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GARY W. OTT

RECORDER, SALT LAKE COUNTY, UTAH

RICHARDS KIMBLE & WINN

2040 E MURRAY-HOLLADAY RD#106

SLC UT 84117

BY: NEH, DEPUTY - WI 59 P.

WHEN RECORDED RETURN TO:

RICHARDS, KIMBLE & WINN, P.C.
2040 E. MURRAY HOLLADAY RD., SUITE 106
SALT LAKE CITY, UT 84117
801-274-6800

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SOUTH 67 CONDOMINIUMS
(including Association Bylaws)

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THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM is made and executed on the date evidenced below by the South 67 Owners Association, a Utah Nonprofit Corporation, (hereinafter referred to as "the Association"), pursuant to the provisions of the Utah Condominium Ownership Act (the "Act"), Title 57-8-1 et seq. of the Utah Code (1953), as may be amended from time to time.

RECITALS

A. This Amended and Restated Declaration of Condominium supercedes and replaces in its entirety the previously recorded Declaration recorded as: **Entry No. 3799237, Book 5462, recorded on May 31, 1983**, Salt Lake County Recorder.

B. The Bylaws attached hereto supercedes and replaces in its entirety the previously recorded Bylaws (and any amendments thereto).

C. Association. The Association is the authorized representative of the owners of certain real property known as South 67 Condominiums, located in Salt Lake County, Utah and more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Project").

D. Existing Project. The Project consists of one-hundred seventy six (176) Units and certain Common Areas and Facilities;

E. Binding Effect. These covenants, conditions, restrictions, easements and limitations shall run with the said real property and Units and shall be binding on all parties having or acquiring any right, title or interest in the described real property or any part thereof and shall inure to the benefit of each owner thereof and are imposed upon said real property and Units and every part thereof as a servitude in favor of each and every parcel thereof as the dominant tenement or tenements.

F. Purpose. It is intended that all Owners, guests, invitees, tenants and residents abide by these covenants, conditions and restrictions in order to maintain property values and a desirable living environment.

NOW, THEREFORE, for the benefit of the Project and the Unit Owners thereof, the Association hereby executes this Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Association, for and on behalf of all of the Unit Owners.

ARTICLE I

DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals" and in the Bylaws attached hereto as Exhibit "C") the following terms shall have the meaning indicated.

1.1 Act shall mean and refer to the Utah Condominium Ownership Act (Section 57-8-1, et seq., Utah Code Annotated, 1953), as amended from time to time.

1.2 Association shall mean and refer to the South 67 Owners Association. Every Unit Owner shall automatically be a member of the Association. Membership in the Association shall be appurtenant to the Unit in which the Owner has the necessary interest, and shall not be separated from the Unit to which it appertains. The property, business and affairs of the Association shall be governed by the Board of Trustees.

1.3 Board of Trustees or Board shall mean and refer to the Board of Trustees of South 67 Condominiums as it exists at any given time. The Board may also be referred to as the "Management Committee."

1.4 Common Areas and Facilities shall mean, refer to, and include:

- (a) The real property and interest in real property which this Declaration submits to the terms of the Act.
- (b) All Common Areas and Facilities designated as such in the Survey Map.
- (c) All Limited Common Areas and Facilities.
- (d) All foundations, columns, girders,

beams, supports, perimeter walls, roofs corridors, washing area, storage spaces, stairs, stairways, clubhouse, racquetball courts, tennis courts, swimming pool, yards and any entrances and exits which are designed for the use of more than one Unit, access roads, driveways, walkways, pedestrian sidewalks, landscape and planting areas, fences, street lights and other common facilities.

(e) All apparatus, installations, and facilities included within the Project and existing for common use.

(f) All portions of the Project not specifically included within the individual Units.

(g) All common areas as defined in the Act, whether or not enumerated herein.

1.5 Common Expenses shall mean and refer to all sums which are expended on behalf of all the Unit Owners and all sums which are required by the Board of Trustees to perform or exercise its functions, duties, or rights under the Act, this Declaration, the Management Agreement for operation of the Project, and such rules and regulations as the Board of Trustees may from time to time make and adopt.

1.6 Common Profits shall mean and refer to the balance of income, rents, profits and revenues from the Common Areas remaining after deduction of the Common Expenses.

1.7 Declaration shall mean and refer to this instrument and as it may be amended from time to time.

1.8 Limited Common Areas and Facilities shall mean and refer to those Common Areas and Facilities designated herein in the Map as reserved for the use of a certain Unit or Units to the exclusion of the other Units.

1.9 Manager shall mean and refer to the manager, if any, retained by the Board of Trustees to oversee the day-to-day operations of the Association and to enforce the covenants, conditions, and restrictions applicable to this community. A Manager may also be a full-time employee/resident of the Project. The Association is not required to be professionally managed but may be so if desired.

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

1.11 Mortgagee shall mean a beneficiary of a Mortgage as well as named Mortgagee.

1.12 Percentage Interest shall mean and refer to the undivided percentage interest of each Unit in the Common Areas as set forth in **Exhibit "B"** attached hereto.

1.13 Par Value shall mean and refer to the number of points assigned to each Unit in the Project by this Declaration.

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

1.15 Project Documents shall mean and refer to this Declaration of Condominium, the Bylaws and Rules and Regulations of the Association.

1.16 Property shall mean and refer to the land, described in **Exhibit "A,"** the buildings, all improvements and the structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property, belonging to the Association, intended for use in connection therewith.

1.17 Record of Survey Map or Maps shall mean and refer to the Record of Survey Maps filed herewith.

1.18 Resident shall mean and refer to any person living or staying at the Project. This includes but is not limited to all lessees, tenants, and the family members of Owners, tenants or lessees.

1.19 Unit shall mean and refer to a separate physical part of the Property intended for independent use, consisting of rooms or spaces located in a Building together with its appurtenant undivided ownership interest in the Common Areas. Units are shown in the Map by single cross-hatching. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, heating apparatus, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit, as shall all decorated interior, 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, wall paper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural members or 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.

NOTES

1.20 *Unit Number* shall mean and refer to the number, letter, or combination thereof which designates a Unit on the Map.

1.21 *Unit Owner or Owner* shall mean and refer to the owner of the fee in a Unit and the percentage of undivided interest in the Common Areas and Facilities which is appurtenant thereto. In the event a Unit is the subject of an executory Contract of sale, the contract purchaser shall, unless the seller and the purchaser have otherwise agreed and have informed the Board in writing of such agreement, be considered the Unit Owner for purposes of voting and Board membership.

ARTICLE II

SUBMISSION

2.1 *Property Submitted.*

NOTES

There is hereby submitted to the provisions of the Act, as the Property initially associated with the South 67 Condominiums, the real property situated in Salt Lake County, State of Utah, particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference; subject to the easements, reservations and other provisions set forth in said **Exhibit "A"**.

ARTICLE III

ENFORCEMENT OF COVENANTS, CONDITIONS, RESTRICTIONS

3.1 Compliance.

Each Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, the Bylaws, and the rules and regulations adopted pursuant to this Declaration and Bylaws and any applicable statute. Failure to comply therewith shall be grounds for sanctions (i.e., fines) pursuant to the Association's rules and policies. Further, subject to the "Alternative Dispute Resolution" procedures described in Section 3.6 below, Owners are subject to legal action or suit maintainable by the Association or an aggrieved Owner for violations of these governing provisions, including the rules and regulations of the Association.

3.2 Remedies.

Violation of any provisions of this Declaration, the Bylaws or any rules or regulations adopted pursuant to the Declaration or Bylaws, or of any decision of the Association made pursuant to such documents, shall give the Board of Trustees acting on behalf of the Association, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do, any or all of the following after giving reasonable notice and an opportunity to be heard:

(a) Subject to reasonable notice, to enter any Unit which or as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board of Trustees shall not thereby be deemed guilty of any manner

of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;

(b) Subject to Section 3.6 below, to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings;

(c) To levy reasonable fines pursuant to a schedule of fines as may be adopted by resolution of the Board of Trustees, a copy of which will be or has been delivered to each Owner, mailed to the mailing address of the Unit or mailed to the mailing address designated by the Owner in writing to the Association, or otherwise delivered to the Owner, and enforced pursuant to the terms of Utah's Condominium Act, as may be amended from time to time, and may contain fines for the violations thereof;

(d) The right of the Association to suspend the voting rights of the Owners after notice and a hearing for any infraction of any of the published rules and regulations of the Association or of this Declaration.

(e) Subject to Section 3.6 below, bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto. The Association shall be entitled to its attorney fees and costs in the event that it prevails in any such enforcement action, whether or not a lawsuit is commenced.

3.3 Action by Owners.

Subject to any limitation imposed by Section 3.6 below, an aggrieved Owner may

bring an action against such other Owner(s) or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

3.4 Injunctive Relief.

Subject to Section 3.6 below, nothing in this section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

3.5 Notification of First Mortgagee.

The Board of Trustees shall notify in writing any first Mortgagee of any individual Unit of any default in performance of the terms of this Declaration by the Lot Owner which is not cured within sixty (60) days provided such Mortgagee has requested in writing to be so notified.

3.6 Mandatory Dispute Alternative Resolution Procedures. Agreement to Encourage Dispute Resolution without Litigation.

Notwithstanding anything to the contrary below, the Board of Trustees may exercise any of the rights and powers set forth in Section 3.2 (a), (c), (d) and (e) above without being bound by this Section 3.6. Moreover, additional exemptions from the application of this Section 3.6 may be contained within this Section, as expressly set forth herein.

(a) The Association, the Board of Trustees, and Members of the Association hereby agree and are bound to this provision not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to

the alternative dispute resolution procedures set forth herein, in a good faith effort to resolve such claim.

(b) As used in this Section, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or related to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of anyone arising from the Association's Declaration or Bylaws;

(iii) the design or construction of improvements within the Association;

(c) The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;

(iii) any suit between Owners, which does not include the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Association's Declaration or Bylaws;

(iv) any suit in which any indispensable party is not bound hereby;

(v) any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required in Section 2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article; and

(vi) any enforcement action permitted pursuant to Section 3.2(a), (c), (d) or (e) above.

MANDATORY DISPUTE RESOLUTION PROCEDURES

(a) **Notice.** A person asserting a Claim ("Claimant") against another person subject to this Section ("Respondent") shall give written notice ("Notice of Dispute") to each Respondent and to the Management Committee stating clearly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent, to discuss in good faith, ways to resolve the Claim.

(b) **Negotiation.** The Claimant(s) and Respondent(s) shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice of

Dispute, the Management Committee may appoint a representative to assist the parties in negotiating a resolution for the Claim.

(c) **Mediation.** If the dispute is not resolved within ninety (90) days after the Respondent receives Notice of Dispute, any party may submit the dispute to mediation by delivering a request for mediation ("Mediation Notice") in the same manner as allowed for delivery of the Notice of Dispute.

(i) **Selection of Mediator.** The mediator shall be selected within sixty (60) days from the delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the parties to the dispute. If the parties are unable to agree on a mediator, the mediator shall be selected by the entity providing the mediation service. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by written consent of all parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(ii) **Position Letter; Pre-Mediation Conference.** No later than thirty (30) days after the selection of the mediator, each party to the dispute shall submit a letter ("Position Letter") to the named mediator containing:

(A) a description of the party's position concerning the issues that need to be resolved;

(B) a detailed description of the defects allegedly at issue; and

(C) a suggested plan of repair, remediation, or correction.

The mediator may schedule a pre-mediation conference. All parties shall attend unless otherwise mutually agreed. The mediation shall be commenced within twenty (20) days after submittal of all Position Letters and shall be concluded within fifteen (15) days after the mediation began unless either (a) the mediator extends the mediation period, or (b) the parties mutually agree to extend the mediation period. The mediation shall be held in a place mutually acceptable to the parties.

(iii) **Failure to Submit Claim.** If the Claimant(s) does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant(s) shall be deemed to have waived the Claim, and the Respondent(s) shall be relieved of any and all liability to the Claimant(s) (but not third parties) on account of such Claim.

(iv) **Failure to Settle.** If the parties do not settle the Claim within thirty (30) days after the mediation begins, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings, indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant(s) shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

(v) **Expenses.** Each party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice

requested by the mediator shall be shared equally by the parties unless they agree otherwise.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

ARBITRATION

(a) **Procedure.** Any claim or controversy that cannot be resolved pursuant to this Article between any person bound by this Declaration and the Association or a representative of the Association that arises out of or relates to the ownership and use of a Unit or the Common Areas or Limited Common Areas of the Association, other than actions brought by and on behalf of the Association for: (1) the collection of assessments and fines, or (2) respecting the enforcement of the Declaration of Condominium by or on behalf of the Management Committee, or (3) enforcing Section 3.2 (a), (c), (d) and (e) above, shall be submitted to arbitration according to regulations prescribed by the Association's Management Committee. In the absence of any such regulations, arbitration shall proceed pursuant to the Commercial

Arbitration Rules of the American Arbitration Association ("AAA"), although such arbitration need not proceed with the AAA. Each Owner, by acquiring or maintaining an ownership interest in the Association, agrees to arbitrate all such disputes according to this provision and the regulation prescribed by the Management Committee pursuant to this provision, and agrees that judgment on the award rendered by the arbitration may be entered in any court having jurisdiction thereof.

NOTES

ARTICLE IV

4.1 Description of Improvements.

The improvements included in the Project are now located on the Property described in said **Exhibit "A"**, and all such improvements are described on the appropriate Record of Survey Map. The significant improvements contained in the Project include eleven (11) buildings, asphalt private roads, open parking spaces, one hundred seventy-six single carports, concrete sidewalks or walkways, wooden fences, a clubhouse, pool and other amenities and common areas. The Project also contains other improvements such as outdoor lighting and landscaping. The record of survey map shows the number of stories and the number of Units which are contained in the eleven (11) buildings. Said buildings are composed of the following materials: wooden frame with load and non-load bearing wall studded with wood, first floor of concrete, second floor of wooden joists; combination trust-rafter type roof; interior walls surfaced with gypsum board; and exterior surfaced with brick veneer and cedar siding.

4.2 Description and Legal Status of Units.

The Map shows the Units and Building designations, its location, dimensions from which its area may be determined, those Limited Common areas which are reserved for its use, and the Common Areas to which it has immediate access. All Units shall be capable of being independently owned, encumbered, and conveyed.

4.3 Contents of Exhibit "B."

Exhibit "B" to this Declaration furnishes the following information with respect to each Unit: (a) the Unit Designation; (b) its par value; and, (c) the percentage interest of ownership each Unit enjoys with respect to the Common Areas. With respect to percentage interest, to avoid a perpetual series of digits and to obtain a total of one hundred percent (100%), the last digit has been adjusted and rounded up or down to a value that is most nearly correct.

4.4 Computation of Percentage Interests.

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 bears to the total par value of all Units. The proportionate ownership in the Common Areas shall be for all purposes including, but not limited to, voting and assessments for Common Expenses.

NOTES

ARTICLE V

COMMON AREAS; UNIT; MAINTENANCE

5.1 Common and Limited Common Areas.

(a) The Common Areas contained in the Project are described and identified in Articles I and II of this Declaration.

Neither the Percentage Interest 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 any instrument of transfer, the percentage interest and such right of exclusive use in the Limited Common Areas shall automatically accompany the transfer of the Unit to which they relate.

Each Unit Owner shall, at its own cost, keep the Limited Common Areas designed for exclusive use in connection with his Unit in a clean, sanitary and attractive condition at all times.

(b) The use of the Common Areas shall be limited to the Owners in residence and to their tenants in residence, and to their guests, invitees and licensees. The use of each of the Limited Common Areas shall be restricted to the Owner of the Unit to which it is appurtenant, to his tenants in residence, and to his guests, invitees and licensees.

The use of the Common Areas and Limited Common Areas shall be governed by the Declaration and the Rules and Regulations as initially established by Declarant and as adopted and amended from time to time by the Board of Trustees.

(c) Notwithstanding any other provision of this Declaration, a patio, if any, to which a condominium Unit has sole access shall be for the exclusive use of the Owner of such

condominium Unit. Such Unit Owner shall keep the patio free and clean of snow, ice and any accumulation of water and shall make all repairs thereto.

5.2 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 interior surfaces of the walls, ceilings, floors, windows, and doors forming the boundaries of his/her Unit and all walls, ceiling, floors, windows and doors within such boundaries.

In addition to decorating and keeping the interior of their Units in good repair and in a clean and sanitary condition, Owners 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. Each Unit shall be maintained so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Unit. Exterior doors and windows shall be maintained by owner but must accord with styles, shapes and colors approved by the Board.

NOTES

ARTICLE VI

GENERAL AND SPECIFIC EASEMENTS

6.1 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 the maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either to 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 appropriate Record of Survey Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

6.2 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 right, to be exercised by the Board of Trustees, as its agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units.

The Board shall also have such rights independent of the agency relationship.

6.3 Emergency Repairs.

Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the insistence of the Board shall be the responsibility of the Association; provided, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Board as an assessment with all rights of collection related thereto.

6.4 Right of Ingress, Egress.

Each Owner, the tenant, guest or invitee, 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 their Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

6.5 Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines, and Other Common Facilities Located Inside of Units; Support.

Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other

Common Facilities located in any of the other Units and serving his Unit.

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Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Facilities serving such other Units and located in such Unit.

The Board of Trustees shall have a right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the common areas contained therein or elsewhere in the buildings. Every portion of a Unit which contributed to the structural support of the building shall be burdened with an easement of structural support for the benefit of all other Units and the Common Areas.

6.6 Easement for Board of Trustees and Manager.

The Board of Trustees and Manager, if any, 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 it is obligated or permitted to perform pursuant to this Declaration.

6.7 Easement for Utility Services.

There is hereby created a blanket easement upon, across, over and under the property described in "Exhibit A" for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephones, electricity, and other utility services.

ARTICLE VII

USE RESTRICTIONS

7.1 *Use of Units - Residential Use.*

Each of the Units in the Project is limited to single-family residential use only. The term "Single-Family" shall be defined by the local Murray City municipal zoning code. Each Unit and Owner is subject to the uses and restrictions imposed by these restrictions (including any parking restrictions).

7.2 *No Obstruction of 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 Board. The Board 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 Board, except as specifically provided herein. Nothing shall be altered on, constructed in or removed from the Common Areas except upon the prior written consent of the Board.

7.3 *Cancellation of Insurance.*

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 on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Board, but for such activity, would pay, without the prior written

consent of the Board.

Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Board and the Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees.

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.

7.4 *Rules and Regulations.*

No Owner shall violate the Rules and Regulations for the use of the Units and of the Common Areas as adopted from time to time by the Board of Trustees. Said Rules and Regulations shall be adopted and enforced pursuant to the terms of Utah's Condominium Act, as may be amended from time to time, and may contain fines for the violations thereof.

7.5 *Structural Alterations.*

No structural alterations to any Unit shall be made by any Owner without the prior written consent of the Board.

7.6 *Window Coverings.*

Window coverings of any and all Units shall consist of wood shutters, mini-blinds, drapes, woven wood coverings, curtains or other customary coverings. The Board of Trustees may require that certain colors and types of window covering be used.

Under no circumstances shall any cardboard or foil or aluminum be used as window coverings in the Project.

7.7 *Signs.*

No signs whatsoever shall be erected or maintained in the Common Areas without the prior written consent of the Board.

7.8 *Pets.*

Other than as specified below or by rules and regulations of the Association, dogs, cats or other household pets shall be allowed inside the Units within the Project if: (1) Ownership of the pet does not violate any local, state or federal laws; (2) The owner or occupant accepts full liability for his or her pet and signs a release, waiver and indemnity agreement; (3) Any pet allowed outside of the owner's Unit is accompanied by the owner and is on a leash; (4) The pet owner promptly cleans up all of his or her pet's droppings; (5) The pet is licensed and vaccinated in accordance with Salt Lake County ordinances; (6) Upon request, the Board is given a copy of the pet's license and proof of vaccination, along with a description sufficient to describe the pet; (7) The pet owner complies with the Association's rules and regulations as they may be adopted or modified by the Board from time to time which supplement this provision; and (8) No animals or birds of any kind shall be raised, bred, or kept in any the Common Areas or Limited Common Areas.

Anything to the contrary notwithstanding, no pet shall be allowed to create or maintain a nuisance. At the discretion of the Board, after notice and a hearing, any pet that is considered to be a nuisance shall not be allowed to remain within the confines of the Project. For the purposes of this paragraph a nuisance is defined as any behavior which annoys or disturbs other owners or occupants, including but not limited to any abnormal, unreasonable or excessive barking, whining, or scratching; any behavior which creates an unacceptable odor, an unhygienic environment or a dangerous condition; or any behavior which establishes a propensity for harm.

Exotic pets may be permitted but only pursuant to the Association's rules and policies.

If a pet owner violates any of these covenants, conditions or restrictions, including any administrative pet rules and regulations, the Board shall have the express authority to issue citations or levy punitive assessments and collect the same as an unpaid assessment. In extreme cases, the Board may require that the Owner remove their pet from the premises.

Notwithstanding anything to the contrary above, Owners are limited to having two (2) pets unless express written consent from the Board is granted.

Owners are strictly liable for any and all bodily or property damage caused by their pets.

7.9 *Storage and Parking of Vehicles.*

No motor vehicle or trailer, including but not limited to any automobile, commercial vehicle, truck tractor, mobile home, or trailer (either with or without wheels), camper

trailers, boat or other water craft, boat trailer, or any other transportation device of any kind may be parked or stationed in front of any garage, walkway, driveway, Unit or Common Area. There is a long-term parking area, limited in number, which is available to the Owners within the Association on a first come first serve basis. The Board shall have absolute discretion in establishing rules governing over the use and availability of parking within the limited long-term parking area.

Each Unit will be assigned one (1) parking space. All additional vehicles must be parked in designated areas.

Visitors may only park their motor vehicles temporarily in designated "guest" spaces in accordance with the Parking Rules and Regulations promulgated by the Board of Trustees.

No Owners or occupants shall repair or restore any motor vehicle of any kind upon any Unit or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

Motor Vehicles parked in unauthorized areas, or in violation of the parking rules and regulations established by the Board of Trustees, may, at owner's expense, be towed away.

All parking spaces shall be used for the purpose of parking motor vehicles and shall not be used as storage facilities.

All vehicles must be currently and properly registered and licensed vehicles and must be in a running and operable condition.

7.10 Aerials, Antennas and Satellite Dishes.

It is the intent that this policy not be inconsistent, incongruent or in conflict with applicable local, state and federal legislation.

Aerials, antennas and satellite dishes shall be prohibited within the Project, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) antennas or satellite dishes designed to receive video programming services via multipoint distribution services which are one meter or less in diameter or diagonal measurement. (hereafter referred to as "Permitted Devices") shall be subject to the following.

(1) located in the attic, garage, or other interior spaces of the residential unit, so as not to be visible from outside the unit;

(2) located in the appurtenant limited common area patio (i.e., the area between the plane formed by the front facade of the building containing the residential unit and the rear line of the limited common area as shown on the record of survey map) and setback from all property lines at least eight (8) feet;

(3) attached to or mounted behind the backside (unit side) of the storage building adjacent to the patio area, or, placed on a tripod or pole in the relevant limited common area appurtenant to the residential unit.

Notwithstanding the foregoing, should an Owner determine that a Permitted Device cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, then the Owner may install the device in the least

conspicuous alternative location in the residential unit or appurtenant limited common area where an acceptable quality signal can be obtained.

The Board of Trustees may adopt rules establishing a preferred hierarchy of alternative locations and require screening of all Permitted Devices, so long as such rules do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device. Anything to the contrary notwithstanding, no Permitted Device may be located in the common area without the express prior written consent of the Board of Trustees. Permitted Devices may only be installed in, on or within property which a party owns or is subject to his exclusive use.

7.11 Sheds.

Any permitted sheds may be no higher than the adjacent fence line bounding the Common Areas. Unit Owners are permitted to have a shed for the storage of common, non-hazardous materials and common lawn and garden care equipment. Such sheds must be used only for storage and not for living or office space. The sheds must be of wood construction using similar siding and trim material as the existing siding of the condominium building or other siding materials as permitted, in writing, by the Board.

All sheds must be maintained in an attractive and appealing way. This includes maintaining the paint scheme similar to the paint scheme of the condominium building. Worn roofs or siding, unpainted or faded wood surfaces, or sheds in a state of unsightly disrepair may be deemed by the Board as not properly maintained. Sheds deemed as such must be brought into compliance or removed at the

Owner's expense within sixty (60) days of receipt of notice from the Board.

7.12 Offensive Activities.

No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of inoperable vehicles, car parts and appliances, or activities shall be permitted on the Common Areas or within any Unit, nor shall anything be done in or placed upon any Common Area which interferes with or jeopardizes the enjoyment of other Units or which is a source of annoyance to residents.

7.13 Unlawful Activities.

No unlawful use shall be made of the Property, Units, or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the same shall be observed.

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ARTICLE VIII

BOARD OF TRUSTEES; POWERS; COMPOSITION

8.1 Status and General Authority of Board of Trustees.

Notwithstanding anything herein contained to the contrary, the Condominium Project shall be managed, operated, and maintained by the Board of Trustees exclusively as agent of, and in the name of, the Association and any act performed by the Board of Trustees pursuant to this Declaration or the Bylaws, as the same may be amended from time to time, shall be deemed to be performed by the Board for and on behalf of the Association as its agent.

The Board of Trustees may delegate to a professional property management company, an independent contractor, an independent accountant and/or bookkeeper, or an occupant of any Unit within the Project, the necessary powers and authority to manage the Project. The Association may reasonably compensate any such individual or company (referred to as "Manager") for said services. The Board may engage a single person/entity to fulfill all said positions or use a combination of different people/entities for the same.

The Manager so engaged shall be responsible for managing the Project for the benefit of the Board of Trustees and the Unit Owners and shall, to the extent permitted by law and the terms of the agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board of Trustees itself.

8.2 Composition of Board and Selection Thereof.

The Board shall be composed of seven (7) members all of whom shall be Unit Owners

capable of committing to regular participation in Association matters as set forth in the Bylaws.

At each annual Owners meeting, any vacant seat on the Board shall be filled with a member elected for a two-year term. It is the intent of this provision, however, that the elected Board members shall have terms that expire at different times. Unless already established, upon adoption of this document, three positions shall be for two (2) years and four positions shall be for one (1) year. If, at the adoption of this document, the Board is not "staggered" as outlined herein, the newly elected Board shall assign Board terms consistent with this provision.

Members shall serve on the Board until their qualified successors are elected. Only the Unit owners and officers and agents of Owners other than individuals shall be eligible for Board membership. At the annual meeting each Unit Owner may vote his percentage of undivided ownership interest in favor of as many candidates for Board membership as there are seats on the Board to be filled.

In cases of vacancy on the Board, the remaining Board members shall elect a replacement to sit on the Board until the expiration of the term for which the member being replaced was elected. Board Members may be removed from their position at any time upon a 60% vote of all voting interests of the Owners. Such vacant seat shall then be filled at the same meeting by the majority vote of the voting interests of the Owners for the balance of the unexpired term. Board members shall be reimbursed for all expenses reasonably incurred in connection with Board business.

ARTICLE IX

ASSESSMENTS

9.1 Agreement to Pay Assessment.

Each Owner of any Unit by the acceptance of a deed therefore, whether or not it be so expressed in the deed, or by entering into a sale and purchase contract, shall be deemed, to covenant and agree with each other and with the Association to pay to the Association:

(1) annual assessments, payable in monthly installments, made to the Association for the purposes provided in this Declaration;

(2) special assessments for capital improvements and other matters as provided in this Declaration, and, as the case may be,

(3) individual assessments applicable to less than all owners as set forth below. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

The monthly assessments herein provided shall commence as to all Units on the date deed is delivered to a purchaser of a Unit, with the first monthly assessment being adjusted according to the number of days remaining in the month of conveyance.

9.2 Amount of Total Annual Assessments.

The total annual assessments against all Units shall be based upon advance estimates of cash requirements by the Board to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates may include, among other things expenses of management,

grounds maintenance, taxes and special assessments, (until the Units are separately assessed as provided herein), premiums for all insurance which the Board is required or permitted to maintain pursuant hereto, common lighting and heating, water charges, trash collection, repairs and maintenance of the Common Areas that must be replaced on a periodic basis, wages for Board employees (if any), legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

9.3 Apportionment of Annual Assessments.

Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among all Owners in proportion to their respective Percentage Interests in the Common Areas.

9.4 Notice of Annual Assessments and Time for Payment Thereof.

Annual assessments shall be made on a calendar year basis. In the event of increases or decreases in the assessment amount, the Board shall give written notice to each Owner as to the amount with respect to his/her Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. Such assessments shall be due and payable in monthly installments on the first day of each and every month of each year.

Delinquent assessments shall be subject to reasonable late fees and/or interest as adopted and published by the Board.

Failure of the Board to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of a Unit for such assessment, but the date when payment shall become due in such case shall be deferred to a date thirty (30) days after such notice shall have been given.

If, in the Board's sole discretion, the assessment is too large or too small as a result of unanticipated income or expenses, the Board may effect an equitable change in the amount of the assessment. However, without the prior approval of a majority of the percentage of ownership interests in the Common Areas, no such increase shall be greater than fifteen percent (15%) of the present assessment amount in any calendar year. Furthermore, Owners shall be given at least thirty (30) days prior written notice of any change.

The annual assessment, however, may be increased in any amount deemed necessary by a two-thirds (2/3) majority vote of all voting interests of the Owners at any regular or special meeting of the Association.

9.5 Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Board may levy in any assessment year a special assessment, payable over such a period as the Board may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this

Declaration.

This Section shall not be construed as an independent source of authority for the Board to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof.

Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective Percentage Interests in the Common Areas. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

Any unpaid special assessment shall be subject to late fees and/or interest and adopted and published by the Board from the date it becomes due and payable if not paid within thirty (30) days after such date. Notwithstanding anything to the contrary herein contained, additions or capital improvements to the Project which cost no more than \$10,000.00 may be authorized by the Board of Trustees alone.

Additions or capital improvements the cost of which will exceed such amount must, prior to being constructed, be authorized by at least a majority of the Percentage Interests. Any addition or capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed, be authorized by a vote of Unit Owners in person or by proxy of not less than 51% of the total voting percentage interests at a meeting of the Association, special or annual, at which a quorum is present.

9.6 Lien for Assessments.

All sums assessed to any Unit pursuant to this Declaration, together with interest

thereon as provided hereon, shall be secured by a lien on such Unit in favor of the Association.

Such lien shall be superior to all other liens and encumbrances on such Unit, except only for: (a) valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; and (b) a lien for all sums unpaid on a first-mortgage, duly recorded in the Official Records of Salt Lake County, Utah, including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by the lien thereof in accordance with the terms of such instrument.

All other lienors acquiring liens on any Unit after this Declaration shall have been recorded in said records shall be deemed to consent that such lien shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence a lien for sums assessed hereunder, the Board may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by the Board and may be recorded in the Office of the County Recorder of Salt Lake County, Utah.

No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Board in the same manner in which mortgages on real property may be foreclosed in Utah or in a non-judicial manner, the same as for trust deeds in the State of Utah.

In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all court costs and reasonable attorneys' fees. All such costs, expenses and fees shall be secured by the lien being foreclosed.

The Owner shall also be required to pay to the Board any assessments against the Unit which shall become due during the period of foreclosure. In the event of foreclosure, after the institution of the action the Unit Owner shall pay a reasonable rental for his use of the Unit and the Board shall, without regard to the value of the Unit, be entitled to the appointment of a receiver to collect any rentals due from the Owner or any other person.

The Board shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

A release of notice of lien shall be executed by the Board and recorded in the Office of the County Recorder of Salt Lake County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded note 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 hereunder, and upon such payment such encumbrancer shall be subrogated to all rights of the Board with respect to such lien, including priority.

The Board shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for thirty days after the same shall have become due; provided, however, that

such encumbrancer first shall have furnished to the Board written notice of such encumbrance.

9.7 Personal Obligations of Owner.

The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Board 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.

9.8 Statement of Account.

Upon payment of a reasonable fee not to exceed ten dollars (\$10.00), or such other amount as may in the future be allowed by the Act, and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Board shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit; amount of the current yearly assessment and the date that such assessment becomes or became due; credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums; and such statement shall be conclusive upon the Board in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid

assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the twenty (20) 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.

9.9 Personal Liability of Purchaser for Assessments.

A purchaser of a Unit, through a voluntary conveyance, shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

9.10 Individual Assessments.

Individual assessments may be levied by the Board against a Unit and its Owner for:

- (1) Administrative costs and expenses incurred by the Board in enforcing the Project Documents, including any fines levied for violations;
- (2) Costs associated with the maintenance, repair or replacement of Common Area for which some but not all of the Unit Owners are responsible;
- (3) Any other charge, fee, fine, dues, expense, or cost designated as an Individual Assessment in the Project Documents or by the Board of Trustees; and
- (4) Reasonable attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

9.11 Reserve Account

The Association shall establish a reasonable reserve account for the funding of long term maintenance and/or replacement items as the Board of Trustees, in their sole discretion, deem necessary and in the best interests of the Owners. The Board of Trustees, shall use reasonable efforts to fund said reserve account but shall not be held personally liable for any alleged failure to fully fund said account as long as gross negligence or intentional misconduct is not proven in a court of law.

9.12 Absentee Owner Failure to Pay Assessments

In the event that an absentee owner fails to pay any assessment obligation hereunder, the Association may demand that the tenant(s) pay to the Association any rent owing to said Owner. Said amount received shall be applied to the Owner's account and payments hereunder shall not constitute a breach of the lease agreement between the Owner and Tenant.

In the event that the Owner's assessment account is brought current pursuant to this Section, then the Association shall forward all excess rental payments to the Owner and tenant shall be directed to make future payments directly to the Owner.

9.13 Transfer Fees.

Each time a legal title to a Unit passes from one person to another, unless the transfer is made to a Qualified Successor Owner, which shall mean such owner's spouse, son, daughter, father or mother or a legal entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent (50%) (the "Qualified

Successor Owner(s)") for estate planning purposes, within thirty (30) days after the effective date of such title transaction the new Unit Owner may pay to the Board, in addition to any other required amounts, a transfer fee, unless otherwise determined by the Board.

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ARTICLE X

INSURANCE

10.1 Insurance.

Unit Owners are required to carry and maintain adequate property and liability insurance on their Units. A Unit Owners' policy shall serve as primary insurance in the event any damage is caused to another Unit, Common Area, or Limited Common Area, so long as fault is attributable to the said Unit Owner. The Board of Trustees may request that Owners provide proof of adequate insurance.

In the event that Owners do not obtain and maintain the insurance required pursuant to this Declaration, then the Association shall have the right, but not the obligation, to purchase a homeowner policy consistent with this Declaration and add the costs of said policy to the assessment account of the Owner.

The Board of Trustees shall secure and at all times maintain the following insurance coverage:

(a) A master or blanket policy of property insurance, with extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).

Each such policy shall contain the standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear. The insured shall be the Association as a

trustee for the Unit Owners, or their authorized representative. Such insurance must provide protection against at least the following loss by fire and other hazards covered by the standard extended coverage.

(b) A comprehensive policy of public liability insurance covering all of the Common Areas insuring the Association, the Board, the Manager, and the Unit Owners against any liability incident to the ownership, use, or operation of the Common Areas and public ways of the Project or of any Unit which may arise among themselves, to the public, or to any invitees, or tenants of the Project, or of the Unit Owners. Limits of liability under such insurance shall be not less than One Million Dollars (\$1,000,000.00) covering all claims for personal property injury and for property damage arising out of a single occurrence, including protection against water damage liability, liability for non-owned and hired automobile and liability for property of others. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association or other Unit Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for similar projects in location, construction and use.

(c) The Association shall maintain fidelity coverage to protect against dishonest acts on the part of Board Members, Manager (including, but not limited to, employees of professional managers) employees, or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance

must name the Association as the obligee and shall be written in an amount sufficient to provide protection which in no event shall be less than one-half of the insured's estimated annual operating expenses and reserves unless a greater amount is required by majority of the Mortgagees, or their designees.

In connection with such coverage any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. All fidelity bond coverage shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without a least 30 days' prior written notice to the service on behalf of Mortgagees.

The following additional provisions shall apply with respect to insurance:

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

(2) Each hazard insurance policy shall be written by a company holding a financial rating of Class VI or better as designated in Best's Key Rating Guide. Each insurer must be specifically licensed to transact business within the State of Utah. Policies are unacceptable where (i) under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against the Borrower or the Mortgagee, or its designee; or (ii) by the terms of the carrier's charter, by-laws or policy, loss, payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any

limiting clauses (other than insurance conditions) which could prevent the Mortgagee or the borrower from collecting insurance proceeds.

(3) The Board shall have the authority to adjust losses.

(4) Insurance secured and maintained by the Board shall not be brought into contribution with insurance held by the individual Unit Owners or their mortgagees.

(5) Each policy of insurance obtained by the Board shall provide: a standard mortgagee clause commonly accepted by private institutional mortgage investors in the Area in which the Project is located; a waiver (if available) of the insurer's subrogation rights with respect to the Board, the Manager, the Unit Owners, their respective servants, agents, and guests; that it cannot be canceled, suspended or invalidated due to the conduct of any member, officer or employee of the Board or of the Manager without a 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; and that a mortgagee clause endorsement which must provide that the insurance carrier shall notify in writing any and all insureds, including the servicers on behalf of Mortgagees or designees thereof at least thirty (30) days in advance of the effective date of any substantial modification or cancellation of the coverage.

(6) Each Unit Owner shall obtain additional insurance at his own expense, as long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Board. Each Unit Owner shall supply the Board with a copy of his

policy within 30 days after he acquires such insurance.

As stated above, the Unit Owner's insurance policy shall serve as primary insurance in the event any damage is caused to another Unit, Common Area, or Limited Common Area, so long as fault is attributable to the said Unit Owner.

(7) Insurance coverage required by this Article must not be prejudiced by (i) any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Project over which the Association has no control.

(8) All policies of property insurance must provide that notwithstanding any provision affording the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the insurance may be a party, or any requirement of law.

10.2 Damage to Project.

In the event of damage or destruction all of the improvements in the Condominium Project, the following Procedures shall apply:

(a) If proceeds of the insurance maintained by the Board of Trustees are alone sufficient to repair or reconstruct the damage or destroyed improvement, such repair or reconstruction shall be carried out.

(b) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if the proceeds of the insurance

maintained by the Board are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all the Unit Owners shall be assessed for any deficiency on the basis of their respective Percentage Interest.

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

(d) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Board 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%, elect to repair or reconstruct the affected improvements, the Board of Trustees shall promptly record with the Salt Lake County Recorder a notice setting forth such facts. Upon the recording of such notice the provisions of subsections (1) through (4) of Section 57-8-31, Utah Code Annotated (1953), shall apply and shall 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 Article regarding the extent of damage to or destruction of Project improvements shall be made by three MAI appraisers selected by the Board of Trustees. The decision of any two such appraisers shall be conclusive.

NOTES

ARTICLE XI

MORTGAGEE PROTECTION

11.1. Mortgagee Protection.

Notwithstanding anything to the contrary contained in the Declaration:

(a) Any mortgage holder which comes into possession of the Unit pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgagee or deed (or assignment in lieu of foreclosure) shall be exempt from any "right of first refusal", or other provisions which may exist relating to sale or lease of the Units in the Project, and no right of first refusal shall impair the rights of any first mortgage to: (i) foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage, or (ii) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or (iii) interfere with a subsequent sale or lease of the Unit so acquired by the Mortgagee.

(b) In the event of damage to or destruction of any Unit, which loss exceeds \$1,000.00, or any part of the Common Areas, which loss exceeds \$10,000.00, the institutional holder of any first mortgage on a Unit shall be entitled to timely written notice to 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 Owner of any insurance proceeds regardless of the amount of loss. Upon request of any first mortgagee of the, Association must provide a letter to said first Mortgagee wherein the Association agrees to notify the first Mortgagee or any organization it designates at the address indicated by the Mortgagee whenever (i) damage to a Unit covered by the first Mortgagee's Mortgage exceeds \$1,000.00, or (ii) damage to the Common Areas and related facilities exceeds

\$10,000.00.

(c) If any Unit or portion thereof or 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 of a Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition. No Unit Owner or other party shall have priority over such institutional holder regardless of the amount of the condemnation award with respect to the distribution to such Unit Owner of the proceeds of any award or settlement.

(d) With the exception of a lender in possession of a Unit following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Unit Owner shall be permitted to lease his Unit for transient or hotel purposes. No Unit Owner may lease less than the entire unit. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and By-Laws 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.

(e) Each holder of a first mortgage lien on a Unit who obtains title to a Unit by virtue of remedies provided in the Mortgage, including but not limited to, foreclosure of the mortgage, or by deed of assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of unpaid charges and shall not be liable for any unpaid claims or assessments and charges against the Unit which accrue prior to the

acquisition of title of such Unit by Mortgagee, except for claims for a pro-rata share of such assessments or charges to all Project Units including the mortgaged Unit.

(f) Any lien which the Board of Trustees 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.

(g) Unless at least 75% of the institutional holders of first Mortgages (based on one vote for each Mortgage owned) of Units have given their prior written approval neither the Board of Trustees, Owners nor the Association shall:

(1) By act or omission, seek to abandon or terminate the Project, except 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 Percentage Interests or obligations of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for (ii) determining the pro-rata share of ownership of each Unit in the appurtenant Common Areas, except as necessary to allow the expansion of the Project as provided in the Declaration.

(3) Partition or subdivide any Unit or of the Common Areas.

(4) By act or omission, seek to amend, partition, subdivide, encumber, sell, abandon 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).

(5) 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.

(h) Any institutional holder of a first mortgage (or trust deed) of a Unit in the Project will, upon request, be entitled to (i) examine the books and records of the Project during normal business hours; (ii) receive the financial statements of the Project within 90 days following the end of any fiscal year of the Project; and (iii) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

(i) Whenever there is a change of ownership of a Unit, the Board shall require that the new Unit Owner furnish the Board with the name of the holder of any first mortgage (or trust deed) affecting such Unit. The Board of Trustees or Manager shall maintain a current roster of Unit Owners and of the holders of first mortgages (or trust deed) affecting Units in the Project.

NOTES

ARTICLE XII

MISCELLANEOUS

12.1 Amendment.

Except as provided below, the vote of at least sixty-seven percent (67%) of the total voting percentage interests of all of the Unit Owners in person or represented by proxy at a meeting of the Association at which a quorum is present shall be required to amend this Declaration or the Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Board of Trustees. In such instrument the Board shall certify that the vote required by this Paragraph for amendment has occurred.

12.2 Consent Equivalent to Vote.

In those cases in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for the authorization or 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.

12.3 Service of Process.

The Board of Trustees shall appoint a service of process agent. Such agent and his/her address shall be specified by an appropriate instrument filed in the appropriate corporate records for the State of Utah.

12.4 Duty of Owner to Pay Taxes on Unit Owned.

It is understood that under the Act each Unit (and its in the Common Areas) in the Percentage Interest 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, except for certain personal properties thereof. Accordingly, each Unit Owner will pay and discharge any and all taxes and assessments which may be assessed against him on his Unit.

12.5 Covenants to Run With Lands; Compliance.

This Declaration and all the provisions hereof shall constitute covenants which run with the land and constitute equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of The Association, all parties who hereafter acquire any interest in or occupy a Unit or any part of in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, assigns, guests and invitees.

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 By-Laws, and the provisions of any rules, regulations, agreements, instruments, and determinations adopted pursuant thereto, (hereinafter referred to collectively as the "Declaration"), and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association, or, in a proper case, by an aggrieved Unit Owner. By acquiring any interest in a Unit each Unit Owner or occupant consents and agrees to be bound by and subject to each and every provision of the Declaration. Should the

Association be required to take action hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise, the Association may recover all costs and expenses, including a reasonable attorney's fee, which may arise or accrue.

12.6 Information Regarding Transferee of Unit.

Any Unit Owner who sells, leases, or otherwise disposes of his Unit shall submit to the Board pertinent information concerning the transferee or new occupant within one week of any transfer of title or possession on a form furnished by the Board.

12.7 Indemnification of Board of Trustees.

Each member of the Board of Trustees shall be indemnified and held harmless by the Unit Owners against all costs, expenses, and fees, reasonably incurred by him in connection with any proceeding to which he or she may become involved by reason of his/her being or having been a member of said Board.

12.8 Invalidity.

The invalidity of any provisions of this Declaration, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

12.9 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.

12.10 Conflicts.

This Declaration is set forth to comply with the requirements of the Act. In the event of any conflict between this Declaration and the provisions of the Act, the provisions of the latter shall control.

12.11 Effect of Recorded Instruments.

At any point in time, the Declaration and the Record of Survey Map concerning each phase which is then a part of the Project shall constitute the constituent parts of a single Declaration and Record of Survey Map affecting the Project. Accordingly, in the event the provisions of the separate instruments conflict irreconcilably, the terms of that instrument which is last recorded shall control.

12.12 Effective Date.

This Declaration shall take effect upon recording in the office of the Salt Lake County Recorder, Utah.

NOTES

IN WITNESS WHEREOF, the South 67 Owners Association has caused this Declaration to be executed by its duly authorized officers on the date evidenced below, pursuant to a vote of the Owners of the Association. See Exhibit "C."

EXHIBIT "A"

(Legal Property Description)

Beginning at a point on the Southerly Line of Jefferson Park No. 2, a subdivision of part of the East Half of Section 24, T.2 S., Range 1 W., S.L.B. & M., according to the Official Plat thereof in the office of the Salt Lake County Recorder. Said point being due South 411.513 feet and due West 647.097 feet from the East 1/4 corner of the before mentioned Section 24; and running thence S 83 degrees 39 minutes E along said southerly line and extension thereof 292.491 feet; thence South 4.388 feet; thence S 83 degrees 49 minutes E 502.456 feet; thence S 01 degrees 15' 00" E 296.048 feet; thence S 03 degrees 58 minutes W 414.288 feet to the North line of Lester Avenue; thence West 739.020 feet along said North Line; thence North 368.82 feet to the beginning of a 1308.035 foot radius curve to the left, the radius point of which bears West; thence along the arc of said curve through a central angle of 8 degrees 30 minutes a distance of 194.051 feet to the beginning of a 1320.663 foot radius curve to the right, the radius point of which bears N 82 degrees 30 minutes E; thence along the arc of said curve through a central angle of 8 degrees 30 minutes a distance of 195.924 feet; thence North 42.782 feet to the point of beginning. Containing 13.251 acres.

Including the units as follows:

<u>Building</u>	<u>Units</u>	<u>Building</u>	<u>Units</u>
A	11-18	I	11-18
A	21-28	I	21-28
B	11-18	J	11-18
B	21-28	J	21-28
C	11-18	K	11-28
C	21-28	K	21-28
D	11-18		
D	21-28		
E	11-18		
E	21-28		
F	11-18		
F	21-28		
G	11-18		
G	21-28		
H	11-18		
H	21-28		

EXHIBIT "B"

The South 67 Condominiums

<u>Building</u>	<u>Unit No.</u>	<u>Par Value (Based on Points)</u>	<u>Percentage Interest</u>
A	11	269	0.4363
A	12	269	0.4363
A	13	399	0.6473
A	14	399	0.6473
A	15	399	0.6473
A	16	399	0.6473
A	17	299	0.4850
A	18	399	0.6473
A	21	279	0.4526
A	22	279	0.4526
A	23	369	0.5986
A	24	369	0.5986
A	25	369	0.5986
A	26	369	0.5986
A	27	369	0.5986
A	28	369	0.5986
B	11	269	0.4363
B	12	269	0.4363
B	13	399	0.6473
B	14	399	0.6473
B	15	399	0.6473
B	16	399	0.6473
B	17	299	0.4850
B	18	399	0.6473
B	21	279	0.4526
B	22	279	0.4526
B	23	369	0.5986
B	24	369	0.5986
B	25	369	0.5986
B	26	369	0.5986
B	27	369	0.5986
B	28	369	0.5986
C	11	269	0.4363
C	12	269	0.4363
C	13	399	0.6473

C	14	399	0.6473
C	15	399	0.6473
C	16	399	0.6473
C	17	299	0.4850
C	18	399	0.6473
C	21	279	0.4526
C	22	279	0.4526
C	23	369	0.5986
C	24	369	0.5986
C	25	369	0.5986
C	26	369	0.5986
C	27	369	0.5986
C	28	369	0.5986
D	11	269	0.4363
D	12	269	0.4363
D	13	399	0.6473
D	14	399	0.6473
D	15	399	0.6473
D	16	399	0.6473
D	17	299	0.4850
D	18	399	0.6473
D	21	279	0.4526
D	22	279	0.4526
D	23	369	0.5986
D	24	369	0.5986
D	25	369	0.5986
D	26	369	0.5986
D	27	369	0.5986
D	28	369	0.5986
E	11	269	0.4363
E	12	269	0.4363
E	13	399	0.6473
E	14	399	0.6473
E	15	399	0.6473
E	16	399	0.6473
E	17	299	0.4850
E	18	399	0.6473
E	21	279	0.4526
E	22	279	0.4526
E	23	369	0.5986
E	24	369	0.5986
E	25	369	0.5986
E	26	369	0.5986
E	27	369	0.5986
E	28	369	0.5986
F	11	269	0.4363

F	12	269	0.4363
F	13	399	0.6473
F	14	399	0.6473
F	15	399	0.6473
F	16	399	0.6473
F	17	299	0.4850
F	18	399	0.6473
F	21	279	0.4526
F	22	279	0.4526
F	23	369	0.5986
F	24	369	0.5986
F	25	369	0.5986
F	26	369	0.5986
F	27	369	0.5986
F	28	369	0.5986
G	11	269	0.4363
G	12	269	0.4363
G	13	399	0.6473
G	14	399	0.6473
G	15	399	0.6473
G	16	399	0.6473
G	17	299	0.4850
G	18	399	0.6473
G	21	279	0.4526
G	22	279	0.4526
G	23	369	0.5986
G	24	369	0.5986
G	25	369	0.5986
G	26	369	0.5986
G	27	369	0.5986
G	28	369	0.5986
H	11	269	0.4363
H	12	269	0.4363
H	13	399	0.6473
H	14	399	0.6473
H	15	399	0.6473
H	16	399	0.6473
H	17	299	0.4850
H	18	399	0.6473
H	21	279	0.4526
H	22	279	0.4526
H	23	369	0.5986
H	24	369	0.5986
H	25	369	0.5986
H	26	369	0.5986
H	27	369	0.5986
H	28	369	0.5986

I	11	269	0.4363
I	12	269	0.4363
I	13	399	0.6473
I	14	399	0.6473
I	15	399	0.6473
I	16	399	0.6473
I	17	299	0.4850
I	18	399	0.6473
I	21	279	0.4526
I	22	279	0.4526
I	23	369	0.5986
I	24	369	0.5986
I	25	369	0.5986
I	26	369	0.5986
I	27	369	0.5986
I	28	369	0.5986
J	11	269	0.4363
J	12	269	0.4363
J	13	399	0.6473
J	14	399	0.6473
J	15	399	0.6473
J	16	399	0.6473
J	17	299	0.4850
J	18	399	0.6473
J	21	279	0.4526
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J	23	369	0.5986
J	24	369	0.5986
J	25	369	0.5986
J	26	369	0.5986
J	27	369	0.5986
J	28	369	0.5986
K	11	269	0.4363
K	12	269	0.4363
K	13	399	0.6473
K	14	399	0.6473
K	15	399	0.6473
K	16	399	0.6473
K	17	299	0.4850
K	18	399	0.6473
K	21	279	0.4526
K	22	279	0.4526
K	23	369	0.5986
K	24	369	0.5986
K	25	369	0.5986
K	26	369	0.5986

K	27	369	0.5986
K	28	369	<u>0.5986</u>

EXHIBIT "C"
BY-LAWS
OF
THE SOUTH 67
OWNERS ASSOCIATION, INC.

ARTICLE I

PLAN OF UNIT OWNERSHIP

1. **Condominium Submission.** The Property is located in Salt Lake County, Utah, has been submitted to the provisions of the Act by a Amended and Restated Declaration recorded in the Office of the County Recorder of Salt Lake County, Utah, simultaneously herewith, and shall hereafter be referred to as "The Condominium."

time to time by the Board of Trustees (hereinafter sometimes called the "Board").

NOTES

2. **By-Laws Applicability.** The Provisions of these Bylaws are applicable to the Project as the same may be expanded as provided in the Declaration and the use, occupancy, sale, lease or other transfer thereof. All Owners of any fee or leasehold interest, all occupants or users of the Condominium, and the agents and servants of any of them are subject to the provisions of the Declaration, these Bylaws, and the Rules and Regulations.

3. **Personal Application.** All present and future Owners, tenants, future tenants, their guests, licensees, servants, agents, employees and any other person or persons who shall be permitted to use the facilities of the Condominium, shall be subject to these Bylaws and to the Rules and Regulations of the Condominium. Acquisition, rental or occupancy of any of the Condominium Units in the Condominium shall constitute an acknowledgment that such Owner, tenant or occupant has accepted and ratified these Bylaws, the provisions of the Declaration and the Rules and Regulations and will comply with them.

4. **Office.** The office of the Condominium and of the Board of Trustees shall be located at the Condominium or at such other place as may be designated from

ARTICLE II

ASSOCIATION

1. **Composition.** All of the Unit Owners of the South 67 Condominiums, acting as a group in accordance with the Act, the Declaration and these Bylaws, shall constitute the Association. Except as to those matters which the Act specifically requires to be performed by the vote of the Unit Owners, the administration of the Condominium shall be performed by the Board.

2. **Voting.** There shall be one-hundred seventy six voting interests in the Association. Each Unit Owner shall have a vote equal to the percent interest said Unit holds in relation to the entire Project. Since a Unit Owner may be more than one person, if only one of such persons is present at a meeting of the Association that person shall be entitled to cast the votes appertaining to that Unit. But if more than one of such persons is present, the vote appertaining to that Unit shall be cast only in accordance with the agreement of a majority of them, and such consent, shall be conclusively presumed if any one of them purports to cast the vote appertaining to that Unit without protest being made forthwith by any of the others to the person presiding over the meeting.

Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this Section to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a Unit Owner.

Except where a greater number is required by the Act, the Declaration, or these Bylaws, a majority of the votes of Unit Owners present in person or represented by proxy in good

standing and entitled to vote is required to adopt decisions at any meeting of the Association.

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

4. **Annual Meeting.** Annual meetings for any other purpose than the election of the Board of Trustees may be held at any time on call of the President of the Board, by a majority of the Board or by Unit Owners representing twenty percent (20%) of the Unit Owners. Notice of such meeting shall be given in accordance with the provisions of Section 6 of this Article II.

The annual meetings of the Association shall be held on the same day of each succeeding year or within fifteen (15) days before or after the previously established meeting date, unless such day shall occur on a Sunday or holiday, in which event the meeting shall be held on the next succeeding Monday which is not a holiday. At such annual meetings the Board shall be elected by ballot of the Owners in accordance with the requirements of these Bylaws. The Association may transact such other business as may properly come before them at such meetings.

5. **Special Meetings.** It shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board or, after all of the Board has been elected by Unit Owners, upon a petition signed and presented to the Secretary by Owners having not less than twenty percent (20%) of the votes of all Owners. The notice

of any special meeting shall state the 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 Meetings.** It shall be the duty of the Secretary to mail, by United States mail, postage prepaid, a notice of (a) each annual meeting of the Owners, at least thirty (30) but not more than sixty (60) days in advance of such meeting and (b) each special meeting of the Owners at least ten (10) 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 their respective Units and at 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. Moreover, hand delivered notice to the Unit Owner or hand delivery to an Owner's mailbox shall satisfy any notice requirements herein.

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 or she shall have fully paid all due installments of assessments made or levied against him and his Unit by the Board as hereinafter provided, together with all interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him and against his Unit, at least three (3) days prior to the date fixed for such annual or special meeting.

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 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 as aforesaid. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy, and must be filed with the Secretary not less than three (3) days before the meeting.

9. **Absentee Ballots.**

(a) A Member who is incapacitated, or who will be absent, on the date set for balloting may cast an absentee ballot at the place or time of balloting, or by mail, in the manner required by the Election Board, but in no event shall the vote be cast more than fourteen (14) days prior to the voting date.

(b) Ballot boxes containing absentee votes shall be opened and the ballots tabulated at the same time and place and under the same conditions as the regular ballots.

10. **Mail-in Ballots.**

(a) A majority of the Board of Trustees may authorize the use and implementation of mail-in ballots at any election or vote on an issue it deems appropriate, including the election of Board members.

(b) When mail-in ballots are authorized by the Board, said ballots shall be prepared and mailed to Voting Members at least thirty (30) days but not more than sixty (60) days prior to the date of the election or vote on an issue. The date set for the tabulation of the

ballots shall be stated on the ballot. Ballots received on or after the date set for tabulation of the ballots shall not be counted.

(c) A combination of mail-in ballots and "in person" ballots may be used.

11. **Unanimous Written Consent in Lieu of Vote.** In any case in which these Bylaws or the Declaration require for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes of the Owners present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from every Owner entitled to cast a vote. The following additional provisions shall govern any application of this Section:

(a) All necessary consents must be obtained prior to the expiration of sixty (60) days after the first consent is given by any Member.

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

12. **Quorum.** Except as may otherwise be provided herein or by statute, at least forty percent (40%) of the total number of Owners in person or represented by proxy or absentee ballot 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, represented by proxy or absentee ballot, shall have power to adjourn the meeting and reschedule for a time no earlier than 48 hours, and no later than thirty, (30) days after the time set for the original meeting. No notice of such rescheduled meeting shall be required except

an announcement thereof at the original meeting. A quorum for the transaction of business at the rescheduled meeting shall be thirty percent (30%) of the Owners in person or represented by proxy or absentee ballot.

13. **Order of Business.** The Board shall establish the agenda items for any properly called meetings of the Association.

14. **Title to Unit.** Title to Units may be taken in the name of natural person or in the names of two or more natural persons, or in the name of a corporation, partnership, association or other entity capable of holding title to real property, or any combination thereof.

15. **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 a record of all transactions occurring thereat.

NOTES

ARTICLE III

BOARD OF TRUSTEES

1. **Powers and Duties.** The affairs and business of the Association shall be managed by the Board which 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 as are not by the Act or by these By-Laws directed to be exercised and done by the Association.

The Board shall have the power from time to time to adopt any Rules and Regulations deemed necessary for the enjoyment of the Condominium provided such Rules and Regulations shall not be in conflict with the Act, the Declaration or these By-Laws. Subject to any limitations or provisions contained in the Declaration, the Board shall be responsible for the following:

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

(b) Making assessments against Owners to defray the cost and expenses of the Condominium, establishing the means and methods of collecting such assessments from the Owners, and establishing the period of the installment payment of the annual assessment for Common Expenses. Unless otherwise determined by the Board, the annual assessment against each Owner for his proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month.

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

(d) Designating, hiring and dismissing the personnel necessary for the maintenance, operation, repair and replacement of the Common Area, and providing services for the Property, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by 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 and amending Rules and Regulations respecting the use of the Property.

(g) Opening of bank accounts on behalf of the Condominium 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 Bylaws and the 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 casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof.

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

(l) Keeping books with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Condominium, specifying and maintenance and repair expenses of the common Areas and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, upon reasonable notice and during general business hours on working days at the times and in the manner that shall be set and announced by the Board 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 resolution of the Association, shall be audited by an outside auditor employed by the Board who shall not be a resident of the Condominium, 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 Condominium who requests the same in writing from the Treasurer.

(m) Ensure that the South 67 Condominiums Association maintains its status as a Utah non-profit corporation. If at anytime the Association's status as a Utah non-profit corporation shall expire, the duly elected Board of Trustees shall have the unilateral authority to reincorporate without Owner approval.

(n) To do such other things and acts not inconsistent with the Act, the Declaration or the By-Laws or by a resolution of the Association.

2. **Manager.** The Board may employ for the Condominium a Manager at a compensation established by the Board, to perform such duties and services as the Board shall authorize, including, but not limited to, the duties listed in Section I of this Article III.

The Board may delegate to the Manager all of the powers granted to the Board by these By-Laws; provided that any actions by the Manager with respect to the powers set forth in paragraphs (b), (f), (g) and (i), of Section I of this Article III shall require the written consent of the Board.

3. **Number of Board Members.** The Board shall be composed of seven (7) members all of whom shall be Unit Owners capable of committing to regular participation in Association matters, including but not limited to on-site Board meetings and responding, in a timely manner, to other community matters.

4. **Selection and Term of Office of the Board.** Unless appointed under the provisions of Section 10 of this Article III, Board members shall be elected in two year cycles. Thereafter, all elected Board member terms shall be for two years. It is the intent of this provision, however, that the elected

Board members shall have terms that expire at different times. Three positions shall be for two (2) years and two positions shall be for one (1) year. If, at the adoption of this Amended and Restated Declaration, the Board is not staggered as outlined herein, the newly elected Board shall assign Board terms consistent with this provision.

5. **Organization Meeting.** The first meeting of the members of the Board following the annual meeting of the Association shall be held within ten (10) days after the annual meeting at such place as shall be fixed by the Board at the meeting at which such Board-persons were elected, and no notice shall be necessary to the newly elected Board Members in order legally to constitute such meeting provided that majority of the whole Board shall be present thereat.

6. **Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Board, but at least six (6) such meetings shall be held during each fiscal year after the first annual meeting of the Association. Notice of regular meetings of the Board shall be given to each member, personally, by mail or by telephone, at least three (3) business days prior to the day named for such meeting.

7. **Special Meetings.** Special meetings of the Board may be called by the President on three (3) business days' notice to each member. Such notice shall be given personally, by mail or by telephone, and such notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or any Officer in like manner and on like notice on the written request of at least two (2) Board Members.

8. **Waiver of Notice.** Before or at any meeting of the Board, any Board Member may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Board Member at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Board Members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

9. **Board's Quorum.** At all meetings of the Board, a majority of the Board shall constitute a quorum for the transaction of business, and the acts of the majority of the Board present at a meeting at which a quorum is present shall be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

10. **Vacancies.** Vacancies in the Board caused by any reason other than removal of a Board Member by a vote of the Association shall be filled by vote of the majority of the remaining Board Members, at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the Board Members present at such meeting may constitute less than a quorum of the Board; and each person so elected shall be a Board Member for the remainder of the term of the Board Member so replaced and until a successor is elected at the next annual meeting of the Association.

11. **Removal of Board Member.**

(a) A Board 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 is present, buy an affirmative vote of the majority of the votes represented and voting. Any Board Member whose removal has been proposed by the Owners shall be given at least thirty (30) days written notice of the calling of the meeting and the purpose thereof and shall be given a reasonable opportunity to be heard at the meeting.

(b) Any Board Member who fails on two (2) successive occasions to attend Board meetings (whether regular or special) or who has failed to attend at least 25% of all Board meetings (whether regular or special) held during any twelve month period may forfeit his membership on the Board as determined by the Board members that are in good standing at that time.

(c) Any Board Member who allows his installments of assessments made or levied against him and his Unit by the Board to exceed four hundred dollars (\$400.00), including default interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him and against his unit, and fails to cure the default within ten (10) days after written notice shall automatically forfeit his membership on the Board.

12. **Compensation.** No Board member shall receive any compensation from the Condominium for acting as such.

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

14. **Report of Board.** The Board shall

present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, full and clear statement of the business and condition of the Condominium.

15. **Fidelity Bonds.** The Board may require that all officers, agents (including professional Manager and its employees) and employees of the Association handling or responsible for funds furnish adequate fidelity bonds. The premiums on such bonds shall constitute a Common Expense. The Board shall provide fidelity insurance coverage as required by the Declaration.

16. **Dispensing with Vote.** Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if all the members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

17. **Liability of the Board.** The members of the Board shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the Board Members from and against all contractual liability to others arising out of contracts made by the Board on behalf of the Owners unless any such contract shall have been made in bad faith.

18. **Open Meetings; Executive Sessions.**

(a) **Open Meetings.** Except as provided in Subsection (b) of this section, all meetings of the Board of Trustees shall be open to Owners. However, no Owner shall have a right to participate in the Board meeting unless the Owner is also a member of the Board. The President shall have the

authority to exclude an Owner who disrupts the proceedings at a Board meeting.

(b) Executive Sessions. In the discretion of the Board, the following matters may be considered in executive session:

(1) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;

(2) Personnel matters, including salary negotiations and employee discipline;

(3) The negotiation of contracts with third parties;

(4) Collection of unpaid assessments; and

(c) Executive Session Procedure.

(1) Except in the case of an emergency, the Board of Trustees shall vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the President or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

(2) A contract or an action considered in executive session does not become effective unless the Board, following the executive session, reconvenes in open meeting and votes on the contract or action, which must be reasonably identified in the open meeting and included in the minutes.

19. Meetings by Telephonic or Electronic Communication.

In the event of an emergency, meetings of the Board may be conducted by telephonic communication or by the use of a means of communication that allows all members of the Board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting.

20. Board Member Proxy Votes.

Board members may give their proxy to another Board member to cast their vote on their behalf.

NOTES

ARTICLE IV

OFFICERS

1. **Designation.** The principal officers of the Condominium shall be a President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board.

The Board may appoint assistant secretaries and such other officers as in its judgment may be necessary. With the exception of the President, no officer need be a member of the Board. 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 Condominium shall be elected annually by the Board of Trustees at the organization meeting of each Board and shall hold office at the pleasure of the Board. Any vacancy in an office shall be filled by the Board at a regular meeting or special meeting called for such purpose.

Nevertheless, the Board Members may serve as the officers of the Association, with such positions therein determined amongst themselves.

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 Board may be removed at any time by the affirmative vote of a majority of the whole Board, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

4. **President.** The President shall be the chief executive officer; he shall preside at

meetings of the Association and the Board and shall be an ex officio member of all Boards; he shall have general and active management of the business of the Condominium and shall see that all orders and resolutions of the Board are carried into effect.

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 Board or the President shall prescribe. If neither the President nor the Vice President is able to act, the Board shall appoint a member of the Board to do so on an interim basis.

6. **Secretary.** The Secretary shall attend all sessions of the Board and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him/her for that purpose and shall perform like duties for Boards when required. He or she shall give, or cause to be given, notice of all meetings of the Association, the Board and Boards and shall perform such other duties as may be prescribed by the Board.

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 Board including resolutions.

7. **Treasurer.** The Treasurer shall have the 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 moneys and other valuable effects in such depositories as may be designated by the Board. He or she shall disburse funds as ordered by the Board taking proper vouchers for such disbursements, and shall render to the President and Board members, at the regular meetings of the Board, or whenever they may require it, an account of all of his transactions as Treasurer and of the financial condition of the Condominium.

NOTES

Treasurer shall compile and keep current at the principal office of the Condominium, 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.

8. Agreement, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks and other instruments of the Condominium for expenditures shall be executed by at least two officers of the Board or by such other person or persons as may be designated by the Board.

9. Compensation of Officers. No officer shall receive any compensation from the Board for acting as such.

ARTICLE V

FISCAL YEAR

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

NOTES

ARTICLE VI

AMENDMENT TO BY-LAWS

1. **Amendments.** Except as otherwise provided in this Section, these Bylaws may be modified or amended either (i) by an affirmative vote of at least sixty-seven percent (67%) of the total voting percentage interests in the Project at any regular or special meeting at which a quorum is present, provided that Notice of the proposed amendment shall have been given to each Owner simultaneously with the notice of such meeting, or (ii) pursuant to a written instrument duly executed by at least sixty-seven percent (67%) of the total voting percentage interests of the Unit Owners.

NOTES

2. **Recording.** A modification or amendment of these Bylaws shall become effective only if such modification or amendment is recorded in the office of the County Recorder of Salt Lake County, Utah.

3. **Conflicts.** No modification or amendment of these Bylaws may be adopted which shall be inconsistent with the provisions of the Act or with the provisions of the Declaration. A modification or amendment once adopted and recorded as provided for herein shall then constitute part of the official Bylaws of the Condominium and all Owners shall be bound to abide by such modification or amendment.

ARTICLE VII

NOTICE

1. **Manner of Notice.** All notices, demands, bills, statements or other communications provided for or required under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, first class postage prepaid, (i) 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 (ii) if to the Board 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.

NOTES

2. **Waiver of Notice.** Whenever any notice is required to be given under the provisions of the statutes, the Declaration or of these Bylaws, 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 Bylaws are set forth in compliance with the requirements of the Act.

2. **Conflict.** These Bylaws are subordinate and subject to all provisions of the Declaration and to the provisions of the Act. 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 Bylaws and the Declaration, the provisions of the Declaration shall control; and in the event of any conflict between the Declaration and the Act, the provisions of the Act shall control.

3. **Severability.** These Bylaws are set forth to comply with the requirements of the State of Utah. In case any of the Bylaws are in conflict with the provisions of any of its statutes, the provisions of the states will apply. If any provisions of these Bylaws or any section, sentence, clause, phrase, or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws, 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 Bylaws 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 Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the

terms and provisions of these Bylaws.

6. **Gender, etc.** Whenever in these Bylaws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

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