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NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
WEST JORDAN CITY  
2000 S REDWOOD RD  
W JORDAN 84088  
REC BY: B ROME                    DEPUTY - WI

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DECLARATION OF CONDOMINIUM

FOR

TUSCANY TOWNHOMES,

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A UTAH CONDOMINIUM PROJECT

IN

SALT LAKE COUNTY, UTAH

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TUSCANY DEVELOPMENT, INC.

AS DECLARANT

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AFTER RECORDING, PLEASE RETURN TO:  
James R. Blakesley  
Attorney-at-Law  
2102 East 3300 South  
Salt Lake City, Utah 84107

DECLARATION OF CONDOMINIUM  
FOR  
TUSCANY TOWNHOMES,  
a Utah Condominium Project

THIS Declaration of Condominium is made and executed this 2nd day of July, 1997, by TUSCANY DEVELOPMENT, INC., a Utah corporation, of 8438 South Gad Way, Sandy, Utah 84093 (hereinafter referred to as the "Declarant").

RECITALS:

- A. This Declaration of Condominium affects that certain real property located in Salt Lake County, Utah described with particularity in Article II below (hereinafter referred to as the "Tract").
- B. Declarant is the owner of the Tract.
- C. Declarant has constructed, is in the process of constructing or will construct upon the Tract a residential planned unit development which shall include certain Units, Common Area, Limited Common Area, and other improvements. All of such construction has been, or is to be, performed in accordance with the plans contained in the Record of Plat Map to be recorded concurrently herewith.
- D. Declarant intends to sell to various purchasers the fee title to the individual Units contained in the Tract, and a corresponding membership interest in the Association of Unit Owners (which shall own the Common Area), subject to the Plat Map, and the covenants, conditions and restrictions set forth herein.
- E. Declarant desires, by filing this Declaration and Record of Plat Map, to submit the Tract and all improvements now or hereafter construct thereon to the Act and the terms, covenants and conditions of this Declaration.
- F. The Project is to be known as "TUSCANY TOWNHOMES"
- G. Since the completion of the Project may be in phases, the completed Project will consist of the original Phase and all subsequent Phases.

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Declarant hereby makes the following Declaration:

### I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

1. Act shall mean and refer to the Utah Condominium Ownership Act, Utah Code Annotated, Sections 56-8-1 et seq. (1953) as amended and supplemented.

2. Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorney's fees, late charges, service fees, filing and recordation fees, accruing interest, fines, and expenditures actually incurred or assessed by the Association.

3. Additional Land shall mean and refer to the additional real property subject to Declarant's unilateral right of annexation as provided in this Declaration, which property is described in Exhibit "D" attached hereto and incorporated herein by this reference.

4. Articles of Incorporation shall mean and refer to the Articles of Incorporation of the TUSCANY TOWNHOMES HOMEOWNERS ASSOCIATION on file or to be filed with the Utah Department of Commerce.

5. Assessments shall mean and refer the allocation of Common Expenses which each Unit or Unit Owner is obligated to pay.

6. Association shall mean and refer to association of Unit Owners at the TUSCANY TOWNHOMES taken as, or acting as, a group.

7. Building shall mean and refer to any of the structures constructed in the Project.

8. Business and Trade are terms which shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefor. Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this

subsection.

9. By Laws shall mean and refer to the document attached to this Declaration as Exhibit "C".

10. Capital Improvement shall mean and refer to all non-recurring expenses (as opposed to day-to-day expenses) to repair, maintain or replace significant fixed assets in the Project intended to restore, enhance, improve or ameliorate the utility, value or beauty of the Common Areas or Facilities. The term Capital Improvement includes but is not limited to the roofs, building exteriors, swimming pool, clubhouse, maintenance shed, playgrounds, basketball court, volleyball area, picnic area, walkways, sidewalks, parking spaces and roadways.

11. Class B Control Period shall mean and refer to the period of time during which the Class B Member is entitled to appoint all or a Majority of the Members of the Management Committee.

12. Committee shall mean and refer to the Management Committee.

13. Common Areas shall mean and refer to all real property in the Project in which the Association owns an interest for the common use and benefit of its Members, their successors, assigns, tenants, family members, guests and invitees, including but not limited to the following items:

a) The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Units.

b) All Common Areas and Facilities designated as such in the Plat Map or Maps;

c) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Unit Owners, such as telephone, electricity, gas, water, and sewer;

d) The Project's outdoor grounds, landscaping, street lighting, fences, clubhouse, maintenance shed, playgrounds, basketball court, volleyball area, picnic area, swimming pool, walkways, sidewalks, parking spaces and roadways;

e) All portions of the Project not specifically included within the individual Units; and

f) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the



Association for the common benefit of its Members.

14. Common Expense shall mean and refer to:

- a) All sums lawfully assessed against the Unit Owners;
- b) Expenses of administration, maintenance, repair, or replacement of the Common Areas and Facilities;
- c) Expenses agreed upon as common expenses by the Association; and
- d) Expenses declared common expenses by the Project Documents.

15. Community shall mean and refer to the Project.

16. Community Wide Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community as determined by the Management Committee from time to time.

17. Declaration shall mean and refer to this Declaration of Condominium for TUSCANY TOWNHOMES, a Utah Condominium Project.

18. Declarant shall mean and refer to TUSCANY DEVELOPMENT, INC., a Utah corporation, its successors and assigns, unless otherwise indicated.

19. Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

20. Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

21. Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or the Committee. A vote which is for any reason suspended is not an "eligible vote".

22. Family shall mean and refer to a group of natural persons residing in the same residential structure and maintaining a common household.

23. Guest shall mean and refer to a person who is not a Permanent Resident and whose presence within the Project as a visitor or invitee is approved by or is at the request of a particular Resident.

24. Improvement shall mean and refer to all existing physical structures and appurtenances to the Property of every kind and type, including but not limited to all Buildings, Units, utility systems, fixtures, plumbing, electrical, heating, air conditioning, streets, roads, walkways, sidewalks, pathways, driveways, parking areas, fences, swimming pool, clubhouse, maintenance shed, playgrounds, basketball court, volleyball area, picnic area, landscaping, trees, shrubs, bushes and green space.

25. Land shall mean and refer to all of the real property subject to this Declaration.

26. Limited Common Area shall mean and refer to that portion of the Common Area designated for the exclusive use of a particular Unit Owner.

27. Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

28. Management Committee shall mean and refer to those Unit Owners duly elected and qualified to manage, operate and regulate the Association.

29. Manager shall mean and refer to the person or entity appointed or hired to manage and operate the Project.

30. Map shall mean and refer to the Plat Map.

31. Member shall mean and refer to an Owner obligated, by virtue of his Ownership, to be a shareholder in the Association and, where the context permits, a representative of the Unit Owners serving on the Management Committee.

32. Mortgage shall mean and refer exclusively to either a first mortgage or first deed of trust on any Unit, but shall not mean or refer to a uniform real estate contract or executory contract of sale.

33. Mortgagee shall mean and refer exclusively to a mortgagee under either a first mortgage or a beneficiary under a first deed of trust on any Unit, but shall not mean or refer to a seller under a uniform real estate contract or executory contract of sale.

34. Owner shall mean and refer to a Unit Owner.

35. Permanent Resident shall mean and refer to anyone who resides in the Project for more than four (4) consecutive weeks or for a total of more than eight (8) weeks in any calendar year.

36. Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

37. Plat Map shall mean and refer to the Record of Survey Map, Plat Map or Maps of TUSCANY TOWNHOMES, a Utah Condominium Project on file in the Office of the County Recorder of Salt Lake County, as they may be amended or supplemented from time to time, which show the location of the Units, Common Area and Facilities.

38. Project shall mean and refer to the TUSCANY TOWNHOMES, a Utah Condominium Project.

39. Project Documents shall mean and refer to the Declaration, By Laws, and Rules and Regulations governing the Project, as they may be amended or supplemented from time to time.

40. Property shall mean and refer to all of the land or real estate, improvements and appurtenances submitted to this Declaration.

41. Record of Survey Map shall mean and refer to the Plat Map.

42. Recreational, Oversized or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational, oversized or commercial transportation device of any kind.

43. Resident shall mean and refer to a person who lives, dwells, abides, lodges, or stays in a Unit.

44. Single Family Home or Residence shall mean and refer to both the architectural style of a Unit and the nature of the residential uses and activities permitted therein.

45. Unit shall mean and refer to a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the

Unit or serving only the Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit.

46. Unit Number shall mean and refer to the number, letter or combination thereof designating a particular Unit.

47. Unit Owner shall mean and refer to the person who is the owner of record in the Office of the County Recorder of Salt Lake County, Utah of a fee or an undivided fee interest in a Unit. The term Unit Owner does not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

## II. SUBMISSION

The Land, described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference, is located in Salt Lake County, Utah, is hereby submitted to the Act and the terms, covenants and conditions of this Declaration, and is hereby made subject to, and shall be governed and regulated by, the Act and this Declaration of Condominium.

In addition:

The Land is SUBJECT TO the described easements and rights of way, TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Plat Maps or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

### III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon and under the following covenants, conditions, and restrictions:

1. Description of Improvements. The significant improvements in the Project include, or shall include, up to forty-nine(49) Buildings, containing up to two hundred and twenty six (226) Units. The Buildings in the Project will be of a contemporary architectural style and will be of wood-frame construction, with, a least in part, veneers of brick, stucco or siding, asphaltic composition shingle roofs and concrete foundations, and will contain either four (4) or six (6) Units. There will also be certain Common Area and Facilities, including but not limited to an entry way, roads, streets, parking areas, swimming pool, clubhouse, maintenance shed, playgrounds, basketball court, volleyball area, picnic area, walking path, sidewalks, walkways, utility systems, landscaping and green space. Electricity and natural gas will be separately metered and billed to each Unit. Water, sewage disposal and garbage removal will not be separately metered or billed, but will be paid for as part of the Common Expenses. The Project will also contain other improvements of a less significant nature.

2. Description and Legal Status of the Property. The Units shall be individually owned and the Common Areas shall be owned by the Association.

3. Membership in the Association. A Unit Owner's membership in the Association is and shall be appurtenant to the ownership of the Unit and may not be separated or partitioned therefrom.

4. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Unit shall describe the interest or estate involved substantially as follows:

All of Unit No. \_\_\_\_\_ contained within TUSCANY TOWNHOMES, a Utah Condominium Project, as the same is identified in the Record of Plat Map recorded in Salt Lake County, Utah as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_ (as said Record of Plat Map may have heretofore been amended or supplemented) and in the Declaration of Condominium for TUSCANY TOWNHOMES, a Utah Condominium Project, recorded in Salt Lake County, Utah as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_, (as said Declaration may have heretofore been amended or supplemented), together with an undivided percentage of ownership interest in the Common Areas appurtenant thereto.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the

benefit of any party who acquires any interest in a Unit. Neither the membership in the Association, nor the right of non-exclusive use of a Common Area shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

5. Ownership and Use. Each Owner shall be entitled to the exclusive ownership and possession of his Unit and an undivided ownership interest in the Common Areas and Facilities, subject to the following:

a) Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own a Unit, it being intended that it may and shall be owned as any other property. This is a residential community and as such the Units shall be used only for residential purposes, except as set forth below. The Common Areas shall only be used in a manner consistent with the residential nature of the Project.

b) Title to the Common Area. The Common Area, described with particularity on Exhibit "D," which is attached hereto and incorporated herein by this reference, shall be owned by all of the Unit Owners as tenants in common.

c) Mandatory Association. Each purchaser of a Unit shall automatically become a Member of the Association.

d) Member's Easements and Rights of Way. Every Member of the Association shall, as an Owner, have the right and non-exclusive easement to use and enjoy the Common Area. Such right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following restrictions:

(1) The right of the Association to limit the number of Guests and Residents;

(2) The right of the Association to suspend voting privileges; and

(3) Subject to the prior written consent of the Secretary of Veterans Affairs, the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes. During the Developer's period of development of the Project, any such dedication or transfer shall be effective only if approved in writing by the Declarant.

e) Rules and Regulations. The Management Committee, shall have the power and authority to adopt, amend or repeal administrative rules and regulations from time to time.

f) Restrictions and Limitations of Use. The use of the Units, of whatever kind, is subject to the following guidelines, limitations and restrictions:

(1) Parties Bound. The Project Documents shall be binding upon all Owners and Residents as well as their family members, vistors, guests and invitees when they enter the Project.

(2) Nuisance. It shall be the responsibility of each Owner and Resident to prevent the creation or maintenance of a nuisance in, on or about the Project. For purposes of this section the term "nuisance" shall be deemed to include but shall not be limited to the following:

a. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Unit or the Common Areas;

b. The storage of any item, property or thing that will cause any Unit or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;

c. The storage of any substance, thing or material upon any Unit or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other Residents at the Project;

d. The creation or maintenance of any noxious or offensive condition or activity in or about any Unit or the Common Areas;

e. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other Residents, their family members, guests, visitors or invitees, particularly if the police or sheriff must be called to restore order;

f. Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other Residents, their guests or invitees;

g. Too much noise in, on or about any Unit

or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.; and

h. Too much traffic in, on or about any Unit or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.

(3) Unsightly Work, Hobbies or Unkempt Condition. The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Project.

(4) Removing Garbage, Dust & Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon or to be stored in such a manner so as to be visible from the street.

(5) Subdivision of a Unit. No Unit shall be subdivided or partitioned.

(6) Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices, or the painting or graffiti, within the Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

(7) Temporary Structures. No Owner or Resident shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Committee. Anything to the contrary notwithstanding and until the occurrence of the Events referred to herein, the Developer may install and use temporary structures in the development of the Project and marketing of the Units.

(8) Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections. All property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to avoid any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or Resident in, on or about the Common Areas without the prior written consent of the Committee. The Management Committee may alter or remove any objects which create, in the opinion of the Management Committee, a dangerous or potentially dangerous condition, or have been planted or placed in a manner which violates this subsection.



(9) Energy Conservation Equipment. No solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Project without the prior written consent of the Committee.

(10) Business Use. No commercial Trade or Business may be conducted in or from any Unit unless: a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; b) the business activity conforms to all zoning requirements for the Project; c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of Residents of the Project; and d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents of the Project, as may be determined in the sole discretion of the Committee. Notwithstanding the foregoing, the leasing of a Unit shall not be considered a Trade or Business within the meaning of this subsection.

(11) Storage and Parking of Vehicles. The driving, parking, standing and storing of motor vehicles in, on or about the Project shall be subject to the following:

a. The parking rules and regulations adopted by the Committee from time to time;

b. Except for purposes of loading or unloading passengers or supplies (for a period of time up to twenty-four (24) hours), no Recreational, Commercial or Oversized vehicle parking is allowed in the Project;

c. No overnight parking on the street is allowed in the Project;

d. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any Unit, Building or parking space, or to create an obstacle or potentially dangerous condition.

e. Residents may only park their motor vehicles within their garages, in their driveways or in other designated parts of the Common Area.

f. No Resident shall repair or restore any vehicle of any kind in, on or about any Unit or the Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

g. No garage may be altered in such a manner

that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed.

h. All parking areas shall be used solely for the parking and storage of vehicles.

i. Garage doors shall remain closed except when the garage is in use.

j. Vehicles parked in violation of this Declaration may be impounded or towed by the Management Committee or its designee without further notice and at the Owner's sole expense.

(12) Aerials, Antennas, and Satellite Systems. No aerials, antennas, satellite dishes or systems shall be erected, maintained or used in, on or about any Unit, outdoors and above ground, whether attached to or on top of any Building, Unit, structure, or otherwise, within the Project without the prior written consent of the Management Committee, which shall not be unreasonably withheld. In making its decisions, the Management Committee shall abide by and be subject to all relevant state and federal laws, including but not limited to all FCC guidelines, rules and regulations as they may be amended or supplemented from time to time.

(13) Windows and Window Coverings. No-aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover the exterior windows of any Unit or garage, although, with the prior written consent of the Management Committee, sun shades and tinted windows are allowed.

(14) Pets. Up to two (2) domestic pets per Unit are allowed unless a variance is granted in writing by the Management Committee. Residents with a pet or pets shall abide by the pet rules and regulations adopted, amended or supplemented by the Management Committee from time to time. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Residents with pets in the Common Area shall keep them on a leash at all times and shall clean up immediately after their pets. Pets which constitute a nuisance will not be tolerated in the Community and for purposes of this subsection, pets in the Common Area without a leash, pets in the Common Area whose owners do not immediately clean up after them, or dogs who bark, howl, whine or scratch unreasonably shall be deemed to be a nuisance.

(15) Insurance. Nothing shall be done or kept in, on or about any Unit or the Common Area which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Project over what the Management

Committee, but for such activity, would pay.

(16) Laws. Nothing shall be done or kept in, on or about any Unit or Common Area, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(17) Damage or Waste. No Owner or Resident shall cause, or allow to be caused, damage to the Common Area or another Unit. No Owner or Resident shall commit, or allow to be committed, waste to the Common Area or another Unit. Each Owner, by virtue of accepting a deed to a Unit or other document of conveyance, and each Resident, by virtue of residing in the Project, shall indemnify and hold the Management Committee and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or Resident, their family members, guests, visitors or invitees; provided, however, that any guest, visitor or invitee of the Declarant shall not under any circumstances be deemed to be the guest, visitor or invitee or any other Owner or Resident.

(18) Structural Alterations. No structural alterations to the Common Area or Facilities is allowed without the prior written consent of the Management Committee.

(19) Mail Boxes. The initial mail box must be the one approved and provided by the Declarant. All replacement mail boxes must be approved in writing by the Management Committee prior to installation.

6. Leases. Any agreement for the leasing, rental, or occupancy of a Unit (hereinafter in this Section referred to as a "lease") shall be in writing and a copy thereof shall be delivered to the Association before the term of the Lease commences. Every lease shall provide that the terms of such lease shall be subject in all respects to the provisions of the Project Documents. Said lease shall further provide that any failure by the Resident thereunder to comply with the terms of the foregoing documents shall be a default under the lease. If any lease does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be a part of the lease and binding on the Owner and Resident by virtue of their inclusion in this Declaration. No Owner shall be permitted to lease his Unit for transient, hotel, seasonal, corporate, executive or other similar purposes. The minimum initial term of any lease shall be at least one (1) year. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his entire Unit. Any Owner who shall lease his Unit shall be responsible for assuring compliance by the Resident with the Project Documents. Failure by an Owner to take legal action, including the institution of a forcible entry and unlawful detainer proceeding against his Resident who is in violation of the Project Documents

within ten (10) days after receipt of written demand so to do from the Committee, shall entitle the Association to take any and all such action including the institution of proceedings in forcible entry and unlawful detainer on behalf of such Owner against his Resident. Neither the Association nor any agent retained by the Association to manage the Project shall be liable to the Owner or Resident for any eviction under this Section that is made in good faith. Any expenses incurred by the Association, including attorneys' fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Board to levy an Individual Assessment against such Owner and his Unit for all such expenses incurred by the Association. In the event such Assessment is not paid within thirty (30) days of its due date, the Committee may resort to all remedies of the Association for the collection thereof. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Unit.

7. Easements: Drainage, Support, Maintenance and Repair. There are hereby RESERVED and the Association is hereby GRANTED the following easements and rights of way:

a) A non-exclusive easement over, across, through, above, over, and under the Buildings, Units and the Common Area for the operation, maintenance, repair, servicing, and regulation of the Common Area as well as common utilities and systems (e.g., power, water, sewer and gas lines) amenities and facilities; and

b) A reciprocal easement on, over, above, under, through and across all Buildings, Units and the Common Area for the drainage of surface waters on, over, under, through and across the Project. The Declarant shall establish a subdrain and storm drainage system designed to serve the entire Project (the "Master Subdrain and Storm Drain System"). No Unit Owner shall interfere with the Master Subdrain and Storm Drain System established by the Declarant, or its successors or assigns. Each Unit Owner shall be responsible to develop his Unit in a manner consistent with the Master Subdrain and Storm Drain System, and so as not to detract therefrom or interfere therewith, or the Established Drainage Pattern on any other Unit in the Project. No changes to the Established Drainage Pattern on any Unit shall be permitted without the prior written consent of the Management Committee. For purposes of this Section, the term "Established Drainage Pattern" is defined as the approved drainage pattern, facilities and improvements in existence at the time such Unit is conveyed to a home purchaser by the Declarant, its successor or assign. The cost of all improvements, maintenance, repairs and replacements of the subdrain or storm drainage system located within the boundaries of any Unit shall be the responsibility of the Unit Owner. The cost of all improvements, maintenance, repairs and replacements of the subdrain and storm drainage system

located in the Common Area shall be the responsibility of the Association. If the Association or the Unit Owners fail to properly manage, maintain or replace the subdrain and storm drainage system, Salt Lake County shall have the right, but not the obligation to maintain the systems, and to charge the cost thereby incurred to the Association. The Association shall not have the authority to change, by vote, alienation, alteration, transfer, sale, or otherwise, the use of the currently existing areas and structures designed to control storm water runoff unless the consent of the Development Services Division of Salt Lake County, or its successor, has first been obtained in writing. Salt Lake County is hereby made a party to the covenants established by this Declaration for the sole purpose of protecting and preserving the use of the common storm drainage system and structures that serve the Project. Salt Lake County shall not be a Member of the Association and shall have no vote in the management, operation or regulations of its affairs. Salt Lake County is hereby granted a right of enforcement as set forth in Section 40 of this Declaration.

8. Liability of Owners and Residents For Damages. Any Owner, by virtue of accepting a deed to a Unit or other document of conveyance, or Resident, by virtue of residing in the Project, shall be liable to the Association, other Owners or Residents for damages to person or property in the Community caused by his negligence or the negligence of his family members, guests, visitors or invitees.

9. Encroachments. In the event that any portion of the Common Area or a Unit encroaches or comes to encroach upon other Common Area or a Unit as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

10. Management Committee. The Association shall be managed by a Management Committee which shall be comprised of five (5) Unit Owners. Until the happening of the Events, the Declarant shall have the exclusive and irrevocable right to appoint all of the Members of the Committee and their successors or replacements. At the first Annual Homeowners Meeting after the occurrence of the Events, the Members of the Committee shall be elected by the Owners. To provide continuity of management, three (3) of the Members shall be elected for two (2) year terms and the other two (2) Members shall be elected for a one (1) year term. Thereafter, all Members shall be elected for two (2) year terms.

a) Qualify. To qualify, a Member of the Committee must be an individual Owner or the legal representative of an organizational Owner.

b) Vacancies. Any vacant seat on the Committee shall

be filled with a Member elected or appointed to serve a two (2) year term.

c) Dismissal. Any Committee Member who fails on three (3) successive occasions to attend Committee meetings (whether regular or special) or who has failed to attend at least twenty-five percent (25%) of all Committee meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat. In such cases, the remaining Committee Members shall elect a replacement to sit on the Committee until the next meeting of the Association.

d) Removal of Committee Member/Declarant's Rights. Except for Committee Members appointed by the Declarant before the occurrence of the Events, Committee Members may be removed at any time by the affirmative vote of a Majority of the Members of the Association. A replacement to serve the remainder of the removed Member's unexpired term shall be elected at the same meeting.

e) Term. Unless he forfeits or otherwise loses his seat as herein provided, a Member shall serve on the Committee until his successor qualifies and is properly elected by the Association.

f) No Compensation. Committee Members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Committee business and approved by the Committee.

11. Committee Officers and Agents. The Committee shall perform its functions through those three (3) Members who are elected as officers by the Committee and through such agents or employees as the Committee may appoint. There shall be a President and Secretary. Any Committee officer, agent, or employee may at any time be removed, with or without cause, by the vote of a majority of the Committee Members. Provided, however, if a Member of the Committee is removed as an officer, he shall continue to be Member of the Committee.

12. Committee Meetings. A regular meeting of the Committee shall be held immediately after the adjournment of each annual Owners meeting or at such other time as the Members of the Committee may decide. Other regular meetings shall be held at periodic intervals (no longer than monthly) at such time and place as the Committee may determine. No notice need be given of regular Committee meetings. Special Committee meetings shall be held whenever called by the President or by any two (2) Members of the Committee. Reasonable effort shall be made to give either oral or written notice of a special meeting to each Committee Member at least twenty-four (24) hours before the time fixed for the meeting. The propriety of holding any meeting which is attended by all Committee Members may not be challenged on grounds

of inadequate notice. A quorum for the transaction of business at any committee meeting shall consist of a Majority of all the Members then in office.

13. Status and General Authority of Committee. Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted, the following authority and powers:

a) To Enter. The power and authority to enter into or upon any Unit to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project. Except in the case of an emergency, reasonable notice shall be given to the Residents.

b) Grant Easements. The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Buildings, Units and the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

c) Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Plat Map which has been approved by the vote or consent necessary to authorize such amendment.

d) Standing. The power to sue and be sued.

e) Enter Into Contracts. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

f) Transfer Interests in Real Property. The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least Seventy five percent (75%) of the Members in the Association.

g) To Purchase. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least Seventy five percent (75%) of the Members in the Association.

h) To Add Property. The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph (g) above to the Project, so long as it has been approved by at least Seventy five (75%) of the Members in the Association.

i) Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, and procedures as may be necessary or desirable to aid the committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Declaration.

j) Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Members of the Association or Residents not on the Committee, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic, video or audio reproduction of Committee meetings.

k) Assignment or Leasing of Open Common Area Parking Spaces. The authority to charge reasonable user fees for Common Area and Facilities, and to assign or lease available Common Area parking spaces to Residents.

l) All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Owners.

14. Delegation of Management Responsibilities. The Committee may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, independent contractors, through service contracts, or any combination thereof. The termination provision of any such contract must not require a termination penalty or any advance notice of more than thirty (30) days and no such contract shall be for a term greater than one (1) year.

15. Owners Meetings. The Association Members shall meet as follows:

a) Annual Meeting. The annual meeting of the Owners shall be held at 7:00 o'clock p.m. on the second Tuesday in October of each year. Whenever such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be at the location specified in the notice of meeting. At least ten (10) but not more than thirty (30) days before the date of the annual meeting, a written notice thereof shall be personally delivered or mailed postage prepaid to each person who appears as an Owner, at his last known address. The



notice shall state the location, date, time, place, and general purpose of the meeting.

b) Special Meetings. Special meetings of the Owners may be called by the President, by any three (3) Members of the Committee, or by Unit Owners holding at least twenty five percent (25%) of the undivided ownership interest in the Common Area. At least two (2) but not more than thirty (30) days before the date set for a special meeting, written notice thereof shall be given in the manner described in the immediately preceding Paragraph.

c) Waiver of Notice. No notice of any Owners meeting shall be required if a waiver of such notice is signed by all of the Owners. Whenever all of the Owners meet in person or by proxy such meeting may not be challenged on grounds of inadequate notice.

d) Quorum. The presence of a majority of the undivided ownership interest in the Project entitled to cast a vote shall constitute a quorum for the transaction of business at any Owner's meeting.

(1) Quorum Not Present. If a quorum is not present at any Owners meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than forty-eight (48) hours and no later than thirty (30) days, after the time set for the original meeting.

(2) Quorum at Rescheduled Meeting. Those Members present at the rescheduled meeting and entitled to vote shall constitute a quorum at the rescheduled meeting.

(3) Percentage Approval Requirement. In any situation in which this Declaration requires the affirmative vote of a certain percentage of the total ownership interest in the Project for authorization or approval of a matter, the affirmative approval of that percentage of the all of Unit Owners, who must either be present at the meeting in person or by proxy, or, in the alternative, who have signed a separate written consent, is required for authorization or approval of the item, regardless of the quorum requirements.

16. Classes of Membership & Voting Allocations. The Association shall have two (2) classes of membership -- Class A and Class B, described more particularly as follows:

a) Class A. The Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled to vote on all issues before the Association to, subject to the following:

(1) One Vote. Each Unit shall have one (1) vote;

(2) Subject To Assessment. No vote shall be cast or counted for any Unit not subject to assessment;

(3) Multiple Owners. When more than one (1) person or entity holds such interest in a Unit, the vote for such Unit shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Unit shall be suspended in the event more than one (1) person or entity seeks to exercise it.

(4) Leased Unit. Any Owner of a Unit which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary prior to any meeting.

b) Class B. The Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Units, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to three (3) votes per Unit owned. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (which are hereinafter referred to as the "Events"):

(1) Units Sold. Four (4) months after seventy five percent (75%) of the Units (constructed upon the Units) have been sold; or

(2) Three Years. Seven (7) years from the date following the first conveyance of a Unit in Phase I to a Unit purchaser after the effective date of this Declaration ; or

(3) Election. When, in its sole discretion, Declarant so determines.

From and after the happening of the Events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Unit owned. At such time, the Declarant shall call a meeting, in the manner described in the By Laws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

17. Lists of Unit Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Committee shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him or her; (b) the name of each person or entity who is an Eligible

Mortgagee, the address of such person or entity, and the Unit which is encumbered by the Mortgage held by such person or entity; and (c) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Committee with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Committee may for all purposes act and rely on the information concerning Unit ownership in its records or, at its option, the records of the county recorder. The address of any Owner shall be deemed to be the address of the Unit owned by such person unless the Committee is otherwise advised in writing.

18. Capital Improvements and Table. The Management Committee shall prepare a Table of Capital Improvements, which shall contain a list of foreseeable expenditures for Capital Improvements within the Area of Common Responsibility. The Table shall be included in every annual budget, and it shall be reviewed and updated at least annually, and reasonable reserve accounts shall be established by the Committee for the replacement of capital assets as they age. Expenditures by the Association for Capital Improvements to the Project shall be subject to and governed by the following:

a) Committee Discretion/Expenditure Limit. Capital Improvements to the Project which cost ten percent (10%) or less of the Total Annual Operations Budget and do not materially alter the nature of the Project, may be authorized by the Management Committee alone.

b) Homeowner Approval/Expenditure Limit. Any Capital Improvement, the cost of which will exceed such amount, must, prior to the commencement of construction, be authorized by at least a Majority of the Owners.

c) Homeowner Approval/Changing the Nature of the Project. Any Capital Improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) of the undivided ownership interest in the Project.

19. Operation, Maintenance and Alterations. The Units and Common Area shall be maintained by the Unit Owners and the Association as follows:

a) Area of Common Responsibility. The Association shall maintain, repair and replace, as needed from time to time,

the Common Area and Facilities, including but not limited to the exterior of all Buildings, all roofs, foundations, footings, columns, girders, beams, supports and main walls of any Unit and garage, all common utility services such as power, light, gas, hot and cold water, heating, refrigeration and air conditioning systems, fences, fixtures, patios, balconies and decks, and all landscaping as set forth with more particularity below.

b) Area of Personal Responsibility. Each Unit Owner shall maintain, repair and replace, as needed, his Unit, individual utilities, including but not limited to all power, water, gas, sewer, telephone, and television lines servicing only his Unit, windows, doors, garage doors and garage door systems. If a specific item is not mentioned expressly in the Area of Common Responsibility and it is located in, on, under or above a Unit, then it shall be the responsibility of the Unit Owner, unless otherwise determined in writing by the Management Committee.

c) Landscaping. The Association shall maintain, repair and replace all landscaping throughout the entire Project, including but not limited to all green space, grass, sod, ground cover, flower beds, plant beds, trees, bushes, shrubs, and sprinkling systems, which Owners or Residents shall not modify, change, or alter without the express prior written consent of the Management Committee. All landscaping in the Project shall be maintained and cared for in a manner consistent with Community Standards and the quality of design and construction originally established by Declarant. Specific guidelines and restrictions on landscaping may be established by the Management Committee from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be properly pruned and trimmed. All landscaping shall be tasteful, so as not to affect adversely the value or use of any Unit, or to detract from the uniform design and appearance of the Project.

d) Snow and Ice Accumulations. The Association shall remove all ice and snow accumulations from the Common Area.

e) Garbage Storage and Removal. Each Owner shall deposit the garbage, debris and refuse from his Unit into the centrally located trash receptacles or dumpsters throughout the Project, which the Association shall empty, manage and maintain.

f) Limited Common Area. While each Unit Owner shall maintain his Limited Common Area in a clean, safe, tidy, attractive and sanitary condition, the Association shall be responsible to replace and repair the Limited Common Area and all improvements constructed or installed thereon.

g) Utilities. The Association shall provide those

utility services not separately metered and billed to the individual Owners by the provider; provided, however, the Declarant may elect to provide electricity to certain Common Area lamp posts from an individual Unit in which case the Unit Owner shall be entitled to a monthly credit in an amount equal to the greater of:

(1) \$2.00, or

(2) The sum equal to the number of watts in the light bulb, multiplied by the Utah Power and Light Kilowatt rate, multiplied by 4,000, divided by 1,000, and divided by 12.

h) Standard of Care/General. The Property shall be maintained in a usable, clean, functional, attractive and good condition, consistent with Community Standards.

i) Right of Entry. The Management Committee, its agents, representatives or employees shall have a right to enter upon or into any Unit or Common Area as necessary in order to maintain and operate the Project, and shall not be liable for trespass for such entry or work.

j) Changes to Areas of Personal or Common Responsibility. The Management Committee may, in its sole discretion, add items to or subtract items from the Areas of Personal or Common Responsibility upon at least thirty (30) days prior written notice to the Unit Owners.

k) Alterations to the Common Area. Anything to the contrary notwithstanding and until the occurrence of the Events, the Declarant may make changes to the Common Area and Facilities without the consent of either the Association, Management Committee or Owners; provided, however, no Owner or Resident may make any structural alterations, modifications, changes or improvements to the Common Area, including but not limited to any additions, extensions, enclosures, fencing, decks, patios, walkways, structures or sheds not shown on the approved plans and specifications, without the prior express written consent of the Management Committee.

20. Common Expenses. Each Owner, upon receipt of a deed to a Unit or other document of conveyance, shall pay his Assessments to the Association subject to and in accordance with the restrictions set forth below; provided, however, anything to the contrary notwithstanding, the Developer shall not be obligated to pay Assessments until such time as any residential structure, building or Unit is substantially completed and a permanent certificate of occupancy has been issued or, in the alternative, the Developer elects in writing to commence payment, whichever first occurs.

a) Purpose of Common Area Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and Residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Committee.

b) Creation of Assessments. The Assessments shall pay for the common expenses of the Association as may be from time to time specifically authorized by the Management Committee. Each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed.

c) Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the Management Committee shall prepare and deliver to the Owners a proposed Budget which:

(1) Itemization. Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

(2) Basis. Shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and Facilities, which estimates shall include but are not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Committee is required or permitted to maintain, common lighting and heating, water charges, carpeting, painting, repairs and maintenance of the Common Areas and Facilities and replacement of the elements and components thereof that must be replaced on a periodic basis, wages for Management Committee employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, Capital Improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration.

d) Apportionment. The common profits of the Project shall be distributed among, the Common Expenses shall be charged to and the voting rights shall be allocated among the Unit Owners equally, as set forth in Exhibit "B" attached.

e) Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a Majority of the Owners. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessment schedule, or if the Management Committee fails for any reason establish the Budget and

Assessment schedule for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the Budget and the Assessment schedule in affect for the then current year shall continue for the succeeding year.

f) Payment of Assessments. The Management Committee has the sole authority and discretion to determine how and when the annual Assessments are paid, and to amend, modify, change or supplement that schedule from time to time.

g) Personal Obligation of Owner. Each Unit Owne4r shall pay his Assessments and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a executory contract of sale, uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Unit pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: the Owner of both the legal and equitable interest in any Unit; the owner of record in the offices of the County Recorder of Salt Lake County, Utah; and both the Buyer and Seller under any executory sales contract, uniform real estate contract, land sales contract, or other similar instrument.

h) Equitable Changes. If the aggregate of all of the monthly Assessment payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Management Committee may from time to time effect an equitable change in the amount of said payments provided the Owners are given at least thirty (30) days written notice of any changes.

i) Dates and Manner of Payments. The dates, method, form, and manner of payment shall be determined by the Management Committee.

j) Reserve Accounts. The Committee shall establish and maintain at least two (2) reserve accounts: one to pay for unexpected operating expenses and the other to pay for Capital Improvements.

k) Acceleration. Assessments shall be paid in the manner and on dates fixed by the Management Committee who may, at its option and in its sole discretion, elect to accelerate the entire annual Assessment for Owners who have failed to pay their monthly Assessment in a timely manner. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Committee otherwise decides acceleration is not in its best interest, the Committee, at its option and in its sole discretion, may elect to decelerate the obligation.

l) Statement of Assessments Due. Upon written request,

the Management Committee shall furnish to any Owner a statement of Assessments due, if any, on his Unit. Failure to provide the certificate within ten (10) days after a written request, shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

m) Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled and each Owner, by accepting a deed to a Unit or other document of conveyance, hereby waives such homestead exemption as to the Association.

n) Termination of Utility Service. At the discretion of the Management Committee, the utility service to any Owner paid for by Assessments may be terminated if the Owner is in arrears on his obligation to pay Assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

o) Suspension of Right to Vote for Non-Payment. At the discretion of the Committee, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

21. Special Assessments. In addition, the Association may levy Special Assessments in any year, subject to the following:

a) Committee Based Assessment. So long as the Special Assessment does not exceed the sum of Five Hundred and 00/100ths Dollars (\$500.00) per Unit in any one fiscal year (the "Special Assessment Limit"), the Committee may impose the special assessment without any additional approval.

b) Association Approval. Any Special Assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the Members of the Association. The Committee in its discretion may allow any Special Assessment to be paid in installments.

22. Specific Assessments. If a Unit Owner may accept or reject the benefit, then the Management Committee shall also have the power to specifically assess the Owners in a particular area as follows:

a) Benefit only To Specific Unit. If the expense benefits less than all of the Units, then those Units benefitted may be specifically assessed, and the specific assessment shall be equitably apportioned among those Units according to the benefit



received.

b) Unequal or Disproportionate Benefit. If the expense benefits all Units, but does not provide an equal benefit to all Units, then all Units shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Units according to the benefit received.

The failure of the Management Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Committee has not previously exercised its authority under this Section.

23. Individual Assessments. Individual Assessments may be levied by the Committee against a Unit and its Owner to reimburse the Association for:

a) costs and expenses incurred in enforcing the Project Documents;

b) costs and expenses associated with the maintenance, repair or replacement of Common Area for which the Unit Owner is responsible;

c) any other charge, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents; and

d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

24. Collection of Assessments. Assessments must be paid in a timely manner and shall be collected as follows:

a) Time is of the Essence. Time is of the essence and all Assessments shall be paid promptly when due.

b) Delinquent Assessments. Any Assessments which are not paid when due are deemed to be delinquent.

c) Lien. If any Unit Owner fails or refuses to make any payment of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property. A notice of lien may be recorded in the Office of the County Recorder of Salt Lake County, but shall only be necessary in order to establish the priority of the lien.

d) Late Fees and Default Interest Rate. Any Assessments delinquent for a period of more than ten (10) days shall incur a late charge of twenty five Dollars (\$25.00) or five percent (5%) of

the delinquent amount, whichever is greater. Interest at the rate of one and one-half percent (1.5%) per month shall accrue on all delinquent accounts. The Committee may, in its sole discretion, change the amount of the late fee or default interest rate or waive late Assessments and accruing interest, but is not required to do so.

e) Foreclosure of Lien and/or Collection Action. If any Assessments remain unpaid, the Association may, as determined by the Committee, institute suit to collect the amounts due, to foreclose the lien, or both.

f) Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to obtain a personal judgment against him for unpaid Assessments and Additional Charges, to foreclose the lien securing the debt in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed, or both.

g) No Waiver. No Owner may waive or otherwise exempt himself from liability for the payment of Assessments, including but not limited to the non-use of Common Areas or the abandonment of his Unit.

h) Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or perform some function required to be taken or performed by the Association or Management Committee under the Project Documents, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

i) Application of Payments. All payments shall be applied as follows: Additional Charges, delinquent Assessments and current Assessments.

j) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's Assessments, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to

collect the rental without regard to the value of the mortgage security. The Committee may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.

k) Appointment of Trustee. If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

l) Attorney in Fact. Each Owner, by accepting a deed to a Unit or other document of conveyance, hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Unit, if the Unit is rented and Owner is delinquent in his Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the tenant or lessee, against rent due, for the amount of money paid to the Association.

25. Liability of Management Committee. The Association shall indemnify every officer and Member of the Committee against any and all expenses, including but not limited to attorney's Assessments reasonably incurred by or imposed upon any officer or Member of the Committee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Committee) to which he may be a party by reason of being or having been an officer or Member of the Committee. The officers and Members of the Committee shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and Members of the Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or Members of the Committee may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and Member of the Committee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or Member of the Committee, or former officer or Member of the Committee, may be entitled.

26. Insurance. The Management Committee shall at all times purchase, maintain in force, and pay the premiums for, if

reasonably available, insurance on the Common Areas satisfying at least the following requirements:

a) Property Insurance. Blanket property insurance using the standard "Special" or "All-Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard Utah condominium project casualty policy. This additional coverage may be added by the Committee as it deems necessary in its best judgment and in its sole discretion.

b) Flood Insurance. If any part of the Project's improvements are in a Special Flood Hazard Area -- which is designated as A, AE, AH, AO, A1-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate Map (FIRM) -- the Association shall obtain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover any common element buildings and any other common property. The Unit Owner may also be required to purchase an individual policy. The amount of flood insurance should be at least equal to the lesser of 100% of the insurable value of the facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program.

c) Liability Insurance. Liability insurance with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated first class subdivisions in the county. If possible, the policy should be written on the comprehensive form and shall include not-owned and hired automobile liability protection.

d) Director's and Officer's Insurance. Adequate director's and officer's liability insurance (aka Errors and omissions insurance).

e) Fidelity Bond. A separate fidelity bond in a reasonable amount to be determined by the Management Committee to cover all non-compensated officers as well as all employees for theft of Association funds, subject to the following:

(1) Agents. Furthermore, where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Committee or the Association.

(2) Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Committee's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the

custody of the Committee, the Association, or the management agent, as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units, plus reserve funds.

(3) Quality of Coverage. The bonds required shall meet the following additional requirements:

a. they shall name the Committee, the Owners Association, and the Property Manager as obligee;

b. if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense;

c. the premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and

d. the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Committee and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee, and FNMA.

f) Earthquake Insurance shall not be required unless requested by a least Seventy five percent (75%) of the Members of the Association.

g) Miscellaneous Items. The following provisions shall apply to all insurance coverage:

(1) Quality of Carrier. A "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports -- International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurers Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service -- if the carrier is issuing a master policy or an insurance policy for the common elements in the Project.

(2) The Insured. The name of the insured under

each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Unit Owners of the TUSCANY TOWNHOMES, a Utah Condominium Project for the use and benefit of the individual Owners."

(3) Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

(4) Beneficiary. In any policy covering the entire Project, each Owner and his Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided Ownership interest in the Common Areas and Facilities.

(5) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(6) Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

(7) Waiver of Subrogation. A waiver of the right of a subrogation against Owners individually.

(8) Individual Neglect. A provision that the insurance is not prejudiced by any act or neglect of any individual Owner.

(9) Deductible. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the Association.

(10) Individual Insurance. Each Owner and Resident shall purchase and maintain adequate liability and property insurance on his Unit, Unit, personal property and contents; provided, however, no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Owners and their mortgagees, may realize under any insurance policy which the Association may have in force on the Property at any particular time.

(11) Primary Coverage. The insurance coverage of an Owner shall, in the event the Association also has insurance covering the loss, be primary and the insurance of the Association shall be secondary.

(12) Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

(13) Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Unit, and may be enforced by them.

(14) Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated first class subdivisions in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost and,; or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction; Steam Boiler and Machinery Coverage Endorsement if the Project has any central heating or cooling.

(15) Restrictions on Policies. No insurance policy shall be maintained where:

a. Individual Assessments Prohibited. Under the term of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Management Committee, the Association, V.A., FHA, FNMA, or their designees.

b. Payments Contingent. By the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or Member; or

c. Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Committee, the Association, an Owner, FNMA, or the borrowers) from collecting insurance proceeds.

(16) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Committee or Owners to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

27. Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

a) Definitions. Each of the following terms shall have the meaning indicated:

(1) "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

(2) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

(3) "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.

(4) "Partial Condemnation" shall mean any other such taken by eminent domain or grant or conveyance in lieu thereof.

(5) "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

(6) "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(7) "Restored Value" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

(8) "Estimated Cost of Restoration" shall mean the



estimated costs of restoring the Project to its former condition.

(9) "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Unit in which they are interested.

b) Determination by Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Committee shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

c) Restoration of the Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the Project's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

d) Notices of Destruction or Obsolescence. Within thirty (30) days after the Committee has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

e) Excess Insurance. If the insurance proceeds condemnation awards, or payments in lieu of condemnation actually

received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, then the excess funds shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This covenant is also for the benefit of the Association and any Mortgagee, and, therefore, may also be enforced by them. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

f) Inadequate Insurance. In the event the cost of Restoration exceeds Available Funds, all of the Units shall be assessed for the deficiency on the basis of their respective percentages of undivided Ownership interest in the Common Areas.

g) Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Project will continue as a planned unit development) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Units.

h) Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Plat Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

i) Authority of Committee to Represent Owners in Condemnation or to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.

j) Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

k) Restoration Power. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.

l) Right of Entry. Such authority shall include the

right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

28. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by the Management Committee obtaining from Owners who collectively hold the required percentages, with or without a meeting, consents in writing to such transaction, subject to the following conditions:

a) Ninety-Day Limit. All necessary consents must be obtained prior to the expiration of ninety (90) days from the time the first written consent is obtained; and

b) Change In Ownership. Any change in Ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

29. Mortgagee Protection. The lien or claim against a Unit for unpaid Assessments levied by the Management Committee or by the Association pursuant to this Declaration or the Act shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, subject to the following:

a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Unit for such unpaid Assessments shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit the lien of any Assessments becoming due thereafter.

b) Books and Records Available for Inspection. The Committee or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Project Documents, as well as the books, records, and financial statements of the Committee and the Association. The term "Available", as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

c) Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written

request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

d) Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Management Committee or the Association shall provide or be deemed to provide hereby that either party may terminate the contract with or without cause, penalty or severance charge, upon at least thirty (30) days prior written notice to the other party thereto.

e) Eligible Mortgagee Designation. Upon written request to the Committee or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Unit Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(1) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

(2) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.

(3) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Committee or the Association.

(4) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

30. Amendment. Subject to the condition set forth herein and in Section 39 (V.A. Approval) below, this Declaration may be amended subject to the following:

a) Consent of the Owners. The affirmative vote of at least sixty seven percent (67%) of the Owners shall be required and shall be sufficient to amend the Declaration or the Plat Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee.

In such instrument the Committee shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained; and

b) Consent of Eligible Mortgagee. The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project; and the consent of Eligible Mortgagees holding at least fifty-one percent (51%) of the undivided Ownership interest in the Common Areas shall be required to add to or amend any material provision of this Declaration or the Plat Map which establishes, provides for, governs, or regulates any of the following:

- (1) voting rights;
- (2) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens;
- (3) reductions in reserves for maintenance, repair, and replacement of the Common elements;
- (4) insurance or fidelity bonds;
- (5) limitations and restrictions on the right to use of the Common Areas;
- (6) responsibility for maintenance and repairs;
- (7) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (8) the boundaries of any Unit;
- (9) the percentages of Ownership interest in the Common Areas;
- (10) convertibility of a Unit into Common Areas or Common Area into a Unit;
- (11) the imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Unit;
- (12) express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guarantors; and
- (13) the requirement that the Project be professionally managed rather than self managed. Any addition or

amendment shall not be considered material for purposes of this Paragraph b) if it is for the clarification only or to correct a clerical error.

Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat Map is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association.

Except for the Secretary of Veterans Affairs, any Eligible Mortgagee who does not deliver to the Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal.

The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Plat Map or the termination of the legal status of the Project as a Utah Condominium Project if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

31. Notice and Hearing. In the event the Management Committee or a Unit Owner claims another Unit Owner or Resident has violated the Project Documents, before any sanction, citation, penalty, or Individual Assessment becomes final, the Owner or Resident about whom the complaint has been made shall be entitled to the following rights of due process:

a) Notice. Written notice specifying the nature of the violation (and providing any other appropriate information) and stating the time, date and place that the Member will have an opportunity to be heard by the Management Committee. Written notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class postage prepaid, addressed to the Member at the address given by the Member to the Management Committee for the purpose of service of notice or to the address of the Member's Unit if no other address has been provided. Any address may be changed from time to time by giving written notice to the Management Committee.

b) Costs & Assessments. If the violation, or the failure to correct or remedy a violation, results or may result in the expenditure of funds, the notice shall also state that the Management Committee may vote to assess the adverse party, levy a fine, or impose other sanctions if the Committee finds that a violation has occurred.

c) Final Determination. After the hearing has taken place, the Management Committee shall (1) determine whether a violation has occurred and, if so, may impose a fine or issue sanctions which shall become effective not less than five (5) days after the date of the hearing; or (2) take such other action as may be appropriate. The determination of the Management Committee shall be final. However, nothing herein shall be construed to prevent the Management Committee from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing Notice and Hearing.

32. Declarant's Sales Program. Notwithstanding anything to the contrary, until the occurrence of the Events, neither the Owners, the Association nor the Management Committee shall interfere with the completion of improvements and sale of all remaining Units, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Units owned by Declarant:

a) Sales Office and Model Units. Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Units at any one time. Such office and/or models may be one or more of the Units owned by it, or one or more of any separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

b) Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

c) Common Area Use. Declarant shall have the right to use the Common Areas of the Project to facilitate sales.

d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the Events, Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

33. Limitation on Improvements by Association. Until the occurrence of the Events, neither the Association, Management Committee nor Unit Owners shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Declarant,

other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

34. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Units or Buildings in the Project title to which is vested in Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protection and controls which are accorded to Declarant (in its capacity as Declarant) herein.

35. Working Capital Fund. A working capital fund shall be established by the Declarant to meet unforeseen expenditures or to purchase any additional equipment or services. The initial working capital fund shall be in an amount equal to two (2) months of estimated common assessments for each Unit. Each Unit's share of the working capital fund shall be collected either at the time the sale of any Unit is closed or when control of the Project is transferred to the Unit Owners, whichever first occurs. Any amounts paid into the working capital fund shall not be considered as advance payments of regular monthly assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Unit Owners. The Declarant is prohibited from using the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. When a Unit is sold, however, the Declarant may reimburse itself for monies it has paid the Association for an unsold Unit's share of the working capital fund by using funds collected at closing when the Unit is sold.

36. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right to select Members of the Committee, and to transfer management of the Project to the Association. If and when Declarant elects to do so, Declarant shall send written notification to each Owner of the effective date of the transfer (the "Transfer or Transition Date") at least forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the Members of their own Management Committee to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Area expenses of the Committee incurred prior to the Transfer Date to be paid in full on or before such date.

37. Certain Provisions Applicable to Declarant. Anything to



the contrary notwithstanding, for so long as Declarant continues to own any of the Units in the Project, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Assessments, except as herein otherwise provided.

a) Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration except as specifically set forth herein or in any agreement for sale of a Unit, and no person shall rely upon any warranty or representation not so specifically made therein.

b) No amendment may be made to the Declaration without the written consent of Declarant until the occurrence of the Events.

38. Completion Obligation. Declarant hereby covenants in favor of each Owner that within two (2) years from the date of any contract of sale:

(a) Units. Each Unit which an Owner has contracted to purchase, the Building within which a Unit is contained or is to be contained, and the appurtenant Limited Common Area shall be substantially constructed, and ready for use or occupancy (as the case may be); and

(b) Common Area. On the land submitted to the Declaration hereby or by any Supplemental Declaration, all planned amenities, landscaping, green space, sidewalks, parking facilities, roads, streets, fences, outdoor lighting, and utility lines and conduits adjacent to the Unit or Building in which a Unit is located, and necessary for its use shall be substantially completed.

39. VA Approval. Anything to the contrary notwithstanding, while Declarant controls the Association and before the occurrence of the Events, the annexation of any additional property or any amendments to the Declaration or Plat Map or mergers must be approved in writing and in advance by the Secretary of Veterans Affairs.

40. Expansion of the Project.

(a) Reservation of Option to Expand. Declarant hereby reserves the option to expand the Project to include additional Units in the Project. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire seven (7) years from the date following the first conveyance of a Unit in Phase I to a Unit purchaser after the effective date of this Declaration, unless sooner terminated by Declarant's recorded

Waiver of such option, there being no other circumstances which will cause the option to expire prior to said seven (7) years. Such right may be exercised without first obtaining the consent or vote of Unit Owners and shall be limited only as herein specifically provided. Such Units shall be located on any or all portions of the Additional Property.

(b) Supplemental Declarations and Supplemental Maps.

Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Salt Lake County, Utah, no later than seven (7) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Units, together with supplemental Map or Maps containing the same information with respect to the new Units as was required on the Map with respect to the Phase I Units. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

(c) Expansion of Definitions.

In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration, plus any Additional Land added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Units after such expansion shall be effective to transfer rights in the Project, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the office of the Salt Lake County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners of Units in the Project as it existed before such expansion the respective undivided interests in the new Common Areas added to the Project as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Unit in the Project as it existed, interest so acquired by the Owner of the Unit encumbering the new Common Areas added to the Project as a result of such expansion.

(d) Declaration Operative on New Units.

The new Units shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Units therein shall be subject to condominium ownership with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Map and Supplemental Declaration in the said office of the Salt Lake County Recorder.

(e) Right of Declarant to Adjust Ownership Interest in

Common Areas. Each deed of a Unit shall be deemed to irrevocably reserve to the Declarant the power to appoint to Unit Owners, from time to time, the percentages in the Common Areas set forth

in Supplemental or Amended Declaration. The proportionate interest of each Unit Owner in the Common Areas after any expansion of the Project shall be an undivided interest of the Project as expanded. A power coupled with an interest is hereby granted to the Declarant, its successors and assigns, as attorney in fact to shift percentages of the Common Areas in accordance with Supplemental or Amended Declarations recorded pursuant hereto and each deed of a Unit in the Project shall be deemed a grant of such power to the Declarant. Various provisions of this Declaration and deeds and mortgages of the Units may contain clauses designed to accomplish a shifting of the Common Areas. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Areas can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Areas may be effected more than seven (7) years following the first conveyance of a Unit in Phase I after the effective date of the Declaration.

Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Map incident to any expansion, the revised schedule of undivided interests in the Common Areas contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Project conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

(f) Other Provisions Concerning Expansion. If the Project is expanded as hereinbefore contained, then it is further provided that:

(1) All or any part of the Additional Land may be added to the Project without any limitations whatsoever save and except that all additional Units created must be restricted to multi family residential housing limited to one single family per Unit.

(2) Portions of the Additional Land may be added to the Project at different times without any limitations.

(3) Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Land through the easement areas as shown on the Map. The Association of Unit Owners shall not allow anything to be built upon or interfere with said easement areas.

(4) No assurances are made concerning:

(a) The locations of any improvement that may be made on any portion of the Additional Land that may be added to

the Project.

(b) Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, Buildings and Units will be comparable to the Phase I facilities on a per Unit basis and will be of a similar quality of materials and construction to Phase I and will be substantially completed prior to annexation.

(c) Whether any Units created on any portion of the Additional Land will be substantially identical to those within the initial Project except that Units will be constructed of an equal or better quality of materials and construction than the Units in Phase I.

(d) Type, size, or maximum number of Limited Common Areas which may be created within any portion of the Additional Land added to the Project.

(5) Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to:

(a) the submission of any portion of the Additional Land to the provisions of the Act as Land under this Declaration;

(b) the creation, construction, or addition to the Project of any additional property;

(c) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or

(d) the taking of any particular action with respect to the Additional Land, the Project, or any Land.

(6) Assuming that only Phase I of the original Declaration are completed the minimum number of Units would be sixty-four (64) and the maximum percentage of ownership interest of each Unit would be 1.5625%. Assuming all Phases are completed and all Additional Land is added to the Project the maximum number of Units shall be two hundred and twenty-six (226), the maximum number of Units per acre will be 0.09889, and the minimum Percentage Interest of each Unit would be 0.4424%. Provided, however, the number of Units actually constructed and the actual undivided percentage of ownership interest of each Unit may actually be somewhere in between the numbers and percentages set forth above.

41. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

42. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or Resident of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

43. Enforcement and Right to Recover Attorney's Assessments. The Association, Management Committee, or any Unit Owner may take action, at law or in equity, to enforce the terms, covenants or conditions of the Project Documents. Should the Association, Management Committee or a Unit Owner be required to take action to enforce the Project Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorney's fee, which may arise or accrue.

44. Mechanics Liens. Mechanics liens shall be filed in the office of the County Recorder as follows:

a) Association/Goods or Services. Mechanics liens for labor, materials or supplies purchased by the Association shall be filed against all Unit Owners in the Project and their appurtenant interest in the Common Area, and shall be indexed in the public records under the name of the Association and Community. If the Association has encumbered the Common Areas and thereafter defaults on its obligations, the lienholder must exercise its rights against the Common Areas before it may proceed against any Unit. Any Owner wishing to release that lien as to his Unit may pay the pro rata share of the total amount of the lien and that shall be sufficient to release the lien against his

Unit.

b) Unit Owner/Goods or Services. Mechanics liens filed for labor, materials or supplies benefitting a particular Unit shall be filed against that Unit and its appurtenant interest in the Common Area.

c) Constructive Consent. Any person or entity who elects to perform labor or provide materials at this Project agrees to be bound by and subject to the terms of this Section.

45. Agent for Service of Process. After the occurrence of the Event, the President of the Association shall be the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent shall be Bryson D. Garbett and the initial office of the Registered Agent shall be 8438 South Gad Way, Sandy, Utah 84093.

46. Declarant's Reservation of Easement. Declarant hereby reserves an easement and right of way across, over, under and through the Common Areas for purposes of vehicular and pedestrian access to the Additional Land or other real property Declarant may own adjacent to the Project.

47. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Map shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED the day and year first above written.

DECLARANT:  
TUSCANY DEVELOPMENT, INC., a Utah corporation

BY:   
Bryson D. Garbett, President

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

On the 2nd day of July, 1997, personally appeared before me Bryson D. Garbett, who by me being duly sworn, did say that he is the President of TUSCANY DEVELOPMENT, INC., a Utah corporation and that the within and foregoing instrument was signed in behalf of said corporation pursuant to its Articles of

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Incorporation or a resolution of its Board of Directors, and said Bryson D. Garbett duly acknowledged to me that said corporation executed the same.

*Gloria Nemelka*  
\_\_\_\_\_  
NOTARY PUBLIC

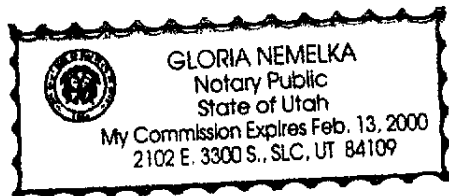


EXHIBIT "A"  
LEGAL DESCRIPTION

The Land described in the foregoing Declaration is located in Salt Lake County, Utah and is described more particularly as follows:

Beginning on the West line of the Section 19 at a point 340.000 feet, North 00°07'12" East, and 37.155 feet, South 89°55'10" East from the Southwest corner of Section 19, Township 2 South, Range 1 West, Salt Lake Base and Meridian; thence around a curve to the left, through a central angle of 13°59'50", an arc distance of 178.381 feet, a chord bearing of North 11°55'57" West, a distance of 177.938 feet; North 00°07'12" East, a distance of 251.625 feet; thence South 89°58'01" East, a distance of 125.000 feet; thence North 00°01'59" East, a distance of 110.000 feet; thence South 89°58'01" East, a distance of 330.000 feet; thence North 45°01'59" East, a distance 104.524 feet to the westerly right of way line of the Denver & Rio Grande Railroad; thence South 19°47'03" East along of said railroad right of way, a distance of 510.524 feet; thence North 89°58'01" West, a distance of 287.783 feet; thence South 00°01'59" West, a distance of 230.000 feet; thence North 89°58'01" West, a distance of 185.000 feet; thence North 00°07'12" East, a distance of 100.524 feet, thence North 89°55'10" West, a distance of 192.848 feet to the point of beginning.

Containing 313,939 square feet or 7.207 acres.



EXHIBIT "B"

<u>Phase</u>	<u>Unit No.</u>	<u>Percentage of Ownership Interest</u>
1	1	1.5625%
1	2	1.5625%
1	3	1.5625%
1	4	1.5625%
1	5	1.5625%
1	6	1.5625%
1	7	1.5625%
1	8	1.5625%
1	9	1.5625%
1	10	1.5625%
1	11	1.5625%
1	12	1.5625%
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1	59	1.5625%
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1	61	1.5625%
1	62	1.5625%
1	63	1.5625%
1	64	<u>1.5625%</u>
		100.00%

EXHIBIT "C"

BY-LAWS OF TUSCANY TOWNHOMES,  
A Utah Condominium Project

Declarant adopts the following By-Laws to assist in the administration of TUSCANY TOWNHOMES:

ARTICLE I

PLAN OF Unit OWNERSHIP AND INCORPORATION

1. Submission. These By-Laws are referred to and incorporated by reference in the Declaration of Condominium for TUSCANY TOWNHOMES, a Utah Condominium Project (the "Declaration"), which is located in Salt Lake County, State of Utah. These By-Laws shall govern the administration of the Project and the Association of Unit Owners.

2. Organizational Form. If the Association incorporates under the laws of the State of Utah, then these By-Laws shall also function and operate as the By-Laws of the corporation; and in the event of any conflict, incongruity or inconsistency between the Declaration and the Articles of Incorporation, the Declaration shall in all instances control.

3. Office and Registered Agent. The initial Registered Agent of the Association is Bryson D. Garbett and the initial Registered Office is 8438 South Gad Way, Sandy, Utah 84093; however, after transfer of management and control of the Association is made by the Developer to the Association, the Registered Agent of the Association shall be the President of the Association and the Registered Office of the Association shall be the home of the President or such other place as shall be designated by him.

4. By-Laws Applicability. All present and future Owners, Residents, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted entrance at TUSCANY TOWNHOMES shall be subject to and abide by these By-Laws.

ARTICLE II

ASSOCIATION

1. Composition. The association of Unit owners is a mandatory association consisting of all Unit Owners at TUSCANY TOWNHOMES

2. Voting. Each Unit shall have one vote. Multiple owners must elect a representative to cast their vote. A vote cast, without objection, by an apparent representative of multiple owners shall be binding upon the parties. Entities may vote by means of an authorized agent.

3. Place of Meeting. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Committee from time to time and stated in the notice of meeting.

4. Annual Meeting. Unless otherwise designated by the Committee, the annual meeting of the Association shall be held at 7:00 p.m. on the first Tuesday of October of each year, or at such other suitable date as may be designated by the Committee from time to time. When such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be the principal office of the Association unless otherwise specified in the notice of meeting.

5. Special Meetings. The President or a majority of the Members of the Management Committee may call a special meeting of the Association, or if he is so directed by resolution of the Committee or upon receipt of a petition signed and presented to the Secretary of the Committee by at least 25% of the Members of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

6. Notice of Meeting. It shall be the duty of the Secretary to hand deliver or mail, by regular U.S. mail postage prepaid, a notice of (a) each annual meeting of the Owners not less than ten and not more than thirty days in advance of such meeting; and (b) each special meeting of the Owners at least three days and not more than twenty days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of his respective Unit or such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

7. Voting Requirements. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Act, Declaration, By-Laws, Rules and Regulations, and shall have fully paid all Assessments and/or Additional Charges due.

8. Proxies. The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the

Unit Owner, or in cases where the Unit Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual written notice to the person presiding over the meeting, by the Unit Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Committee not less than 48 hours before the meeting. Only individual Unit Owners or the legal representative of an Organizational Unit Owner may be proxies.

9. Quorum Voting. A majority of the Members of the Association shall constitute a quorum for the adoption of decisions. If, however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than two days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an announcement thereof at the original meeting. The Owners present at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Unit Owners representing a majority of the Members of the Association in person or by proxy, shall decide any question brought before the meeting. If the Declaration requires a fixed percentage of Unit Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.

10. Order of Business. The order of business at all meetings of the Association shall be as follows:

- a) roll call;
- b) proof of notice of meeting;
- c) reading of minutes of preceding meeting;
- d) reports of officers;
- e) report of special committees, if any;
- f) election of inspectors of election, if applicable;
- g) election of Committee Members, if applicable;
- h) unfinished business; and
- i) new business.

11. Conduct of Meeting. The President shall, or in his absence the Vice-President, preside over all meetings of the Association; and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the meeting as well as record of all transactions occurring thereat.

- a) Open Meetings. A portion of each meeting of the

Committee shall be open to all Members of the Association, but Members other than Members of the Committee may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Committee. The Committee shall establish procedures, policies and guidelines for conducting of its meetings, retiring to executive session, and prohibiting photographs and/or any electronic, video or audio recordation of the meetings, or any part thereof.

b) Executive Session. The Committee may, with approval of a majority of a quorum, adjourn a meeting and reconvene in an Executive Session to discuss and vote upon private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an Executive Session shall first be announced in open session.

c) Action Without A Formal Meeting. Any action to be taken at a meeting of the Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all Members of the Committee.

### ARTICLE III

#### MANAGEMENT COMMITTEE

1. Powers and Duties. The affairs and business of the Association shall be managed by the Management Committee. The Management Committee shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things necessary to operate and maintain the Project. The Committee shall have the power from time to time to adopt any rules and regulations deemed proper for the exercise of its management powers. The Committee may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Declaration, the Committee shall be responsible for at least the following:

a) Preparation of an annual budget, in which there shall be established the contribution of each Owner necessary to pay the Common Expenses.

b) Establishing Assessments against Owners to defray the costs and expenses of the Project, establishing the means and methods of collecting such Assessments from the Owners, and establishing the period and method of the installment payment of the annual Assessments subject to these guidelines. Unless otherwise determined by the Committee, each Owner's annual Assessment may be payable in equal monthly installments, due and payable in advance on the first day of each month; however, in the event a Unit Owner fails to make an installment payment in a timely manner, then the

entire annual Assessment may be accelerated by the Committee and shall thereafter be automatically due and payable within ten days after written notice, although the Committee, in its sole discretion, may subsequently elect to de-accelerate the obligation.

c) Providing for the operation, care, upkeep, replacement, maintenance, and surveillance of all the Common Areas and services of the Project.

d) Designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Common Areas, and providing services for the property, and, where appropriate, providing the compensation of such personnel in the performance of their duties, which supplies and equipment shall be deemed the common property of the Owners.

e) Collecting the Assessments against the Owners, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to carry out the administration of the Property.

f) Making, amending, and enforcing rules and regulations respecting the Declaration, these By-Laws, and the use of the Property.

g) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.

h) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Declaration and other provisions of these By-Laws, after damage or destruction by fire or other casualty.

i) Enforcing by legal means the provisions of the Declaration, these By-Laws, and Rules and Regulations for the use of the Property adopted by it, and bringing any proceedings which may be instituted on behalf of the Owners.

j) Obtaining and carrying insurance against the risks, casualties and liabilities, as provided in the Declaration and paying the premium cost thereof.

k) Paying the cost of all services rendered to the Project and not billed directly to Owners of individual Units.

l) Keeping a copy of all Project Documents and the Association's books and records with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Project, specifying the maintenance and repair expenses of the Common Areas and any other expenses incurred. The said documents, books, financial statements, and vouchers

accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Committee for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices, and the same, upon a resolution approved by a Majority of the Members of the Association, shall be audited by an outside auditor employed by the Committee who shall not be a Resident of the Project or an Owner therein. The cost of such audit shall be a Common Expense. A copy of the annual audit report shall be supplied to any first mortgagee of any Unit in the Project who requests the same in writing from the Secretary. A mortgage holder, at its expense, may have an audited statement prepared at any time.

m) Providing where necessary all water, electricity, and other necessary utility services for the Common Areas and such services to the Units, including but not limited to heating, as are not separately metered or charged to the Unit Owners thereof.

n) Paying any amount necessary to discharge any mechanic's or materialmen's lien or other encumbrance levied against the Property, or any part thereof, which may in the opinion of the Committee constitute a lien against the Property or against the Common Areas, rather than merely against the particular Unit. When one or more Unit Owners are responsible for the existence of such a lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Committee by reason of said lien or liens shall be specially assessed to said Unit Owners and shall, until paid by said Unit Owners, constitute a lien on the interest of said Unit Owners in the Property which lien may be perfected and foreclosed in the manner provided in the Declaration.

o) Giving notice of and conducting hearings for alleged infractions of the Project Documents, issue citations or Individual Assessments for violations thereof.

p) Making emergency repairs.

q) At the expense of the Owner, or Resident, impounding, towing or otherwise removing any motor vehicle parked, stored or standing in violation of the parking rules and regulations or in an unauthorized area.

r) Evicting non-Owner Residents in material violation of the Project Documents.

s) Charging and collecting user fees and assigning or leasing available open Common Area parking spaces to Residents.

t) Doing such other things and acts necessary to accomplish the foregoing and not inconsistent with the Act or the



Project Documents or anything required by a proper resolution of the Management Committee or Association.

2. Composition of Management Committee. The Management Committee shall be composed of at least three but no more than nine Members. Only individual Unit Owners or officers or agents of Organizational Owners other than individuals shall be eligible for Committee membership.

3. Election and Term of Office of the Committee. The term of office of membership on the Committee shall be two years. At the expiration of the Member's term, a successor shall be elected.

4. First Committee Meeting. The first meeting of the Members of the Committee shall be immediately following the annual meeting of the Association or at such other time and place designated by the Committee.

5. Regular Meetings. Regular meetings of the Committee shall be held from time to time and at such time and place as shall be determined by a majority of the Members of the Committee, but no less often than monthly.

6. Special Meetings. Special meetings of the Committee may be called by the President or a majority of the Committee Members on at least forty-eight hours prior notice to each Member. Such notice shall be given personally, by regular U. S. mail postage prepaid, or by telephone, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all Members of the Committee shall be valid for any and all purposes.

7. Waiver of Notice. Before or at any meeting of the Committee, any Member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Committee shall constitute a waiver of notice. If all the Members are present at any meeting of the Committee, no notice shall be required and any business may be transacted at such meeting.

8. Committee's Quorum. At all meetings of the Committee, a majority of the Members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the Committee Members present at a meeting at which a quorum is present shall be deemed to be the acts of the Committee. If, at any meeting of the Committee, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no longer than two days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

9. Vacancies. Vacancies in the Committee caused by any reason other than removal of a Member by a vote of the Association

shall be filled by vote of the majority of the remaining Members of the Committee at a special meeting of the Committee held for that purpose promptly after the occurrence of any such vacancy, even though the total Members remaining may constitute less than a quorum of the committee; and each person so elected shall be a Member for the remainder of the term of the Member so replaced and until a successor is elected at the next annual meeting of the Association. A vacancy created by the removal of a Member by a vote of the Association shall be filled by the election and vote of the Association.

10. Removal of Committee Member. A Member may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a majority of the Members of the Association. Any Member whose removal has been proposed by the Owners shall be given at least thirty days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Committee Member who misses 25% or more of the Committee Meetings or who misses three consecutive meetings, in any calendar year, shall be automatically removed from the Committee.

11. Conduct of Meetings. The President shall preside over all meetings of the Committee and the Secretary shall keep a Minute Book of the Committee recording therein all resolutions adopted by the Committee and a record of all transactions and proceedings occurring at such meetings.

12. Report of Committee. The Committee shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

#### ARTICLE IV

##### OFFICERS

1. Designation. The principal officers of the Association shall be the President and Secretary, each of whom shall be elected by the Committee. The Committee may appoint assistants and such other officers as in its judgment may be necessary. All officers must be Members of the Committee. Two or more offices may be held by the same person, except that the President shall not hold any other office.

2. Election of Officers. The officers of the Association shall be elected annually by the Committee at the Corporation meeting of each Committee and shall hold office at the pleasure of the Committee. Any vacancy in an office shall be filled by the Committee at a regular meeting or special meeting called for such purpose.

3. Removal of Officers. The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Committee may be removed at any time by the affirmative vote of a majority of the Committee, and his successor may be elected at any regular meeting of the Committee, or at any special meeting of the Committee called for such purposes.

4. President. The President shall be the chief executive officer; he shall preside at meetings of the Association and the Committee and shall be an ex officio member of all committees; he shall have general and active management of the business of the Committee and shall see that all orders and resolutions of the Committee are carried into effect. He shall have all of the general powers and duties which are usually vested in or incident to the use of president of a stock corporation organized under the laws of the State of Utah.

5. Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Committee or the President shall prescribe. If neither the President nor the Vice-President is able to act, the Committee shall appoint a Member of the Committee to do so on an interim basis.

6. Secretary. The Secretary shall attend all meetings of the Committee and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him or her for that purpose and shall perform like duties for committees when required. He shall give, or cause to be given, notices for all meetings of the Association and the Committee and shall perform such other duties as may be prescribed by the Committee. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Committee including resolutions.

7. Treasurer. The Treasurer shall have custody of all funds and securities that are not under the control of the Managing Agent, and with the Assistance of the Managing Agent, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Committee. He shall disburse funds as ordered by the Committee, taking proper vouchers for such disbursements, and shall render to the President and Members, at the regular meetings of the Committee, or whenever they may require it, an account of all his transactions

as Treasurer and of the financial condition of the Project.

ARTICLE V

FISCAL YEAR

The fiscal year of the Association shall be the calendar year consisting of the twelve month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Committee should it be deemed advisable or in the best interests of the Association.

ARTICLE VI

AMENDMENT TO BY-LAWS

1. Amendments. These By-Laws may be modified or amended either (i) by the affirmative vote of a Majority of the Members of the Association or (ii) pursuant to a written instrument of consent duly executed by a majority of the Members of the Association provided all of the written consents are obtained within a ninety day period.

2. Recording. An amendment to these By-Laws shall become effective immediately upon recordation in the Office of the County Recorder of Salt Lake County, State of Utah.

ARTICLE VII

NOTICE

1. Manner of Notice. All notices, demands, bills, statements, or other communications provided for or required under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage pre-paid, a) if to an Owner, at the address of his Unit and at such other address as the Owner may have designated by notice in writing to the Secretary; or b) if to the Committee or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Act.

ARTICLE VIII

COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. Compliance. These By-Laws are set forth in compliance with the requirements of the Act.

2. Conflict. These By-Laws are subordinate and subject to all provisions of the Act and the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration or the Act. In the event of any conflict between these By-Laws and the Act or Declaration, the provisions of the Act or Declaration shall control.

3. Severability. If any provisions of these By-Laws or any section, sentence, clause, phrase, or work, or the application thereof in any circumstance is held invalid, the validity of the remainder of these By-Laws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

4. Waiver. No restriction, condition, obligation, or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

5. Captions. The captions contained in these By-Laws are for convenience only and are not part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these by-Laws.

6. Gender & Grammatical Disclaimers. Whenever in these By-Laws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine.

7. Liability of Committee Members. The Members of the Committee and the officers of the Association shall not be liable to any Member of the Association for any damage, loss or liability arising out of or caused by their voluntary participation as a Member of the Committee, including but not limited to any claims due to negligence, mistake of judgment, or for any acts or omissions made in good faith. In addition, the Members of the Association agree to indemnify and hold the Members of the Committee and officers of the Association harmless from any and all claims arising out of or caused by their voluntary participation as a Member of the Committee or officer of the Association to the extent any damage, loss or liability is not covered by insurance, unless caused by gross negligence or wilful neglect.

8. Attorney's Assessments and Costs. If an Owner or Resident, their families, guests or invitees shall, at any time, violate the terms, covenants or conditions of these By-Laws, and the Committee

shall be required to take action to enforce the same, regardless of whether a lawsuit is commenced, the Owner or Resident shall reimburse the Committee for all costs and expenses, including but not limited to a reasonable attorney's fee, necessitated thereby. To secure payment of any unpaid costs or Assessments, the Committee shall have the right and power to file a lien against the Unit owned or occupied, and may proceed to collect the unpaid costs and Assessments the same as if it were unpaid Assessments. In the event of a breach or anticipated breach by an Owner or Resident, their family, guests or invitees, of any of the terms, covenants, or conditions of these By-Laws, the Committee shall have, in addition to any other remedies provided by law or equity, the right to injunctive relief and damages.

9. Persons Bound. All references herein to an Owner, Resident, Tenant, Renter, Lessee, Guest, or Invitee shall be deemed to include their respective executors, administrators, employees, representatives, legatees, distributees, successors and assigns; and the terms, covenants, and conditions herein contained shall apply to and be binding upon them.

DATED this 2<sup>nd</sup> day of July, 1997.

DECLARANT:  
TUSCANY DEVELOPMENT, INC., a Utah corporation

BY: *Bryson D. Garbett*  
Bryson D. Garbett, President

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

On the 2nd day of July, 1997, personally appeared before me Bryson D. Garbett, who by me being duly sworn, did say that he is the President of TUSCANY DEVELOPMENT, INC., a Utah corporation and that the within and foregoing instrument was signed in behalf of said corporation pursuant to its Articles of Incorporation or a resolution of its Board of Directors, and said Bryson D. Garbett duly acknowledged to me that said corporation executed the same.

*Gloria Nemelka*  
NOTARY PUBLIC  
Residing At:

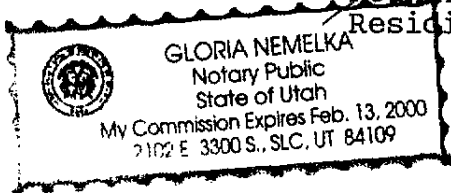


EXHIBIT "D"  
LEGAL DESCRIPTION OF ADDITIONAL LAND

The ADDITIONAL LAND described in the foregoing Declaration as Common Area is located in Salt Lake County, Utah and is described more particularly as follows:

*Beginning on the West line of Section 19 at a point 514.04 ft. N 00°07'05" E from the Southwest corner of said Section 19, T. 2 S., R. 1 W., S. L. B. & M.: thence N 00°07'05" E, 2,131.42 ft. along the section line; thence N 89°59'43" E 41.33 ft. to a point on the westerly right of way line of the Rio Grande Railroad, which point is on the arc of a 2,914.93 foot-radius curve to the left, the center of which bears S 11°34'21" E; thence Southerly 835.525 ft. along the arc of said curve through a central angle of 16° 25'23"; thence S 19°47'03" E 1,945.80 ft. to a point on the south line of said section 19; thence N 89°55'10" W 642.52 ft.; thence N 00°07'12" E, 340.00 ft.; thence N 89°55'10" W, 230.00 ft; thence around a curve to the left, through a central angle of 13°59'50", an arc distance of 178.381 feet, a chord bearing of North 11°55'57" West, a distance of 177.938 feet to the point of beginning.*

*Containing 994,417 square feet or 22.829 acres.*

POOR COPY  
CO. RECORDER

Excluding the land described below:

Beginning on the West line of the Section 19 at a point 340.000 feet, North 00°07'12" East, and 37.155 feet, South 89°55'10" East from the Southwest corner of Section 19, Township 2 South, Range 1 West, Salt Lake Base and Meridian; thence around a curve to the left, through a central angle of 13°59'50", an arc distance of 178.381 feet, a chord bearing of North 11°55'57" West, a distance of 177.938 feet; North 00°07'12" East, a distance of 251.625 feet; thence South 89°58'01" East, a distance of 125.000 feet; thence North 00°01'59" East, a distance of 110.000 feet; thence South 89°58'01" East, a distance of 330.000 feet; thence North 45°01'59" East, a distance 104.524 feet to the westerly right of way line of the Denver & Rio Grande Railroad; thence South 19°47'03" East along of said railroad right of way, a distance of 510.524 feet; thence North 89°58'01" West, a distance of 287.783 feet; thence South 00°01'59" West, a distance of 230.000 feet; thence North 89°58'01" West, a distance of 185.000 feet; thence North 00°07'12" East, a distance of 100.524 feet, thence North 89°55'10" West, a distance of 192.848 feet to the point of beginning.

Containing 313,939 square feet or 7.207 acres.

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