

83  
19

2

DECLARATION OF CONDOMINIUM  
(Including Association Bylaws)  
CANYON VILLAGE CONDOMINIUMS  
A Condominium Project (Expandable)  
City of Provo, Utah County, Utah

ENT 12727:2005 PG 1 of 19  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2005 Feb 07 3:33 pm FEE 83.00 BY SFS  
RECORDED FOR PROVO CITY CORPORATION

THIS DECLARATION OF CONDOMINIUM is made this 15<sup>th</sup> day of December, 2004, by Craig Peay Construction, Inc., and Canyon Village Investments, LLC, a Utah limited liability company (the "Declarant") pursuant to the provisions of Sections 57-8-1 et seq. of the Utah Code (1953), as amended, known as the Condominium Ownership Act (the "Act").

- A. Declarant is the record owner of that certain Tract of land, more particularly described in ARTICLE II hereof.
- B. Declarant has constructed, or is in the process of constructing, upon such Tract the Condominium Project including Units and other improvements in accordance with the plans and drawings reflected in the Record of Survey Map.
- C. Declarant desires, by recording this Declaration and the Record of Survey Map in the Public Records, to submit such Tract and all improvements constructed thereon to the provisions of the Act as a Condominium Project to be known as Canyon Village Condominiums.
- D. Declarant intends to sell to various purchasers fee title to the individual Units contained in the Project, together with an undivided percentage interest in and to the Common Areas and Facilities appurtenant to such Units, subject to the covenants, conditions, restrictions, reservations, and easements herein set forth.

NOW, THEREFORE, pursuant to the foregoing purposes, Declarant hereby declares as follows:

**ARTICLE I  
DEFINITIONS**

When used in this Declaration (including that portion hereof captioned "Recitals") each of the following terms used shall have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act:

**Act** shall mean and refer to the Condominium Ownership Act, Title 57, Chapter 8, Utah Code, (1953), as the same may be amended from time to time, including any successor statutory provisions thereof.

**Assessment** shall mean the amount which is to be levied, and assessed against each Owner and the Owner's Unit and paid to the Association for Association expenses, whether Annual, Special, or Specific Assessments ( as later defined).

**Association of Unit Owners** or **Association** shall mean and refer to the Unit Owners within the Project acting as a group in accordance with this Declaration and the Act.

**Building** or **Buildings** shall mean and refer to a structure or structures containing Units and comprising a part of the Project.

**Bylaws** shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in ARTICLES X, XI and XII (as authorized by the Act).

**Common Areas** or **Common Areas and Facilities** shall mean, refer to and include:

(a) The real property and interests in real property which this Declaration submits to the provisions of the Act, including the entirety of the Tract and any landscaping, sidewalks, walkways, stairs and landings, fencing, parking areas, private drives or roadways, play area and exterior Building surfaces, including roofs, but excluding all Condominium Units as herein defined;

(b) Those Common Areas and Facilities and Limited Common Areas and Facilities specifically set forth and designated as such on the Map;

(c) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management including any central services such as power, water, gas and light; and

(d) All Common Areas and Facilities and all Limited Common Areas and Facilities as defined in the Act, whether or not expressly listed herein or on the Map.

**Common Assessment** shall mean the charge by the Association against each Owner and the Owner's Unit to pay the Association's common expenses, including repairs, maintenance and management of the Common Area.

**Common Expenses** shall mean and refer to all items and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act this Declaration and such Rules and Regulations and other determinations and agreements pertaining to the Condominium project as the Management Committee or the Association may from time to time adopt.

**Condominium Project or Project** shall mean and refer to Canyon Village Condominiums as the same shall exist at any time.

**Declarant** shall mean Craig Peay Construction, Inc., and Canyon Village Investments , LLC, a Utah limited liability company, its successors and assigns, if any, as owner and developer of the Project.

**Declaration** shall mean and refer to this Declaration of Condominium pertaining to the Project as such Declaration may hereafter be supplemented or amended in accordance with the Act and the provisions hereof. Any ambiguities, omissions, and/or conflicts herein shall be construed to comply with the provisions of the Act.

**Limited Common Areas and Facilities or Limited Common Areas** shall mean and refer to those Common Areas designated in this Declaration or the Act or shown on the Map as reserved for the exclusive use of a certain Unit or Units to the exclusion of other Units.

**Management Committee or Committee** shall mean and refer to the Committee as provided in this Declaration charged with and having the responsibility and authority to administer the Project on behalf of the Association of Unit Owners and to make and to enforce reasonable Rules and Regulations covering the operation and maintenance thereof.

**Manager** shall mean any person or entity appointed or employed as a Manager by the Committee.

**Mortgage** shall mean a recorded mortgage or deed of trust encumbering a Unit; and Mortgagee shall mean the mortgagee or beneficiary named in a Mortgage.

**Owner or Unit Owner** shall mean and refer to the person or persons owning record title to a Condominium Unit. The Declarant shall be deemed to be the Owner of all completed but unsold Units. In the event a Unit is the subject of an executory contract of sale, the buyer shall, unless the seller and the buyer have otherwise agreed and have informed the committee in writing of such agreement, also be considered the Unit Owner for all purposes.

**Public Records** shall mean and refer to the Office of the Utah County Recorder, Provo, Utah.

**Record of Survey Map, Survey Map or Map** shall mean and refer to the Record of Survey Map

recorded concurrently herewith in the Public Records, Provo City, Utah County, Utah, consisting of one sheet prepared by Dudley & Associates, Inc., a Utah Registered Land Surveyor, as said Map may hereafter be modified or amended in accordance with law. Such terms shall also be applicable to future phasing plats annexed into the Project as provided in ARTICLE II.

**Rules and Regulations** shall mean and refer to those Rules and Regulations authorized to be promulgated to Unit Owners from time to time by the Management Committee pursuant to Section 10.09.

**Specific Assessment** shall mean a charge against a particular Owner or the Owner's Unit in compliance with the provisions of this Declaration, the Bylaws or Rules and Regulations of the Association, or any other charge designated as a Specific Assessment in this Declaration, the Bylaws, or Rules and Regulations of the Association, together with costs, interest, attorneys fees, and other charges payable by such Owner pursuant to the provisions of this Declaration.

**Tract** shall mean and refer to the real property described in Section 2.01, which ARTICLE II of this Declaration submits to the Act.

**Unit or Condominium Unit** shall mean and refer to any one of the separately numbered and individually described residential living Units in the Project as designated on the Map and intended for independent use as defined in the Act, together with the undivided interest in and to the Common Areas and Facilities appertaining to that Unit, and shall include anything located within or without said Unit but designated and designed to serve only that Unit such as built ins, appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, but specifically excluding the exterior walls and surfaces of Buildings and Units, interior common or party walls, floor joists, foundations and roofs. Fixtures and the like shall also be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim consisting of, among other things and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installation constituting part of a particular Unit or serving only that Unit, and any structural members of any other property of any kind, including fixtures and appliances within any Unit which are not removable without jeopardizing the soundness, safety or usefulness of the remainder of the Building within which the Unit is situated, shall be considered part of the Unit.

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

## ARTICLE II

### SUBMISSION OF THE PROJECT AND ANNEXATION

**2.01 Submission, Description, and Reservations.** Declarant hereby submits to the provisions of the Act the following described real property situated in the City of Provo, Utah County, Utah.

A tract of land described as:

Commencing at a point located North 89°05'28" East along the Section line 291.84 feet and South 1010.03 feet from the North quarter corner of Section 7, Township 7 South, Range 3 East Salt Lake Base and Meridian; thence North 89°33'58" East along a fence line 168.38 feet; thence South 03°55'00" East 54.45 feet; thence South 88°38'27" East 259.85 feet; thence South 67°26'53" East along a fence line 5.84 feet; thence South 89°49'42" East along a fence line 47.19 feet; thence South 05°34'34" East along a fence line 65.77 feet; thence North 89°36'30" West 2.21 feet; thence South 05°21'30" East 169.77 feet to the North boundary line of 400 South Street; thence South 88°25'21" West along the Northerly boundary line of 400 North Street 186.18 feet; thence North 03°30'00" West along a fence line 126.14 feet; thence North 89°46'05" West along a fence line 208.30 feet to the Easterly boundary line of State Street; thence North 29°41'20" West along the Easterly boundary line of State Street 200.94 feet to the point of beginning.

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.

RESERVING UNTO DECLARANT, however such easements and rights of ingress and egress over, across, through, and under the above described Tract and any improvements (including Buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration: (i) to construct and complete the Buildings and Units and all of the other improvements described in this Declaration or in the Record of Survey Map recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; and (ii) to improve portions of such property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, such real property 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 10 years after the date on which this Declaration is recorded in the Public Records.

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 reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above described real property or any portion thereof, including without limitation, any mortgage (and nothing in this paragraph shall be deemed to modify or amend such mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Record of Survey Map or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the said real property at such time as construction of all Project improvements is complete, and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities; AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS, AND RESTRICTIONS CONTAINED IN THIS DECLARATION.

#### **2.02 Division into Condominium Units, Minimum and Maximum Ownership Interests.**

The Project is hereby divided into 38 Condominium Units as set forth on the Map, each such Condominium Unit consisting of a Unit and an appurtenant undivided but equal interest in and to the Common Areas and Facilities. Such Units comprise the minimum anticipated number of Units in the Project and give each Owner a maximum 1/38th (or 3.8%) undivided interest in the Common Areas and Facilities.

### **ARTICLE III**

#### **IMPROVEMENTS**

**3.01 Improvements.** The improvements included in the Project are now or will be located on the Tract and all of such improvements are described on the Map, including the number of Units which are to be contained in the Buildings which comprise a part of such improvements, the dimensions of the Units, and other significant facts relating to such Buildings, Units and Common Areas and Facilities.

**3.02 Description of Buildings, Parking and Storage Units.** There will be three buildings with four Units each. One building with two Units, and two buildings with twelve Units, six buildings in total. The twelve Unit buildings have six three bedroom and six two bedroom Units. The four Unit buildings have two three bedroom and two, two bedroom. The two Unit building has two three bedroom Units. Common Area stairways lead to each floor which provide access to each of the Units on each floor. The twelve Unit buildings are one level with two bathrooms, a kitchen, living and dining area. All the other buildings have two story Units. All of these townhome Units have their own private back yards. The construction consists of cement siding over wood frame, and asphalt shingle roof. Each Unit in a particular building is basically of the same size and configuration and each two bedroom Unit is basically of the same size and configuration. Each Unit has an appurtenant parking stall assigned to it as reflected on the Map.

**3.03 Description and Legal Status of Units.** The Map shows the Unit Number of each Unit, its location and dimensions from which its areas may be determined, the Limited Common Area if any, which are reserved for its use, and the Common Areas of the Project. Each Unit shall be legally designated and described by a Unit Number.

**3.04 Common and Limited Common Areas.** The Common and Limited Common Areas contained in the Project are defined in Article I hereof and described and identified on the Map. The Common Areas will consist of, but not be limited to, driveways, parking areas, sidewalks, fencing, and landscaped areas throughout the Project. Neither the ownership of undivided interests in and to the Common Areas nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which they appertain, and even though not specifically mentioned in the instrument of conveyance, such percentage of undivided interest and such right of exclusive use shall automatically accompany the conveyance of the Unit to which they relate.

**3.05 Conveyance Description of a Unit.** Each conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit shall describe that Unit by the Unit Number shown on the Map with the appropriate reference to the Map and to this Declaration, as each shall appear in the Public Records and in substantially the following form:

Unit \_\_\_\_\_ Canyon Village Condominiums as the same is identified in the Record of Survey Map therefor recorded in Utah County, Utah as Entry No. \_\_\_\_\_ (as said Record of Survey Map may have heretofore been amended) and in the Declaration of Condominium (including Association Bylaws) of Canyon Village Condominiums recorded in Utah County, Utah as Entry No. \_\_\_\_\_, (as said Declaration may have heretofore been amended), TOGETHER with the undivided ownership interest in and to the Common Areas and Facilities which is appurtenant to said Unit as more particularly described in said Declaration (as said Declaration may have heretofore been amended or supplemented).

Such description will be construed to describe the Unit together with an equal undivided ownership interest in and to the Common Areas and Facilities as the same are established and identified in the Declaration and on the Map, and to incorporate all the rights incident to ownership of a Unit and all the limitations of such ownership as described in this Declaration. Each such conveyance shall be subject to all of the provisions of this Declaration.

## ARTICLE IV

### NATURE AND INCIDENTS OF OWNERSHIP

**4.01 Holding Title.** Title to a Unit shall be in fee simple and may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including but without limitation, joint tenancy or tenancy in common. An Owner's right to sell or otherwise convey title to such Owner's Unit shall not be subject to any right of first refusal or similar restrictions in favor of Declarant or the Association.

**4.02 No Separation.** No part of a Unit, nor any part of the legal rights comprising ownership of a Unit may be separated from any other part thereof during the period of condominium ownership described herein, so that each Unit, the undivided interest in and to the Common Areas appurtenant to such Unit, and the exclusive right to use and occupy the Limited Common Areas appurtenant to each Unit, shall always be conveyed, devised, encumbered and otherwise effected only together and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance or other disposition of a Unit or any part thereof, shall constitute a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration.

**4.03 Membership in Association.** Each Unit Owner shall be a member of the Association of Unit Owners. Membership in the Association shall be mandatory, shall be appurtenant to, and shall not be separated from the Unit to which it appertains.

**4.04 Undivided Interest in Common Areas.** Each Unit Owner shall have, for each Unit owned, an equal, undivided ownership interest in and to the Common Areas as set forth in Section 2.02.

**4.05 No Partition.** The Common Areas and Facilities shall be owned in common by all the Owners of Units and no Unit Owner may bring action for partition thereof.

**4.06 Use of Common Areas and Limited Common Areas.** Subject to the limitations contained in this Declaration, each Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas and shall have the exclusive right to use and enjoy the Limited Common Areas which appertain to his Unit as designated herein or on the Map or inferred by the Act.

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

**4.8 Assessments and Rules Observance.** Each Unit Owner is responsible for the prompt payment of any Assessments and charges levied by the Association as set forth in this Declaration, and for the observance of the Rules and Regulations promulgated by the Management Committee. Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Unit to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration following such transfer.

**4.09 Unit Maintenance.** Each Owner shall at his own cost and expense maintain, repair, paint, re-paint, tile, paper or otherwise furnish and decorate the interior walls and trim the interior surfaces of the walls, ceilings, floors, and windows and doors forming the boundaries of his Unit and all walls, ceilings, floors, windows and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixture, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in, or connected with his Unit.

**4.10 Maintenance of Limited Common Areas.** Each Owner shall keep the Limited Common Areas designed for use in connection with his Unit in a clean, sanitary and attractive condition at all times notwithstanding any duty or obligation of the Committee, acting for the Association, to maintain and repair Common and Limited Common Areas pursuant to the provisions of ARTICLE X.

## ARTICLE V

### EASEMENTS

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

**5.2 Repair of Common Areas.** If any of the Common Areas are or may be located within any of the Units or may be conveniently accessible only through the Units, the Owners of the other Units shall have the irrevocable right to be exercised by the Committee as their agent to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or another Unit or Units. The Committee shall also have such rights independent of the agency relationship. Damage to the interior of any part of the Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the instance of the Committee or of Unit Owners, shall be an expense of all

the Unit Owners and assessed proportionately, provided, that if such damage is the result of negligence of the Owner of the Unit members of his family, his or their guests or invitees, then such Owner shall be financially responsible for all such damage. Amounts owing by Owners pursuant hereto shall be collected by the Committee by Specific Assessment pursuant to this Declaration.

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

**5.04 Utility Services.** There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all public utilities, including but not limited to, water, sewer, gas, telephone, electricity, cable and other utility services.

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

## ARTICLE VI

### RESTRICTIONS

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

**6.02 Residential Use.** The Tract is zoned residential and is restricted to single family residential use pursuant to applicable provisions of Provo City zoning ordinances. The term "residential" as used herein shall be held and construed to exclude individual room letting or boarding and commercial and professional uses which are not the subject of a permit granted by Provo City pursuant to its then current home occupation ordinance. Each Unit and Owner is subject to the uses and restrictions imposed by such zoning (including any parking restrictions).

**6.03 Leasing Restrictions.** No lease of any Unit shall be for less than the whole thereof nor for an initial term of less than one year. All leases shall be subject to the provisions of this Declaration whether or not stated therein.

**6.4 Fireplaces; Window Coolers.** No Unit within the Project shall contain any fireplace or any window mount evaporative coolers or air conditioners.

**6.05 Declarant's Right to Sell Units.** Notwithstanding anything contained herein to the contrary, until Declarant has completed and sold all of the Units within the Project, the Unit Owners who have purchased Units from Declarant shall not interfere with the completion of the contemplated improvements and sale of the remaining Units. Declarant may make such use of the unsold Units and the Common Areas as may facilitate such completion and sale, including but not limited to, the maintenance of a sales office, the showing of the Units, and the display of signs.

**6.06 Signs.** No signs or other advertising shall be displayed which are visible from the exterior of any Unit or on the Common Areas, including "For Sale" signs, except in conformity with the Rules and Regulations promulgated by the Management Committee.

**6.07 Parking.** The parking of recreational vehicles or boats or other than operational passenger vehicles within the Project is prohibited.

## INSURANCE

**7.01 Insurance and Bonds.** The Management Committee shall secure or caused to be secured and maintained at all times the following insurance and bond coverage with respect to the Project:

(a) A policy or policies of fire and casualty insurance with extended coverage endorsement, for the full insurable replacement value of the entire Project including Units **but not the contents thereof**. Such policy or policies shall be made payable to the Committee and all persons holding an interest in the Project or any of the Units, as their interests may appear.

(b) An appropriate fidelity bond coverage for any person or entity handling funds of the Management Committee, including, but not limited to, employees of a professional manager, if any, the amount of such coverage to be not less than the estimated maximum of funds, including reserves, in the custody of such person or entity at any given time during the bond term, all as determined by the Management Committee, but in no event less than a sum equal to three months aggregate Annual Assessments on all Units, plus reserve funds.

(c) A policy or policies insuring the Committee, the Manager if any, and the Unit Owners against any liability incident to the ownership, use or operation of the Project or of any Unit, which may arise among themselves, to the public, and to any invitees or tenants of the Project or of the Unit Owners. Limits of liability under such insurance shall not be less than \$150,000 for any person injured, \$500,000 for all persons injured in any one accident, and \$500,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

**7.02 Additional Insurance Provisions.** The following additional provisions shall apply with respect to such insurance:

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

(b) The Committee shall have the authority to adjust losses.

(c) Insurance secured and maintained by the Committee shall not be brought into contribution with insurance held by the individual Unit Owners or their Mortgagees.

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

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

(f) All insurance required to be maintained hereunder by the Committee shall be procured from a company or companies authorized to do business in the State of Utah and which hold a financial rating of Class A or better from Best's Key Rating Guide.



(g) Notwithstanding anything herein contained to the contrary, insurance coverages must be in such amounts and meet other requirements of the Federal National Mortgage Association and the Department of Veterans Affairs, if Units in the Project are sold and qualified through FHA or VA mortgage loan guaranties.

**7.03 Unit Owners Contents Policies.** Each Unit Owner shall be responsible to purchase and maintain in force a condominium owner contents policy (State Farm H06 or equivalent) (the "contents policy"). All claims for damage to a Unit must first be submitted by the Owner to his insurer on his contents policy. The Committee will not be required to file claims on its Condominium Project policy for any damage that either should or would have been covered under an Owner's contents policy.

### ARTICLE XIII

#### DAMAGE, DESTRUCTION AND RESTORATION

In the event of damage to or destruction of part or all of the improvements in the Condominium Project, the following procedures will apply:

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

(b) If less than seventy-five percent (75%) of the Projects improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out upon approval of at least 50 percent of the affected Unit Owners. All affected Owners shall be assessed equally for any deficiency through Special Assessments.

(c) If seventy-five percent (75%) or more of the Projects improvements are destroyed or substantially damaged, and if proceeds of insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if the Unit Owners within one hundred (100) days after the destruction or damage by a vote of at least seventy-five percent (75%) elect to repair or reconstruct the affected improvements, restoration and assessment therefor shall be accomplished in the manner directed under subsection (b), above.

(d) If seventy-five percent (75%) or more of the Projects improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage and by a vote of at least seventy-five percent (75%), elect to repair or reconstruct the affected improvements, the Management Committee shall promptly record in the Public Records a notice setting forth such facts. Upon the recording of such notice, the provisions of Section 57-8-31 (1) through (4) of the Act shall apply and govern the rights of all parties having an interest in the Project or any of the Units.

(e) Any reconstruction or repair which is required to be carried out by this Article shall be accomplished at the instance and direction of the Management Committee. Any determination which is required to be made by this Article regarding the extent of the damage to or destruction of Project improvements, shall be made by three qualified appraisers selected by the Management Committee. The decision of any two such appraisers shall be conclusive.

### ARTICLE IX

#### MORTGAGES AND MORTGAGEE PROTECTION

**9.01 Notice of Mortgage.** Any Owner who mortgages his Unit shall furnish the Committee the name and address for such Mortgagee, and the Committee shall maintain such information in a book entitled "Mortgages of Units." The Committee shall report to such Mortgagee any unpaid assessments due from the Owner of such Unit at the same time as the Committee makes demand on the Owner thereof for payment of such Assessment. Each Mortgagee shall also be entitled to written notification from the Committee of any other default by its Owner-Mortgagor in the performance of such Owner's obligations

under the term and provisions of this Declaration which shall not have been cured within 30 days after written notice to such Owner-Mortgagor by the Committee specifying such default.

**9.02 Right to Examine.** A Mortgagee shall have the right to examine the books and records of the Association and Committee upon request and to require annual reports of the financial status of the Association.

**9.03 Notice of Damage.** In the event of substantial damage to or destruction of any Unit or any part of the Common Areas, the Mortgagee of any Unit shall be entitled to timely written notice of any such damage or destruction. No Owner or other party shall be entitled to priority over such Mortgagee with respect to the distribution to such Unit of any insurance proceeds.

**9.04 Notice of Default.** Any Mortgagee is entitled to written notification from the Management Committee of any default by the Owner of such Unit in the performance of any obligation under the Declaration which is not cured within 30 days.

**9.05 Effect of Foreclosure on Liens.** Each Mortgagee of a Unit who comes into possession of such Unit by virtue of foreclosure of the Mortgage thereon, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any unpaid claims or assessments and charges against the Unit which accrued prior to the time such holder comes into possession of the Unit, except for claims for a prorated share of such assessments or charges resulting from a prorated reallocation of such assessments or charges to all Units in the Project, including the mortgaged Unit.

**9.06 General Mortgage Protection.** Unless at least seventy-five percent (75%) of the Mortgagees (based on one vote for each Mortgage owned) of Units have given their prior written approval, neither the Management Committee nor the Association of Unit Owners shall:

- (a) By act or omission, seek to abandon or terminate the Project except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;
- (b) Change the pro-rata interest or obligations of any Unit for (i) purposes of levying Assessments or charges or allocating distributions hazard insurance proceeds or condemnation awards or (ii) determining the pro-rata share of ownership of each Unit in the Common Areas;
- (c) Make any material amendment to the Declaration or to the Bylaws of the Association including but not limited to, any amendment which would change the percentage interest of the Unit Owners in the Common Areas;
- (d) By act or omission, seek to amend, partition, subdivide, encumber, sell, or transfer the Common Areas. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this Section; or
- (e) Use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by the Act in cases of substantial loss to the Units and/or the Common Areas of the Project.

## ASSOCIATION BYLAWS

**PURSUANT TO SECTION 57-9-15 OF THE ACT, THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES X, X1 AND X12. THE MISCELLANEOUS PROVISIONS OF ARTICLE XIII OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE BYLAWS PROVISIONS AND THE OTHER PROVISIONS OF THIS DECLARATION.**

**BYLAWS - MANAGEMENT COMMITTEE**

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

- (a) The authority without the vote or consent of the Unit Owners or of any other person, except for Mortgagees if required by the terms of their Mortgage, to grant or create on such reasonable terms as it deems advisable, utility and similar easements over, under, across, and through the Common Areas and Facilities;
- (b) The authority to execute and record, on behalf of all Unit Owners, any amendments to the Declaration or the Map which have been approved by the vote or consent of Unit Owners necessary to authorize such amendments as set forth in Section 13.04 of the Declaration;
- (c) The power to sue and be sued;
- (d) The authority to enter into contracts relating to the Common Areas and other matters over which it has jurisdiction, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the agreement has been obtained;
- (e) The power and authority to convey or transfer any interest in real property, so long as the vote or consent necessary under the circumstances has been obtained, including that of any Mortgagee if required by the terms of its Mortgage,
- (f) The power and authority to purchase, or otherwise acquire, and accept title to, any interest in real property so long as such action has been authorized by any vote or consent which is necessary under the circumstances;
- (g) The authority to promulgate such reasonable Rules and Regulations, and establish such procedures as may be necessary or desirable to aid the Committee in carrying out its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners; and
- (h) The power and authority to perform any other acts and to enter into any other transactions, subject to the rights of the Management Committee, which may be reasonably necessary for the Management Committee to perform its functions as agent for the Unit Owners. Any instrument executed by the Management Committee relating to the Common Areas of the Project that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and or value relies upon such instrument.

**10.02 Composition of Committee: Declarant Control.** Until the happening of the first of the following two events, the Management Committee shall be composed of three members who need not be Owners, selected solely by Declarant:

- (a) The expiration of 120 days following the conveyance of title to Units representing eighty percent (80%) of the total outstanding Association votes; or
- (b) The expiration of four years after the first conveyance of title to any Unit purchaser.

Provided, however, that Declarant may waive such right in whole or in part at any time prior to the occurrence of either or both of the aforesaid events by (i) notifying Unit Owners in writing of such waiver, and (ii) filing in the Public Records a written notice of waiver of such. right whereupon Unit Owners shall promptly hold a meeting to elect a new Management Committee, it being established hereby that the control of the Unit Owners in the Management Committee shall automatically vest 60 days

following the date such waiver is recorded by Declarant. In the event a Committee seat which was filled by an appointee of or by Declarant becomes vacant, Declarant has the right to select a replacement member to sit on the Committee for the balance of the term associated with the vacated seat. In all other cases of vacancy the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected.

**10.03 Management Committee: Owner Control (Composition, Election, Vacancies).** Subject to the provisions of Section 10.02, above, the Committee shall be composed of three members each to be elected to a one year term. Members shall serve on the Committee until their successors are elected. Committee members must be Owners or if not, then officers, directors, agents or employees of non-individual Owners designated by appropriate written document as determined by the Committee. Vacancies in the Committee membership may be filled by appointment by the remaining members or member of the Committee and said appointees shall serve until the next annual meeting when their successors (appointees may succeed themselves) shall be elected for the unexpired term of the member they were appointed to replace.

**10.04 Rights and Duties.** The Management Committee, subject to the rights and duties of the Unit Owners, the Declaration, and the Bylaws, shall be responsible for the general management and administration of the Project. It is understood that the Committee has the obligation to maintain the Common Areas. However, and notwithstanding anything contained herein to the contrary, in the event of the failure or refusal of the Committee to maintain all the Common Areas of this Project, as contemplated in this Declaration, then the Unit Owners shall maintain the same.

**10.05 Exterior Maintenance.** In connection with its duty to maintain Common Areas and Facilities, the Committee will provide maintenance upon the exterior of each Building and Unit and the Common Area as follows: Paint, repair, replace, and care for Roofs, gutters, downspouts, fencing, exterior building surfaces and central Limited Common Area stairways, trees, shrubs, grass, walks, walkways, stairs, driveways, parking areas and any other exterior improvements except Unit glass surfaces.

**10.06 Right of Delegation to Manager.** The Management Committee may carry out any of its functions which are capable of delegation through a Manager. The Manager so engaged shall be responsible for managing the Common Areas and shall, to the extent permitted by law and the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. Any such management agreement shall be terminable for cause upon 30 days notice and may run for a reasonable period of from one to three years, renewable by consent of the Association and the Committee. A management agreement negotiated by Declarant shall not exceed two years duration.

**10.07 Payment for Services, Etc.** The Management Committee may obtain and pay for the services of such personnel as the Management Committee shall determine to be necessary or desirable for the proper operation of its function in the Project, including the enforcement of this Declaration. The Committee may also hire other persons to furnish snow removal, ground maintenance and other common services to the Project

**10.08 Personal Property Ownership and Use.** The Management Committee may acquire and hold for the use and the benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in and to the Common Areas and transferable only with the transfer of a Unit.

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

**10.10 Limitation of Liability.** No member of the Management Committee acting in good faith shall be personally liable to any Unit Owner, guest lessee or any other person for any error or omissions of the Association, its representatives and employees, the Management Committee, any subcommittees of the Committee or the Manager.

**10.11 Capital Improvements.** The Management Committee shall make no structural alteration, capital additions to, or capital improvements of the Common Areas without the prior approval of the Unit Owners holding at least sixty Percent (60%) of the voting power.

**10.12 Extended Rights.** The Management Committee may exercise any other right or privilege given to it expressly by the Declaration, these bylaws or by law and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

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

**10.14 Committee Meetings, Quorum and Committee Action.** The Management Committee shall establish its rules for Committee meetings, whether regular or special. A majority of current Committee members shall constitute a quorum. The action of a majority of those Committee members attending a meeting at which a quorum is present shall be sufficient to constitute the action of the Committee. Action by consent shall require the unanimous written consent of all current Committee members.

## ARTICLE XI

### BYLAWS - ASSOCIATION VOTING, MEETINGS AND OFFICERS

**11.01 Voting.** There shall be one vote for each Unit as reflected on a recorded Map.

**11.02 Multiple Ownership.** If a Unit has more than one Owner, the vote relating to such Unit shall be exercised as such Owners may determine among themselves, but in no event shall more than the total vote attributable to such Unit be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such co-owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the applicable Unit unless an objection is made at the meeting or in writing by another co-owner of the same Unit in which event no vote will be counted with respect to such Unit except to determine the presence or absence of a quorum.

**11.03 Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Management Committee in its notice therefor.

**11.04 Annual Meetings.** Annual meetings of the Members of the Association shall be held each year beginning in the year 2002, on such month, day and time as is set forth in the notice therefor, provided, that after the first such annual meeting, a month other than the month of the initial meeting may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected members of the Management Committee, as needed, pursuant to the provisions of Section 10.03 of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before such meeting.

**11.05 Special Meetings.** The President shall call a special meeting of the Owners as directed by a resolution of the Management Committee or on a petition signed by Owners holding at least thirty percent (30%) of the total votes of the Association having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by a majority of Unit Owner present, either in person or by proxy.

**11.06 Notice of Meetings.** The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least 10, but not more than 20, days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

**11.07 Quorum.** Except as provided in Section 12.10, Owners present, in person or by proxy, at any meeting of Members duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Members collectively be entitled to cast at least a forty percent (40%) of the total Association votes eligible to vote.

**11.08 Adjourned Meetings.** If any meeting of Owners cannot be organized because a quorum is not present the Owners who are present either in person or by proxy, may adjourn the meeting to a time not less than 48 hours nor more than 45 days from the time the original meeting was called, at which time the requirements for a quorum shall be reduced by one-half that required at the immediately preceding meeting.

**11.09 Officers.** The Association shall have a President, a Vice President and a Secretary/Treasurer all of whom shall be elected by and from the Management Committee. The Committee may appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Management Committee in an organizational meeting of the Committee immediately following each annual meeting of Members at which the new Management Committee has been elected.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Management Committee. The President shall have all of the general powers and duties that are usually vested in the office of president of a similar type, association.

(b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act if neither the President nor Vice President is able to act, the Management Committee shall appoint some other member of the Committee to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed by the Management Committee.

(c) **Secretary.** The Secretary shall keep the minutes of all meetings of the Management Committee and the minutes of any meetings of the Association. The Secretary shall have charge of such books and records as the Management Committee may direct and shall, in general, perform all duties incident to the office of secretary of a similar type association.

(d) **Treasurer.** The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate amounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Management Committee.

## ARTICLE XII

### BYLAWS -ASSESSMENTS

**12.01 Agreement to Pay Assessments.** Each Owner of a Unit by the acceptance of a deed or contract therefor, whether or not it be so expressed in the deed or contract shall be deemed to covenant and agree with the Association, all other Unit Owners and with the Management Committee to pay to the Association the Annual and any Special Assessments and Specific Assessments described in this ARTICLE XII, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute, and remain (a) a charge and continuing lien upon the Unit with respect to which the Assessment is made until fully paid; and (b) the personal joint and several obligation of the Owner or Owners of such Unit at the time the Assessment falls due. No Unit Owner may exempt himself or his Unit from liability for payment of Assessments by waiver of his rights in the Common Areas or by abandonment of his Unit. In a voluntary conveyance of a Unit the Grantee shall be jointly and severally liable with the Grantor for all unpaid Assessments, late payment fees, interests and costs of collection, including reasonable attorneys fees, which shall be a charge on the Unit at the time of the conveyance, without prejudice to the Grantee's right to recover from the Grantor the amounts paid by the Grantee therefor.

**12.02 Purpose of Assessments.** Assessments levied by the Management Committee for the Association shall be used exclusively for the purpose of promoting the Project, the interests of the Owners therein, paying costs properly incurred by the Association or Management Committee, and maintenance, operation and carrying of the Common Areas. The use made of

funds obtained from Assessments may include, but shall not be limited to, payment of the cost of insurance premiums on policies required of the Association hereunder; maintenance, repair, and improvement of the Common Areas; taxes or Special Assessments, if any, levied by governmental authorities; payment of any basic coverage cable TV providing coverage availability to each Unit in the Project; establishment and funding of a reserve to cover major repair or replacement of improvements within or deemed to be Common Areas; and any expense necessary or desirable to enable the Management Committee to perform or fulfill its obligations, functions or purposes pursuant to this Declaration, the Bylaws or Rules and Regulations.

**12.03 Annual Assessments.** Annual Assessments shall be computed and assessed against all Units in the Project based upon advance estimates of the Committee's cash requirements to provide for payment of common costs as set forth in Section 12.02, which costs shall be apportioned among the Units in proportion to their respective undivided interests in and to the Common Areas. However, for purposes of such apportionment Declarant shall be deemed to own the undivided interest in the Common Areas based only upon Units which have been completed and used by Declarant for residential purposes or as models for marketing purposes, or fully completed (carpeted and painted) but not yet conveyed by Declarant to third party grantees.

**12.04 Annual Budget.** Annual Assessments shall be determined on the basis of a fiscal year ending December 31; provided the first fiscal year shall begin on the date of recordation of this Declaration in the Public Records. On or before December 15 of each fiscal year the Committee shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. The operating budget for the first fiscal year shall be prepared and furnished to each Owner within 30 days of such Owners initial purchase. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessments for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

**12.05 Notice and Payment of Annual Assessment.** Except with respect to the fiscal period ending December 31, 2002, the Association shall notify each Owner as to the amount of the Annual Assessment against his Unit on or before December 15 of the year preceding the year for which such Annual Assessment is made. Each Annual Assessment shall be payable in 12 equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the Assessment relates; provided, however, the Annual Assessments for the fiscal period ending December 31, 2002, shall be based upon such portion of the calendar year 2002 as follows the date of recordation of the Declaration in the Public Records and shall be payable in such installments and at such times as the Management Committee, in its sole discretion may determine. The failure of the Committee to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such Assessment or any other Assessment but the date when the payment shall become due in such case shall be deferred to a date 15 days after notice of such Assessment shall have been given to the Owner in the manner provided in Section 12.01.

**12.06 Initial and Transfer Fees.** In addition, each Owner (other than Declarant), shall be required to prepay at the time of purchase of his Unit whether *as a first* time or subsequent Owner, a sum equal to two times the then monthly installment of the Annual Assessment, which sum shall be in addition to any pro-ration of Assessment which may be due for the month in which such purchase takes place. Such fees shall become part of the Associations general fund to be utilized as necessary.

**12.07 Maximum Annual Assessment.** Until January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum Annual Assessment shall not exceed the amount per Unit that is determined by the Committee pursuant to Section 12.04. From and after January 1 of the calendar year immediately following the conveyance, of the first Unit to an Owner, the maximum Annual Assessment may be increased each calendar year thereafter by not more than fifteen percent (15%) above the maximum Annual Assessment for the previous year without the vote of Owners entitled to cost a majority of the Association votes.

**12.08 Special Assessments.** The Association may levy Special Assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of amenities, infrastructure or improvements within the Common Areas. Any such Special Assessment shall be apportioned among and assessed to all

Units in the same manner as Annual Assessments. Special Assessments must be assented to by at least sixty percent (60%) of the total Association votes, which Owners present in person or represented by proxy must be entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least 10 but not more than 30 days prior to the meeting date.

**12.09 Uniform Rate of Assessment.** All Annual and Special Assessments authorized by Sections 12.03 and 12.09, respectively, shall be fixed at a uniform rate for all Units; provided, however, that until a Unit has been both fully improved (including carpet and paint) and occupied for the first time for residential or model purposes, the Annual and Special Assessments applicable to such Unit shall not be due and payable. During the period of time that Declarant controls the Management Committee, if Assessments collected fail to adequately meet the common expenses, then Declarant shall pay any shortfall.

**12.10 Quorum Requirements.** The quorum at any Member meeting required for any action authorized by Section 12.08, above, shall be as follows: at the first meeting called, the presence of Owners or proxies entitled to cast sixty percent (60%) of the total Association votes eligible to vote shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 12.08, above) at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held less than 48 hours nor more than 45 days following the immediately preceding meeting.

**12.11 Specific Assessment.** In addition to the Annual Assessment and any Special Assessment authorized pursuant to Sections 12.03 and 12.08, above, the Committee may levy at any time Specific Assessments (a) on every Unit especially benefited by any improvement made on the written request of the Owner of the Unit to be charged, (b) on every Unit the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on every Unit to which the Committee shall incur any expense for maintenance or repair work performed, or enforcement action taken pursuant to any of the provisions of the Declaration. The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorneys fees and costs, and shall be allocated among the affected Units according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such Assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Committee, it shall not give rise to a Specific Assessment against the Units benefited.

**12.12 Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Unit and upon the payment of a reasonable fee to the Committee to cover administrative costs, the Committee shall issue a certificate stating whether or not payments of all Assessments respecting such Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

**12.13 Effect of Nonpayment, Remedies.** Any Assessment (whether Annual, Special or Specific) not received within 10 days of the date on which it or any installment thereof becomes due shall be subject to a late charge not to exceed 5% thereof, which, together with interest and costs of collection, shall be, constitute, and remain a continuing lien on the affected Unit. If any Assessment is not received within 10 days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of one percent (1%) per month; and the Committee, on behalf of the Association, may bring an action against the Owner who is personally liable therefor or may foreclose its lien against the Unit pursuant to the provisions of the Utah Code, 1953, as amended, applicable to the exercise of powers of sale in deeds of trust, by foreclosure as a mortgage or in any other manner permitted by law. Any judgment obtained in connection with the collection of delinquent Assessments and related charges shall include reasonable attorneys fees, court costs and every other expense incurred by the Committee in enforcing the Association's rights. Failure of the Committee to promptly enforce any remedy granted pursuant to this Section 12.14 shall not be deemed a waiver of any such rights.

**12.14 Subordination of Lien to First Mortgages.** The lien of the Assessments provided herein shall be subordinate to the lien of any first Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or purchaser who comes into possession of or becomes the Owner of a Unit by virtue of the foreclosure of such first Mortgage or the exercise of a power of sale under such first Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any Assessment installment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Unit; provided, that to the extent there



are any proceeds of the sale on foreclosure of such first Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such first Mortgage, the lien shall apply to such excess. No sale or transfer of a Unit in connection with any foreclosure of a first Mortgage shall relieve any Unit from the lien of any Assessment installment thereafter becoming due.

**12.15 No Abatement.** No diminution or abatement of any Assessments under the Declaration shall be claimed or allowed for inconvenience, annoyance or discomfort arising from (a) any construction (or lack of construction) within the Project; (b) the making of (or failure to make) any repairs or improvements to or the maintenance of any Common Areas of the Project, or any part thereof; or (c) from any action taken to comply with the provision of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

## ARTICLE XIII

### GENERAL PROVISIONS

**13.01 Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner at the latest address for such person, as reflected in the records of the Management Committee at the time of delivery or mailing. Any notice required or permitted to be given to the Association or the Committee may be given by delivering or mailing the same to the Manager or any member of the Committee. Any notice required or permitted to be given to the DRC may be given by delivering or mailing the same to the Manager or any member of the DRC.

**13.02 Agent for Service of Process.** C. David Cabanilla, whose address is 365 West 3800 North, Provo, UT, 84604, is designated initially as the person to receive service of process in cases authorized by the Act; provided, however, that the Management Committee shall have the right to appoint a successor agent for service of process who shall be a resident of Utah. The name and address of such successor shall be specified by an appropriate notice filed in the Public Records.

**13.03 Party Walls.** Each wall which is built as a part of the original construction of the Units within the Project and placed on the dividing line between Units shall constitute a party wall, and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

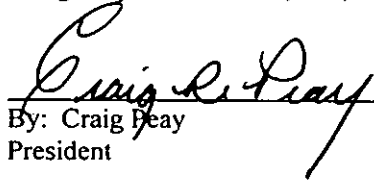
**13.04 Amendment.** This Declaration may be amended (as opposed to terminated) by an instrument recorded in the Public Records, which is executed either by Owners who collectively hold at least sixty percent (60%) of the total outstanding votes in the Association or by the Association which shall certify that the required sixty percent (60%) vote was obtained in a meeting of members or by consent and is so documented in the records of the Association. No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant.

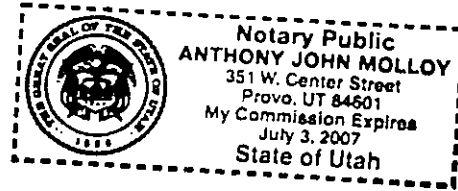
**13.05 Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 13.05:

- (a) All necessary consents must be obtained prior to the expiration of 90 days after the first consent is given by any Owner,
- (b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed;
- (c) Any change in ownership of a Unit which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose; and



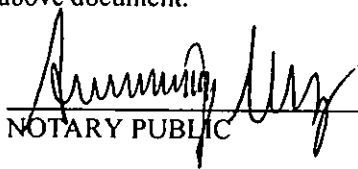
Craig Peay Construction, Inc.,

  
By: Craig Peay  
President



STATE OF UTAH)  
: SS.  
COUNTY OF UTAH )

On this \_\_\_\_ day of December, 2004, personally appeared before me Craig Peay, President of Craig Peay Construction, Inc., who duly acknowledged before me that he executed the above document.

  
NOTARY PUBLIC