

3893  
#101  
When recorded, mail to:  
Smith, Knowles & Hamilton, P.C.  
4723 Harrison Boulevard, Suite 200  
Ogden, Utah 84401  
Attention: Melven E. Smith

E 1273208 B 2042 P 871  
CAROL DEAN PAGE, DAVIS CNTY RECORDER  
1996 SEP 11 9:53 AM FEE 101.00 DEP REC  
REC'D FOR BONNEVILLE TITLE COMPANY, INC

AMENDED  
CONDOMINIUM DECLARATION  
FOR  
WHISPERING PINES CONDOMINIUM NOS. 1 & 2  
A UTAH CONDOMINIUM PROJECT

Units 1 to 6 = common area Phase 1, 11-361-0001 to 0007  
Units 7 to 16 = common area Phase 2,  
11-387-0007 to 0017

return to  
Bonneville title

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**AMENDED  
CONDOMINIUM DECLARATION  
FOR** E 1273208 B 2042 P 875  
**WHISPERING PINES CONDOMINIUM NOS. 1 & 2  
A UTAH CONDOMINIUM PROJECT**

THIS AMENDED DECLARATION (hereinafter "Declaration") made and executed this 21<sup>st</sup> day of July, 1996, by BLUE MOON DEVELOPMENT, L.C. (hereinafter referred to as "Declarant"), pursuant to the provisions hereinafter defined:

**ARTICLE I**

**AMENDMENT AND SUBMISSION**

The Declarant is the record owner in fee simple of the tract particularly described in Exhibit "A" annexed hereto, located in Davis County, Utah, (hereinafter the "Tract"), and in that certain Declaration of Covenants, Conditions and Restrictions and Reservations of Easements for WHISPERING PINES CONDOMINIUM NO. 1 (hereinafter the "Original Declaration"), filed for record and recorded on December 20, 1995, at 10:28 a.m., as Entry No. 1217824, in Book 1949, at Page 900, of the official records of the Recorder's Office of Davis County, Utah. Declarant desires to amend the original Declaration by executing and recording this Declaration. Upon recordation of this Declaration, this Declaration and all terms contained herein shall supersede and take priority over all terms and provisions of the Original Declaration. Developer hereby submits the Tract, together with the buildings, all improvements, all easements, rights and appurtenances thereunto belonging to the provisions of the Act, to be known as WHISPERING PINES CONDOMINIUM. The project is described as WHISPERING PINES CONDOMINIUM NO. 1, on the Record of Survey Map recorded on December 20, 1995, as Entry No. 1217823, in Book 1949, at Page 899, in the records of the County Recorder's Office of Davis County, Utah, and on the WHISPERING PINES CONDOMINIUM NO. 2, record of Survey Map to be recorded simultaneously herewith.

**ARTICLE II**

**DEFINITIONS**

When used in the Declaration and in the By-Laws, which are made a part of this Declaration and are attached hereto as Exhibit "B", the following terms 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.

1. Act shall mean and refer to the Utah Condominium Ownership Act (Sections 57-8-1 through 57-8-36, Utah Code Annotated, 1953), as the same may be amended from time to time.
2. Declaration shall mean and refer to this instrument, as the same may be amended from time to time.
3. Declarant shall mean and refer to BLUE MOON DEVELOPMENT, L.C., their successors and assigns.
4. Record of Survey Map and Map shall mean and refer to the WHISPERING PINES CONDOMINIUM NO. 1, Record of Survey Map filed on December 20, 1995, as Entry No. 1217823, in Book 1949, at Page 899, in the records of the County Recorder's Office of Davis County, Utah, and to the WHISPERING PINES CONDOMINIUM NO. 2, Record of Survey Map, to be filed simultaneously herewith. Both maps were prepared and certified by Glen Ravenberg, a Registered Land Surveyor in the State of Utah operating under License No. 3835.
5. Property shall mean and refer to the land in Exhibit "A", the buildings, all improvements and the structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.
6. Management Committee shall mean and refer to the Management Committee of WHISPERING PINES CONDOMINIUM Project as it exists at any given time.
7. Association shall mean and refer to all of the Unit Owners acting as a group in accordance with the Declaration and By-Laws.
8. Common Areas and Facilities and Common Areas shall mean and refer to, and include:
  - a. All Common areas and Facilities designated as such in the Survey Map.
  - b. All Limited Common Areas and Facilities.
  - c. All access roads, pedestrian sidewalks, and other common facilities as designated in the Survey Map.
  - d. All apparatus, installations, and facilities included within the Project and existing for common use.
  - e. All portions of the Project not specifically included within individual Units.

f. All Common Areas as defined in the Act, whether or not enumerated herein.

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

10. Percentage Interest means and refers to the percentage undivided interest of each Unit in the Common Areas as set forth in Article III, paragraph 4.

11. Condominium Unit or Unit means and refers to a separate physical part of the Property intended for independent use consisting of a single family twin home with an attached two-car garage. Some Units include a small patio located in the back of the twin home and between the nook and master bedroom. Units are identified in the Map by unit number. Each Unit shall be attached to another Unit in the Project, making each Unit an attached twin home. Each Unit shall share a common wall with another Unit in the Project. Each Unit shall include all space up to the center line of the common wall. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit but designed to serve only one Unit, such as appliances, electrical receptacles and outlets, air-conditioning compressors and other air-conditioning apparatus, fixtures and the like, shall be considered part of the Unit. The Unit shall include all structures within the Unit up to the center line of the common wall.

12. Unit Number shall mean and refer to the number which designates a Unit in the Map.

13. Unit Owner or Owner shall mean and refer to the owner of the fee in a Unit and Percentage Interest in the Common Areas which is appurtenant thereto. In the event a Unit is the subject of an executory contract of sale, the contract purchaser shall, upon notice to the Committee by the Purchaser (unless the seller and purchaser have otherwise agreed and have informed the Committee in writing of such agreement) be considered the Unit Owner for purposes of voting and Committee membership.

14. Rules and Regulations means those rules and regulations adopted from time to time by the Management Committee that are deemed necessary for the enjoyment of the Project, provided they are not in conflict with the Act or Declaration.

15. Common Expenses shall mean and refer to all sums which are expended on the behalf of all the Unit Owners and all sums which are required by the Management Committee to perform or exercise its functions, duties or rights under the Act, this Declaration, any Management Agreement for the operation of the Project, and such Rules and Regulations as the Management Committee may, from time to time, make and adopt. By the way of illustration but not limitation, Common Expense shall include:

- a. Expense of administration, maintenance, operation, repair, or replacement of those elements of the Common Areas that must be replaced on a periodic basis, and to other reserves as may, from time to time, be established pursuant to the Declaration;
  - b. Expenses agreed upon by the Association and lawfully assessed against the Owners in accordance with the Declaration;
  - c. Expenses declared Common Expenses by the provisions of the Act, this Declaration or the By-Laws; and
  - d. Any valid charge against the Project as a whole.
16. Common Profits shall mean and refer to the balance income, rents, profits, and revenues from the Common Areas remaining after deduction of the Common Expenses.
17. Condominium Project and Project shall mean and refer to the WHISPERING PINES CONDOMINIUM Project.
18. Tract shall mean and refer to the real property hereby submitted to the Project. The Property which Exhibit "A" of this Declaration submits to the terms of the Act constitutes a Tract.
19. Mortgage shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered. First mortgage shall refer to a mortgage which has a lien position prior to any other mortgage.
20. Mortgagee shall mean and refer to any person named as a Mortgagee or beneficiary under (or holder of) a deed of trust.
21. Majority of Owners shall mean and refer to the Owners of the Units to which more than fifty percent (50%) of the votes in the Association appertain.

### ARTICLE III

#### COVENANTS, CONDITIONS, AND RESTRICTIONS

The submission of the Tract to the provisions of the Act is made upon and under the following covenants, conditions, and restrictions.

- 1. Description of Improvements. The improvements included in the Project will be located on the property described in Exhibit "A" annexed hereto. The Map indicates that each Unit is contiguous to another Unit, each Unit connecting to another Unit by a common wall. The buildings upon each Unit shall be single family dwellings consisting of a living room,



master bedroom, family room, spare bedroom/study, and various other amenities associated with single family residences. The Project consists of sixteen (16) Units. Units shall not exceed one (1) story in height and will be constructed with cement footings and foundations, wood framing, and exterior brick veneer and aluminum siding. Some of the Units will have basements constructed of cement foundations and wood framing.

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

3. Common and Limited Common Areas.

a. The Common Areas contained in the Project are described and identified in Article II of this Declaration. Neither the Percentage Interest nor the right of Exclusive use of Limited Common Area shall be separated from the Unit to which it appertains; and even though not specifically mentioned in the instrument of transfer, the Percentage Interest and such right of exclusive use shall automatically accompany transfer of the Unit to which they relate. Each Unit Owner shall, at its own cost, keep the Limited Common Areas designed for exclusive use in connection with his Unit in a clean, sanitary and attractive condition at all times.

b. The use of the Common Areas shall be limited to Owners in residence and to their tenants in residence, and to Owner's guests, invitees and licensee. The use of the Common Areas and Limited Common Areas shall be governed by the Declaration and the Rules and Regulations as initially established by the Declarant and as adopted and amended from time to time by the Management Committee.

4. Computation of Percentage Interests. Each unit shall include an undivided one-sixteenth (16th) interest in the Common Area and Facilities which shall be appurtenant to each such unit in the Project. The proportionate ownership in the Common Areas shall be for all purposes including, but not limited to, voting, participation in Common Profits, and assessments for Common Expenses.

5. Maintenance Obligations of Owners. Subject only to the duty of the Association to provide for maintenance as provided in Article III, Paragraph 6 of this Declaration, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Management Committee approval, to maintain, repair, replace and restore areas subject to his exclusive control, in a neat, sanitary and attractive condition. Areas subject to the exclusive control of the Owner shall be deemed to include, but not be limited to, the interiors and exteriors of the Unit and the appurtenant patios, fences, and utility laterals. In the event that any Owner shall permit any improvement which is the responsibility of such Owner to maintain, to fall into disrepair or not to be so maintained as to create a dangerous, unsafe,

unsightly, or unattractive condition, or to otherwise violate this Declaration, the Management Committee shall have the right, but not the duty, upon fifteen (15) days prior written notice to the Owner of such Unit to correct such condition and to enter upon such Owner's Unit to make such repairs or to perform such maintenance and the cost thereof shall be charged to the Owner. Said cost shall be a Special Assessment and shall create a lien enforceable in the manner provided as other assessments as set forth in this Declaration. The Owner shall promptly pay all amounts due for such work and the costs and expenses of collection may be added, at the option of the Management Committee, to the amounts payable by each Owner as assessments.

6. Maintenance Obligation of Association. Subject to the provisions of paragraph 5 of this Article, the Association shall maintain or provide for the maintenance of all Common Areas and all improvements thereon, including boundary fences, entrance gates, streets, sidewalks, Common Area, landscaping, landscaping equipment and lighting and utility mains, and any and all utility laterals to the Unit lines.

7. Association Membership. Membership in the Association shall be mandatory, shall be appurtenant to the Unit in which the owner has the necessary interest and shall not be separated from the Unit to which it appertains. The property, business and affairs of the Association shall be governed by the Management Committee as agent of the Association.

8. Easement of 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 encroachments and for maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either to the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building(s) on the Tract, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

9. Access for Repair of Common Areas. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable right to be exercised by the Committee, as its agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Area or to another Unit or Units. The Committee shall also have such rights independent of the agency relationship. Damage to a Unit or any part thereof 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 the responsibility of the Association; provided, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be

financially responsible for all such damage. Amounts owing by the Owners pursuant hereto shall be collected by the Committee by assessment.

10. Right of Ingress and Egress. 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 the Limited Common Areas designated for use in connection with his Unit, and such right shall be appurtenant to and pass with the title to each Unit.

11. Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines, and Other Common Facilities Located Inside the Units; Support. Each Unit Owner shall have an easement common with Owners of all other Units to use all the pipes, wires, ducts, cables, conduits, public utilities, lines and other Common Facilities located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Facilities serving such other Units and located in such Unit. The Management Committee shall have a right of access to each Unit to inspect the same, to remove said violations therefrom and to maintain, repair or replace the common areas contained therein or elsewhere in the buildings. Every portion of a Unit which contributes to the structural support of an adjoining Unit shall be burdened with an easement of structural support to the benefit of the adjoining Unit.

12. Easement to 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.

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

14. Use of Units and Common Areas.

a. Each of the Units in the Project is intended to be used for single family residential housing and is restricted to such use.

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

c. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which may result in the cancellation of the insurance on the Project or any part thereof or increase the rate of insurance on the Project or any part thereof over what the Management Committee, but for such activity, would pay without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner and each Owner shall indemnify and hold the Management Committee and the Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees; provided, however, that any invitee of the Declarant shall not, under any circumstances, be deemed to be an invitee of any other Owner. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become any annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

d. No Owner shall violate the Rules and Regulations for the use of the Units and of the Common Areas as adopted from time to time by the Management Committee.

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

f. No maintenance, repairs or replacement of exterior elements of any Unit shall be made by an Owner without the prior written consent of the Management Committee. The Management Committee may adopt architectural standards which each Owner agrees to abide by in order to maintain uniformity in style, quality, colors and appearance throughout the Project.

g. No recreational vehicle (boats, campers, trailers, motor homes, or similar items) shall be parked on any portion of the Common Areas except for temporary parking.

h. No signs whatsoever shall be erected or maintained in the Common Areas without the prior written consent of the Management Committee, except:

(i) such signs as may be required by legal proceedings, and

(ii) such signs as Declarant or licensed general contractors may erect or maintain incident to sale of Units.

i. Declarant intends to sell the Units unimproved to licensed contractors before construction of twin homes thereupon. Until the licensed contractors have completed and sold all the Units, neither the Unit Owners who have purchased Units

from Declarant or licensed contractors, nor the Management Committee shall interfere with the completion of improvements and sale of the remaining Units. The Declarant and/or general contractors may use any Unit(s) owned by them, or either of them, as models, management offices, or sales offices until such time as all Units are completed and sold to Unit Owners. Declarant and licensed contractors may relocate models, management offices, or sales offices from time to time within the Project. Declarant and licensed contractors shall also have the right to maintain on the Project such advertising signs which may be placed in any location on the Project and may be relocated or removed at the discretion of either of them.

15. Status and General Authority of Management Committee. Notwithstanding anything herein contained to the contrary, WHISPERING PINES CONDOMINIUM Project shall be managed, operated, and maintained by the Management Committee exclusively as agent of the Association and any act performed by the Management Committee pursuant to this Declaration or the By-Laws, as the same may be amended from time to time, shall be deemed to be performed by the Management Committee for and on behalf of the Association as its agent. The Management Committee shall have, and is hereby granted the following authority and powers:

- a. The authority, without the vote or consent of the Owners, to transfer or convey utility and similar easements over, under, across, and through the Common Areas and Facilities.
- b. The authority to execute and record, on the behalf of all the Unit Owners, any amendment to the Declaration or Map which has been approved by the consent necessary to authorize such amendment.
- c. The power to sue and be sued.
- d. The authority to enter into contracts which in any way concern the Project, 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 authorized by the Owners having an interest therein.
- f. The power and authority to purchase, 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 license persons not otherwise entitled to use any of the recreational areas and facilities, to use the same from time to time as the Management Committee deems appropriate upon the payment of fees prescribed by it to help defray the cost maintenance thereof.

h. The power and authority to borrow money, provided no indebtedness for borrowed funds shall exceed at any given time the sum of Five Thousand Dollars (\$5,000.00) without the prior approval of the Majority of Owners.

i. The authority to promulgate such reasonable Rules and Regulations, and procedures as may be necessary or desirable to aid the Management Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Owners.

j. The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions as agent for the Association.

Any instrument executed by the Management Committee that recites facts which, if true, would establish the Management Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

16. Manager. The Management Committee may carry out any of its functions which are capable of delegation through a Project Manager. Any Manager retained for such purpose must be an individual or entity experienced and qualified in the field of property management. The Manager so engaged shall be responsible for managing the Project for the benefit of the Unit Owners 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.

17. Composition of Management Committee and Initial Selection Thereof. Until the election of the Management Committee takes place at the first annual meeting of the Association as provided in Section 1, Article II of the By-Laws, the Management Committee shall consist of such persons as shall have been designated by the Declarant. From and after the first annual meeting of the Association, the Management Committee shall be composed of five persons, all of whom shall be officers, directors, or designees of Owners or spouses of Owners, or Mortgagees (or designees of Mortgagees) of Units. The Declarant shall have the right in its sole discretion to replace such members of the Management Committee as may be so selected and designated by it, and to select and designate their successors. In all other cases of vacancy, the remaining Management Committee members shall elect a replacement to sit on the Management Committee until the expiration date of the term for which the member being replaced was elected. Declarant may, by a written instrument duly recorded, waive its right to select the members of the Management Committee at any time prior to the termination of the right to select Management Committee members reserved hereunder.

18. Agreement to Pay Assessment. Each Owner of any Unit by the acceptance of a deed therefor, whether or not it be expressed in the deed, or by entering into a sale and/or purchase contract, shall be deemed to covenant and agree with each other and with the

Management Committee to pay to the Management Committee annual assessments made by the Management Committee for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided for in this Declaration. Such assessments shall be fixed, established, and collected from time to time in the manner hereinafter provided.

a. Amount of Total Annual Assessments: The total annual assessments against all Units shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates may include, among other things, expenses of management, grounds maintenance, taxes and special assessments, (until the Units are separately assessed as provided herein), premiums for all insurance which the Management Committee is required or permitted to maintain pursuant hereto, common lighting and heating, water charges, trash collection, sewer charges, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Management Committee employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owner under or by reason of this Declaration.

b. Apportionment of Annual Assessments: Expenses attributed to the Common Areas and to the Project as a whole shall be apportioned among all the Owners in proportion to their respective Percentage Interests in the Common Areas.

c. Notice of Annual Assessments and Time for Payment Thereof: Annual assessments shall be made on a calendar year basis. The Management Committee shall give written notice to each Owner as to the amount of the annual assessment with respect to his Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. Such assessments shall be due and payable in monthly installments on the first day of each and every month of each year, provided, however, that the first annual assessment shall be for the balance of the calendar year remaining after the date filed by the Management Committee as the date of commencement of the Project. Such assessment shall be due and payable within thirty (30) days after written notice of the amount thereof shall have been given to the respective Owner of a Unit. Each monthly assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Failure of the Management Committee to give timely notice of any assessment as provided herein shall not effect the liability of the Owner of a Unit for such assessment, but the date when payment shall become due in such case shall be deferred to a date thirty (30) days after such notice shall be given.

d. Special Assessments for Capital Improvements: In addition to the annual assessments authorized above, the Management Committee may, in any assessment year, levy a special assessment, payable over such a period as the Management Committee may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Management Committee to incur expenses, but shall be authorized by other Sections hereof. Any amounts assessed pursuant hereto shall be assessed to the Owners in proportion to their respective Percentage Interests in the Common Areas. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Notwithstanding anything to the contrary herein contained, additions or capital improvements to the Project which cost no more than Five Thousand Dollars (\$5,000.00) may be authorized by the Management Committee alone. Additions or capital improvements, the cost of which will exceed such amount must, prior to being constructed, be authorized by the Majority of the Owners. Any addition or capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed, be authorized by vote of Unit Owners in person or by proxy of not less than sixty-seven percent (67%) of the Percentage Interest at a meeting of the Association, special or annual, at which a quorum is present.

e. Lien for Assessments. All sums assessed to any Unit pursuant to this Declaration, together with interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Unit, except only for: (i) valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; and (ii) a lien for all sums unpaid on the first Mortgage, or on any Mortgage to Declarant, duly recorded in the Official Records of Davis County, Utah, including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by a lien thereof in accordance with the terms of such instrument. All other lienors acquiring liens shall be deemed to consent that such liens shall be inferior to future liens for assessments as provided herein whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence a lien for sums assessed hereunder, the Management Committee may prepare a written notice of the lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such notice shall be signed by the Management Committee and may be recorded in the Office of the County Recorder of Davis County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien



may be enforced by judicial foreclosure by the Management Committee in the same manner in which trust deeds on real property may be foreclosed in Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of the filing of the notice of lien and all reasonable attorney's fees. All such costs, expenses, and fees shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Management Committee any assessments against the Unit which shall become due during the period of foreclosure.

In event of foreclosure, after the institution of the action, the Unit Owner shall pay a reasonable rental for his use of the Unit and the Management Committee shall, without regard to the value of the Unit, be entitled to the appointment of a receiver to collect any rentals due from the Owner or any other person. The Management Committee shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner hereof.

A release of notice of lien shall be executed by the Management Committee and recorded in the Office of the County Recorder of Davis County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien. Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created hereunder, and upon such payment such encumbrancer shall be subrogated to all rights of the Management Committee with respect to such lien, including priority.

The Committee shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for thirty (30) days after the same shall become due; provided, however that such encumbrancer first shall have furnished the Management Committee written notice of such encumbrance.

f. Personal Obligation of Owner: The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Management Committee without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any Common Areas or by abandonment of his Unit.

g. Statement of Account: Upon payment of a reasonable fee or such other amount as may in the future be allowed by the Act, and upon written request of any Owner or Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Management Committee shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit; the amount of the current yearly assessment and the date that such assessment becomes or has become due; credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums; and such statement shall be conclusive upon the

Management Committee in favor of person who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such a request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the twenty (20) day period provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Unit.

h. Personal Liability of Purchaser for Assessment: Subject to the provisions of subparagraph (g) a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

i. Unimproved Unit Exception: Notwithstanding any other provision herein, Unimproved Unit(s) shall not be assessed any annual assessments or special assessments without the prior written consent of the Owner(s) of such Unimproved Unit(s). For purposes of this paragraph, the term *Unimproved Unit(s)* shall refer to Unit(s) upon which no dwelling has been approved for occupancy by Kaysville City.

19. Transition of Management. Notwithstanding anything to the contrary contained in paragraph 17 above, Declarant may, at any time, relinquish its reserved right to select members of the Management Committee and to transfer the management of the Project to the Management Committee elected by Unit Owners. If and when the Declarant elects to do so, Declarant shall notify Owners in writing of the effective date of such transfer (Transfer Date) at least forty-five (45) days prior thereto. Thereupon, Unit Owners shall call a meeting to elect the members of Management Committee to take office as of the Transfer Date. Declarant covenants to cooperate with Unit Owners in effecting orderly transition of management. Moreover, Declarant shall cause all obligation for Common Expense of the Management Committee prior to the Transfer Date to be paid in full on or before such date. Accordingly, it is intended that the cash position of the Management Committee as of the Transfer Date be zero (0).

20. Insurance. The Management Committee shall secure, and at all times maintain, the following insurance coverage:

a. A multi-peril policy or policies of fire and casualty insurance, with extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement costs). Each such policy shall

contain the standard mortgage clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of Mortgagees as their interests may appear. The insured shall be the Association.

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

c. The Association shall maintain fidelity coverage to protect against dishonest acts on the part of Management Committee Members, Manager, employees or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which in no event shall be less than one and one-half times the insured's estimated annual operating expenses and revenues. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

The following additional provisions shall apply with respect to insurance:

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

b. Each hazard insurance policy shall be written by a company holding a financial rating of Class VI or better from Best's Insurance Reports. Each insurer must be specifically licensed to transact business within the State of Utah. Policies are unacceptable where: (i) under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against the Borrower or BLUE MOON DEVELOPMENT, L.C. or its designee; or (ii) by the terms of the carrier's charter, by-laws or policy loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent BLUE MOON DEVELOPMENT L.C. or the borrower from collecting the insurance proceeds.

- c. The Management Committee shall have the authority to adjust losses.
- d. Insurance secured and maintained by the Management Committee shall not be brought into contribution with insurance held by individual Unit Owners or their Mortgagee.
- e. Each policy of insurance obtained by the Management Committee shall provide:
  - (i) a standard mortgagee clause commonly accepted by private institutional mortgage investors in the Area in which the Project is located;
  - (ii) a waiver (if available) of the insurer's subrogation rights with respect to the Management Committee, the Manager, the Unit Owners, and their respective servants, agents and guests;
  - (iii) that it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Unit Owner or Owners;
  - (iv) that it cannot be cancelled, suspended, or invalidated due to the conduct of any member, office or employee of the Management Committee or the Manager without a prior written demand that the defect be cured;
  - (v) that any "no other insurance clause" therein shall not apply with respect to insurance held individually by the Unit Owners;
  - (vi) and that a mortgage clause endorsement which must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.
- f. Any Unit Owner may obtain additional insurance at his own expense, as long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Management Committee. Any Unit Owner who individually obtains insurance covering any portion of the Project shall supply the Management Committee with a copy of his policy within thirty (30) days after he acquires such insurance.
- g. The Project is not located in an area identified by the Secretary of Housing and Urban Development as an area having specialized flood hazards. In the event that at some future time the Project should be declared to be in such flood area, a blanket policy of flood insurance on the Project shall be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the Units comprising the Project or the maximum coverage limit available under the National Flood

Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be in form and substance as that required by the Federal Home Loan Mortgage Corporation at any given time.

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21. Damage to Project. In the event of damage of or destruction of part of all of the improvements in the WHISPERING PINES CONDOMINIUM Project, the following procedures shall apply:

a. If proceeds of the insurance maintained by the Management Committee are alone sufficient to repair or reconstruct the damage or destroyed improvements, such repair or reconstruction shall be carried out.

b. If less than seventy-five percent (75%) of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Management Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all Unit Owners shall be assessed for any deficiency on the basis of their respective Percentage Interest.

c. If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if the Unit Owners do not, within one hundred (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 with the Davis County Recorder a notice setting forth such facts. Upon the recording of such notice the provisions of subsections one (1) through four (4) of Section 57-8-31, Utah Code Annotated (1953), shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

Any reconstruction or repair which is required to be carried out by this Paragraph 21 regarding the extent of damage to or destruction of Project improvements shall be made by three MAI appraisers selected by the Management Committee. The decision by any two such appraisers shall be conclusive.

22. Certain Provisions Applicable to Declarant. Notwithstanding any other provision herein contained, for so long as Declarant continues to own any of the Units, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations as Unit Owner to pay assessments, except as herein otherwise provided, as to each Unit owned by Declarant in accordance with the Declaration.

a. Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration, except as specifically

set forth herein or in any agreement for sale of a Unit, and no person shall rely upon any warranty or representation not so specifically made therein.

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

23. Amendment. Except as provided below, the vote of at least sixty-seven percent (67%) of the Percentage Interest of the Unit Owners in person or represented by proxy at a meeting of the Association at which a quorum is present shall be required to amend the Declaration or the Map. Any amendments so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument, the Management Committee shall certify that the vote required by this Paragraph for amendment has occurred. The foregoing right of amendment shall be subject to the following: Notwithstanding anything to the contrary contained in the Declaration, neither the insurance provisions of Paragraph 20, the Mortgage protection provisions of Paragraph 27, nor the maximum minimum Percentage interest in the Common Areas provision of Paragraph 4, shall be amended without the written approval of all institutional first Mortgages.

24. Consent Equivalent to Vote. In those cases in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for the authorization or approval of a transaction, such requirements may be fully satisfied by obtaining with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the necessary percentage of undivided ownership interest.

25. Eminent Domain. Whenever all or part of the Common Areas shall be taken, injured, or destroyed as a result of the exercise of eminent domain, each Unit Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, but in any proceeding for the determination of damages, such damages shall be determined for such taking, injury, or destruction as a whole and not for each Unit Owner's interest therein. After such determination each Unit Owner shall be entitled to a share in the damages in the same portion as his Percentage Interest in the Common Areas.

26. Service of Process. Charles A. Hammond is the person to receive service of process in cases authorized by the Act. The Management Committee shall, however, have the right to appoint a successor substitute process agent. Such successors or substitute agent and his address shall be specified by an appropriate instrument filed in the office of the County Recorder of Davis County, State of Utah.

27. Mortgagee Protection. Notwithstanding any thing to the contrary contained in the Declaration:

a. An adequate reserve fund for repair, maintenance, and replacement of those elements of the Common Areas that must be replaced on a periodic basis must be established and funded by regular monthly payments rather than by special assessments.

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b. There shall be established a working capital fund for the initial months of operation of the Project equal to a minimum amount of two months' estimated Common Areas charge for each Unit.

c. Any mortgage holder which comes in possession of the Unit pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage or Deed (or assignment in lieu of foreclosure) shall be exempt from any "right of first refusal" or other provisions which may exist relating to sale or lease of the Units in the Project, and no "right of first refusal" shall impair the rights of any first Mortgagee to:

(i) foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage or the Trust Deed, or

(ii) accept Deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or

(iii) interfere with a subsequent sale or lease of the Mortgagee.

d. Any agreement for professional management of the Project, or any other contract provided for service by the Declarant must provide for termination by either party without cause or payment of a termination fee on ninety (90) days or less written notice and a maximum contract term of three (3) years.

(e) In the event of damage or destruction of any Unit, which loss exceeds One Thousand Dollars (\$1,000.00), or any part of the Common Areas, which loss exceeds ten Thousand Dollars (\$10,000.00), the institutional holder of any first mortgage on a Unit shall be entitled to timely written notice of any such damage or destruction. No Unit Owner or other party shall be entitled to priority over such institutional holder with respect to the distribution to such Unit Owner of any insurance proceeds, regardless of the amount of loss. Upon request of any first Mortgagee, the Association must provide a letter to said first Mortgagee wherein the Association agrees to notify the first Mortgagee or any organization it designates at the address indicated by the Mortgagee whenever:

(i) damage to the Unit is covered by the first Mortgagee's Mortgage exceeds One Thousand Dollars (\$1,000.00), or

(ii) damage to the Common Areas and related facilities exceeds Ten Thousand Dollars (\$10,000.00).

f. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the institutional holder of any first Mortgage of a Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition. No Unit Owner or other party shall have priority over such institutional holder regardless of the amount of the condemnation award with respect to the distribution to such Unit Owner of the proceeds of any award or settlement.

g. With the exception of a lender in possession of a Unit following default in a first Mortgage, a foreclosure proceeding of any deed or other arrangement in lieu of foreclosure, no Unit Owner shall be permitted to lease his Unit for transient or hotel purposes. No Unit Owner may lease less than the entire Unit. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to provisions of the Declaration and By-Laws and that any failure by the lessee to comply with the terms of such documents shall be at default under the lease. All leases shall be in writing. A Lessee and a Renter shall be treated the same.

h. Each holder of a first Mortgage lien on a Unit who obtains title to a Unit by virtue of remedies provided in the Mortgage, including but not limited to, foreclosure of the Mortgage, Trust Deed or by deed of assignment in lieu of foreclosure, shall take the Unit free of unpaid charges and shall not be liable for any unpaid claims or assessments and charges against the Unit which accrue prior to the acquisition of title of such Unit by Mortgagee.

(i) Any holder of a Mortgage is entitled to written notification from the Management Committee or any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligation under the Declaration which is not cured within sixty (60) days.

(k) Unless at least seventy-five percent (75%) of the first Mortgagees (based on one vote for each Mortgage owner) of Units have given their prior written approval, neither the Management committee, Declarant, nor Association shall:

(i) By act or omission, seek to abandon or terminate the Project.

(ii) Change the pro-rata interest or obligations of any Unit for:

(a) purposes for levying assessment or charges or allocating distributions of hazard insurance proceeds or condemnation award, or for

(b) determining the pro-rata share of ownership of each Unit in the appurtenant Common Areas.

(iii) Partition or sub-divide any Unit.



(iv) Make any material amendment to the Declaration or to the By-Laws of the Association, including but not limited to, any amendment which would change the Percentage Interests of the Unit Owners in the Common Areas.

(v) By act or omission, seek to amend, partition, subdivide, encumber, sell, abandon, or transfer, the Common Areas. (The granting of easements for public utilities or for other public purposes consistent with the intended use for the Common Areas of the Project shall not be deemed a transfer within the meaning of this subparagraph).

(vi) Use of hazard insurance proceeds for losses to any condominium property (whether to Units or to the Common Areas) for other than repair, replacement, or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or the Common Areas of the Project.

l. The holders of the first Mortgages (or Trust Deeds) shall have the right to examine the books and records of the Project.

m. Whenever there is a change of ownership of a Unit, the Management Committee shall require that the new Unit Owner furnish the Management committee with the name of the holder of the first Mortgage (or Trust Deed) affecting the Unit. The Management committee or Manager shall maintain a current roster of the Unit Owners and of the holders of the first Mortgages (or Trust Deed) affecting the Units in the Project.

28. Duty of Owner to Pay Taxes on Unit Owner. It is understood that under the Act, each Unit (and its Percentage Interest in the Common Areas) in the Project is subject to a separate assessment and taxation of each taxing authority and the special district(s) for all types of taxes and assessments authorized by law, and that as a result thereof, no taxes will be assessed or levied against the Project as such, except for certain personal properties thereof. Accordingly, each Unit Owner will pay and discharge any and all taxes and assessments which may be assessed against him or his Unit.

29. Covenant to Run With Land; Compliance. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Declarant; all parties who hereafter acquire any interest in a Unit, in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of the Act, terms of this Declaration, the By-Laws, and the provisions of any rules, regulations, agreements, instrument, and determinations contemplated by this Declaration, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee on behalf of Unit Owners, or, in a proper case, by an aggrieved

Unit Owner. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

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30. Information Regarding Transferee of Unit. Any Unit Owner who sells, leases, or otherwise disposes of his Unit shall submit to the Management committee pertinent information regarding the transferee or new occupant within one week of any transfer of title or possession on a form furnished by the Management Committee.

31. 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 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 Management Committee.

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

33. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

34. Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context to requires.


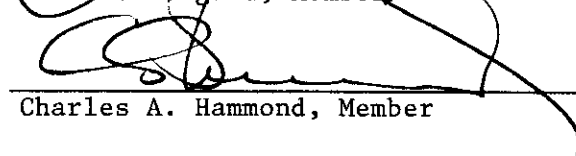
35. Headings. The headings appearing at the beginning of the paragraphs of this declaration are only for convenience of reference and are not intended to describe, interpret, define, limit, extend, or otherwise affect the content, meaning, or intent of this Declaration or any paragraph or provisions hereof.

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

37. Effective Date. This Declaration shall take effect upon recording in the Office of the County Recorder of Davis County, Utah.

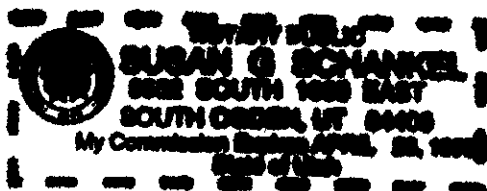
IN WITNESS WHEREOF, the undersigned, have executed this instrument on this  
21st day of August, 1996.

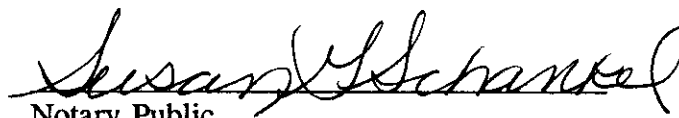
BLUE MOON DEVELOPMENT L.C.  
by:

  
John L. Lingard, Member  
  
Charles A. Hammond, Member

STATE OF UTAH            )  
                                  : SS  
COUNTY OF WEBER        )

On the 21st day of <sup>August</sup> ~~July~~, 1996, personally appeared before me,  
John L. Lingard and Charles A. Hammond  
who, being duly sworn, did say that they are the Members and Owners of BLUE MOON  
DEVELOPMENT, L.C., and that the within and foregoing instrument was signed on behalf of  
said limited liability company by authority of a resolution of its members and John L.  
Lingard and Charles A. Hammond duly acknowledged to me that  
said limited liability company executed the same.



  
Notary Public  
Residing at:

My Commission Expires:

EXHIBIT "A"

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Legal Description of WHISPERING PINES CONDOMINIUM NO. 1

A part of Lot 4, Block 3, Plat "A", Kaysville City, Davis County, Utah, beginning at the Southwest corner of said Lot 4, said point is East 49.50 feet, along the center line of 100 South Street, and North 0°01'52" East 33.00 feet from the City Monument at the Intersection of 100 South Street and 300 East Street and running thence North 0°01'52" East 265.69 feet, to the South line of Lot 5, thence North 89°59'49" East 114.00 feet along said South line, thence South 50.00 feet, thence West 38.00 feet, thence South 118.00 feet, thence East 20.90 feet, thence South 97.70 feet, thence West 97.04 feet, along the North line of 100 South Street to the point of beginning.

Legal Description of WHISPERING PINES CONDOMINIUM NO. 2

A part of Lot 4 and all of Lot 3, Block 3, Plat A, Kaysville City Survey, Davis County, Utah, beginning at a point which is East 49.50 feet, North 0°01'52" East 33.00 feet to the Southwest corner of said Lot 4 and East 97.04 feet from the City Monument at the intersection of 100 South and 300 East streets, running thence North 97.70 feet, thence West 20.90 feet, thence North 118.00 feet, thence East 38.00 feet, thence North 50.00 feet to the South line of Lot 5, thence North 89°59'49" East 150.00 feet along said South line and South line extended to the Southeast corner of Lot 6, thence South 0°01'53" West 265.71 feet to the North line of 100 South Street, thence West 166.95 feet to the point of beginning.

## BY-LAWS GOVERNING THE WHISPERING PINES CONDOMINIUM NO. 1 &amp; 2

## ARTICLE I

MANAGEMENT COMMITTEE

Section 1. General Responsibility. The business and property comprising of WHISPERING PINES CONDOMINIUM shall be managed by a management committee consisting of five (5) unit owners to be selected by the unit owners as hereinafter provided. Such management committee shall have all the powers, duties, and responsibilities as are now or may hereafter be provided by law, the Declaration filed contemporaneously herewith, and/or any amendments subsequently filed thereto, and these By-laws as the same may from time to time be altered or amended; provided, however, that the management committee may engage the services of a resident manager and/or a property management firm and fix and pay reasonable fees or compensation therefore; and delegate duties and functions thereto; provided further, that until WHISPERING PINES CONDOMINIUM has sold all of the units in the condominium project, or until December, 1999, whichever occurs first, each unit owner, by accepting a deed to any unit, irrevocably consents that Charles A. Hammond may act as the project manager and shall have all the rights, powers, duties and responsibilities conferred upon the management committee and/or the managers under the Condominium Ownership Act, the Declaration and these By-laws. The engagement of a property manager shall be a financial decision and subject to a vote of the unit owners.

Section 2. Operation and Maintenance. The committee shall be responsible for the control, operation and management of the project, in accordance with the provisions of the Utah Condominium Ownership Act, the Declaration whereby the project is established and submitted to the provisions of said Act, these by-laws, and such administrative, management and operational rules and regulations as the committee or owners association may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the committee. The committee shall, in this connection, provide for the proper and reasonable control, operation and management of the project and of the maintenance and repair of the common areas and facilities appurtenant thereto. The operation of the project shall be conducted for the committee by a professional agent or agents, having requisite skills in condominium operations and maintenance.

Section 3. Committee Vacancies. In case of any vacancy in the management committee, the remaining members thereof may elect a successor to hold office until the next meeting of the unit owners.

Section 4. Officers. The management committee shall appoint or elect from among its membership a chairman, a vice chairman, secretary, and a treasurer, who shall hold office at the pleasure of the committee. The chairman of the committee, or in his absence, the vice-chairman, shall preside at all meetings of the committee and at all meetings of the unit owners. The secretary shall take and keep minutes of all meetings. He shall perform such other services as the committee may impose upon him, and shall receive such compensation as the committee may fix or approve. The treasurer shall have the custody and control of the funds of the committee, subject to the action of the committee, and shall, when requested by the chairman to do so, report the state of finances of the committee at each annual meeting of the unit owners and at any meeting of the committee. He shall perform such other services as the committee may require of him and shall receive compensation as the committee may fix or approve.

Section 5. Regular Meetings. A regular meeting of the committee shall be held immediately after the adjournment of each annual unit owners meeting at the place at which such unit owners meeting was held. Regular meetings, other than the annual meeting, shall be held at regular intervals and at such places and at such times as the committee may from time to time by resolution designate. No notice need be given of regular meetings of the committee.

Section 6. Special Meetings. Special meetings shall be held whenever called by the chairman, vice-chairman, or by a majority of the committee. Either written or oral notice of such special meeting shall be given not less than 24 hours in advance of said meeting; provided, however, that by unanimous consent of the committee, special meetings may be held without call or notice of any time or place.

Section 7. Quorum. A quorum for the transaction of business at any meeting of the committee shall consist of the majority of the committee then in office.

Section 8. Special Committees. The management committee, by resolution, may designate one or more special committees, each committee to consist of two (2) or more of the unit owners, which exercise the powers in said resolution set forth. 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 chairman of the management committee may appoint persons to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

Section 9. Additional Facilities. The management shall have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the interest of the members, for conducting the business of the committee.

## ARTICLE II

### MEETING OF UNIT OWNERS E 1273208 B 2042 P 901

Section 1. Annual Meeting. The annual meeting of all unit owners shall be held at 7:00 o'clock p.m. on the third Thursday of January each year, commencing in January of 1997, at such place as shall be stated in the notice of meeting or in a duly executed waiver of notice; provided, however, that whenever such date falls upon a legal holiday, the meeting shall be held on the next succeeding business day, and provided, further, that the management committee may, by resolution, fix the date of the annual meeting at such other date as it shall deem appropriate. At such meeting the unit owners shall elect committee members for two (2) year terms, which terms shall commence as of February 1; provided, however, that at the first election after the recording of these By-laws two (2) of the five committee members shall be elected for terms of not more than one (1) year, which terms shall commence upon election and shall expire on the next February 1 after such election, and three (3) of said committee members shall be elected for not more than two (2) years, which terms shall commence upon election and shall expire on the second February 1 after such election; provided, further, that the term of any duly elected appointed committee member shall not expires until his successor is elected and qualifies.

Section 2. Voting. At any meeting of the owners, each owner including Declarant, shall be entitled to cast one vote for each unit owned. Any owner may attend and vote at such meeting in person, or by an agent duly appointed by an instrument in writing signed by the owner and filed with the management committee or the manager. Any designation of an agent to act for an owner may be revoked at any time by written notice to the management committee or manager, and shall be deemed revoked when the management committee or the manager shall receive actual notice of the death or judicially declared incompetence of such owner or of the conveyance of such owner of this condominium. Where there is more than one record owner, any or all of such persons may attend any meeting of the owners, but it shall be necessary for those present to act unanimously in order to cast the votes to which they are entitled. Any designation of an agent to act for such persons must be signed by all such persons. Declarant shall be entitled to vote with respect to any condominium owned by Declarant.

In the event that a notice of default is recorded by any mortgagee who holds a mortgage which is a first lien on a condominium against the owner of the condominium covered by the mortgage, then and in the event and until the default is cured, the right of the owner of such condominium to vote shall be transferred to the mortgagee recording the notice of default. Mortgagee shall mean any creditor that holds a first note on the property; example, Trust Deed or Uniform Real Estate Contract.

Section 3. Meetings. The presence at any meeting of owners having a majority of the total votes shall constitute a quorum. In the event that a quorum is not present at any meeting, the owners present, though less than a quorum, may adjourn the meeting to a later date

and give notice thereof to all the owners in accordance with the provisions of paragraph 4 hereof, and at that meeting the presence of owners holding in excess of thirty percent (30%) of the total votes shall constitute a quorum for the transaction of business; but in the event a quorum is not present at that meeting, the owners present though less than a quorum, may give notice to all the owners in accordance with paragraph 4 of an adjourned meeting, and at that meeting whatever owners are present shall constitute a quorum. Unless otherwise expressly provided in this Declaration, any action may be taken at any meeting of the owners upon the affirmative vote of a majority of the voting power of the owners present and voting provided that a quorum is present as provided for above.

Section 4. Special Meeting. Special meetings of the owners may be called at any time for the purpose of considering matters which, by the terms of this Declaration require the approval of all or some of the owners, or for any other reasonable purpose, said meeting shall be called by written notice, signed by a majority of the management committee, or by the owners having one-third (1/3) of the total votes and delivered not less than fifteen (15) days prior to the date fixed for said meeting. Said notices shall specify the date, time and place of the meeting, and the matters to be considered thereat.

Section 5. Calls and Notices of Meetings. The calls and notices of all meetings of the unit owners shall conform to the provisions of Article III of these By-laws.

Section 6. Waiver of Irregularities. All inaccuracies and/or irregularities in calls, notices of meeting and in the matter of voting, and method of ascertaining those present, shall be deemed waived if no objection is made at the meeting.

### ARTICLE III

#### CALLS AND NOTICES OF MEETINGS

Section 1. Annual Meeting of Unit Owners. At least five (5) days, inclusive of the date of meeting, before the date of any annual meeting of the unit owners, the secretary shall cause a written notice setting forth the time and place to be delivered personally or deposited in the mail, with postage prepaid, addressed to each unit owner as his last post office address as it then appears on the records of the management committee.

Section 2. Special Meetings of Unit Owners. Special meetings of the unit owners may be called by the management committee, or by one-third (1/3) in number of the unit owners, and notice of such meeting shall be given to each unit owner in writing at least 48 hours before the time fixed for the meeting and such notice shall advise each unit owner as to the time, place and general purpose of the meeting and shall be delivered personally, or mailed, postage prepaid, to each unit owner at his last post office address as it appears on the books of the management committee. Whenever all of the members shall meet in person, such meeting shall



be valid for all purposes without call or notice, or waiver of call or notice. No call or notice of any meeting of members shall be necessary if waiver of call and notice be signed by all of the members.

#### ARTICLE IV

##### ADMINISTRATIVE RULES AND REGULATIONS

The committee shall have the power to adopt and establish by resolution such building, management, and operational rules as the committee may deem necessary for the maintenance, operation, management and control of the project, and the committee may, from time to time by resolution, alter, amend and repeal such rules. When a copy thereof has been furnished to the owners they shall be taken to be a part hereof. Unit owners shall at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all unit owners and/or occupants of the project. Rules and regulations may be altered or amended or abolished at a meeting of owners properly called and properly voted.

#### ARTICLE V

##### PAYMENT OF EXPENSES

Section 1. Assessments. Each unit owner shall pay the management committee his pro-rata portion of the cash requirements deemed necessary by the committee to manage and operate WHISPERING PINES CONDOMINIUM upon the terms, at the times, and in the manner herein provided without any deduction on account of any setoff or claim which the owner may have against the management, and if the owner shall fail to pay any installment within one (1) month from the time when the same becomes due, the owner shall pay interest thereon at the rate of twelve percent (12%) per annum from the date when such installment shall become due to the date of the payment thereof.

The cash requirements above referred to for each year, or portion of the year, are hereby defined, and shall be deemed to be such aggregate such as the management committee from time to time shall determine, in its judgment, is to be paid by all the owners of WHISPERING PINES CONDOMINIUM then in existence to enable the committee to pay all estimated expenses and outlays of the committee to the close of each year, growing out of or connected with the maintenance and operation of such land, buildings, and improvements, which sum may include, among other things, the cost of management, special assessments, fire, casualty, and public liability insurance premiums, common lighting and heating, landscaping and care of grounds, repairs and renovations to common areas and facilities, garbage collections, wages, water charges, sewer fees, legal and accounting fees, management fees, expenses and liabilities incurred by the management committee under or by reason of the Declaration and these by-laws,

the payment of any deficit remaining from a previous period, the creation of a reasonable contingency or other reserve or surplus fund, as well as all other costs and expenses relating to WHISPERING PINES CONDOMINIUM. The management committee may, from time to time, up to the close of the year for which such cash requirements have been so fixed or determined, increase or diminish the amount previously fixed or determined for such year. The committee may include, in the cash requirements for any year, any liabilities or items of expense which accrued or became payable in a previous year, or which might have been included in the case requirements for a previous year, but were not included therein; and also any sums which the management committee may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

The pro-rata portion payable by the owner in and for each year or portion of year shall be a sum within the limits and on the conditions hereinabove provided bearing to the aggregate amount of such cash requirements for such year, or portion of year, determined as aforesaid, the ratio of the owner's unit to the total of all units, and such assessments, together with any additional sums accruing under the Declaration and these By-laws shall be payable monthly in advance, or in such payments and installments as shall be required by the management committee, and at such times as shall be provided by the committee.

The management committee shall have discretionary powers to prescribe the manner of maintaining and operating WHISPERING PINES CONDOMINIUM and to determine the cash requirements of the management committee to be paid as aforesaid by the owners under the Declaration and these By-laws. Every such reasonable determination by the committee, within the bounds of the condominium Ownership Act, the Declaration, and these By-laws, shall, as against the owner, be deemed necessary and properly made for such purpose.

First mortgagees of all Units shall have the right to examine the books and records of the homeowners association.

If the owners shall at any time let or sublet the unit, and shall default for a period of one (1) month in the payment of any management assessments, the management committee may, at its option and so long as such default shall continue, demand and receive from any tenant or sub-tenant of the owner occupying the unit the rent due or becoming due from such tenant or sub-tenant to the owner up to an amount sufficient to pay all sums due from the owner to the management committee, and any such payments of such rent to the committee shall be sufficient payment and discharge of such tenant or sub-tenant as between such tenant or sub-tenant and the owner to the extent of the amount so paid.

Section 2. No Waiver. The omission of the management committee, before the expiration of any year, to fix the management assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the covenants, conditions, or restrictions of the Declaration and these By-laws, or a release of the owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment shall be fixed.

ARTICLE VI

TAXES AND INSURANCE E 1273208 B 2042 P 905

Section 1. Taxes. It is acknowledged that under the Condominium Ownership Act each of said units in each of said unit's percentage of the undivided interest in the common areas and facilities of the project are subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, and that as a result thereof no taxes will be assessed or payable against the project as such. Each member will, therefore, pay and discharge any and all taxes which may be assessed against any of said units of which he is the owner, against the percentage of undivided interests in the common areas and facilities of any such unit, and/or against any items of personal property located in or upon any unit of which he is the owner.

Section 2. Insurance. The committee shall secure and maintain the following insurance coverage on the project:

A. Fire and Extended Coverage. The management committee shall secure and at all times maintain, in its name as trustee for the owners, a policy or policies of fire and extended coverage insurance on the project in an amount which shall be equal to its maximum insurance replacement value, excluding foundation and excavation costs, or in such greater or lesser sum as the committee may from time to time determine to be necessary, proper and adequate. As between unit owners, participation in any proceeds realized by the committee from said insurance policy or policies will be on the basis of any damage sustained. In the event such unit owners cannot agree on the amount of damage sustained by each, the decision of the committee respecting the appraisal of such damage shall be conclusive. Each unit owner shall be responsible for securing and maintain insurance coverage on the interior of his unit and furniture, appliances, and all person property which he may have in or on his particular unit.

B. Public Liability Coverage. The committee shall secure and at all times maintain, in its own name a policy of comprehensive general liability insurance for bodily injury and property damage in the aggregate amount of \$3,000,000.00 Said minimum coverage limit may be increased or decreased by the committee from time to time as it may deem to be in the interest of its members.

It is intended that the insurance policies herein provided for include coverage for any act or omission of the committee, its officers; agents and employees, or of the occupants of any office unit in the project, respecting the ordinary and anticipated use, occupancy, operation and/or maintenance of the project. It is not intended, however, that said insurance policies include any coverage or recognize any liability with respect to any act or omission on the part

of any unit owner or occupant, or their employees, respecting acts or omissions other than those arising out of the ordinary and anticipated use, occupancy, operation and/or maintenance of the project or of any of said units.

## ARTICLE VII

### RIGHT OF ENTRY

Section 1. By the Committee. The committee and its duly authorized agents - shall have the right to enter any and all of the said units in case of an emergency originating in or threatening such unit or any other part of the project, whether the owner or occupant thereof is present at the time or not. The committee and its duly authorized agents shall also have the right to enter any and all of said units at all reasonable times as required for the purpose of making necessary repairs upon the common areas and facilities of the project.

Section 2. By Unit Owner. All unit owners and their duly authorized agents and representatives shall have the right to enter any of said units contained within the project for the purpose of performing emergency installations, alterations, or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations, or repairs are necessary to prevent damage or threatened damage to other units in the project; and provided, further, that the unit owner affected by such entry shall first be notified thereof if available and if time permits.

## ARTICLE VIII

### REIMBURSEMENT FOR DAMAGES

Each unit owner shall promptly perform or cause to be performed all maintenance and repair work within any of said units owned by him which, if omitted, will adversely affect the building in which said unit is located in its entirety, or any part of the project, and shall be liable in damages for any failure on his part to do so. Each member shall also reimburse the committee for the full value of any repairs or replacements to the common areas and facilities made necessary through the negligence or fault of such unit owners or such unit owner's tenants.

## ARTICLE IX

### NUISANCE

No unit owner shall cause, permit or suffer any nuisance to be created or carried on in any unit of which he is the owner or occupant.

ARTICLE X

USE AND OCCUPANCY

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Section 1. Obstruction of Common Areas and Facilities. No member shall cause or allow nor permit any person over whom he has or may exercise supervision or control to cause or allow any roadway, driveway, or sidewalk in or on the project to be obstructed or to be used for any purpose other than for ingress to or egress from said units or the project.

Section 2. Use of Unit. No owner or occupant of any of said units, shall, without the prior written consent of the committee, occupy or use any of said units, nor permit any person over whom such owner or occupant has or may exercise supervision and control to occupy or use the same, for any purpose other than a private dwelling, or to permit or suffer anything to be done or kept in or upon any of said units which would constitute a nuisance or a violation of any law, ordinance, or regulation, which would increase the rate of fire insurance on the project or which might otherwise interfere with the rights of other owners or occupants of the project. No sign, signal, advertisement, or illumination shall be inscribed or exposed on or at any window or outside wall of the project, except upon specific approval of the management committee.

Section 3. Antennas. No radio, T.V. antenna or satellite dish shall be installed on the outside of any building contained within the Project without the prior written consent of the Committee.

Section 4. Pets. No pet shall be kept or harbored in the project unless the same in each instance be expressly permitted by the management committee. In no event shall pets be permitted in any of the common areas and facilities of the project unless carried or upon a leash. The owner shall indemnify the committee and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having any pet in the project. One pet under 20 pounds (such as a cat or dog) may be authorized.

Section 5. No Waiver of Strict Performance. The failure on the part of the committee to insist, in one or more instances, upon a strict performance of any of the terms, covenants, or conditions of the aforesaid Act, Declaration, record of survey map, rules, regulations, agreements, determinations and/or these By-laws, or to exercise any right or option wherein contained, shall not constitute, nor be construed as, a waiver or relinquishment of any other right which the committee may have thereunder or which it may thereafter acquire.

ARTICLE XI

AMENDMENTS

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These By-laws may be altered, amended, or repealed by the affirmative vote of sixty-seven percent of the unit owners at any regular meeting of such unit owners, or at any special meeting if notice of the proposed alteration or repeal be contained in the notice of such special meeting.

Adopted and approved this 21<sup>st</sup> day of August, 1996.