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RANDALL A. CRONIN
UTAH COUNTY RECORDER
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RECORDED FOR SPYGLASS PARK LC

AFTER RECORDING, PLEASE RETURN TO:

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DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR SPYGLASS PARK
A PLANNED UNIT DEVELOPMENT

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and executed this 11th day of March, 1997, by SPYGLASS Park, L.C., 1013 South Orem Boulevard, Orem, Utah (hereinafter referred to as the "Declarant").

RECITALS:

- A. This Declaration of Covenants, Conditions and Restrictions affects that certain real property located in Utah County, Utah described with Particularity in Article II below (hereinafter referred to as the "Tract").
- B. Declarant is the owner of the Tract.
- C. Declarant has constructed, is in the process of constructing or will construct upon the Tract a planned unit development which shall include certain lots, commercial buildings, offices, limited common area, common area, and other improvements. All of such construction has been, or is to be, completed in accordance with the plans contained in the Record of Survey Map recorded, or to be recorded concurrently herewith.
- D. Declarant intends to sell to various purchasers the fee title to the individual lots and commercial offices contained in the Tract, together with corresponding membership interests in the Association of Unit Owners, in whom title to the common areas and facilities will be vested, subject to the Record of Survey Map and the covenants, conditions, and restrictions set forth herein.

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

I. DEFINITIONS

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

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

2. Articles of Incorporation shall mean and refer to the Articles of Incorporation of Spyglass Park on file, or to be filed, in the offices of the Department of Commerce for the state of Utah.

3. Association shall mean and refer to Spyglass Park Property Owners Association; and shall consist of all of the Owners of Commercial lots and Offices in the project taken as, or acting as, a group. The Association shall operate and control the Common Areas.

4. Building shall mean and refer to a commercial structure built on a Lot or Lots.

5. By Laws shall mean and refer to the By Laws of Spyglass Park, a copy of which is attached to and incorporated in this Declaration by reference as Exhibit "C".

6. Capital Improvement shall mean and refer to all nonrecurring expenses (as opposed to day-to-day expenses) to repair, maintain or replace significant fixed assets in the Project intended to restore, enhance, improve or ameliorate the utility, value or beauty of the Common Areas or Facilities, such as areas of ingress to and egress from the Project, roads, sidewalks, and exterior lighting.

7. Class B Control Period shall mean and refer to the period of time during which the Class B member is entitled to appoint all or a majority of the members of the Management Committee.

8. Commercial Office or Unit shall mean and refer to a separate physical part of the property intended for independent use, consisting of a Commercial Office located in a Building. The Commercial Offices are designated on the Map. Mechanical equipment and appurtenances located within any one Commercial Office or located without said Unit but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all foundations, footings, surfaces of exterior and interior walls, floors, ceilings, and roofs, including but not limited to all paint, wall coverings, windows and window frames, doors

and door frames, trim, carpeting, tile, linoleum, floor coverings and the like. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of any other Commercial Office or the remainder of the Building within which the Unit is located shall be deemed to be part of the Commercial Office.

9. Commercial Office Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Utah County, Utah) of a fee or an undivided fee interest in a Commercial Office or a Lot. The term Commercial Office Owner does not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof; It does mean and include, however, jointly and severally, both the seller and buyer under an executory contract for sale.

10. Committee shall mean and refer to the Management Committee of Spyglass Park Property Owners Association as duly constituted.

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

(a) The real Property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, but excluding the individual Lots, the Commercial Offices, or other improvements constructed upon the Lots.

(b) All Common Areas and Facilities designated as such in the Record of Survey Map or Maps;

(c) All Limited Common Areas designated as such in the Record of Survey Map or Maps;

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

(e) The Project's outdoor grounds, lighting, landscaping, sidewalks, open parking spaces, and roadways;

(f) All portions of the Project not specifically included within the individual Lots or Commercial Offices; and

(g) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the property owned by the Association for the common benefit of its Members.

12. Common Area Fees shall mean and refer to the allocation of all common expenses incurred to operate and maintain the Project, including sums designated for the reserve account or accounts, which are or shall be assessed against each Lot or Commercial Office, and which each Lot or Commercial Office Owner is or shall be obligated to pay.

13. Community shall mean and refer to Spyglass Park Project, including all real property and interests in the real property described in this Declaration.

14. Community Wide Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community and other similarly situated first class commercial office projects in the county. This standard may be more specifically determined by the Management Committee from time to time.

15. Declaration shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of Spyglass Park, a Planned Unit Development.

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

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

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

19. Guest shall mean and refer to an invitee, temporary visitor or any person whose presence within the Project is approved by or is at the request of a particular business.

20. Improvement shall mean and refer to all existing structures and appurtenances to the Property of every kind and type, including but not limited to all buildings, fixtures, walkways, plumbing and electrical systems, heating and air conditioning systems, utility systems, roads, walkways, driveways, parking areas, fences, walls, stairs, landscaping, green space, trees, shrubs, bushes, commercial facilities and amenities.

21. Land shall mean and refer to the real property subject to this Declaration.

22. Limited Common Areas shall mean and refer to those Common Areas designated in this Declaration or in the Survey Map as reserved for the use of a certain Lot, Commercial Office or Owner to the exclusion of the other Lots, Commercial Offices or Owners. Any parking spaces, doorsteps, porches, stairways, stairwells, balconies, patios, private greenspace or landscaping, or other apparatus intended to serve a single Commercial Office, shall constitute Limited Common Area appertaining to that Lot or Commercial Office exclusively, whether or not the Survey Map or Maps make such a designation.

23. Lot shall mean and refer to a portion of the Property, other than the Common Area, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plat or Survey Map filed in the office of the County Recorder of Utah County in conjunction with this Declaration or any amendment thereto. Where the context indicates or requires, the term Lot includes any Commercial Office or other improvement constructed upon a Lot.

24. Lot Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Utah County, Utah) of a fee or an undivided fee interest in a Lot. The term Lot Owner does not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof; It does mean and include, however, jointly and severally, both the seller and buyer under an executory contract of sale.

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

26. Management Committee shall mean and refer to the committee of Owners elected to manage and operate the Association.

27. Map shall mean and refer to the Record of Survey Map on file in the office of the County Recorder of Utah County.

28. Member shall mean and refer to an Owner. Each Owner is obligated, by virtue of his or her ownership, to be a member of the Association.

29. Mortgage shall mean and refer to both a first mortgage or first deed of trust on any Lot, but shall not mean or refer to an executory contract of sale.

30. Mortgagee shall mean and refer to a mortgagee under a first mortgage or a beneficiary under a first deed of trust on any Lot, but shall not mean or refer to a seller under an executory contract for sale.

31. Notice and Hearing shall mean and refer to the procedure which gives an Owner notice of an alleged violation of the Declaration, By Laws, or administrative Rules and Regulations adopted by the Management Committee from time to time, the right to a hearing before the Committee or its designated agent.

32. Owner shall mean and refer to the owner of a Lot or Commercial Office.

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

34. Project shall mean and refer to Spyglass Park, a planned Unit Development.

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

36. Record of Survey Map shall mean and refer to the "Record of Survey Map or Maps of Spyglass Park, a Planned Unit Development" on file in the office of the County Recorder of Utah County.

37. Survey Map shall mean and refer to the Record of Survey Map on file in the office of the County Recorder of Utah County.

38. Unit shall mean and refer to a Commercial Office unless the context requires otherwise.

39. Unit Number shall mean and refer to the number, letter, or combination thereof which designates a Commercial Office.

40. Unit Owner shall mean and refer to the owner of a Commercial Office.

II. SUBMISSION

The Declarant hereby submits the real property described below, located at Utah County, Utah, to this Declaration and said Land shall hereafter be subject to and shall be governed by the covenants, conditions, and restrictions set forth below.

See Exhibit "A" which is attached here and incorporated herein by this reference.

SUBJECT TO the described easements and rights of way.

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

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

III. COVENANTS, CONDITIONS, AND RESTRICTIONS

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

1. Description of Improvements. The significant improvements included in the Project, which are now or will be located upon the Tract, are six (6) commercial buildings containing nine (9) commercial offices or units as shown on the Map. Of the six buildings, three are duplexes, and three stand alone. All Units except Unit eight (8) and Unit nine (9) have a separate downstairs entrance. The project also includes certain parking areas, green space, landscaping, roadways, walkways, utility systems, entrances to and exits from the Community. The location and configuration of the improvements referred to in the foregoing sentence are depicted on the Map. The Project will also contain other improvements of a less significant nature.
2. Description and Legal Status of Lots. Exhibit "D" to this Declaration and the Survey Map designate the Lots and Commercial Offices, as well as the Unit Number of each Commercial Office or Lot, its location, dimensions, and the Common Areas and Facilities to which it has immediate access. Membership in the Association with its appurtenant interest in the Common Areas may not be partitioned or separated from the ownership of the Lot or Commercial Office.
3. Membership in the Association. Each Owner shall be a member of the Association. Notwithstanding anything herein to the contrary, and notwithstanding the differences in the size of each unit, the percentage of ownership interest of each Member in the Association shall one ninth of the total, as set forth in Exhibit "B" which is attached hereto.
4. Limited Common Areas. The Limited Common Areas may not be partitioned from the Lot or Commercial Office to which they are appurtenant. The exclusive use of Limited Common Area is reserved to the Lot or Commercial Office to which it is assigned on the Survey Map.

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

Unit No. ___ contained within the Spyglass Park Planned Unit Development, as the same is identified in the Record of Survey Map recorded in Utah County, Utah as entry No. ___, in Book ___, Page ___ (as said Record of Survey Map may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions and Restrictions of SPYGLASS Park, a Planned Unit Development, recorded in Utah County, Utah as Entry No. ___, in Book ___, at Page ___, (as said Declaration may have heretofore been amended or supplemented).

TOGETHER WITH the appurtenant membership in SPYGLASS Park property Owners Association as more particularly described in said Declaration.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot or Unit. Neither the membership in the Association, nor the right of exclusive use of a Limited Common Area shall be separated from the Lot or Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Lot or Unit to which they relate.

6. Ownership and Use. Each Owner, of whatever kind, shall be entitled to the exclusive ownership and possession of his or her Lot or Commercial Office and to a corresponding membership in the Association as set forth herein and subject to the following:

(a) Nature and Restrictions on Ownership Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his or her Lot or Commercial Office. There shall be no requirements concerning who may own a Lot or Commercial Office, it being intended that they may and shall be owned as any project and, as such, Lots and Commercial Offices shall be used only for commercial purposes. The Common Areas shall only be used in a manner consistent with the commercial nature of the Project.

(b) Title to the Common Area. Title to the Common Area will be conveyed to the Association in fee simple, free of all liens (other than current years taxes, if any). Each purchaser shall automatically become a member of the Association upon the receipt of a deed to the Lot or Commercial Office.

(c) Member's Easements and Rights of Way. Every member of the Association shall as the Owner of one or more Lots or Commercial Offices have a right and non-exclusive easement of use and enjoyment in and to the Common Area. Such

right and easement shall be appurtenant to and shall pass with the title to every Lot or Commercial Office, subject to the following restrictions:

(1) The right of the Association to adopt administrative rules and regulations from time to time governing the use and enjoyment of the Common Area;

(2) The right of the Association to suspend the voting rights of a member for: (a) any period during which any Common Area Fee (or Assessment) against such member's Lot remains delinquent, and (b) a period not to exceed 30 days after notice and hearing as may be set forth hereinafter for any infraction of the Association rules; and

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

(d) Delegation of Use. The Owner of any Lot may delegate to any occupant of the Commercial Office the right to the use and enjoyment of the Common Area Facilities.

(e) Rules and Regulations. The Association, acting through its Management Committee, shall have the power and authority to adopt administrative rules and regulations. Such rules, regulations and use restrictions shall be binding upon all Owners and occupants, their guests, visitors and invitees.

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

(1) Parties Bound. All provisions of the Declaration, By-Laws, Rules and Regulations shall be binding upon all Owners and occupants, their guests, visitors and invitees.

(2) Nuisance. It shall be the responsibility of each Owner and occupant to prevent the creation or maintenance of a nuisance in, on, or about the Project. This includes but is not limited to the following:

(a) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about his or her Lot and Commercial Office or the Common Areas;

(b) The storage of any item, property or thing that will cause any Lot, Commercial Office or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;

(c) The storage of any substance, thing or material upon any Lot, Commercial Office or in the Common Areas that will emit any foul, unpleasant, or noxious odors, or that will or might disturb the peace, quiet, safety, comfort, or serenity of the other occupants at the Project;

(d) The creation or maintenance of any noxious or offensive condition or activity in or about any Lot, Commercial Office or the Common Areas;

(e) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress, or a disturbance to any other occupants, their guests or invitees, particularly if the police or sheriff must be called to restore order;

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

(g) Too much noise in, on or about any Lot, Commercial Office or the Common Area;

(3) Removing Garbage, Dust & Debris. All rubbish, trash, refuse, waste, dust, debris, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon.

(4) Subdivision of Lot or Commercial Office. No Lot or Commercial Office shall be subdivided or partitioned.

(5) Temporary Structures. No Owner or occupant shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, sheds, or the like.

(6) Landscaping. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or occupant in, on or about the Common Areas without the prior written consent of the Committee. The Management Committee may alter or remove any objects planted or placed in violation of this subsection.

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

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

(a) The rules and regulations adopted by the Committee from time to time;

(b) No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, RV or any other transportation device of any kind may be parked or stationed (except for purposes of loading or unloading), in such a manner so as to create an obstacle or potentially dangerous situation, or along any street or road, or in front of any walkway, driveway, building or lot, or in unauthorized Common Areas. No Owners or occupants shall repair or restore any vehicle of any kind in, on or about any Lot or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

(c) Owners, Occupants, visitors, guests and invitees shall park their motor vehicles in the designated Common Areas.

(d) The parking areas are not designed for recreational, commercial or oversized motor vehicles and the Management Committee has the right to make rules and regulations restricting or prohibiting their use in, on or about the property.

(e) Vehicles parked in violation of this Declaration of parking Rules and Regulations adopted by the Committee may be impounded, towed and stored without further notice, and at the owner's sole expense. The Association, Committee and members of the Committee shall be indemnified and held harmless from any loss, damage or claim caused by or arising out of the impounding, towing or storing of a motor vehicle pursuant hereto.

(9) Aerials, Antennas, and Satellite Systems. No aerials, antennas, satellite dishes, or satellite systems (hereinafter referred to collectively as "Satellite Dish") shall be erected, maintained or used in, on or about any Lot, the Common Areas, outdoors and above ground, whether attached to a building, structure, Commercial Office or otherwise, within the Project without the prior written consent of the Management Committee.

(10) Insurance. Nothing shall be done or kept in any Unit or in the Common Areas or Limited Common Areas which results in the cancellation of the insurance on the Property or increases the rate of the insurance on the Property, over what the Management Committee, but for such activity, would pay.

(11) Laws. 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.

(12) Damage or Waste. No damage to, or waste of, the Common Areas or Limited Common Areas or shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Management Committee and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or an invitee; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner.

(13) Maintenance. Each Owner shall keep the exterior of his or her Unit in a clean, sanitary and attractive condition, and good state of repair.

(14) Structural Alterations. No structural alterations, plumbing, electrical or similar work within the Common Areas or Limited Common Areas shall be done by any Owner without the prior written consent of the Management Committee, except emergency repair.

7. Easement -- Support, Maintenance and Repair. There is hereby reserved and granted a non-exclusive easement appurtenant to the Common Area and to all other Lots, as dominant tenements, through each Lot and the Common Area, as servient tenements, for the support, maintenance and repair of the Common Area and all Lots.

8. Liability of Owners and Occupants for Damages. Any Owner or Occupant shall be liable to the Association or other Owners or Occupants for damages to person or property in the Community caused by his or her negligence.

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

10. Management Committee. The Association shall be managed by a Management Committee which shall be comprised of three (3) members. At the first annual meeting of the Association after the transfer of management by the Declarant, two members shall be elected for two (2) year terms and the other members for a one (1) year term so that the terms of the members will be staggered. Thereafter, all members shall be elected for a two (2) year term. Any vacant seat on the Committee shall be filled with a member elected or appointed for a two year term. Any Committee member who fails on three successive occasions to attend Committee meetings (whether regular or special) or who has failed to attend at least 25% of all Committee meetings (whether regular or special) held during any twelve month period shall automatically forfeit his or her seat. In

such cases, the remaining Committee members shall elect a replacement to sit on the Committee until the next meeting of the Association.

Except for Committee Members appointed by the Declarant during the Class B Control Period, Committee Members may be removed at any time by the affirmative vote of a majority of the members in the Association. A replacement to serve the remainder of the removed member's unexpired term shall be elected at the same meeting. Until the end of the Class B Control Period all members of the Committee, or their replacements, shall be appointed by the Declarant.

Unless a member forfeits or otherwise loses his or her seat as herein provided, a member shall serve on the Committee until his or her successor qualifies and is properly elected by the Association.

Committee members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Committee business and approved by the Committee.

11. Committee Officers and Agents. The Committee shall perform its functions through those members who are elected as officers by the Committee and through such agents or employees as the Committee may appoint. Any Committee officer, agent, or employee may at any time be removed, with or without cause, by the vote of a majority of the Committee members. One person may hold more than one office except that of President and Secretary. The officers of the Committee, and their respective powers and functions, shall be as follows:

(a) President. The President shall be the chief executive of the Committee and shall exercise general supervision over the property and affairs of the Project. The President shall preside over all meetings of the Committee and of the Lot Owners and shall execute all instruments on behalf of the Committee, unless the President chooses to delegate that authority to another Committee member.

(b) Secretary. The Secretary shall keep minutes of meetings of the Committee and of the Lot Owners and shall keep all records which are required or made necessary by the Declaration, or the Committee.

(c) Treasurer. The Treasurer shall have custody and control of the funds available to the Committee. The Treasurer shall cause to be prepared an annual financial statement for each fiscal year of Project operation. The offices of Secretary and Treasurer may be held by the same Committee member.

12. Committee Meetings. A regular meeting of the Committee shall be held immediately after the adjournment of each annual Owners meeting or at such other time as the members of the Committee may decide. Other regular meetings shall be held at periodic intervals at such time and place as the Committee may determine. No notice

need be given of regular Committee meetings. Special Committee meetings shall be held whenever called by the President or by any two members of the Committee. Reasonable effort shall be made to give each Committee member at least twenty-four hours before the time fixed for the meeting. The propriety of holding any meeting which is attended by all Committee members may not be challenged on grounds of inadequate notice. A quorum for the transaction of business at any Committee meeting shall consist of a majority of all members then in office.

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

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

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

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

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

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

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

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

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

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

(j) Meetings. The authority to establish procedures for the conduct of its meetings. This includes the power to decide what portion of the meeting shall be open or closed to Members of the Association or residents not on the Committee, to retire to executive session, to regulate record keeping, and to allow or prohibit the tape or video recording of Committee meetings.

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

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

A special meeting of the Owners may be called by the President, by any two members of the Committee, or by at least 25% of the members of the Association. At least two (2) but not more than thirty (30) days before the date set for a special meeting, written notice thereof shall be given in the manner described in the immediately preceding Paragraph.

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

The presence of a majority of the Association members entitled to cast a vote shall constitute a quorum for the transaction of business at any Owners meeting. If a quorum is not present at any Owners meeting, whether regular or special, the meeting may be

adjourned and rescheduled for a time no earlier than forty-eight (48) hours and no later than thirty (30) days, after the time set for the original meeting. The presence of at least 25% of the Members of the Association entitled to vote shall constitute a quorum at the rescheduled meeting. Notwithstanding the foregoing provisions of this Paragraph, however, in any case in which this Declaration requires the affirmative vote of a certain percentage of ownership interest for authorization or approval of a matter, their consent, in person by proxy or in writing is required for authorization or approval of the item, regardless of the quorum requirements.

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

(a) Class A. Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled on all issues to one vote for each Lot or Commercial Office in which they hold an ownership interest. There shall be only one vote per Lot or Commercial Office; provided, however, no vote shall be cast or counted for any Lot or Commercial Office not subject to assessment. When more than one person or entity holds such interest in any Lot or Commercial Office, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot or Commercial Office shall be suspended in the event more than one person or entity seeks to exercise it.

Any Owner of a Commercial Office which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

(b) Class B. Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale, and who is designated as such in a recorded instrument executed by Declarant. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following:

- 1) When 75% of the Lots or Commercial Offices have been sold;
or
- 2) Two years from the effective date of this Declaration; or
- 3) When, in its discretion, the Declarant so determines.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot or Commercial Office owned. At such time, the Declarant shall call a meeting, in the manner described in the By Laws of the Association for special meetings, to advise the

membership of the termination of Class B status and, if it has not already occurred, to schedule Transition of the operation and management of the entire Project to the Association.

16. Lists of Lot Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Committee shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Lot or Commercial Office which is owned by him or her; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Lot or Commercial Office which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Lot or Commercial Office which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot or Commercial Office, either the transferor or transferee shall furnish the Committee with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Utah County, Utah. The Committee may for all purposes act and rely on the information concerning Owners and Lot or Commercial Office ownership which is thus acquired by it or, at its option, the Committee may act and rely on current ownership information respecting any Lot or Lots which is obtained from the office of the County Recorder of Utah County, Utah. The address of any Owner shall be deemed to be the address of the Commercial Office owned by such person unless the Committee is otherwise advised in writing.

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

Any capital improvement, the cost of which will exceed such amount, must, prior to the commencement of construction, be authorized by at least a majority of the percentage of undivided ownership interest in the Common Areas.

18. Operation, Maintenance, and Alterations. The Property shall be maintained as follows:

(a) Area of Common Responsibility. The Association shall maintain all of the Common Area in a usable, clean, functional, attractive and good condition, consistent with Community Standards and other similarly situated first class commercial office projects in the county. The Committee shall provide those utility services not separately metered and billed to individual Lots or Commercial Offices by the provider.

(b) Area of Personal Responsibility. Each Lot and Commercial Office Owner shall maintain his or her Lot, Commercial Office, and Limited Common Area in a usable, clean, functional, attractive and good condition, consistent with Community Standards and other similarly situated first class commercial office projects in the county.

All landscaping shall be tasteful, so as not to affect adversely the value or use of any other Lot or the Common Area, or to detract from the uniform design and appearance of the Project.

(c) Neglect. If the Committee determines that (i) any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items for which s/he is responsible hereunder; or (ii) that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of any Owner, his or her guests, visitors, invitees or tenants, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense. Such costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot or Commercial Office, as provided below. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Committee. If an emergency does not exist, then the Owner shall have ten (10) days after receipt of notice within which to complete maintenance repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Committee determines that an emergency exists, then notice and the opportunity to cure the default is not necessary. The Association may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described above. The Association or its agents or employees shall have a right to entry upon or into any Lot, Commercial Office and/or Limited Common Area as necessary to perform such work and shall not be liable for trespass for such entry or work.

(d) Alterations to the Common Area. The Declarant may make changes to the Common Area without the consent of the Committee; however, no Owner or resident may make any structural alterations to the Common Area without the prior written consent of the Committee.

(e) Landscaping. All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant and in a condition comparable to that of other similarly situated first class commercial office projects in the county. Specific guidelines and restrictions on landscaping may be established by the Committee. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be neatly trimmed.

19. Common Area Expenses. Each Lot or Commercial Office Owner (hereinafter referred jointly to as "Lot Owner" in this Section) shall pay his or her Common Area Fees or Assessments subject to the following:

(a) Purpose of Common Area Expenses. The Common Area Fees provided for herein shall be used for the general purpose of operating the Project, promoting the health, safety, welfare, common benefit and enjoyment of the Owners and occupants of Lots or Commercial Offices, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Management Committee.

(b) Creation of Common Area Fees. There are hereby created Common Area Fees to pay for the common expenses as may be from time to time specifically authorized by the Management Committee. Each Owner of any Lot or Commercial Office, by acceptance of a deed therefore, whether or not so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Common Area Fees assessed.

(c) Budget. Before the annual Association meeting each year, the Management Committee shall prepare a budget which shall set forth an itemization of the anticipated Common Expenses for the twelve month calendar year, commencing with the following January 1. The budget shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates shall include but are not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Committee is required or permitted to maintain, common lighting and heating, water charges, carpeting, painting, repairs and maintenance of the Common Areas that must be replaced on a periodic basis, wages for Management Committee employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by any reason of this Declaration.

(d) Apportionment. The total of such common expenses shall be apportioned equally among all the Lots and Commercial Offices.

(e) Approval of Budget and Assessments. The proposed budget and the Common Area Fees shall become effective unless disapproved at the annual meeting by a vote of at least a majority of the members of the Association. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Common Area Fees or the Management Committee fails for any reason to establish the budget and Common Area Fees for the succeeding year, then and until such time as a new budget and new Common Area Fee schedule shall have been established the budget and the Common Area Fees in effect for the then current year shall continue for the succeeding year.

(f) Payment of Common Area Fees. The Management Committee has the sole authority and discretion to determine how and when the annual Common Area Fees are paid.

(g) Owners Liable to Pay Common Area Fees. For purposes of this Section, the term "Owner" shall mean and refer to the Owner of the legal and equitable interest in the Lot or Commercial Office, including but not limited to the owner of record in the offices of the county recorder of Utah County, Utah and both the Buyer and Seller under any land sales contract, uniform real estate contract, or other similar instrument, who shall be jointly and severally liable to pay Common Area Fees.

(h) Equitable Charges. If the aggregate of all monthly payments on all of the Lots and Commercial Offices is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days written notice of any changes.

(i) Dates and Manner of Payments. The dates and manner of payment shall be determined by the Committee.

(j) Reserve Accounts. The Committee shall establish and maintain at least two reserve accounts: One to pay for unexpected operating expenses and the other to pay for capital improvements. The reserve accounts shall be funded out of regular Common Area Fees.

(k) Personal Obligation to Owner. Owners are jointly and severally liable to pay all Common Area Fees assessed, accruing interest, late fees and collection costs, including attorneys fees. Provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot or Commercial Office pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Common Area Fees which accrued prior to the acquisition of title.

(l) Acceleration. Common Area Fees shall be paid in the manner and on dates fixed by the Committee which may, at its option and in its sole discretion, elect to accelerate the entire annual Common Area Fee for delinquent Owners. If, however, the Common Area Fee is accelerated and an Owner subsequently files bankruptcy or the Committee otherwise decides acceleration is not in its best interest, the Committee, at its option and in its sole discretion, may elect to deaccelerate the obligation.

(m) Statement of Common Area Fees Due. Upon written request, the Committee shall furnish to any Owner a statement of Common Area Fees due, if any, on his or her Lot or Commercial Office. Failure to provide the certificate within ten days after a written request, shall be deemed conclusive evidence that all Common Area Fees are paid current. The Association may require the advance payment of a processing charge not to exceed fifteen dollars (\$15.00) for the issuance of such certificate.

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

20. Special Assessments. In addition to the other Common Area Fees authorized herein, the Association may levy special assessments in any year. So long as the special assessment does not exceed five hundred dollars (\$500.00) per Lot or Commercial Office in any one fiscal year, the Committee may impose the special assessment. Any special assessment which would exceed this allocation shall be effective only if approved by a majority of the members of the Association. The Committee in its discretion may allow any special assessment to be paid in installments.

21. Specific Assessments. The Committee shall have the power specifically to assess the Owners of an individual Lot or Commercial Office as, in its discretion, it shall deem appropriate. Failure of the Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Committee has not previously exercised its authority under this Section. The Committee may specifically assess a Lot or Commercial Office for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

(a) Benefit Only To Specific Lot or Commercial Office. Expenses of the Association which benefits less than all of the Lots or Commercial Offices may be specifically assessed, equitably among all of the Lots or Commercial Offices which are benefited, according to the benefit received.

(b) Unequal or Disproportionate Benefit. Expenses of the Association which benefit all Lots and Commercial Offices, but which do not provide an equal benefit to all Lots or Commercial Offices may be specifically assessed equitably among all Lots and Commercial Offices according to the benefit received.

22. Collection of Common Area Fees. It is important that all Owners pay their Common Area Fees in a timely manner. (Lots and Commercial Offices are hereinafter referred to collectively as "Lots").

(a) Procedure. In pursuing the collection of delinquent accounts, it is suggested that the Committee follow these guidelines and policies:

(1) Delinquent Fees. Any Common Area Fees which are not paid when due are delinquent and a lien attaches automatically, regardless of whether a notice was recorded.

(2) Late Fees and Accruing Interest. Any Common Area Fees delinquent for a period of more than ten (10) days shall incur a late charge of twenty-five dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of one and one-half percent (1.5%) per month shall accrue on all delinquent accounts. The Committee may, in its sole discretion, waive late fees and accruing interest but is not required to do so.

(3) Notice of Delinquency. The Association shall give a notice of delinquency to any Owner who has not paid within twenty (20) days following the due date.

(4) Notice of Lien. If the Common Area Fees are not paid in a timely manner, and no satisfactory arrangements have been made to pay the debt, a notice of lien evidencing the unpaid Fees, accruing interest, late charges, attorney's fees, the cost of a foreclosure report, and any other Additional Charges permitted by law should be filed with the Utah County Recorder. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Owners. It may be executed by the Association's attorney, manager, Committee Member or other designated agent.

(5) Foreclosure of Lien and/or Collection Action. If the Common Area Fees remain unpaid, the Association may, as determined by the Committee, institute suit to collect the amounts due and/or to foreclose the lien.

(a) Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

(b) No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Common Area Fees provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his or her Lot or Commercial Office.

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

(d) Application of Payments. All payments shall be applied as follows: Additional charges, Delinquent Common Area Fees and Current Common Area Fees.

(e) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Common Area Fees may be enforced by sale or foreclosure of the Lot Owner's interest therein by the Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Lot Owner shall pay: (a) the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, (b) reasonable attorney's fees, and (c) a reasonable rental for the Lot during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the Lot.

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

(g) Attorney in Fact. Each Owner by accepting a deed to the Lot hereby irrevocably appoints the Association as his or her attorney in fact to collect rent from any person renting his or her Commercial Office, if the Commercial Office is rented and Owner is delinquent in his or her Common Area Fees. Rent due shall be paid directly to the Association, upon written demand, until such time as the Lot Owner's Common Area fees are current; and the Lot Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

23. Liability of Management Committee. The Association shall indemnify every officer and member of the Committee against any and all expenses, including but not limited to attorney's fees, reasonably incurred by or imposed upon any officer or member of the Committee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Committee) to which he or she may be a party by reason of being or having been an officer or member of the Committee. The officers and members of the Committee shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association except to the extent that such officers or

members of the Committee may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Committee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Committee, or former officer or member of the Committee, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

24. **Insurance.** The Management Committee or the Association shall at all times purchase, maintain in force, and pay the premiums for, if reasonably available, insurance on the Common Areas satisfying at least the following requirements:

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

(b) **Director's and Officer's Insurance.** Adequate director's and officer's liability insurance.

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

(1) **Applicability.** Where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, the Fidelity Bond shall cover the management agent's officers, employees and representatives handling or responsible for funds of, or administered on behalf of, the Committee or the Association.

(2) **Amount of Coverage.** The total amount of fidelity bond coverage required shall be based upon the Committee's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Committee, the Association, or the management agent, as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Lots, plus reserve funds.

(3) **Quality of Coverage.** The bonds required shall at least meet the following additional requirement:

(a) they shall name the Committee, the Association, and the Property Manager as obligee;

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

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

(d) the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten (10) days' prior written notice to the Committee and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee.

The following provisions shall apply to all insurance coverage:

(1) The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Lot and Commercial Office Owners of Spyglass Park, a Planned Unit Development for the use and benefit of the individual Spyglass Park Lot and Commercial Office Owners."

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

(3) Beneficiary. In any policy covering the entire Project, each Lot or Commercial Office Owner and each such Lot or Commercial Office Owner's Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided ownership interest in the Common Areas and Facilities.

(4) Certificate of Insurance. Evidence of insurance shall be issued to each Lot or Commercial Office Owner and Mortgagee upon request.

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

(6) Miscellaneous Provisions. Each Insurance policy shall contain at least the following additional items:

(a) Waiver of Subrogation. A waiver of the right of a subrogation against Lot or Commercial Office Owners individually;

(b) Individual Neglect. A provision that the insurance is not prejudiced by any act or neglect of any individual Lot or Commercial Office Owner and

(7) Deductible. The deductible on a claim made against the Association's liability insurance policy shall be paid by the party who would be liable for the loss, damage, claim or repair in the absence of insurance, and in the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. Provided, however, if the loss is caused by an act of God or nature, or by an element beyond the control of the Association, then the Owner shall be responsible for and shall pay the deductible.

(8) Individual Insurance. No Lot or Commercial Office Owner shall be entitled to exercise his or her right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Lot Owners and their mortgagees, may realize under any insurance policy which the Association may have in force on the Property at any particular time.

(9) Primary Coverage. The insurance coverage of a Lot or Commercial Office Owner shall, in the event the Association also has insurance covering the loss, be primary and the insurance of the Association shall be secondary.

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

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

(12) Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated first class commercial projects in the county.

(13) Quality of Insurance Carrier. Each insurance policy required hereby shall be written by an insurance carrier licensed to transact business in the State of Utah and who has the highest rating by Best's Key Rating Guide.

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

(a) Individual Assessments Prohibited. Under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, a Lot or Commercial Office Owner, a borrower, a Mortgagee, the Management Committee or the Association;

(b) Payments Contingent. By the terms of the carrier's charter, bylaws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or

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

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

25. Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project. Each of the following items shall have the meaning indicated:

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

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

(c) Obsolescence. "Substantial obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is twenty-five percent (25%) percent or more of the estimated restored value of the Project. "Partial obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

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

(e) Estimated Costs of Restoration. "Estimated cost of restoration" shall mean the estimated costs of restoring the Project to its former condition.

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

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

(h) Restoration of the Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent (67%) of the Project's undivided ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Lots which have appurtenant at least fifty-one percent (51%) of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

(i) Notices of Destruction or Obsolescence. Within thirty (30) days after the Committee has determined that Substantial Destruction, Substantial Condemnation,

or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

(j) Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(k) Inadequate Insurance. In the event the cost of Restoration exceeds Available Funds, all of the Lots or Commercial Offices shall be assessed for the deficiency equally.

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

(m) Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, Planned Unit Development ownership under this Declaration and the Survey Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners equally. Payment to any Owner whose Lot of Commercial Office is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(n) Authority of Committee to Represent Owners in Condemnation or to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Lot and Commercial Office Owners and their mortgagees as their interests may appear. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Lot and Commercial Office therein whenever Restoration or sale, as the case may be, is undertaken as herein above provided. Such authority shall include the right and power to

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

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

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

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

27. Mortgagee Protection. The lien or claim against a Lot or Commercial Office (hereinafter the "Lot") for unpaid Common Area Fees levied by the Management Committee or by the Association pursuant to this Declaration or the Act shall be subordinate to any Mortgage recorded on or before the date such Common Area Fees become due.

(a) Statutes. In the event that the State of Utah should enact any statute applicable to planned unit developments with a provision that would allow such Common Area Fees, including special assessments, to have a limited priority over a Mortgage recorded before such Common Area Fees became due, or in the event that the State of Utah should enact any law which would allow a lien for unpaid Common Area Fees to survive foreclosure or exercise of a power of sale, all such assessments and charges, including special assessments, shall after the date of such enactment be made due and payable to the Committee or the Association on a monthly basis and the lien for any fees, late charges the Association assessed in connection with such unpaid Common Area Fees shall be deemed subordinate to the first Mortgage in the Lot upon which such Common Area Fees are levied.

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

(c) Books and Records Available for Inspection. The Committee

or the Association shall make available to Lot Owners, to lenders and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration and rules concerning the Project, and the books, records, and financial statements of the Committee and the Association. "Available", as used in the Paragraph, shall mean available for inspection upon request during normal business hours or under other reasonable circumstances.

(d) Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal free year of charge to the party so requesting. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

(e) Management Contracts. Any agreement for professional management of the Project and any contract or lease which is entered into by the Management Committee or the Association shall provide that either party may terminate the contract for cause upon at least sixty (60) days written notice to the other party thereto.

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

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

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

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

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

28. Amendment. The affirmative vote of at least sixty-seven percent (67%) of the members of the Association shall be required and shall be sufficient to amend the Declaration or the Record of Survey Map. Any amendment so authorized shall be

accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment shall, however, be subject to the following:

(a) Consent of Eligible Mortgagee. The consent of Eligible Mortgagees holding at least sixty-seven percent (67%) of the undivided ownership interest in the Common Areas shall be required to make any amendment which would terminate the legal status of the Project; and the consent of Eligible Mortgagees holding a lien against at least fifty-one percent (51%) percent of the undivided ownership interest in the Common Areas shall be required to add to or amend any material provision of this Declaration or the Survey Map which establishes, provides for, governs, or regulates any of the following: (i) voting; (ii) assessments, assessment liens, or subordination of liens; (iii) reserves for maintenance, repair, and replacement of the Common Areas; (iv) insurance or fidelity bonds; (v) limitations and restrictions on the right to use of the Common Areas; (vi) responsibility for maintenance and repair of the several portions of the Project; (vii) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (viii) the boundaries of any Lot; (ix) the percentages of ownership interest in the Common Areas; (x) convertibility of Lots into Common Areas or of Common Areas into Lots; (xi) leasing of Lots or Commercial Offices; (xii) express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guarantors; and (xiii) the requirement that the Project be professionally managed rather than self managed. Any addition or amendment shall not be considered material for purposes of this Paragraph (a) if it is for clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Survey Map is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Survey Map or the termination of the legal status of the Project as a planned unit development if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

29. Notice and Hearing. If a Member appears to be in violation of any provision of the Declaration, By Laws or administrative rules and regulations adopted by the Committee from time to time (the "Project Documents") and the provisions of any of the Project Documents require that Notice and Hearing be provided, the Committee shall give written notice to the member specifying the nature of the violation (and providing any other appropriate information) and stating the time, date and place that the member will have an opportunity to be heard by the Committee. If the member's failure to correct a violation results in the expenditure of funds by the Association to correct the violation,

the notice shall also state that the Committee may vote to levy a fine or impose sanctions if the Committee finds that a violation has occurred. Written notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class postage prepaid, addressed to the member at the address given by the member to the Committee for the purpose of service of notice or to the address of the member's Lot if no other address has been provided. Any address may be changed from time to time by giving written notice to the Committee. After the hearing has taken place, the Committee shall (i) determine whether a violation has occurred and, if so, may impose a fine or issue sanctions which shall become effective no less than five (5) days after the date of hearing; or (ii) take such other action as may be appropriate. The determination of the Committee shall be final. However, nothing herein shall be construed to prevent the Committee from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing Notice and Hearing.

30. Declarant's Sales Program. Notwithstanding anything to the contrary, until Declarant has sold all the Lots owned by it in the Project or the expiration of a reasonable sales period following two (2) years after the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah whichever first occurs (hereinafter referred to as the "Occurrence"), neither the Lot or Commercial Office Owners, the Association nor the Committee shall interfere with the completion of improvements and sale of all remaining Lots or Commercial Offices, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots or Commercial Offices owned by Declarant:

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

(b) Common Area Use. Declarant shall have the right to use the Common Areas of the Project including but not limited to the Community Center to facilitate sales.

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

31. Limitation on Improvements by Association. Until the Occurrence described above, neither the Association nor the Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Declarant, other than such repairs, replacement, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

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

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

34. Certain Provisions Applicable To Declarant. Notwithstanding any other provision herein contained, for so long as Declarant continues to own any of the Lots the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Common Area Fees or Assessments, except as herein otherwise provided, as to each Lot or Commercial Office owned by Declarant in accordance with the Declaration.

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

(b) No amendment may be made to the Declaration without the written consent of Declarant so long as Declarant retains the ownership of two (2) or more Lots or Commercial Offices; provided, however, that the obligation to acquire said written consent of Declarant shall cease on a date two (2) years from the date of recording the Declaration.

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

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

37. Enforcement and Right to Recover Attorney's Fees. Should the Association or Committee be required to take action to enforce the Declaration, By-Laws or any administrative rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorney's fee, which may arise and accrue.

38. Security. Neither the Association nor the Committee shall in any way be considered insurers or guarantors of security within the Project. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or for the ineffectiveness of security measures undertaken.

39. Mechanics Liens. Mechanics liens for labor, materials or supplies purchased by the Association are to be indexed in the public records under the name of the Association and Community. Any Owner wishing to release that lien as to his or her Lot or Commercial Office may pay the pro rata share of the total amount of the lien and that shall be sufficient to release the lien against his or her Lot or Commercial Office. If the Association has encumbered the Common Areas and thereafter defaults on its obligations, the lienholder must exercise its rights against the Common Areas before it may proceed against any Lot or Commercial Office.

Mechanics liens filed for labor, materials or supplies benefitting a particular Lot or Commercial Office shall be filed against that Commercial Office or Lot.

Any person or entity who elects to perform labor or provide materials at this Project shall do so subject to the terms of this Section.

40. Agent for Service of Process. The President of the Association is the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent is Bruce R. Dickerson and the initial office of the Registered Agent is 1013 South Orem Boulevard, Orem, Utah 84058.

41. Party Wall. As shown on the Map, there are certain walls, built as part of the original construction of the Units which have been constructed on the dividing line between the Units. These walls shall be "Party Walls." With regard to the maintenance, repair and replacement of the Party Walls, the following restrictions apply:

(a) The cost of reasonable repair and maintenance of the Party Wall shall be shared by the Owners who make use of the Wall equally.

(b) If an Owner causes adjacent damages to the Party Wall, then that Owner shall promptly repair the damage in a manner consistent with the original construction.

(c) If an Owner desires to upgrade and improve the Party Wall, then that Owner may do so provided the other Owners sharing the Wall consent in writing and the Owner desiring the upgrade pays for the improvements.

(d) The Party Wall shall be maintained in accordance with the Community Standards. No Owner may impair the structural integrity of the Wall, alter the Party Wall's height, length, depth or thickness without the prior written consent of the Owners using the Wall, or change the location of the Wall which shall remain the same. The Owners shall always keep the Party Wall of the same quality of construction and materials as the original Wall.

(e) In all construction work, the Owner doing the work shall have the right to enter onto the property of the other Owner or Owners insofar as that is reasonably necessary to complete the construction.

(f) Any controversy or difference that shall arise between the Owners with respect to this Section shall be submitted to the Committee and the final decision of the Committee shall be binding upon the parties, final and conclusive.

(g) Each Owner shall have a right of contribution against the other Owners using the Party Wall for the cost of maintaining, repairing or replacing the Wall. The proportionate cost allocated to each Owner may be collected by lien and foreclosure, like any other Common Area Fee or Assessment. Provided, however, each Owner is responsible to pay for the cost of repairing damage to the Party Wall caused by his or her negligence, and shall indemnify and hold the other Owners harmless therefrom.

EXHIBIT "A"

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

COMMENCING AT THE SOUTHWEST CORNER OF BLOCK 133, PLAT "A",
SPANISH FORK CITY SURVEY OF BUILDING LOTS, THENCE AS FOLLOWS:

<u>BEARING</u>	<u>DISTANCE</u>	
NORTH	198.00'	
EAST	264.00'	
SOUTH	198.00'	
WEST	264.00'	TO THE POINT OF BEGINNING

AREA: 1.2 ACRES

EXHIBIT "B"

<u>Unit Number</u>	<u>% Interest</u>
1	11.1111111111
2	11.1111111111
3	11.1111111111
4	11.1111111111
5	11.1111111111
6	11.1111111111
7	11.1111111111
8	11.1111111111
9	11.1111111111
<hr/>	
TOTAL	100%

EXHIBIT "C"

BYLAWS OF SPYGLASS PARK,
A PLANNED UNIT DEVELOPMENT

ARTICLE I

PLAN OF PROJECT, OWNERSHIP & INCORPORATION

1. **Submission.** These Bylaws are referred to and incorporated by reference in the Declaration of Covenants, Conditions and Restrictions of SPYGLASS PARK, a commercial office project (the "Declaration"), which is located in Utah County, State of Utah. These Bylaws shall govern the administration of SPYGLASS PARK planned unit development and the Association of Unit owners (also known as Owners).

2. **Incorporation.** If the Association is incorporated under the laws of the State of Utah, then these Bylaws shall also function and operate as the Bylaws of the incorporated Association.

3. **Office and Registered Agent.** The Registered Agent of the Association is Bruce R. Dickerson, 1013 S. Orem Boulevard, Orem, Utah 84058, which is also the initial Registered Office of the Association; however, after transfer of management and control of the Association is made by the Declarant to the Association, the Registered Agent of the Association shall be the President of the Association.

4. **Bylaws Applicability.** All present and future owners, occupants, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted entrance to SPYGLASS PARK shall be subject to and abide by these Bylaws.

ARTICLE II

ASSOCIATION

1. **Composition.** The SPYGLASS PARK Property Owners Association is a mandatory association consisting of all Owners at SPYGLASS PARK.

2. **Voting.** The total percentage of the number of votes in the Association shall be 100% and each Unit Owner shall have one vote. Multiple owners must elect a representative to cast their vote. A vote cast, without objection, by an apparent representative of multiple owners shall be binding upon the parties. Entities may vote by means of an authorized agent.

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

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

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

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

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, that Owner shall be in full compliance with all of the terms, covenants, and conditions of the Act, Declaration, Bylaws, Rules and Regulations, and shall have fully paid all Common Area Fees and/or Additional Charges due.

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

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

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

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

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

ARTICLE III

MANAGEMENT COMMITTEE

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

- (a) Preparation of an annual budget, in which there shall be established the contribution

of each Owner to the common area fees.

(b) Establishing common area fees against Owners to defray the costs and expenses of the Project, establishing the means and methods of collecting such common area fees from the Owners, and establishing the period and method of the installment payment of the annual assessment for common area fees subject to these guidelines. Unless otherwise determined by the Committee, each Owner's common area fee may be payable in equal monthly installments, due and payable in advance on the first day of each month. However, in the event a Unit Owner fails to make an installment payment in a timely manner, then the entire annual assessment may be accelerated by the Committee and shall thereafter be automatically due and payable without further notice, although the Committee may subsequently elect to deaccelerate the obligation.

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

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

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

(f) Making, amending, and enforcing the Rules and Regulations respecting the Declaration, these Bylaws, and the use of the Property.

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

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

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

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

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

(l) Keeping books and records with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Project, specifying the maintenance and repair expenses of the Common Areas and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Committee for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices, and the same, upon resolution of the Association, may be audited at least once a year by an outside auditor employed by the Committee who shall not be a resident of the Project or an Owner therein. The cost of such audit shall be a Common Expense. A copy of the annual audit report shall be supplied to any first mortgagee of any Unit in the Project who requests the same in writing from the Secretary.

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

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

(o) To give notice of and to provide hearings for alleged infractions of the Declaration, Bylaws or administrative rules and regulations, issue citations and/or levy fines for violations of the Declaration, Bylaws, or Rules and Regulations.

(p) To make emergency repairs.

(q) At the expense of the Owner, or Occupant, to tow away or otherwise remove any motor vehicle parked, stored or standing in an unauthorized area.

(r) To evict non-Owner Occupants in material violation of the Declaration, Bylaws, or any administrative rules and regulations.

(s) To do such other things and acts necessary to accomplish the foregoing and not

inconsistent with the Act, the Declaration, the Bylaws, or to do anything required by a proper resolution of the Management Committee or Association.

2. Composition of Management Committee. The Management Committee shall be composed of three (3) members. Only individual Unit Owners or officers or agents of organizational Owners other than individuals shall be eligible for Committee Membership.

3. Election and Term of Office of the Committee. The term of office of membership on the Committee shall be two years. At the expiration of the member's term, a successor shall be elected. For purposes of continuity, however, the terms of the members of the Committee shall be staggered. At the first organizational meeting of the Association, two members shall be elected for two (2) year terms and one member shall be elected for a one (1) year term. Thereafter, all members shall be elected for two (2) year terms.

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

5. Regular Meetings. Regular meetings of the Committee shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Committee.

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

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

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

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

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

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

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

ARTICLE IV

OFFICERS

1. **Designation.** The principal officers of the Association shall be a President, a Secretary and a Treasurer, all of whom shall be elected by the Committee. The Committee may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Committee. Two or more offices may be held by the same person, except that of President and Secretary.

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

3. **Removal of Officers.** The officers shall hold office until their respective successors

are chosen and qualify in their stead. Any officer elected or appointed by the Committee may be removed at any time by the affirmative vote of a majority of the Committee, and his or her successor may be elected at any regular meeting of the Committee, or at any special meeting of the Committee called for such purpose.

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

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

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

ARTICLE V

FISCAL YEAR

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

ARTICLE VI

AMENDMENT TO BYLAWS

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

2. **Recording.** An amendment to these Bylaws shall become effective immediately upon recordation in the Office of the County Recorder of Utah County, State of Utah.

ARTICLE VII

NOTICE

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

2. **Waiver of Notice.** Whenever any notice is required to be given under the provisions of the statutes, the Declaration, or 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 Act and the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration or the Act. In the event of any conflict between these Bylaws and the Act or Declaration, the provisions of the Act or Declaration shall control.

3. **Severability.** If any provisions of these Bylaws or any section, sentence, clause, phrase, or work, or the application thereof in any circumstance is held invalid, the validity of the remainder of these 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 & Grammatical Disclaimers.** Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine.

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

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

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

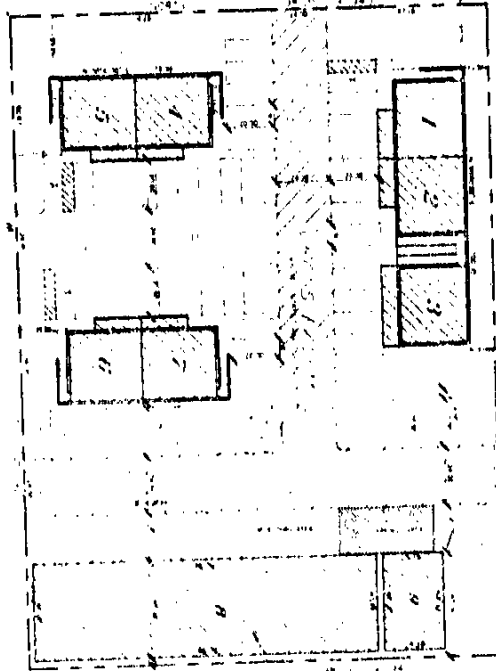
EXHIBIT "D"

ENT 30798 K 4250 P8 781



100 EAST ST.

800 NORTH ST.



SPYGLASS

