent to each of the Members not more than 60 but not less than 10 days prior to the meeting. Mailed notice is deemed delivered when it is deposited in the United States Mail, postage prepaid, addressed to the Member at the last known address. Each Member shall register his or her address with the Association, and it shall be the obligation of the Member to provide notice of any change of address to the Association. If no address is registered, the Association may mail that Member's notice to the Secretary of the Association as the agent for the Member. Only one notice will be mailed on each Lot, so if there are multiple owners, they must designate one of them to receive the notice of the meeting on their behalf.

2.5 Members of Record. Upon purchasing a Lot in the Subdivision, each Owner shall promptly furnish the Association with a copy of the deed or other instrument under which he or she acquired title to the Lot. For purposes of determining a quorum, determining the persons entitled to vote, and all other matters before a meeting of the Members, the Association may designate a record date, not more than 60 days nor less than 10 days prior to the meeting date to determine the Members entitled to notice and to vote at the meeting. If no record date has been fixed, the record date is deemed to be the date on which notice of the meeting was mailed to the Members. The persons appearing as Members, as of the record date, or whose ownership is not registered with the Association until subsequent to the record date, shall not be entitled to notice, shall not be counted in comprising a quorum, and shall not be entitled to vote at the meeting. This shall not preclude a person who acquires his or her Membership subsequent to the record date from voting the interest of his predecessor under a written proxy.

2.6 Quorum. At any meeting of the Members, the presence of Members, in person or by proxy, holding the right to cast more than 50% of the total votes of the Association shall constitute a quorum for the transaction of business. In the event that a quorum is not present at a meeting, the Members present, in person or by proxy, though less than a quorum, may adjourn the meeting to a later date set by those Members present. Notice of re-scheduled meeting will be sent to the Members providing at least 10 days notice of the new meeting. At any re-scheduled meeting, a quorum will be deemed to exist, comprised of those Members present in person or by proxy at the re-convened meeting.

2.7 Proxies. At each meeting of the Members, each Member entitled to cast a vote shall be entitled to vote in person

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on or by written proxy. All proxies must be in writing, signed by the Member as shown on the records of the corporation. When a Membership is jointly held, the proxy must be signed by all of the joint owners of the Membership. Proxies must be presented to the Secretary of the Meeting at the beginning of the meeting for purposes of determining a quorum. The secretary will make an entry of proxies in the minutes of the meeting.

2.8 Voting Rights. With respect to each matter presented to the Members, including the election of Trustees, each Member will be entitled to cast one vote for each Lot that he or she owns. Lots with multiple owners will be entitled to only one vote for that Lot, and in the event that the multiple owners of the Lot are not able to agree on how to cast the vote, no vote will be cast. If only one of the multiple owners is present at the meeting, the other owners are deemed to have consented to that owner voting the interests of that Lot. In the event of Lots held subject to trust deeds or mortgages, the Trustor or Mortgagor will be entitled to vote, and the Lender shall have no right to vote; provided, however, that when a Lender has taken possession of any Lot, the Lender shall be deemed to have succeeded to the interest of the Trustor or Mortgagor, and shall then be entitled to cast the vote.

2.9 Simple Majority. Any matter placed before the Members for a vote shall pass if there is an affirmative vote of the majority of the Members present at the meeting (and there is a quorum present). Election of Trustees will be by secret ballot. Other matters may be voted by secret ballot or by show of hands or such other means as the officer conducting the meeting shall determine.

2.10 Waiver of Irregularities. Any inaccuracies, irregularities or errors in any call for a meeting or notice of meetings, inaccuracies or irregularities in the determination of a quorum or acceptance of proxies are deemed waived unless there is an objection stated at the meeting prior to the vote being taken.

2.1 Informal Action. Any act which is required to be taken or approved at a meeting may be taken or approved without a formal meeting if a majority of the Members consent to the action in writing prior to the action being taken. The Members may hold meetings for which formal notice was not given if the Members waive notice prior to the meeting.

### ARTICLE III

#### BOARD OF TRUSTEES

3.1 General Powers. The Board of Trustees shall have authority to manage and control the property and affairs of the Association. The Board of Trustees may exercise all powers

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conferred upon them by law, by the Articles of Incorporation, or by these bylaws, provided, however, that those powers which are specifically reserved to the Members' bylaws or by the Articles of Incorporation shall be exercised only by the Members. The Board may delegate its powers to officers, managers, or to such others as are appropriately delegated.

3.2 Number and Tenure. There shall be five (5) members of the Board of Trustees. They shall serve until the next annual meeting in which Trustees are elected, and shall continue to serve until their successors have been elected and assumed office. Immediately after the election of the first Board of Trustees by the Members, the Trustees shall, by drawing lots, divide themselves into three (3) terms of two (2) years and two (2) terms of one year. Thereafter, at each annual meeting, only those Trustees whose terms have expired will stand for election. Trustees need not be residents of the State of Utah.

3.3 Board Meetings. The Board of Trustees shall have at least one meeting per year, which shall be within the ninety (90) days preceding the annual meeting of Members for the purpose of setting the agenda for the meeting. The Trustees meeting is for the purpose of approving annual reports, tax returns, and similar matters. Special meetings may be called by the President or the Chairman, or by a majority of the Board by giving notice to the other board members. Notice of Board meetings will be given in writing or by telephone not more than fifteen (15) days, and not less than five (5) days prior to the date of the meeting.

3.4 Quorum. A quorum at a Board meeting will consist of a simple majority of the Board. Board members may be counted as present if they are participating in the meeting by telephone. No proxies will be given among board members. Actions of the Board may only be taken by formal action of the Board, and no individual Trustee shall have the authority to act on behalf of the Association.

3.5 Deadlock. In the event of a deadlock on the Board, the Board shall immediately call for a special meeting of the Members and at the direction of the Chairman of the Board, either call for the election of a new board, or submit the matter to the Members for determination.

3.6 Compensation. The Board of Trustees shall serve without compensation, provided that their reasonable out of pocket expenses for Association business, including the costs of attending board meetings, may be reimbursed by the Association.

3.7 Resignation or Removal. Any Trustee may resign at any time. A Trustee is deemed to have resigned when he or she sells (or otherwise is divested of) his or her Lot and therefore ceases to be a Member of the Association. Any Trustee may be removed prior to the end of his or her term of office by an affirmative vote of sixty percent (60%) of the Members of the

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Association at a regular or special meeting called for that purpose.

3.8 Vacancies. Vacancies on the Board of Trustees will be filled by appointment of a successor by the remainder of the Board, provided that any such appointee will be confirmed or rejected at the next regular meeting of the Members. Any such Trustee is to fill the balance of the vacant term which he or she has filled, and will stand for election at the expiration of that term.

3.9 Informal Action by Trustees. The Trustees may take any action they could take in a formal meeting without a formal meeting, provided that the action is authorized in advance in writing signed by a majority of the Board, and further provided that all of the Trustees must have been given an opportunity to approve or reject the action. The Trustees may waive notice of meetings by signing written waivers at the time of the meeting. Minutes of all board meetings will be kept, and when a meeting is held without prior notice, the minutes will reflect the written waiver of notice.

#### ARTICLE IV

#### OFFICERS AND DUTIES

4.1 Number. The officers of the Association shall consist of at least a President, and a Secretary/Treasurer. The Board may establish such other officers as it deems appropriate.

4.2 Appointment Tenure. The officers will be appointed by the Board of Trustees at their annual meeting, and all officers shall serve at the pleasure of the Board and may be removed by a majority vote of the Board in a meeting called for that purpose. All officers must be Members of the Association.

4.3 Duties of the President. The President shall preside at meetings of the Board of Trustees and at meetings of Members. He shall sign, on behalf of the Association, all legal documents approved by the Board, including deeds and mortgages and other contracts. The President shall supervise and be primarily responsible for the day-to-day operation of the Association's affairs, including the firing and termination of employees and subordinates. The President shall perform such other duties as assigned by the Board.

4.4 Duties of Vice President. The Vice President will perform the duties of the President if he or she is not available, and shall perform such other duties as designated by the Board.

4.5 Duties of the Secretary/Treasurer. The Secretary/Treasurer is responsible to keep accurate records of the

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Members of the Association and the transfer of their interests to others, to keep minutes at the meetings of the Association Members and the Trustees, and cause notice of any meetings to be issued as called for in these bylaws, to file annual reports, and to perform all other assignments of the Board.

4.6 Compensation. The Officers will serve without compensation, provided that their reasonable out of pocket expenses in performing their duties for the Association, will be reimbursed. The Board may fix such other compensation as it finds appropriate given the responsibility of the Officers.

## ARTICLE V

### INDEMNIFICATION

5.1 Indemnification Against Third Party Actions. The Association may defend and indemnify the Officers and Trustees against all actions, claims, and suits brought by third parties against them individually, which arise from the exercise of their obligations and duties as Officers and Trustees. This shall include all civil, administrative, criminal or investigative actions whether brought by an individual or a governmental agency. The indemnification shall extend to the payment of reasonable attorneys fees incurred in the defense of such action, including fees for independent counsel, and the payment of any find, settlement, or judgment. This indemnity is limited in scope to those acts or omissions arising from the good faith exercise of the authority of the office held, or the discharge of the duties as a Trustee on behalf of the Association.

5.2 Indemnification Against Member Actions. The Association may defend and indemnify the Officers and Trustees against all actions, claims, and suits brought by Members of the Association against them individually which arise from the exercises of their obligations and duties as Officers and Trustees. This shall include all civil, administrative, criminal or investigative actions whether brought by an individual or a governmental agency. The indemnification shall extend to the payment of reasonable attorneys fees incurred in the defense of such action, including fees for independent counsel and the payment of any fine, settlement, or judgment. This indemnity is limited in scope to those acts or omissions arising from the good faith exercise of the authority of the office held, or the discharge of the duties as a Trustee on behalf of the Association.

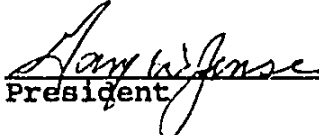
5.3 Request for Indemnification. When any Officer, Trustee or employee of the Association receives notice of any action referred to above, he or she must give notice to the President and to the Board of Trustees, stating at the nature of

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the claim, the claimant, and providing all pertinent information about the claim. The Board, in the case of an action against an Officer or employee, or against a single Trustee, may vote to indemnify the officer, employee or Trustee. In the event that the action is against the Board of Trustees as a whole, or names more than a single Trustee individually, and the claim is entirely covered by and within the policy limits of the Association's insurance coverage, the Board may vote to indemnify itself and the individuals named. In the event that the claim exceeds the limits of any insurance coverage, or it is not covered, the Board may not agree to indemnify itself without presenting the matter to the Association for a vote at a special meeting called for that purpose.

5.4 Amendment. These bylaws may be amended by the Members of the Association from time to time as the Members see fit by a majority vote at a meeting called for the purpose.

Adopted this 18th day of December, 1996.

  
\_\_\_\_\_  
President

Attest:

  
\_\_\_\_\_  
Secretary

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