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 DONNA S. MCKENDRICK TOOELE COUNTY RECORDER  
 Tooele County Recorder  
 DONNA S. MCKENDRICK

APPENDIX A

BYLAWS

BENCH MARK VILLAGE ASSOCIATION

An Association of Unit Owners Under the Utah Condominium Ownership Act

The administration of the Bench Mark Village Condominium (the "property") and the Bench Mark Village Association ("association") shall be governed by these bylaws, by the Utah Condominium Ownership Act, Utah Code Ann. §§ 57-8-1 through 57-8-36 (Repl. vol. 1963), as amended, (the "act") and by the declaration.

1. Application of Bylaws.

All present and future unit owners, mortgagees, lessees and occupants of units and their employees, and any other persons who may use the facilities of the property in any manner are subject to the declaration, these bylaws and all rules made pursuant hereto and any amendment thereof. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a unit shall constitute an agreement that the provisions of the declaration and these bylaws (and any rules and regulations made pursuant thereto), as they may be amended from time to time, are accepted, ratified and will be complied with.

2. Management Committee.

2.1. The administration of the property on behalf of the association shall be conducted by a management committee of seven natural individuals.

2.2. At every annual meeting, the associaton shall elect the members of the management committee for the forthcoming year. At least thirty (30) days prior to any annual meeting of the association, the management committee shall elect from the unit owners a nominating committee of not less than three (3) members (none of whom shall be members of the then management committee) who shall recommend to the annual meeting one nominee for each position on the management committee to be filled at that particular annual meeting. Nominations for positions on the management committee may also be made by petition filed with the secretary of the association at least five (5) days prior to the annual meeting of the association, which petition shall be signed by five (5) or more unit owners and signed by the nominee named therein indicating his willingness to serve as a member of the management committee, if elected. Members of the management committee shall be unit owners, and must be natural individuals and residents of the State of Utah.

2.3. Members of the management committee shall serve for a term of one (1) year; provided, however, that three members of the management committee elected at the first annual meeting shall serve for an initial term of one (1) year and the four other members shall serve for initial terms of two (2) years. Thereafter, all management committee members elected shall serve for a one-year term. The terms of no more than four members will end each year. The members of the management committee shall serve until their respective successors are elected, or until their death, resignation or removal.

2.4. Any member of the management committee may resign at any time by giving written notice to the president of the association, or the remaining management committee members. Any member of the management committee may be removed from membership on the management committee by a two-thirds majority vote of the association. Whenever there shall occur a vacancy on the management committee due to death, resignation, removal or any other cause, the remaining members shall elect a successor member to serve until the next annual meeting of the association, at which time said vacancy shall be filled by the association for the unexpired term, if any.

2.5. The members of the management committee shall receive no compensation for their services unless expressly approved by a majority of the association; provided, however, that any member of the management committee may be employed by the association in another capacity and receive compensation for such employment.

2.6. The management committee, for the benefit of the property and the association, shall manage the business, property and affairs of the property and the association and enforce the provisions of the declaration, these bylaws, the house rules and the administrative rules and regulations governing the property. The management committee shall have the powers, duties and responsibilities with respect to the property as contained in the act, the declaration and these bylaws.

2.7. The meetings of the management committee shall be held at such places within the State of Utah as the management committee shall determine. Four (4) members of the management committee shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the management committee. The management committee shall annually elect all of the officers of the association. The meeting for the election of officers shall be held at the first meeting of the management committee immediately following the annual meeting of the association.

2.8. Special meetings of the management committee may be called by the president or by any three management committee members.

2.9. Regular meetings of the management committee may be held without call or notice. The person or persons calling a special meeting of the management committee shall, at least two (2) days

before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called; if an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

2.10. Any member of the management committee may, at any time, waive notice of any meeting of the management committee in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the management committee at a meeting shall constitute a waiver of notice of such meeting except if a management committee member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the management committee are present at any meeting of the management committee, no notice shall be required and any business may be transacted at such meeting.

2.11. Any two (2) persons who are designated of record as being members of the most recent management committee (regardless of whether or not they shall still be members) may execute, acknowledge and record an affidavit stating the names of all of the members of the then current management committee. The most recently recorded of such affidavits shall be prima facie evidence that the persons named therein are all of the incumbent members of the management committee and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

2.12. The fiscal year shall be determined by the management committee.

### 3. Meetings of the Association.

3.1. The presence in person or by proxy at any meeting of the association of fifty percent (50%) of the unit owners in response to notice of all unit owners of record properly given shall constitute a quorum. In the event that fifty percent (50%) of the unit owners are not present in person or by proxy, the meeting shall be adjourned to a specified time, at which time it shall reconvene and any number of unit owners present at such subsequent meeting shall constitute a quorum. Unless otherwise expressly provided in the declaration, any action may be taken at any meeting of the unit owners upon a majority vote of the unit owners who are present in person or by proxy and who are voting.

3.2. There shall be an annual meeting of the association on the first Tuesday of June at 7:00 p.m. at Bench Mark Village or at such other reasonable place or time as may be designated by written notice by the management committee. At or prior to an annual meeting, the management committee shall furnish to the unit owners: (i) a budget for the coming fiscal year that shall itemize the estimated common expenses of the coming fiscal year with the estimated allocation

thereof to each unit owner; and (ii) an audited statement of the common expenses itemizing receipts and disbursements for the previous and current fiscal year, together with the allocation thereof to each unit owner.

3.3. Special meetings of the association may be held at any time at the property or at such other reasonable place to consider matters which, by the terms of the declaration, require the approval of all or some of the unit owners, or for any other reasonable purpose. Special meetings shall be called by written notice, and requested by a majority of the management committee, or by unit owners representing at least one-third (1/3) in interest of the undivided ownership of the common areas and facilities and delivered to all unit owners not less than five (5) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting, and the matters to be considered.

3.4. Robert's Rules of Order (latest edition) shall govern the conduct of the association's meeting when not in conflict with the declaration or these bylaws.

#### 4. Officers.

4.1. All officers and employees of the association shall serve at the will of the management committee. The officers shall be a president, vice-president, secretary and treasurer. The management committee may appoint such other assistant officers as the management committee may deem necessary. No officer shall receive compensation for serving as such. Officers shall be annually elected by the management committee and may be removed and replaced by the management committee.

4.2. The president shall be the chief executive of the management committee and shall preside at all meetings of the unit owners and of the management committee and may exercise the powers ordinarily allocable to the presiding officer of an association, including the appointment of committees. The president shall exercise general supervision over the property and its affairs. He shall sign on behalf of the association all conveyances, mortgages and contracts of material importance to its business. He shall do and perform all acts which the management committee may require.

4.3. The vice-president shall take place of the president and perform his duties whenever the president shall be absent or unable to act. If neither the president or the vice-president is able to act, the management committee shall appoint some other member thereof to do so on an interim basis. The vice-president shall also perform such other duties as shall from time to time be prescribed by the management committee.

4.4. The secretary shall keep minutes of all proceedings of the management committee and of the meetings of the association and

shall keep such books and records as may be necessary and appropriate for the records of the unit owners and the management committee.

4.5. The treasurer shall have the responsibility for the funds and securities of the management committee and shall be responsible for keeping full and accurate accounts of all receipts and all disbursements in books belonging to the Bench Mark Village Home Owner's Association. He shall be responsible for the deposit of all monies and all other valuable effects in the name and to the credit of the management committee in such depositories as may be from time to time designated by the management committee.

5. Common Expenses; Assessments.

5.1. All assessments shall be made in accordance with the general provisions of paragraph 22 of the declaration.

5.2. Within thirty (30) days prior to the annual meeting of the association, the management committee shall estimate the common expenses and capital contributions for the following year. The estimated capital contributions may include such amounts as the management committee may deem proper for general working capital, for the general operating reserve, for a reserve fund for replacements and major maintenance and shall take into account any expected income, surplus or deficit in the common expenses for any prior year. These estimated capital contributions and common expenses shall be presented at the annual meeting and thereafter shall be assessed on a monthly basis to the unit owners in accordance with the declaration. If the estimated common expenses prove inadequate for any reason, including nonpayment of any unit owner's assessments, the management committee may, by resolution duly adopted, make additional assessments, which shall be assessed to the unit owners in the same manner as the estimated common expenses. Each unit owner shall be obligated to pay to the management committee assessments made pursuant to this paragraph on or before the first day of each month, or in such other reasonable manner as the management committee shall designate. The funds received by the management committee from assessments shall be kept in either capital accounts or in the common expense fund and shall be expended by the management committee only in accordance with the provisions of the act, the declaration and these bylaws.

5.3. Every determination, by the management committee with respect to common expenses and common expenditures necessary to maintain the property, that is made within the bounds of the act, the declaration, and these bylaws, shall be final and conclusive as to the unit owners and shall be deemed necessary and properly made for such purposes.

5.4. The failure by the management committee before the expiration of any year, to estimate the common expenses as required herein, shall not be deemed a waiver or modification in any respect.

of the provisions of the declaration or these bylaws or a release of the unit owner from the obligation to pay any past or future assessments, and the estimated common expenses fixed for the previous and current year shall continue until a new estimate is fixed.

5.5. No unit owner may exempt himself from liability for common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his unit.

5.6. The treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the common areas and facilities, specifying and itemizing the maintenance, repair and replacement expenses of the common areas and facilities and any other expenses incurred. Such record shall be available for examination by the unit owners during regular business hours. In accordance with the actions of the management committee assessing common expenses against the units and unit owners, the treasurer shall keep an accurate record of such assessments and of the payments thereof by each unit owner.

5.7. All common expense assessments shall be a separate, distinct and personal liability of the owner of the unit at the time each assessment is made. The management committee shall have the rights and remedies contained in the act and in the declaration to enforce the collection of assessments for common expenses.

5.8. Any person who shall have entered into a written agreement to purchase a unit shall be entitled to obtain a written statement from the treasurer setting forth the amount of unpaid assessments charged against the unit and its owners, and if such statement does not reveal the full amount of the unpaid assessments as of the date it is rendered, neither the purchaser nor the unit shall be liable for the payment of an amount in excess of the unpaid assessments shown thereon, provided that the former unit owner grantor shall remain so liable. Any such excess which cannot be promptly collected from the former unit owner grantor shall be reassessed by the management committee as a common expense to be collected from all unit owners, including without limitation the purchaser of the unit, his successors and assigns. The new unit owner shall and the former unit owner shall not be liable for any assessments made after the date of transfer of title to a unit, even though the common expenses for the expenses incurred or the advances made by the management committee for which the assessment is made relate in whole or in part of any period prior to that date.

5.9. In the event that title to a unit is transferred at sheriff's sale pursuant to execution upon any lien against the unit, the management committee shall give notice in writing to the sheriff of any unpaid assessments for common expenses which are a lien against the unit, and for any expenses of or advances by the management committee which have not theretofore been reduced to a lien, which shall be paid out of the proceeds of the sale prior to the distribution of any balance to the former unit owner against whom the execution was issued. The purchaser at such sheriff's sale and the unit involved

shall not be liable for unpaid assessments for common expenses and for any expenses of or advances by the management committee which became due prior to the sheriff's sale of the unit. Any such unpaid assessments which cannot be promptly collected from the former unit owner shall be reassessed by the management committee as a common expense to be collected from all of the unit owners including the purchaser who acquired title at the sheriff's sale, his successors and assigns. To protect its rights to collect unpaid assessments for common expenses which are a lien against a unit, and for any expenses of and advances by the management committee, the management committee may on behalf of all the unit owners, purchase the unit at sheriff's sale, provided such action is authorized by the affirmative vote of a majority of the members of the management committee.

5.10. In addition to the statements issuable to purchasers of units, the management committee shall provide a current statement of unpaid assessments for common expenses and for any expenses of and advances by the management committee in respect of the unit, to the unit owner, to any person who shall have entered into a binding agreement to purchase the unit and to any mortgagee on request at reasonable intervals.

5.11. In all cases where, all or part of any assessments for common expenses and for any expenses of and advances by the management committee cannot be promptly collected from the persons or entities liable therefor under the act, declaration or bylaws, the management committee shall reassess the same as a common expense, without prejudice to its rights of collection against such persons or entities.

## 6. Litigation.

6.1. If any action is brought by one or more but less than all unit owners on behalf of the association and recovery is had, the plaintiff's expenses, including reasonable counsel's fees, shall be a common expense; provided, however, that if such action is brought against the unit owners or against the management committee, the officers, employees, or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the unit owners, the plaintiff's expenses, including counsel fees, shall not be charged to or borne by the other unit owners, as a common expense or otherwise.

6.2. Complaints brought against the association, the management committee or the officers, employees or agents thereof, in their respective capacities as such, or the property as a whole, shall be directed to the management committee, which shall promptly give written notice thereof to the unit owners and any mortgagees and shall be defended by the management committee, and the unit owners and mortgagees shall have no right to participate other than through the management committee in such defense. Complaints against one or more, but less than all unit owners shall be directed to such unit owners, who shall promptly give written notice thereof to the management committee and to the mortgagees affecting such units, and shall be defended by such unit owners.

## 7. Abatement and Enjoinment of Violations by Unit Owners.

The violation of any house rules or administrative rules or regulations adopted by the management committee or the breach of any provision contained herein, or the breach of any provision of the declaration, shall give the management committee the right, in addition to any other rights set forth in these bylaws:

7.1. To enter the unit in which or as to which such violation or breach exists and to similarly abate and remove, at the expense of the defaulting unit owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the management committee shall not thereby be deemed guilty in any manner of trespass; or

7.2. To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

## 8. Accounting.

8.1. The books and accounts of the association shall be kept in accordance with generally accepted accounting procedures under the direction of the treasurer.

8.2. At the close of each fiscal year, the books and records of the management committee shall be audited by an accountant approved by the association.

8.3. The books and accounts of the association shall be available for inspection at the office of the association by any unit owner or his authorized representative during regular business hours.

## 9. Special Committees.

The management committee by resolution may designate one or more special committees, each committee to consist of two (2) or more unit owners, which to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the management committee. Such special committees shall keep regular minutes of their proceedings and report the same to the management committee when required. The members of such special committee or committees designated shall be appointed by the management committee or the president. The management committee or the president may appoint unit owners to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.



10. Amendment of Bylaws.

These bylaws may be amended by a two-thirds (2/3) affirmative vote of the association at a meeting duly called for such purpose. Upon such an affirmative vote, the management committee shall acknowledge the amended bylaws, setting forth the fact of the required affirmative vote of the unit owners and the amendment shall be effective upon recording.

11. Severability.

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

12. Captions.

The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these bylaws nor the intent of any provision hereof.

13. Effective Date.

These bylaws shall take effect upon recording of the declaration of which they are a part.