

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
BIG WHEEL COMMERCIAL PARK CONDOMINIUMS

PHASE I
A COMMERCIAL CONDOMINIUM PROJECT

THIS DECLARATION of covenants, conditions and restrictions, hereinafter called "Declaration", is made and executed in St. George, Washington County, State of Utah, this 10th day of February, 1986, by THURSTON ENTERPRISES, hereinafter called "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in the County of Washington, State of Utah, which is more particularly described as follows:

Beginning at a point South 538.91 feet and East 593.37 feet from the North Quarter Corner of Section 20, Township 42 South, Range 15 West, Salt Lake Base and Meridian, and running thence North 67°30'00" East 160.00 feet; thence South 09°33'47" East 270.50 feet; thence North 59°15'15" West 148.07 feet to a point of tangency with a 160.00 foot radius curve to the Left, thence Northwesterly along the arc of said curve 16.93 feet; thence North 22°30'00" West 132.00 feet to the point of beginning.

WHEREAS, Declarant is the owner of certain Commercial Units and other improvements heretofore constructed or hereafter to be constructed upon Lots on the property, and

WHEREAS, The Declarants state that they plan to submit the above described real property and said buildings and other improvements constructed thereon to the provisions of the Utah Condominium Ownership Act as a condominium project, and

WHEREAS, Declarant desires and intends to sell fee title to the individual lots and associated units contained in said Condominium Project together with undivided ownership interest in the Common Areas and facilities appurtenant thereto to various purchasers, subject to covenants, limitations, and restrictions contained herein, and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values and amenities of the Property and for maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, the Declarant desires to subject the Property described above of this Declaration to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which are for the benefit of the Property and each Owner thereof, and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the common areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be incorporated under the laws of the State of Utah as a nonprofit corporation, Big Wheel Commercial Park Association, and

WHEREAS, Declarant intends to annex Phase II Land whose Owners will become Members of the Association and will be entitled and subject to all rights, powers, privileges, covenants, restriction, easements, charges, and liens hereinafter set forth, and

WHEREAS, Declarant will convey the said Property subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the said property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of said property and which shall be construed as covenants of equitable servitude, which shall run with the real property and shall be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to BIG WHEEL COMMERCIAL PARK ASSOCIATION, a non-for-profit corporation, its successors and assigns. A copy of the Articles are attached hereto as Exhibit "B". The Association shall be governed in accordance with the Articles, Declaration and Bylaws.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) now owned by the Association

or hereafter acquired for the common use and the enjoyment of the members and not dedicated for use by the general public, specifically exempting therefrom all lots areas as hereafter defined. The lots shall be deeded to grantees of Declarant. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Beginning at a point South 538.91 feet and East 593.37 feet from the North Quarter Corner of Section 20, Township 42 South, Range 15 West, Salt Lake Base and Meridian, and running thence North 67°30'00" East 160.00 feet; thence South 09°33'47" East 270.50 feet; thence North 59°15'15" West 148.07 feet to a point of tangency with a 160.00 foot radius curve to the Left, thence Northwesterly along the arc of said curve 16.93 feet; thence North 22°30'00" West 132.00 feet to the point of beginning.

LESS AND EXCEPTING Lots 1 through 5.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Areas.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "Declarant" shall mean and refer to THURSTON'S ENTERPRISES INCORPORATED, their successors and assigns, if such successors or assigns shall acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. "Conveyance" shall mean and refer to actual conveyance of fee title to any Lot and unit contained thereon to any owner by a warranty deed or other document of title and shall not mean the mere execution of an installment sales contract.

Section 9. "Commercial Unit", sometimes referred to as "Unit", shall mean and refer to a single unit constructed by Declarant on a Lot on which activities are to conform to the St. George City M-1 Zoning. Mechanical equipment and appurtenances located within any one unit or located without said unit but designed to serve only that unit such as appliances, electrical receptacles and outlets, air conditioning and compressors, fixtures and the like, shall be considered part of the unit, as shall all doors, door frames and trim. All pipes, wires, conduits, or other public utility lines or installation constituting a part of the unit and serving only the unit shall be considered part of the unit.

Section 10. "Plat" shall mean and refer to Plat known as the Record of Survey Maps of the Project consisting of 2

pages, executed and acknowledged by Declarant, prepared and certified by a registered Utah Land Surveyor, and recorded in the office of the County Recorder of Washington County, Utah on the 11th day of February, 1986, as entry No. 288837 as the same will hereafter be modified, amended, supplemented or expanded in accordance with the provisions of Article XII concerning amendments or supplements to this Declaration which are to occur in conjunction with the expansion of the Development as herein provided.

Section 11. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the office of the Recorder of Washington County, Utah and shall mean and refer to as the same as is hereafter modified, amended, supplemented, or expanded in accordance with the provisions hereof concerning amendments or supplements to this Declaration which are to occur in conjunction with the expansion of the Development.

Section 12. "Development" shall mean and refer to that certain real property, and any additions thereto, together with all buildings and improvements thereon, described in the Declaration.

Section 13. "Board of Trustees" shall mean and refer to the governing board of the Lot Owner's Association defined above.

Section 14. "The Act" shall mean and refer to the Utah Condominium Ownership Act, Utah Code Annotated 1953, amended, Section 57-8-1, et. seq. as the same may be amended from time to time.

Section 15. "Condominium" shall mean and refer to the ownership of a single Lot with a unit constructed on it in this condominium Project, together with all rights, obligations and organizations established by this Declaration.

Section 16. "Project" shall mean and refer to the commercial condominiums located on the lots and common areas as herein described and shall be known as the Big Wheel Commercial Park Condominiums, Phase I.

Section 17. "Phase II Land" shall mean and refer to that property which may be added to the project by Declarant under the terms of this declaration, which property is described as Exhibit "A" under Phase II Property, attached hereto.

Section 18. "Supplementary Declaration" shall mean and refer to any supplementary declaration of covenants, conditions, and restrictions, or similar instrument, which extends the provisions of the Declaration to all or any portion within the Phase II Land and contained such complementary or amended provisions for such additional land as are herein required by the Declaration.

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Section 19. Articles and By-laws shall mean and refer to the Articles of Incorporation and the By-laws of the Association.

ARTICLE II
PROPERTY DESCRIPTION AND RIGHTS

Section 1. Description of Land. The land comprising Phase I of the Project is the tract or parcel in Washington County, State of Utah, more particularly described as Exhibit "A" hereto attached as described under Phase I.

Section 2. Description of Improvements. The significant improvements contained or to be contained in the Project include one building containing 5 commercial units (each unit is 30 feet by 36 feet in size) constructed in Phase I (as described on the Plat), together with road ways and parking area. The units are constructed of cement floors with masonry walls and metal roofs.

Section 3. Description and Legal Status of Units. The Plat hereto shows the Lot number and its associated unit number, its location, those common areas and facilities which are reserved for its use.

Each Lot owner shall have an undivided interest in the common areas and facilities in the percentage described below, which percentage is subject to change upon filing of Amended Declaration as hereinafter provided. The percentage of the undivided ownership interest in the common areas and facilities which is appurtenant to each unit is $1/5$ (the total expected units in Phase I each having an equal interest) a unit owners percentage of ownership interest in the common areas and facilities shall be for all purposes, including voting and assessment of common expenses. The percentage of undivided ownership of common areas and facilities is subject to change upon the addition or deletion of units by Declarant and Amendment of this Declaration by Declarant. If Lots are added or deleted then the new percentage of undivided ownership in the common area shall be calculated by dividing one (1) by the total number of Lots, i.e. $1/n$ with "n" equaling the total number of Lots. All Lots and associated unit, of whatever type, shall be capable of being independently owned, encumbered and conveyed. In any event, the number of units in Phase I shall not exceed 5 and in Phase II shall not exceed 17, for a total of 22 units in Phase I and II.

(1) Each unit boundary lines are the unfinished interior surfaces of its perimeter walls, uppermost ceiling, lowermost floor, all window panes, interior surfaces or doors, door frames and trim. Each unit shall include both the portion of the building that are not common areas and facilities within such boundary lines and the spaces so encompassed. Without limitation, a unit shall include any finishing material applied or affixed to the interior surfaces or the interior walls, floors, and ceilings, non supporting interior walls and all

utility pipes, systems, fixtures, equipment or appliances found within the boundary lines of the unit and servicing only that unit.

Section 4. Submission to Condominium Ownership Act.

Declarant hereby submit the above-described property, tract of land, buildings, and other improvements constructed thereon or hereafter to the constructed, together with all appurtenances thereto, to the provisions of the Act as a Condominium Project and this Declaration is submitted in accordance with the terms and the provisions of the Act and shall be construed in accordance therewith. It is the intention of the Declarant that the provisions of the Act shall apply to the property.

Section 5. Covenants to Run with the Land.

This Declaration containing covenants, conditions and restrictions relating to the Project shall be an enforceable, equitable servitude which shall run with the land and this Declaration and its servitudes shall be binding upon the Declarants, their successors and assigns and upon all lot owners or subsequent lot owners, their grantees, mortgagees, and successors, heirs, executors, administrators, devisees and assigns.

Section 6. Owners' Easements of Enjoyment.

Every lot owner shall have a right and easement of use and enjoyment in and to the Common Area which easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable fees for garbage pick-up facilities and excess storage on Common Area provided that such fees charged by the Association shall in no way affect its status as a non-profit corporation.
- (b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said property; be subordinate to the rights of the Owners hereunder;
- (c) The right of the Association to suspend the voting rights of a member and to deny said member use of garbage facility for any period during which any assessment against his Lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (d) With the approval of all the holders of first mortgage liens on lots, and two-thirds of the owners, the right of the Association to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Area to any public agency, authority,

or utility for such purposes and subject to such conditions as may be agreed to by the members. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by two-thirds (2/3) of each class of members has been recorded.

- (e) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.
- (f) The right of the Declarant and of the Association to grant and reserve easements and right-of-ways through, under, over and across the Common Area, for the installation, maintenance and inspection of lines and appurtenances for public or private utilities.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described land and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete each of the Commercial Units on the Lots and all of the other improvements as Declarant deems to be appropriate, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete on the Phase II Land or any portion thereof such improvements as Declarant or said assignee or successor shall determine to build in its sole discretion; (iii) To improve portions of the Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant or as such assignee or successor may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the above described land or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire seven (7) years after the date on which this Declaration is filed for record in the Office of the County Recorder of Washington County, Utah.

Section 8 Alterations. The Declarant reserves the right to change the interior design and interior arrangement of any unit and to alter the size of the associated Lot, so long as the Declarant owns the units and Lots altered. Any such change shall be reflected by an amendment of this Declaration and of the

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Plat which may be executed by the Declarant alone, notwithstanding the procedures for amendment described in Article XII of this Declaration.

Section 9. Delegation of Use. Any member may designate, in accordance with the Bylaws, his right of enjoyment, to the Common Area and facilities to a member or employee of his business, his tenants, or contract purchasers who use his property for commercial purposes.

Section 8. Title to the Common Area. The Declarant covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area of Phase I to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, except, (i) any statement of facts an accurate survey may show, (ii) covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration, (iii) easements and rights-of-way of record, and (iv) a covenant to maintain the Common Area in good repair and condition at all times and to operate the same at its own expense in accordance with high standards, which shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Classes of Membership. The Association shall have two classes of membership:

- (a) Class A. Class A member(s) shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person owns an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.
- (b) Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

1. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

2. On January 1, 1996.

Section 3. Changes in Voting Procedure. If Declarant shall exercise his option to add additional Lots (up to 17 total lots) then at such time as the amended or Supplementary Declaration is filed, the voting shall be adjusted accordingly, including that Declarant may regain his Class B voting status for all Lots owned (whether or not completed), even if previously converted to Class A status under the terms hereof.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien, and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments, (b) special assessments, and (c) capital assessments, such assessments to be levied, fixed, established and collected from time to time as herein below provided. The assessments, together with interest, costs and reasonable attorney's fees as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such Lot as the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the business interests, health, safety and welfare of the members and in particular for the improvement, repair and maintenance of the Common Area, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and the Commercial Units situated upon the Properties. They shall include, but are not limited to, funds for the actual cost to the Association of all taxes, utilities, insurance and shall include a reserve for repairs, replacement and maintenance of those elements of the Common Area and for the maintenance of the exteriors of the Commercial Units that must be replaced on a periodic basis, caring for the grounds, landscaping, garbage pickup, snow removal and other services furnished to owners by the Association, and other charges required by this Declaration or that the Board of Trustees shall determine to be necessary to meet the primary purposes of the Association. Special and capital improvement assessments shall be used exclusively for the purposes for which such assessments were levied as provided for in this declaration.

Section 3. Basis and Maximum of Annual Assessments.

Until January 1st of the year immediately following the conveyance of the first Lot to any owner, the maximum annual assessment shall be Four Hundred Eighty and no/100 Dollars (\$480.00) per Lot.

- (a) From and after January 1st of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1st of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment may be increased more than ten percent (10%) only by vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken incident to a merger or consolidation which the Association is authorized to participate in under its Articles of Incorporation.
- (c) The Board of Trustees shall fix the annual assessment at an amount not in excess of the maximum.

Section 4. Capital Improvement Assessments.

In addition to annual assessments, with the approval of two-thirds (2/3) of each class of members, the Association may levy, for any assessment period, capital improvement assessments, applicable to the assessment period only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon any Common Area.

Section 5. Special Assessments.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement, upon the Common Area, including fixtures and personal property related thereto, and for the repair of the exteriors of the Commercial Units, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for any Action Authorized Under Sections 3, 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3,

4, or 5 shall be sent to all members not less than 30 days, nor more than 60 days, in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Rate of Assessment. Annual, special and capital assessments shall be fixed at uniform rates for all lots and may be collected on a monthly basis.

Section 8. Date of Commencement of Regular Assessments; Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of said lot to the original owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Trustees shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates for payment of said assessment shall be established by the Board of Trustees.

The Association shall, upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Furthermore, a first mortgage holder, upon request, is entitled to a written certificate from the Association advising of any default by the Lot owner of any obligation not cured within sixty (60) days. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, or such other rate as the Board of Trustees may establish from time to time. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs of suit, and reasonable attorney's fees incurred shall be added to the amount of such assessment.

Each such owner, by his acceptance of a deed to a Lot, hereby expressly grants to the Association, its successors, assigns, or agents the right and power to bring all actions

against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in the like manner as a mortgage or deed or trust lien on real property, and such owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other lot owners. The Association, acting on behalf of the lot owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

Section 10. Nonuse and Abandonment. No owner may waive or escape personal liability for the assessments provided for herein, nor release the Lot owned by him from the liens and charges hereof, by nonuse of any Common Area or abandonment of this Lot.

Section 11. Subordination of the Lien to Mortgages. The lien created hereunder upon any Lot shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any first mortgage (meaning a mortgage with first priority over other mortgages) or equivalent security interest on any Lot, made in good faith and for value, recorded prior to the date any such assessment becomes due. Any holder of a first mortgage lien or equivalent security interest on a Lot who comes into possession by virtue of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take said Lot and the improvements appurtenant thereto free of any claims for unpaid assessment charges against said Lot which accrue prior to the time such holder comes into possession of the Lot, except for the claims for a share of such expenses or charge resulting from a reallocation of such assessment or charges to all lots including the mortgaged Lot. No such sale or transfer shall relieve such Lot from liability for any assessments which thereafter became due or from the lien thereof.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All Properties dedicated to and accepted by any local public authority;
- (b) The Common Area.

Section 13. Management Agreements. The Board may employ a manager or other persons who may contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. Any contract with a person or firm appointed as a manager or managing agent shall be terminable by the Association for cause upon

thirty (30) days' written notice thereof. Any such contract, and any other contract (except prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration where the policy permits short term cancellation by the insured) with a third person wherein the third person is to furnish goods or services for any Common Area or the Association shall be limited to a duration of one (1) year; provided, however, that such contracts may be renewable for successive one (1) year periods with the approval, for each such period, by a vote or written consent of a majority of each class of members of the Association.

Section 14. Insurance Assessments. The Board of Trustees, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the buildings, including all commercial units, unless the owners thereof have supplied proof of adequate coverage to the Board of Trustees' complete satisfaction and approval, which shall not be unreasonable withheld, against loss or damage by fire or other hazard, and shall also obtain a broad form public liability policy covering all Common Area and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism.

Premiums for all such insurance coverage, including insurance on commercial units obtained by the Board of Trustees, shall be written in the name of the Association as Trustee shall be written in the name of the Association as Trustee for each of the commercial unit owners in the same proportions as the square footage of all the commercial units combined. Insurance on individual commercial units obtained by the Board of Trustees on commercial units shall not be a part of the common expense, but shall be an expense of the specific commercial units or units so covered and a debt owed by the owners, and shall be collectable by a lawful procedure permitted by the laws of the State of Utah.

In addition, if said debt is not paid within twenty (20) days after notice of such debt, such amount shall automatically become a lien upon such owner's lot and commercial unit and shall continue to be such a lien until fully paid. This lien shall be subordinate to liens as set forth in Section 11 above and shall be enforceable in the same manner as any lien created by failure to pay the maintenance assessments. In addition to the aforementioned insurance required to be carried by the owners and/or the Association, any owner may, if he wishes, at his own expense, insure his own commercial unit for his own benefit and carry any and all other insurance he deems advisable. It shall be the individual responsibility of each owner at his own expense to provide, as he sees fit, liability insurance, theft, and other insurance covering personal property damage and loss.

In the event of damage or destruction by fire or other casualty to any properties covered by insurance written in the

name of the Association, the Board of Trustees shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the properties to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, whose accounts are insured by a Federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Trustees. The Board of Trustees shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction, or rebuilding of such destroyed building or buildings.

In the event the insurance proceeds are insufficient to pay all of the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Trustees shall levy a special assessment against all owners of the damaged commercial units in such proportions as the Board of Trustees deem fair and equitable in the light of the damage sustained by such commercial units. Such payments shall be made to all such owners and their mortgagees in proportion to their percentage interests.

In the event of damage or destruction by fire or other casualty to any commercial unit or other property covered by insurance written in the name of an individual owner, said owner shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to repair or rebuild such damaged or destroyed portions of the exterior of the commercial unit in good workmanlike manner in conformance with the original plans and specifications of said commercial unit. In the event such owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the commercial unit area within thirty (30) days, the Association, by and through its Board of Trustees, is hereby irrevocably authorized by such owner to repair and rebuild any such commercial unit in a good and workmanlike manner in conformance with the original plans and specifications of the commercial unit. The owner shall then repay the Association in the amount actually expended for such repairs, and the Association shall have a lien securing the payment of insurance premiums, and subject to foreclosures as above provided.

ARTICLE V PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall built as a part of the original construction of a commercial unit upon the properties and placed between two (2) separate commercial units intended for use and occupancy as a commercial building shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property

damage due to negligence of willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The costs of reasonable repair and maintenance of a party wall shall be shared equally by the owners who make use of the wall.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any owner who has used the wall may restore it, and if the owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions. The word "use" as referred to herein means ownership of a commercial unit or other structure which incorporates such wall or any part thereof.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of an owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Trustees of the Association shall select an arbitrator for the refusing party.

Section 7. Encroachment. If any portion of a party wall or other part of a building or structure now or hereafter constructed upon said property encroaches upon any part of the Common Areas, or upon the lot or lots used or designated for use by another lot owner, an easement for the encroachment and for the maintenance of same is granted and reserved and shall exist and be binding upon the Declarant and upon all present and future owners of any part of said property for the benefit of the present and future owners of such encroaching building or structure for the purpose of occupying and maintaining the same; in the event a structure consisting of more than one commercial unit becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements are granted and reserved upon the Common Areas, and in and upon each commercial

unit and lot for the benefit of the Association and the adjacent owner or owners to the extent reasonably necessary or advisable to make repairs and replacements; and minor encroachments resulting from any such repairs and/or replacements and the maintenance thereof are hereby granted and reserved for the benefit of the present and future owners thereof. The easements for encroachment herein granted and reserved shall run with the land.

ARTICLE VI
MANAGEMENT AND ARCHITECTURAL CONTROL

Section 1. Management.

(a) Board of Trustees. The business, property and affairs of the Project shall be managed, operated and maintained by the Board of Trustees of the Association as agent for the Lot owners. The Board of Trustees shall have, and is hereby granted, the power and authority as outlined in the the Articles of Incorporation to include but not be limited to the following authority and powers:

(1) The authority, without the vote or consent of the lot owners or of any other person(s), to grant or create, on such terms as it deems advisable, utility and similar easements, over, under, across and through the common areas and facilities; and work performed pursuant to such easements must be done in a workmanlike manner and any damage to the interior structure or decor of a unit must be repaired;

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

(b) Responsibility. The Board of Trustees shall be responsible for the control, operation and management of the project in accordance with the provisions of the Act of this Declaration and the Articles of Incorporation and By-Laws as hereinafter set forth. The Board of Trustees may from time to time promulgate operational rules and regulations.

Section 2. Architectural Control. No fence, wall, building, sign or other structure or exterior addition to, or change or alteration thereof, including painting, or landscaping, shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on the project or any portion thereof, until plans and specifications shall have been submitted to and approved in writing by the Board of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Said plans and specifications shall be prepared by a duly licensed architect or other person approved by the Board and shall include, where appropriate, the following:

- (a) Plot plans, showing the location of all structures and showing grade elevations and drainage;

- (b) Building plans, including floor, foundations and roof plans, with all materials therefor;
- (c) Exterior elevations, surfaces, sections, structural design and salient exterior details;
- (d) General exterior scheme; and

All such plans and specifications shall be submitted in writing over the signature of the owner of the property or such owner's authorized agent.

Approval shall be based, among other things, on adequacy of site dimensions; adequacy of structural design and material; conformity and harmony of external design with neighboring structures; effective location and use of improvements in relationship to neighboring property, improvements, operations and uses; relation of topography, grade and finished ground elevation of property being improved to that of neighboring property; proper facing of main elevations with respect to nearby streets; preservation of view and aesthetic beauty with respect to fences, and walls; assurance of adequate access to the Association in connection with the performance of its duties and the exercise of its powers hereunder; conformity with such rules and regulations as may be adopted by the Board in accordance with this Article; and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The declarant shall not be required to comply with any of the provisions of this Article.

In the event the Board fails to either approve or disapprove such plans and specifications within thirty (30) days after the same have been submitted to it, it shall conclusively be presumed that the board has approved such plans and specifications. All improvement work approved by the Board shall be diligently completed and construction in accordance with approved plans and specifications.

Unless at least two-thirds (2/3) of the votes of each class of members have given their prior written approval, the Association shall not be entitled by act or omission to change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Commercial Units, the exterior maintenance of Commercial Units, the maintenance of the or the upkeep of the Common Area.

ARTICLE VII EXTERIOR MAINTENANCE

In addition to the maintenance of the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment, including but not limited to, paint, repair, replacement and care of roofs, gutters,

downspouts, exterior building surfaces, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces or heating and cooling units or equipment located upon any Lot or upon the roof of any Commercial Unit.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the owner, his employees, or guests or invitees of the owners of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VIII EASEMENTS

Section 1. Minor Encroachments. Each Lot and the Common Area shall be subject to an easement for encroachment created by construction, repair, shifting, settling or movement, and overhangs as designed or constructed by the Declarant. A valid easement for said encroachment and for the maintenance of same, so long as it stands, shall and does exist.

Section 2. Utilities Easement. There is hereby granted and conveyed to the City of St. George, and Mountain States Telephone and Telegraph Company, their successors and assigns, a blanket easement upon, across, over and under all of the said Common Area and for ingress, egress, installation, replacing, repairing and maintaining all utilities at such location or locations as said utilities deem appropriate. By virtue of this easement, it shall be expressly permissible for the providing electrical, and telephone company to construct and maintain the necessary equipment on said property and to affix and maintain electrical, and telephone wires, circuits and conduits on, across and under the Common Area.

An easement is further granted to all police, fire protection, ambulance, trash collection and all similar persons to enter upon the streets, Common Area in the performance of their duties. Notwithstanding anything to the contrary contained in this Article, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said property except as initially planned and approved by the Declarant or thereafter approved by the Board of Trustees. Should any company furnishing a service conveyed by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said property without conflicting with the terms thereof.

Section 3. Easements for Ingress and Egress. An easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or to cross over the Common Area, and any Lot to perform the duties of maintenance and repair of the Commercial Unit or Common Area provided for herein.

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ARTICLE IX .
RIGHT OF FIRST MORTGAGEES TO PAY TAXES
OR OTHER CHARGES WHICH ARE IN DEFAULT

First mortgagees of lots within this planned unit development may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Lot or Common Area and may pay overdue premiums on hazard insurance coverage on the lapse of a policy for such Lot or Common Area and first mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

ARTICLE X
USE RESTRICTIONS

Section 1. Commercial Use. No owner shall occupy or use his Commercial Unit, or permit the same or any part thereof to be occupied or used for any purpose other than as a commercial unit and commercial purpose which is allowed under the City Zoning Ordinance M-1 for use by himself or his employees, lessees or guests.

Section 2. Fee Conveyed. Each Lot shall be conveyed as a separately designated and legally described freehold estate, the owner taking title in fee simple, subject to the terms, conditions, and provisions hereof.

Section 3. Uses Permitted by Declarant During Construction. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant on the building of said Commercial Units to maintain during the period of construction and sale of said Commercial Units, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of said Commercial Units, including but without limitation, a business office, storage area, construction yard, signs, model Commercial Units and sales office.

Section 4. Animals or Pets. No animals, livestock or poultry of any kind may be raised, bred or kept on any Lot or in the Common Area except that dogs, cats or other pets may be kept in Commercial Units, or upon any Lot and subject to the rules and regulations adopted by the Board of Trustees in accordance with the M-1 Zoning Ordinance of St. George, Utah.

Section 5. Signs. No signs of any kind shall be displayed to the public view on or from any Lot or the Common Area except for a four by eight-foot sign attached to the front of the Commercial Unit identifying the owners name or business interest. No other sign will be allowed without prior consent of the Board of Trustees.

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Section 6. Obstruction of the Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board of Trustees.

Section 7. Prohibited Uses. No noxious or offensive activities shall be carried on in any Lot or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the owners.

Section 8. Oil and Mining Operations. No drilling, quarrying of any kind shall be permitted upon or in any Lot, or upon the Common Area.

Section 9. Alteration of Common Area. Nothing shall be altered or constructed, or removed from the Common Area, except with the written consent of the Board of Trustees.

Section 10. Owner's Responsibility for Maintenance. All utilities, fixtures and equipment including but not limited to heating and cooling, installed within a Commercial Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls or roof of a Commercial Unit shall be maintained and kept in repair by the owner thereof. The Owner shall also maintain, repair and replace, at his expense, any heating or cooling unit located upon the roof or attached elsewhere, to his Commercial Unit or upon his Lot. An owner shall do no act nor any work that will impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Commercial Units or their owners.

Section 11. Time Sharing Prohibited. Neither the Declarant nor the owner of any Lot shall allow or permit any form of time sharing ownership.

Section 12. Leases. Any lease agreement between a Commercial Unit owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, Articles of Incorporation of the Association and the By-laws of said Association, and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. Furthermore, all leases shall be in writing.

ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. The Association, or the Declarant or its successors in interest, or any owner, shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, Bylaws

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or Articles of Incorporation. Specifically, the aggrieved party may seek to recover damages and for injunctive relief. Failure by the Association to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability, Construction and Validity of Restrictions. All of said conditions, covenants and reservations contained in this Declaration shall be reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or reservations, or any one of said conditions, covenants or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant and lot owners, their successors, heirs, and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason become unenforceable.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 4. Gender and Grammar. The singular wherever used in this Declaration shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 5. Conflicts. In case of any conflict between this Declaration, as the same may be amended from time to time, and the Articles of Incorporation and the Bylaws of the Association, as they may be amended from time to time, the provisions of this Declaration shall be controlling.

Section 6. Person to Receive Service of Process. The person to receive Service of process in the cases provided herein or in the Act is Allan R. Thurston 1205 Quail Ridge Dr., Washington, Utah 84780.

ARTICLE XII
AMENDMENT AND ANNEXATION OF ADDITIONAL LAND

Section 1. Amendment. Except as otherwise provided herein, this Declaration may be amended during the first twenty

(20) year period by an instrument signed by not less than ninety percent (90%) of the lot owners, and thereafter, by an instrument signed by not less than seventy-five percent (75%) of the lot owners, which amendment shall be effective upon recordation in the Office of the Recorder of Washington County, State of Utah. Prior to any material amendment to this Declaration, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the members will vote on said amendment.

Section 2. Annexation of Additional Land.

(a) Declarant expressly reserves the right and option to expand the property subject to this Declaration by the annexation of all or part of Phase II land described at Exhibit "A" hereto. The annexation of such land shall become effective upon the recordation in the office of the County Recorder of Washington County, Utah, of a Supplementary Declaration which (i) describes the land to be annexed or incorporated by reference to the description contained in Phase II portion of the Plat, (ii) Declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the property subject to the Declaration, and (iii) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land. When such annexation becomes effective, the annexed land shall become part of the property. Such annexation may be accomplished in one or more annexations, it being the right of Declarant, without limitation, to annex any portion or all of Phase II property at any time, and in any sequence within the limitations set forth below.

(b) Declarant's right to annex said land to the property shall be subject to the following limitations:

(1) The annexed land must be part of the land which is Phase II Land as of the date of this Declaration.

(2) Declarant shall not effectuate any annexation of land which would cause the total number of lot/units existing on, or planned for, the total property to exceed 22 units or 13 units per acre annexed.

(3) Declarant's right to annex land to property shall expire seven (7) years after this Declaration is filed for record in the office of the County Recorder of Washington County, Utah, unless such option is terminated by filing of appropriate documents constituting an election to terminate the option, which may only be elected by the Declarant in their sole discretion.

(4) Declarant's right to annex Phase II property shall not be limited by a consent or lack thereof by unit owners or the Association.

(5) Any unit added shall be architecturally compatible to the Phase I buildings, as determined by Declarant in their sole discretion but no assurances can be given as to the precise design, layout, site design or materials to be use in construction, or the precise common area and related improvements.

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(6) All lots/units to be added to Phase II shall be used exclusively for commercial activities that conform to the city of St. George's M-1 Zone and common shall be used for the same purpose (except common areas which shall be used for the same purposes and in the same manner as such are in Phase I).

(c) The annexation authorized under the foregoing paragraph shall be made by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions or similar instrument, with respect to the additional property which shall extend the plan of this Declaration to such property.

Such Supplementary Declaration contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the plan of this Declaration.

The recordation of such Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the owners of lots in said real property shall automatically be members of the Association.

(d) Until all portion of the Phase II Land are included in the Development, or until the right to enlarge the Development through the addition of tracts or subdivisions terminates, whichever event first occurs, Declarant shall have, and, is hereby vested with, the right to unilaterally amend the Declaration as may be reasonably necessary or desirable: (i) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information; (ii) to better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; or (iii) to facilitate the practical, technical, administrative or functional integration of any addition tract or subdivision into the Development.

(e) In the event the property is expanded the definitions used in this Declaration automatically shall be expanded to encompass and refer to the property as so expanded. E.G., "Property" shall mean the real property described in Exhibit "A" as Phase II property, of this Declaration plus any additional real property added by a Supplementary Declaration or by Supplementary Declarations, and reference to this Declaration shall mean this Declaration as so supplemented.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal the day and year first above written.

DECLARANT

By: Allan R. Thurston
Allan R. Thurston
THURSTON ENTERPRISES INC.

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STATE OF UTAH)
) : ss.
COUNTY OF WASHINGTON)

On the 10th day of February, 1986, before me, a Notary Public in and for the above State and County, personally appeared, Allan R. Thurston, who being by me first duly sworn, declared to me that they are the persons who signed the foregoing document as Declarant and that the statements therein contained are true. In witness whereof, I have hereunto set my hand and seal this 10th day of February, 1986.

Scott C. Gubler
NOTARY PUBLIC
Residing at St. George UT

My Commission Expires
10/29/86

9/18

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Scott Gubler

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EXHIBIT "A"

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LEGAL DESCRIPTION - PHASE I

BEGINNING at a point South 538.91 feet and East 593.37 feet from the North Quarter Corner of Section 20, Township 42 South, Range 15 West, Salt Lake Base and Meridian, and running thence North $67^{\circ}30'00''$ East 160.00 feet thence South $09^{\circ}33'47''$ East 270.50 feet; thence North $59^{\circ}15'15''$ West 148.07 feet to a point of tangency with a 160.00 foot radius curve to the left, thence Northwesterly along the arc of said curve 16.93 feet; thence North $22^{\circ}30'00''$ West 132.00 feet to the point of beginning.

LEGAL DESCRIPTION - PHASE II

Beginning at a point South 192.22 feet and East 438.72 feet from the North Quarter Corner, Section 20, Township 42 South, Range 15 West, SLB&M, and running; thence South $75^{\circ}14'17''$ East, 250.00 feet; thence South $67^{\circ}30'$ West, 160.00 feet; thence North $22^{\circ}30'$ West, 183.10 feet; thence West 75.77 feet; thence North $22^{\circ}30'$ West, 18.98 feet; thence North $00^{\circ}33'10''$ West, 160.00 feet to the point of beginning, containing 1.33 acres.

