

7307

DECLARATION OF CONDOMINIUM  
OF  
MONTERA CONDOMINIUMS

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DEEDS AND MORTGAGES  
OFFICE

7307

THIS DECLARATION is made as of the date hereinafter set forth by Montera Condominiums, a General Partnership (hereinafter referred to as "Declarant") , pursuant to the provisions of the Utah Condominium Ownership Act.

RECITALS:

- A. Declarant is the owner of that certain tract of land, more particularly described in Article II hereof.
- B. Declarant has constructed, or is in the process of constructing, upon said tract a Condominium Project, including certain Units and other improvements. All of such construction has been, or is to be, performed in accordance with the plans and drawings contained in the Record of Survey Map filed for record simultaneously herewith, prepared and certified by Dudley & Associates, Utah County, Registered Land Surveyors.
- C. Declarant desires, by filing this Declaration and the Record of Survey Map, to submit said tract and all improvements now or hereafter constructed hereon to the provisions of the Utah Condominium Ownership Act as a Condominium Project to be known as the Montera Condominiums.
- D. Declarant intends to sell to various purchasers the Fee Title to the individual Units contained in the Project, together with the undivided ownership interest in the Common Areas and Facilities appurtenant to such Units, subject to the covenants, conditions, restrictions, limitations and easements herein set forth.

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

ARTICLE I  
DEFINITIONS

When used in this Declaration (including that portion hereof captioned "Recitals" and in the Bylaws attached hereto as Exhibit "C") the terms used shall have the meaning stated in the Utah Condominium Ownership Act and as follows unless the context otherwise requires.

- 1. Act shall mean and refer to the Utah Condominium Ownership Act, Title 57, Chapter 8, Utah Code Annotated 1953 as the same may be amended from time to time.
- 2. Declaration shall mean and refer to this Declaration. This Declaration has been drafted to comply with the requirements of the Utah Condominium Ownership Act, Title 57, Chapter 8, Utah Code Annotated 1953. Any ambiguities, omissions, and/or conflicts shall be construed to comply with the provisions of said Act.
- 3. Map shall mean and refer to the Record of Survey Map filed herewith captioned Montera Condominiums.
- 4. Property shall mean and refer to the Tract or Entire Tract described in Exhibit "B", the buildings, all improvements and the structures thereon, all easements, rights and appurtenances belonging thereto and all articles of personal property intended for use in connection therewith.
- 5. Common Areas or the Common Areas and Facilities shall mean and refer to and include:

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a. The land on which the buildings and other improvements are constructed and submitted by this Declaration to the terms of the Act.

b. Those Common Areas and Facilities specifically set forth and designated in the respective Units as hereinafter defined.

c. That part of the Condominium Project not specifically included in the respective Units as hereinafter defined.

d. All Limited Common Areas and Facilities.

e. All exterior walkways, streets, yards, gardens, fences, open parking spaces, installation of central services such as power, light, gas, all apparatus and installations existing for common use, such recreational and community facilities as may be provided for.

f. All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management.

g. All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein.

6. Condominium Unit or Units mean and refers to one of the living Units intended for independent use as defined in the Act and as shown in the Map. 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 and other air conditioning apparatus fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of, inter alia and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installation constituting a part of the Unit or serving only the Unit, and any structural members of any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit.

7. Management Committee or Committee shall mean and refer to the Committee as provided in the Declaration charged with and having the responsibility and authority to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the Property.

8. Association of Unit Owners or the Association shall mean and refer to the Unit Owners acting as a group in accordance with the Declaration and Bylaws.

9. Common Expenses shall mean all items, things and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration, the Bylaws, such rules, regulations and other determinations and agreements pertaining to the Condominium Project as the Management Committee, the Unit Owners, or the Association as hereinafter mentioned, may from time to time adopt.

10. Mortgage shall mean any mortgage, deed of trust, or other security instrument by which a Unit or any part thereof is encumbered.

11. Mortgagee shall mean any person named as a Mortgagee or beneficiary under or holder of a Deed of Trust.

12. Limited Common Areas and Facilities or Limited Common Areas shall mean those Common Areas designated in the Declaration and shown on the Map as reserved for use of certain Unit or Units to the exclusion of other Units. Limited Common Areas include storage areas and parking spaces specifically assigned to a Unit Owner.

13. Unit Number shall mean and refer to the number, letter or combination thereof which designates a Unit in the attached Exhibit "A" and on the Map.

14. Unit Owner or Owner shall mean and refer to the Owner of the Fee in a Unit and the Ownership of Undivided Interest in the Common Areas which is appurtenant thereto. The Declarant shall be deemed to be the Owners of all completed but unsold Units. In the event a Unit is the subject of an executory contract of sale, the Buyer shall, unless the Seller and the Buyer have otherwise agreed and have informed the Committee in writing of such agreement, be considered the Unit Owner for all purposes.

15. The Tract or Entire Tract shall mean and refer to the following described tract of land situated in Utah County, State of Utah, together with all appurtenances thereto.

( See Exhibit "B" for Property Description)

This Tract constitutes the entire Condominium Project.

16. Condominium Project or Project shall mean and refer to the Montera Condominium Project.

17. Management Body shall mean and refer to either the Management Committee or the Association as the context may admit.

18. Declarant shall mean and refer to the person (s) who execute the Declaration or on whose behalf the Declaration is executed.

## ARTICLE II

### SUBMISSION TO THE ACT

Declarant hereby submits to the Provisions of the Act the following described real property situated in Utah County, State of Utah, to wit:

(See Exhibit "B" for Property Description)

## ARTICLE III

### COVENANTS, CONDITIONS AND RESTRICTIONS

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

1. Description of Improvements. The improvements included in the Project are now or will be located on the Tract above described, and all of such improvements are described on the Map. The Map indicates the number of Units which are to be contained in the buildings which comprise a part of such improvements, the dimensions of the Units, and other significant facts relating to such buildings and Common Areas.

The Montera Condominium Project consists of one building which has three levels. The first and third levels each contain eight units for a total of 16 units in the Project. The second level is divided in half; one half belonging to the upper units and one half to the lower units. Each unit has a living room/kitchen area, two bedrooms and two bathrooms and a laundry space. The building is conventional wood frame construction with brick facade.

2. Description and Legal Status of Units. The Map shows the Unit Number of each Unit, its location, dimensions, from which its areas may be determined, the Limited Common Areas which are reserved for its use, and the Common Areas of the Project. The individual family living Units shall be legally designated and described by letter and number.
3. Exhibit "A" Contents. Exhibit "A" attached to this Declaration and made a part hereof furnishes the following information with respect to each: (a) Unit-building designation; (b) par value of each Unit based on points; and (c) its appurtenant Undivided Ownership Interest in the Common Areas.
4. Common and Limited Common Areas. The Common Areas contained in the Project are described and identified in Article I hereof and in the Map. Neither the Ownership of Undivided Interest in the Common Areas nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which it appertains; and even though not specifically mentioned in the instrument of conveyance, such percentage of Undivided Interest and such right of exclusive use shall automatically accompany the conveyance of the Unit to which they relate.
5. Determine of Interest in Common Areas. The proportionate share of the Unit Owners in the Common Areas of the Project is based on the par value that each of the Units bear to the total value of all the Units. The proportionate ownership of the Common Areas shall be for all purposes, including but not limited to, voting and assessment for Common Expenses. The maximum interest for each of the Unit Owners in the Common Areas shall be set forth in the aforesaid Exhibit "A".
6. Holding Title. Title to a Unit may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common.
7. No Separation. No part of a Unit or of the legal rights comprising ownership of a Unit may be separated from any other part thereof during the period of Condominium Ownership described herein, so that each Unit, the Undivided Interest in the Common Areas appurtenant to such Unit, and the exclusive right to use and occupy the Limited Common Areas appurtenant to each Unit, shall always be conveyed, devised, encumbered, and otherwise effect only together and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance or other disposition of a Unit or any part thereof, shall constitute a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration.
8. No Partition. The Common Areas shall be owned in common by all the Owners of Units, and no Unit Owner may bring action for partition thereof.
9. Use of Common Areas and Limited Common Areas. Subject to the limitations contained in the Declaration, any Unit Owner shall have the exclusive right to use and enjoy the Limited Common Areas designated herein (and on the Map) for exclusive use by such Unit Owner.
10. Unit Maintenance. Each Owner shall at his own cost and expense maintain, repair, paint, re-paint, tile, wax, paper or otherwise refinish and decorate the exterior walls and trim the interior surfaces of the walls, ceilings, floors and windows and doors forming the boundaries of his Unit and all walls, ceilings, floors, windows and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in, or connected with his Unit.

11. Maintenance of Limited Common Areas. Each Owner shall keep the Limited Common Areas designed for use in connection with this Unit in a clean, sanitary and attractive condition at all times.

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

13. Access for Repair of Common Areas. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable rights, to be exercised by the Committee as their agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas of another Unit or Units. The Committee shall also have such rights independent of the Agency relationship. Damage to the interior of any part of the Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit as the instance of the Committee or of Unit Owners, shall be an expense of all the Unit Owners and assessed proportionately; provided, that if such damage is the result of negligence of the Owner of the Unit, then such Owner shall be financially responsible for all such damage. Amounts owing by Owners pursuant hereto shall be collected by the Committee by assessment pursuant to the Declaration of Covenants, Conditions and Restrictions concerning the Mira Monte Condominiums above referred to.

14. Right of Ingress, Egress, Lateral Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and to the Limited Common Areas designated for use in connection with his Unit, and each Owner shall have the right to the horizontal and lateral support of a Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

15. Easement to Management Committee. The Management Committee shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

16. Easement for Utility Services. There is hereby created a blanket easement upon, across, over and under the Tract above described in Article II for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephone, electricity, and other utility services.

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

Unit \_\_\_\_\_ shown in the Record of Survey Map for the Montera Condominiums appearing in the Records of the County of Utah, in Book \_\_\_\_\_ Page \_\_\_\_\_ of Plats, and as defined and described in the Declaration of Condominium, appearing in such Records in Book \_\_\_\_\_ Page \_\_\_\_\_ of Records. This conveyance is subject to the provisions of the aforesaid Declaration of the Montera Condominiums.

Such description will be construed to describe the Unit, together with an Undivided Interest in and to the Common Areas as the same is established and identified in the Declaration and Map referred to herein above, and to incorporate all the rights incident to Ownership of a Unit and all the limitations of such Ownership as described in this Declaration.

18. Status and General Authority of Committee.

a. Except as hereinafter provided, the Condominium Project shall be managed, operated and maintained by the Management Committee as agent for the Unit Owners. The Committee shall, in connection with its exercise of any of the powers hereinafter provided, constitute a legal entity capable of dealing in the Committee's name. The Management Committee shall have, and is hereby granted, the following authority and powers:

(1) The authority with the consent of the Unit Owners or of any other person(s) to grant or create on such terms as it deems advisable, utility and similar easements over, under, across and through the Common Areas.

(2) The authority to execute and record, on behalf of all Unit Owners, any amendments to the Declaration or the Map which has been approved by the vote or consent necessary to authorize such amendment.

(3) The power to sue and be sued.

(4) The authority to enter into contract relating to the Common Areas and other matters over which it has jurisdiction, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the agreement has been obtained.

(5) The power and authority to convey or transfer any interest in real property, so long as the vote or consent necessary under the circumstances have been obtained.

(6) The power and authority to purchase, or otherwise acquire, and accept title to, any interest in real property so long as such action has been authorized by any vote or consent which is necessary under the circumstances.

(7) The power and authority to add any interest in real property obtained pursuant to Subparagraph 6 above to the Project, so long as such action has been authorized by the necessary vote or consent.

(8) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out its function or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners.

(9) The power and authority to perform any other acts and to enter into any other transactions, subject to the rights of the Homeowners Association, which may be reasonably necessary for the Management Committee to perform its functions as agent for the Unit Owners. Any instrument executed by the Management Committee relating to the Common Areas of the Project 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.

b. Composition of Committee, Election, Vacancy. The Management Committee shall be composed of three (3) members, with one (1) Committee member elected for one year term, one (1) member for two year term, and one member for three year term. Members shall serve on the Committee until their successors are elected. Only Unit Owners or spouses of Unit Owners and officers, directors, agents and employees of Owners other than individuals shall be eligible for Committee Membership. At the annual meeting each Unit Owner may vote his percentage of Undivided Ownership Interest in favor of as many candidates or Committee Memberships as there are seats on the Committee to be filled; provided, however, that until the happening of two events, namely either title to Units representing seventy-five percent (75%) of the votes of Unit Owners shall have been conveyed by Declarants to the purchasers thereof, or the expiration of five (5) years after the first conveyance of title to any Unit purchase, whichever shall first occur, the Declarants alone shall have the right to select the Management Committee or act as the Management Committee themselves. However, Declarants may waive the right at any time prior to the occurrence of either or both of the aforesaid events by (i) notifying Unit Owners in writing of such waiver of the right, and (ii) filing for record in the Office of the Utah County Recorder a written notice of waiver of the right, whereupon Unit Owners shall promptly hold a meeting to elect a new Management Committee, it being established hereby that the control of the Unit Owners in the Management Committee shall automatically vest thirty (30) days following the date such waiver is recorded by Declarants. In the event a Committee seat which was filled by a Declarant becomes vacant, Declarants have the right to select a replacement member to sit on the Committee for the balance of the term associated with the vacant seat. In all other cases of vacancy, the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected.

c. Rights and Duties. The Management Committee, subject to the rights and duties of the Association, this Declaration, and Bylaws regarding Project maintenance as provided herein shall be responsible for the general management of the Project. It is understood that the Committee has the obligation to maintain the Common Areas of the Project.

d. Right of Delegation to Manager. The Management Committee may carry out any of its functions which are capable of delegation through a manager. The Manager so engaged shall be responsible for managing the Common Areas and shall, to the extent permitted by law and the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself.

e. Payment of Services, Etc. The Management Committee may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Management Committee shall determine to be necessary or desirable for the proper operation of its function in the Project, whether such Committee or by any person or entity with whom it contracts. The Management Committee may obtain and pay for the operation of the Project or the enforcement of this Declaration. It is recognized that the Committee may arrange with other persons to furnish snow removal, ground maintenance and other common services to the Project whether such personnel are furnished or employed directly by the Management Committee.

f. Personal Property Ownership and Use. The Management Committee may acquire and hold for the use and the benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in the Common Areas. Such interest shall not be transferable except with the transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto, and such beneficial interest may in no event be

reserved, by the transferor of a Unit. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosure.

g. Rules and Regulations. The Management Committee may make reasonable rules and regulations governing the operation and use of the Common Areas and of other matters over which it has jurisdiction, which rules and regulations shall be consistent with the rights and duties established in this Declaration and Bylaws. The Management Committee may suspend any Owner's voting rights at the meeting of Unit Owners during any period or such periods during which such Owner fails to comply with such rules and regulations, or with any other obligations of such Owners under this Declaration. The Management Committee may also take judicial action against any Owner to enforce compliance with such rules and regulations or other obligation or to obtain damages for noncompliance, all to the extent provided by law.

h. Capital Improvements. There shall be no structural alterations, capital additions to, or capital improvements of the Common Areas requiring expenditure in excess of \$3,000.00 without the prior approval of the Unit Owners holding a majority of the voting power.

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

19. The Montera Condominium Association. The conveyance of each Unit and its proportionate share of the Common Areas shall be subject to the covenants, conditions, restrictions, easements, charges, and liens as contained in the Condominium Declaration and any supplements or amendments thereto recorded in the Office of the County Recorder of Utah County, Utah, prior to the conveyance of any Unit. The Condominium Declaration provides, inter alia, that all Unit Owners in the Montera Condominium shall, upon becoming same, automatically become members of the Montera Condominium Association which shall elect the Management Committee to maintain and administer certain facilities, maintain Common Areas in the Project, and enforce the covenants and restrictions imposed in this Declaration and to collect and disburse the assessments and charges created herein. The Montera Condominium Association has been established for the benefit of the Unit Owners of the Montera Condominium Project.

20. Assessments.

a. Agreement to Pay Assessments. Each Owner of a Unit by the acceptance of a deed or contract therefor, whether or not it be so expressed in the deed or contract, shall be deemed to covenant and agree with each other and with the Management Committee to pay annual assessments made by them for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided hereunder.

b. Basis of Assessments. The total annual assessments against all Units shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and/or the Common Properties, which estimates may include among other things, expenses of management, taxes and special assessments levied by governmental authorities until the Units are separately assessed as provided herein; premiums for all insurance which the Management Committee is required or permitted to maintain pursuant hereto; common lighting, water, repair and maintenance of the Common Areas, wages for employees of the Committee, legal and accounting fees, any



deficit remaining from a previous period, creation of a reasonable contingency reserve, surplus and/or sinking fund, any other expenses and liabilities which may be incurred by the Committee for the benefit of the Owners or by reason of this Declaration.

c. Apportionment of Expenses. Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among all Units in proportion to their respective Undivided Interest in the Common Areas assessable by the Management Committee provided, however, that for this purpose Declarant shall be deemed to own only the Undivided Interest in the Common Areas based upon Units which have been completed by not conveyed by Declarant.

d. Method, Payment of Assessments, Etc. Annual assessments shall be made on a calendar year basis. The Committee shall give written notice to each Owner as to the amount of the annual assessment with respect to this unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year, provided, however, that the first annual assessment shall be for the balance of the calendar year remaining after the day fixed by the Committee as the date of commencement of the assessment. Each annual assessment shall be due and payable in monthly installments. Each monthly assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Such monthly assessment becomes payable upon the date the Unit Owner purchases his Unit, whether by conveyance of title or entering into a contract of sale and purchase, and thereafter each monthly payment shall be due and payable on the first day of each and every month in advance.

e. Special Assessments. In addition to the annual assessments authorized hereunder, the Management Committee may levy in any assessment year special assessments, subject to the provisions of paragraph 18 (h) above, payable over such period as the Management Committee may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas of the Project or any other part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration. This paragraph shall not be construed as an independent source of authority for the Management Committee to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other paragraphs hereof. Any amount assessed pursuant thereto shall be assessed to Owners in proportion to their respective Undivided Interest in the Common Areas! Declarant's interest in the Common Areas shall be determined on the same basis set forth in subparagraph (c) above. Notice in writing of the amount of such special assessment and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such dates.

*and*  
f. Liens for Unpaid Assessments. All sums assessed to any Unit pursuant to this section, together with interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Management Committee. Such lien shall be superior to all other liens and encumbrances on such Unit, except only for:

1. governmental assessment authority; and
2. encumbrances on the interest on any Unit after this Declaration shall have been recorded shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instrument creating such liens.

All other lienors acquiring liens on any Unit after this Declaration shall have been recorded shall be deemed to consent that such liens shall

be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instrument creating such liens.

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

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

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

The Management Committee shall report to any encumbrancer of a Unit any unpaid assessment remaining unpaid for longer than thirty (30) days after the same shall have become due; provided, however, that such encumbrancer first shall have furnished to the Management Committee written notice of such encumbrance.

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

h. Information Concerning Unpaid Assessments. Upon payments of a reasonable fee not to exceed Ten Dollars (\$10.00) and upon written request of any Owner or mortgagee, prospective mortgagee or prospective purchaser of a Unit, the Management Committee shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit; the amount of the current yearly assessment and the portion thereof which has theretofore been paid; credit for advance payments of prepaid items, including but not limited to, an Owner's share of prepaid insurance premiums, and such statement shall be conclusive upon such Management Committee in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, all unpaid assessments which become due prior to the lien of the mortgagee which become due prior to the date of making such request shall be subordinate to the lien of the mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligation of the purchaser shall be released automatically if the statement is not furnished within the ten (10) day

period provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) days and the purchaser subsequently acquires the Unit.

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

j. Collection by the Committee. It is recognized that the Committee under this Declaration will maintain the Common Areas of the Project except as otherwise contained therein. It is further recognized that the Management Committee of the Project is authorized to levy assessments for the purposes of performing functions it is authorized to perform within the Project. With respect to the Units in the Project, the Management Committee shall be authorized to collect from the Unit Owners and enforce liability for the payment of assessments levied pursuant to this Declaration.

21. Use of Condominium.

a. Single Family Housing Use. Each of the Units in the Project is intended to be used for single family residential housing and is restricted to such use.

b. Restrictions Concerning Common Areas. There shall be no obstructions of the Common Areas by the Owners, their tenants, guests or invitees without the prior written consent of the Management Committee. The Management Committee may by rules and regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Management Committee, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas except upon consent of the Management Committee.

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

d. Animals. No livestock or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Areas, except that household pets may be kept in Units, subject to strict observances of rules and regulations adopted by the Management Committee.

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

f. Restrictions on Alterations. No structural alterations to any Unit shall be made by any Owner without the prior written notice of the Management Committee.

g. Declarant's Right to Sell Units. Notwithstanding anything contained herein to the contrary, until the Declarants have completed and sold all of the Units, neither the Unit Owners who have purchased Units from the Declarants nor the Management Bodies shall interfere with the completion of the contemplated improvements and sale of the remaining Units. The Declarants may take such use of the unsold Units and the Common Areas as may facilitate such completion and sale, including but not limited to, the maintenance of a sales office, the showing of the Units, the recreational facilities and the display of signs.

22. Insurance Bond. The Management Committee shall secure or cause to be secured and maintained at all times the following insurance and bond coverage:

a. A policy or policies of fire and casualty insurance with extended coverage endorsement, for the full insurable replacement value of the entire Project. Such policy or policies shall be made payable to the Committee and all persons holding an interest in the Project or any of the Units, as their interests may appear.

b. An appropriate fidelity bond coverage for any person or entity handling funds of the Management Committee, including but not limited to, employees of the professional managers, the amount of such coverage to be equal to the estimated maximum of funds, including reserve funds, in the custody of the Owners' Association or the management agent at any given time during the term of the fidelity bond, but not less than a sum equal to three months' aggregate assessment on all Units plus reserve funds, said bond to name the Association as an obligee.

c. A policy or policies insuring the Committee, the Manager, and the Unit Owners against any liability incident to the ownership, use or operation of the Project or of any Unit which may arise among themselves, to the public and to any invitees or tenants of the Project or of the Unit Owners. Limits of liability under such insurance shall not be less than \$30,000.00 for any person injured, \$1,000,000.00 for all persons injured in any one accident, and \$1,000,000.00 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

d. The following additional provisions shall apply with respect to insurance:

1. In addition to the insurance described above, the Committee shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with condominium projects similar to the Project in construction, nature and use.

2. The Committee shall have the authority to adjust losses.

3. Insurance secured and maintained by the Committee shall not be brought into contribution with insurance held by the individual Unit Owners or their mortgagees.

4. Each policy of insurance obtained by the Committee shall, if possible, provide: a waiver of the insurer's subrogation rights with respect to the Committee, the Manager, the Unit Owners, and their respective servants, agents and guests; that if cannot be cancelled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Committee or of the Manager without prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners.

5. Any Unit Owner may obtain additional insurance at his own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Committee. Any Unit Owner who individually obtains insurance covering any portion of the Project shall supply the Committee with a copy of his policy within thirty (30) days after he acquires such insurance.

6. Notwithstanding anything herein contained to the contrary, insurance coverages must be in such amounts and meet other requirements of the Federal National Mortgage Association and the Veterans Administration.

23. Damage to Project. In the event the damage to or destruction of part or all of the improvements in the Condominium Project, the following procedures shall apply:

a. If proceeds of the insurance maintained by the Management Committee are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

b. If less than 75 percent of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and upon approval of at least 50 percent of the affect Unit Owners, all affected Owners shall be assessed for any deficiency on the basis of their respective percentages of Undivided Interest in the Common Areas and Facilities.

c. If 75 percent or more of the Project's improvements are destroyed or substantially damaged, if proceeds of insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if the Unit Owners withing 100 days after the destruction or damage by a vote of at least 75 percent elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subparagraph (b) above.

d. If 75 percent or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage and by a vote of at least 75 percent, elect to repair or reconstruct the affected improvements, the Managment Committee shall promptly notify the Veterans Administration and obtain approval thereof, and the Management Committee shall promptly record with Utah County Recorder a notice setting forth such facts. Upon the recording of such notice, the provisions of subsection 1 through 4 of Section 57-8-31, Utah Code Annotated (1953) shall apply and govern the rights of all parties having an interest in the project or any of the Units.

Any reconstruction or repair which is required to be carried out by this Paragraph 23 shall be accomplished at the instance and direction of the Management Committee. Any determination which is required to be made by this Paragraph 23 regarding the extent of the damage to or destruction of Project improvement, shall be made by three (3) MAI appraisers selected by the Management Committee. The decision of any (2) such appraisers shall be conclusive.

24. Amendments. Except as provided below, the vote of at least 2/3 of the Undivided Ownership Interest in the Common Areas and Facilities shall be required to amend this Declaration or the Record of Survey Map. Any amendment so authorized shall be accomplished through the recordation of any instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this paragraph for amendment has occured.

a. Until Units representing 75 percent of the Undivided Ownership Interest in the Project have been sold or the expiration of five (5) years after the first conveyance of title to any Unit purchased, whichever occurs first, Declarant shall have and is hereby vested with the right to amend this Declaration or the Record of Survey Map. Such

right shall obtain without regard to the subject matter of amendment, so long as the amendment involved is consistent with law.

25. Consent Equivalent to Vote. In those cases in which the Act or this Declaration required the vote of a stated percentage of the Project's Undivided Ownership Interest for the authorization of approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the necessary percentage of Undivided Ownership Interest.

26. Service of Process. Service of Process shall be received by David L. Nelson, 845 East 950 South, Orem, Utah (801) 224-3092. He shall serve as agent for service of process in cases authorized by the Act. The Management Committee shall, however, have right to appoint a successor or substitute process agent. Such successor or substitute agent and his address shall be specified by an appropriate Instrument filed in the Office of the County Recorder of Utah County, State of Utah.

27. Mortgage Protection. Notwithstanding anything to the contrary in the Declaration:

a. An adequate reserve fund for replacement of the Common Areas must be established and shall be funded by regular monthly payments rather than by special assessments.

b. There shall be established a working capital fund for the initial months of operation of the Project equal to a minimum amount of two months estimated Common Area charge for each Unit.

c. Any mortgage holder which comes into possession of the Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage or deed or assignment in lieu of foreclosure, shall be exempt from any provisions relating to sale or lease of the Units in the Project.

d. Any management agreement for the Project shall be terminable by the Management Committee for cause upon thirty (30) days written notice thereof, and the term of any such agreement shall not exceed one year, renewable by agreement of the parties for successive one year periods.

e. In the event of substantial damage to or destruction of any Unit or any part of the Common Areas, the institutional holder of any first mortgage on a Unit shall be entitled to timely written notice of any such damage or destruction. No Unit Owner or other party shall be entitled to priority over such institutional holder with respect to the distribution to such Unit of any insurance proceeds.

f. If any Unit or portion thereof of the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the institutional holder of any first mortgage on a Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition and no Unit Owner or other party shall have priority over such institutional holder with respect to the distribution to such Unit of the proceeds of any award or settlement.

Start  
g. There shall be no prohibition or restriction on a Condominium Unit Owner's right to lease his or her Unit, except a requirement that leases have a minimum initial term of up to six months. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing.

h. Each holder of a first mortgage lien on a Unit who comes into possession of a Unit by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a

foreclosure sale, shall take the Unit free of any unpaid claims or assessments and charges against the Unit which accrue prior to the time such holder comes into possession of the Unit, except for claims for a pro-rata share of such assessments or charges resulting from a pro-rata reallocation of such assessments or charges to all Units in the Project, including the mortgaged Unit.

i. Any holder of the mortgage is entitled to written notification from the Management Committee of any default by the mortgagor of such Unit in the performance of such mortgagor's obligation under the Declaration which is not cured within thirty (30) days.

j. Any lien which the Management Committee may have on any Unit in the Project for the payment of Common Expenses assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any first mortgage on the Unit recorded prior to the date any such Common Expense assessments become due.

k. Unless at least 75% of the first mortgagees (based on one vote for each mortgage owned) of Units have given their prior written approval, neither the Management Committee nor the Association of Unit Owners shall:

1. By act or omission, seek to abandon or terminate the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

2. Change the pro-rata interest on obligations of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro-rata share of ownership of each Unit in the appurtenant Common Areas.

3. Partition or subdivide Unit.

4. Make any material amendment to the Declaration or to the Bylaws of the Management Committee, including but not limited to, any amendment which would change the percentage interest of the Unit Owners in the Common Areas except as provided in paragraph 24.

5. By act or omission, seek to amend, partition, subdivide, encumber, sell or transfer, the Common Areas. (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this subparagraph).

6. Use hazard insurance proceeds for losses to any condominium property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or the Common Areas of the Project.

7. Terminate professional management and assume self management of the Project.

l. Mortgage protection, notwithstanding all other provisions hereto: (a) the liens created hereunder upon any Unit shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage or trust deed with first priority over other such mortgages) upon such interest made in good faith and for value, provided that after the foreclosure or trust deed termination of any such document, there may be a lien created pursuant to paragraph (h) hereof of the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any claimed shall have the same effect and be enforced in the same manner as provided herein; (b) no amendment to this paragraph shall affect the rights of the holder of any such mortgage recorded prior to the recordation of such amendment that is not joined in the execution thereof; (c)

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

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

29. Enforcement. Each Unit Owner shall comply strictly with the provisions of this Declaration and with the administrative rules and regulations drafted pursuant thereto as the same may be lawfully amended from time to time and with the decisions adopted pursuant to this Declaration and the administrative rules and regulations, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee or Manager on behalf of the Unit Owners, or in a proper case, by an aggrieved Unit Owner.

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

a. Notwithstanding any provision of this Declaration to the contrary, any proceeding, suit or action as may be deemed necessary to recover a money judgement respecting any assessments levied or fixed by the Management Committee shall be maintained on behalf of the Association at the instance and suit of the Management Committee.

b. Covenants to Run with Land: Compliance. This Declaration and all the provisions hereof shall constitute covenants to run with them; and/or equitable servitudes, as the case may be, and shall be binding upon and inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of the Act, the terms of this Declaration, the Bylaws and the provisions of any rules regulations, agreements, instruments, and determinations contemplated by this Declaration, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief for both, maintainable by the Committee on behalf of Unit Owners, or, in a proper case, by an aggrieved Unit Owner. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to, be bound by each and every provision of this Declaration.

c. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

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

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



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

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

35. All Amenities. (i.e. parking, recreation and service areas) are a part of the Project and are covered by the mortgage at least to the same extent as are the common elements.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has caused this instrument to be executed and its seal to be affixed hereto on the 28<sup>th</sup> day of February, 1984.

DECLARANT N.N.R. PARTNERSHIP

BY David Nelson

David Nelson

NOTARIAL VERIFICATION

On this 28 day of February, 1984, appeared before me, David Nelson, who being duly sworn and that the foregoing instrument was signed by him.

Carol C. Howard  
Notary Public



Residing At:

Provo - ut

My Commission Expires:

April 23<sup>rd</sup> - 86

EXHIBIT A

<u>Unit Number</u>	<u>Par Value</u>	<u>Appurtenant Undivided Interest in Common Areas</u>
1	1.0	6.25%
2	1.0	6.25%
3	1.0	6.25%
4	1.0	6.25%
5	1.0	6.25%
6	1.0	6.25%
7	1.0	6.25%
8	1.0	6.25%
9	1.0	6.25%
10	1.0	6.25%
11	1.0	6.25%
12	1.0	6.25%
13	1.0	6.25%
14	1.0	6.25%
15	1.0	6.25%
16	1.0	<u>6.25%</u>
		100%

EXHIBIT B

Commencing at a point located South 148.88 feet from the Northeast corner of block 7, Plat "D", Provo City Survey of Building lots: thence West 198.00 feet thence South 49.50 feet; thence East 65.96 feet; thence South 53.50 feet; thence East 29.08 feet; thence North 4.00 feet; thence East 103.00 feet; thence North 99.00 feet to the point of beginning.

AREA = 0.38 ACRES