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RECORDED AT THE CLERK'S OFFICE

*Joe Fullmer*

1985 JUN 24 PM 1:42

UTAH COUNTY RECORDER  
JANIS A. HILL  
CLERK

17653

AMENDED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
COLONIAL PINES CONDOMINIUM

This Declaration made at the date hereinafter set forth by Dalton and Fullmer, a Utah Partnership, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Utah County, State of Utah which is more particularly described on Exhibit "A", attached hereto, and

WHEREAS, Declarant intends to construct buildings and other improvements upon said land as condominium units to be known as Colonial Pines Condominium.

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

ARTICLE I  
DEFINITIONS

As used herein or elsewhere in the Condominium Documents, unless otherwise provided, or unless the context requires otherwise, the following terms shall be defined as in this Article provided.

1. Unit: Any one of those parts of the buildings which are separately described on the Record of Survey Map.

2. Unit Owner: The person, persons or entity holding title in fee to a Unit in the Condominium Project and an undivided interest in the common areas and facilities as shown in the records of the County Recorder of Utah County, Utah.

BOOK 2226 PAGE 617

3. Assessment: That portion of the cost of maintaining and managing the property which is to be paid by each unit owner as set forth in Article VII hereof.

4. Association: Colonial Pines Owners Association, Inc. and its successors, a non-profit corporation duly organized under the laws of the State of Utah, with its principal place of business at American Fork, Utah. Copies of the By-laws of the corporation and certain of its rules and regulations are annexed hereto and made a part hereof as exhibits.

5. Board of Directors: Shall mean and refer to the governing Board of the Association. The term "Board of Directors" as used in the condominium documents shall be synonymous with the term "Management Committee" as used in the Utah Condominium Ownership Act.

6. Building: The structure or structures containing the units located on the property.

7. Property: Shall mean and refer to that certain real property hereinbefore described. Said property shall be governed by the provisions of the "Condominium Ownership Act" of the State of Utah (Title 57-8-1 et seq., as amended).

8. Common Areas and Facilities: The common areas and facilities are that part of the property which is not within the units as such units are shown on the Record of Survey Map or which exist within the units by virtue of an easement herein created.

9. Common Expenses: The actual estimated costs of:

a. Maintenance, management operation, repair and replacement of the common areas and facilities and those parts of the units as to which, pursuant to other provisions hereof, it is the responsibility of the Association to maintain, repair and replace; and adequate reserves to assure payment of the above costs;

b. Management and administration of the Association, including without limiting the same to compensation paid by the Association to a managing agent, accountants, attorneys, and other employees;

c. All liens of any nature, including taxes and special assessments levied by government authority which are liens upon more than one unit or upon any portion of the common areas; however, taxes on individual units are the duty of the individual unit owner(s);

BOOK 2226 PAGE 618

d. Any other items held by or in accordance with other provisions of this Declaration or the corporation By-laws to be common expense.

11. Limited Common Area: Limited common areas shall mean those common areas designated in the Declaration and shown on the Record of Survey Map as reserved for use of certain unit(s) to the exclusion of other units. Limited common areas include the stairways and balcony areas for the upper story units, the patio and yard areas for the lower story units, and the assigned parking spaces.

12. Condominium Documents: This Declaration and Exhibits annexed hereto as the same from time to time may be amended.

Exhibit "A" Legal description of land comprising the Condominium;

Exhibit "B" The Record of Survey Map certifying that the plat fully and accurately depict the layout, location, unit number and dimensions of the units as built;

Exhibit "C" A schedule of parking spaces as assigned to each unit;

Exhibit "D" By-laws of Colonial Pines Owners Association, Inc.; and

Exhibit "E" Regulations of the Common Areas.

Exhibit "F" Maintenance Agreement.

ARTICLE II  
CONDOMINIUM NAME

The name of the Condominium is: COLONIAL PINES  
CONDOMINIUM.

STATEMENT OF APPLICABILITY OF THE LAWS OF UTAH. This Declaration is made pursuant to the provisions of the "Condominium Ownership Act" of the State of Utah (Title 57-8-1 et seq., as amended) and the property shall also be governed by said act.

BOOK 2226  
PAGE 619

ARTICLE III  
NAME OF ORGANIZATION OF UNIT OWNERS

The name of the organization of unit owners is: COLONIAL PINES OWNERS ASSOCIATION, INC., a non-profit corporation duly organized under the laws of the State of Utah with its principal place of business at American Fork, Utah County, Utah. Colonial Pines Owners Association, Inc. herein referred to as the "Association," has enacted By-laws pursuant to the Non-Profit Corporation Act of the State of Utah.

ARTICLE IV  
DESCRIPTION OF BUILDINGS

The Condominium project contains two (2) buildings. Each of the buildings are identical in size and height and are constructed of masonry, brick, wood, aluminum siding, and asphalt shingle roof. The interiors are standard inside sheetrock finish. Each of the buildings are two story design with the bottom story having a full basement below ground level.

ARTICLE V  
DESCRIPTION OF UNITS

Each of the buildings contain ten (10) units. Each unit has one level of living space with a kitchen, living room, dining room, two bedrooms and two full baths. The general floor plat of each unit showing the exterior dimensions of the unit are shown on the Record of Survey Map. Each unit shall have one covered parking space and one open parking space assigned to it as further shown on the Record of Survey Map.

ARTICLE VI  
DESCRIPTION OF COMMON AREAS AND FACILITIES AND  
PROPORTIONATE INTEREST OF EACH UNIT THEREIN

1. General Common Areas and Facilities. Except as otherwise in this Declaration provided, the common areas and facilities shall consist of the areas and facilities described in the definitions and constitute in general all of the parts of the property except the units and the permanent parking space assigned to each unit. The general common areas and facilities shall include the following whether located within the bounds of the unit or not:

a. All structural parts of the buildings including without limitation, foundations, columns, joists, beams, supports, supporting walls, floors, ceilings and roofs;

BOOK 2226 PAGE 620

b. Driveways, parking areas, lawns, shrubs, trees, entrance ways, exterior steps, service areas, and playground;

c. Any utility pipe or line or system servicing more than a single unit, and all ducts, wires, conduits, and other accessories used therewith;

d. All other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use, or which have been designated as common areas and facilities in the Record of Survey Map;

e. All repairs and replacement of any of the foregoing.

2. Use of Common Areas and Facilities. No person shall use the common areas and facilities or any part thereof in any manner contrary to or not in accordance with the rules and regulations pertaining thereto as from time to time may be promulgated by the Association.

3. Ownership of Common Areas. Each unit owner shall own an individual one-twentieth (1/20) interest in the general common area.

#### UNIT DESCRIPTION

1. Real Property. Each unit, together with the space within it as shown on the Record of Survey Map and together with all appurtenances thereto, together with furnace, water heater, air conditioning unit (whether contained within the unit or not), built-in appliances and plumbing fixtures, shall for all purposes constitute a separate parcel of real property which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property independently of all other parts of the property, subject only to the provisions of this Declaration.

2. Boundaries. Each unit shall be bounded as to both horizontal and vertical boundaries as shown on the Record of Survey Map, subject to such encroachments as are contained in the buildings whether the same exist now or are created by construction, settlement or movement of the buildings or permissible repairs, reconstruction or alterations. Said boundaries are intended to be as follows:

a. Horizontal Boundaries:

(1) The upper boundary shall be the plane of the lower surface of the ceiling of the upper most living level of each unit;

(2) The lower boundary shall be the plane of the upper surface of the floor of the lower living level.

b. Vertical Boundaries:

(1) Between units: the plane formed by the center line of the wall between units;

(2) Exterior boundaries shall be the plane formed by the interior side of the wall in which windows are located.

It is not intended that the unit owners shall own the undecorated or unfinished surfaces of the perimeter walls, floors and ceilings surrounding the respective unit spaces, nor shall owners be deemed to own pipes, wire, conduits or other public utility lines running through the respective unit spaces that are utilized for, or served by, more than one unit space. The owners, however, shall be deemed to own the walls and partitions except support walls and joists that are contained in their respective units and shall also be deemed to own the inner-decorated or finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint, wallpaper, floor coverings and the like.

3. Appurtenances. Each unit shall include, and the same shall pass with each unit as an inseparable appurtenance thereto, whether or not separately described, conveyed or encumbered, all of the rights, title and interest of the unit owner in the property, which shall include but not be limited to,

a. Common areas and facilities: an undivided share in the common areas and facilities, such undivided share to be that portion as set forth in Article VI hereof.

b. A license to maintain private passenger automobiles at and on parking space or spaces (in addition to the space shown on the Record of Survey Map) assigned to the unit by Declarant or by the Association, subject to the rules and regulations of the Association.

c. Easements for the benefit of the unit.

d. Association membership and funds and assets held by the Association for the benefit of the unit owners.

e. All such appurtenances, however, shall be and continue to be subject to the easements for the benefit of other units.

f. The following easements from each unit owner to each other unit owner and to the Association:

(1) Ingress and Egress. Easements through the common areas and facilities for ingress and egress for all persons making use of such areas and facilities in accordance with the terms of the condominium documents.

(2) Maintenance, Repair and Replacement. Easements through the units and common areas and facilities for maintenance repair and replacement of the units and common areas and facilities. Use of these easements, however, for access to units shall be limited to reasonable hours, except that access may be had at any time in case of emergency.

(3) Utilities. Easements through the units and common areas and facilities for the furnishing of utility services within the building.

(4) Structural Support. Every portion of a unit which contributes to the structural support of the building shall be burdened with an easement of structural support.

(5) Emergency Easements of Ingress and Egress. Easements whenever reasonably required for emergency ingress and egress.

ARTICLE VII  
DESCRIPTION OF LIMITED COMMON AREAS

Except as otherwise in this Declaration provided, the limited common areas and facilities shall consist of the areas and facilities described in the definitions and the Record of Survey Map.

ARTICLE VIII  
ASSESSMENTS

Assessments against the units owners shall be made and approved by the Board of Directors of the Association and paid by the unit owners to the Association in accordance with the following provisions:

1. Share of Expense. Each unit owner shall be proportionately liable for his share of the common expenses in the same percentage as his share of ownership in the general common areas and facilities and membership in the Association of unit owners.

2. Assessments Other Than Common Expenses. Any assessments, the authority to levy which is granted to the Association or its Board of Directors by the condominium documents, shall be paid by the unit owners to the Association in the proportions set forth in the provisions of the condominium documents authorizing the assessment.

3. Assessments for Common Expenses. Assessments for common expenses shall be made for the calendar year annually in advance on or before the 15th day of December and at such other and additional times and in the judgment of the Board of Directors additional common expense assessments are required for the proper management, maintenance and operation of the common areas and facilities. Such annual assessment shall be due and payable in twelve (12) equal consecutive monthly payments, on the first day of each month, beginning with January of the year for which the assessments are made. The total of the assessment shall be in the amount of the estimated common expenses for the year, including a reasonable allowance for contingencies and reserves for replacements, less the amounts of unneeded common expense account balances. If an annual assessment is not made as required, a payment in the amount required by the last prior assessment shall be due upon each assessment payment date until changed by management.

4. Assessments for Emergencies. Assessments for common expenses of emergencies which cannot be paid by the common expense account shall be made only by the Board of Directors of the Association.

5. Assessments for Liens. All liens of every nature, including taxes and special assessments levied by governmental authority which are a lien upon more than one unit or upon any portion of the common areas and facilities, shall be paid by the Association as a common expense.

6. Assessment Roll. The assessments against all unit owners shall be set forth upon a roll of the units which shall be



available in the office of the Association for inspection at all reasonable times by the unit owners or their duly authorized representatives. A certificate made by the Association as to the status of the unit owner's assessment account shall limit the liability of any person for whom made other than the unit owner. The Association shall issue such certificate to such persons as a unit owner shall request in writing.

7. Liability for Assessments. The owners of a unit and his grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor. Such liability may not be avoided by a waiver of the use or enjoyment of any common areas or facilities or by abandonment of the unit for which the assessments are made. A purchaser of a unit at a judicial or foreclosure sale or a first mortgagee who accepts a deed in lieu of foreclosure shall be liable only for assessments coming due after such sale and for that portion of due assessments prorated to the period after the date of such sale. Such a purchaser as aforesaid shall be entitled to the benefit of all prepaid assessments paid beyond the date such purchaser acquired title.

8. Lien for Assessments. The unpaid portion of any assessment which is due shall be secured by a lien upon the unit and all appurtenances thereto and shall be enforced in the manner provided for the foreclosure of liens by the laws of the State of Utah. Such lien shall have priority over all other liens except liens for general taxes and first mortgages or trust deeds of record. Such a claim of lien shall also secure all assessments which come due thereafter until the claim of lien is satisfied.

9. Application.

a. Interest; Application of Payments. Assessments and installments thereof paid on or before fifteen (15) days after the date when due shall not bear interest, but all sums not paid on or before fifteen (15) days after the due date shall bear interest at the rate of eighteen percent (18%) per annum from the date when due until paid. All payments upon account shall be applied first to interest and then to the assessment payment first due. All interest collected shall be credited to the common expense account.

b. Suit. The Association at its option may enforce collection of delinquent assessments by suit at law or by foreclosure of the liens securing the assessments or by any other competent proceeding and in any event the Association shall be entitled to

recover in the same action, suit or proceeding the payments which are delinquent at the time of judgment or decree together with interest thereon at the rate of eighteen percent (18%) per annum, and all costs incident to the collection and the action, suit or proceeding, including, without limiting the same to reasonable attorney's fees.

ARTICLE IX  
PURPOSE AND USE RESTRICTION

The purpose of this Condominium is to provide for the operation of the property and buildings with the condominium form of ownership. In order to provide for a congenial occupation of the buildings and provide for the protection of the values of the units, the use of the property shall be restricted to be and in accordance with the following provisions:

1. No part of the properties shall be used for other than housing and the related common purposes for which the properties were designed. Each unit shall be used and occupied as a residence for a single family and for no other purpose.

2. There shall be no obstruction of the common areas and facilities nor shall anything be stored in the common areas and facilities without the prior written consent of the Association except as otherwise provided herein.

3. Nothing shall be done or kept in any unit or in the common areas and facilities which will increase the rates of insurance on the buildings or contents thereof beyond that customarily applicable for residential use, without the prior written consent of the Association. No owner shall permit anything to be done or kept in his unit or in the common areas and facilities which will result in the cancellation of insurance on any building, or the contents thereof, or which would be in violation of any law or regulation of any governmental authority. No waste shall be committed in the common areas and facilities.

4. No owner shall cause or permit anything (including, without limitation, a sign, awning, canopy, shutter, storm door, screen door, radio or television antenna) to be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or the outside of windows or doors, without the prior written consent of the Association.

5. No animals or birds of any kind shall be raised, bred or kept in any unit or in the common areas and facilities, except that dogs, cats and other household pets may be kept in units, subject to the rules adopted by the Association and provided that they are not kept, bred or maintained for any

commercial purpose and provided further that any such pet causing or creating a nuisance or disturbance shall be permanently removed from the property after a hearing by the Association and then ten (10) days written notice from the Association.

6. No noxious, offensive, or illegal activity shall be carried on in any unit or in the common areas and facilities.

7. Nothing shall be done in any unit or in, on, or to the common areas and facilities which will impair the structural integrity of the buildings or any part thereof or which would structurally change the buildings or any part thereof except as is otherwise provided herein.

8. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the common areas and facilities, except in a patio court in such manner as not to be visible except from the unit for which such courtyard is reserved. The common areas and facilities shall be kept free and clear of all rubbish, debris, and other unsightly materials.

9. No industry, business, trade, occupation, or profession of any kind, whether for commercial, religious, educational, charitable or other purposes shall be conducted, maintained, or permitted on any part of the property except such as may be permitted by the management committee and subject to the rules, nor shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted by any unit owner on any part of the property or in any unit therein, except that:

a. During the period of time that units are being sold, Declarant may maintain a sales office and/or model unit on the properties and may conduct sales activity on the property. At all times the Association of unit owners may maintain an office on the property for the purpose of conducting Association activities and business.

b. The Declarant may perform or cause to be performed such work as is incident to the completion of the development of the property, or to the sale or lease of units owned by the Declarant;

c. The Declarant or its agent may place "For Sale" or "For Rent" signs on any unsold, unoccupied or reacquired units and may place such other signs on the property as may be required to facilitate the sale or lease of unsold units;

d. The Association of Unit Owners or its agent or representative may place "For Sale" or "For Rent" signs on any unit or on the property for the purpose of facilitating the disposal of units by any unit owners, mortgagee or the Association of Unit Owners; and

e. A unit owner with respect to a unit, and the Association of Unit Owners or its agent or representative with respect to the common areas and facilities, may perform or cause to be performed any maintenance, repair or remodeling work, required or permitted by this Declaration.

#### ARTICLE X INSURANCE

The insurance which shall be carried upon the property shall be governed by the following provisions:

1. Authority to Purchase. All insurance policies upon the property shall be purchased by the Association for the benefit of the unit owners and their respective mortgagees as their interest may appear and shall provide for the issuance of certificates of insurance mortgage endorsements to the holders of first mortgages on the units or any of them, and, if insurance companies will agree, shall provide that the insurer waives its rights of subrogation as to any claims against unit owners, developer, and the Association and their respective employees, agents, and invitees.

2. Unit Owners. Each unit owner may obtain insurance, at his own expense, affording coverage upon his personal property and for his personal liability, but all such insurance shall contain the same waiver of subrogation as that referred to in Article IX, Paragraph 1 above and must be obtained from an insurance company for which the Association obtains coverage against the same risk, liability or peril, if the Association has such coverage.

3. Coverage.

a. Casualty. The buildings and all other insurable improvements upon the land and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof as determined annually by the insurance company affording such coverage. Such coverage shall afford such protection against:

(1) loss or damage by fire and other hazards covered by the standard extended coverage endorsement;

(2) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the buildings, including but not limited to, vandalism, malicious mischief, windstorm, water and flood damage.

b. Public liability and property damage in such amounts and in such forms and shall be required by the Association including but not limiting the same to general liability, water damage, legal liability, hired automobile, non-owner automobile and off-premises employee coverages.

c. Workmens Compensation policy to meet the requirements of law.

d. All liability insurance shall contain endorsements to cover liabilities of the Association as a group to a unit owner.

4. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as common expenses.

5. Ownership and Payment of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees as their respective interest may appear and shall provide that all proceeds payable as a result of casualty loss shall be paid to the Association as trustee. The Association shall hold such proceeds as may be paid on account of loss in trust for the purposes elsewhere stated herein, and for the benefit of the Association, the unit owners and their respective mortgagees as their interest may appear. If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such cost shall be retained by the Association or distributed to the unit owners and their mortgagees as their interest may appear. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the unit owner and his mortgagee jointly.

6. Reconstruction or Repair of Casualty Damage.

a. General Common Areas and Facilities. If any party of the general common areas and facilities shall

be damaged by casualty, the Association, upon input from the unit owners, shall decide whether to repair and restore the damage. The Association shall first use insurance proceeds, if any, for repairs, and each unit owner shall be liable for a pro rata assessment for any deficiency.

b. Single Unit. If the casualty damage is only to those parts of one unit for which the responsibility of maintenance and repair is that of the unit owner, then the unit owner shall be responsible for reconstruction and repair and the Association shall pay over to said unit owner all insurance proceeds received on account of such loss upon input from the unit owners.

c. Buildings. If the casualty damage affects more than one unit and contiguous common area in a building or buildings, and if less than three-fourths (3/4) of the building or buildings is destroyed or substantially damaged, the Association shall immediately proceed to repair and restore the building or buildings and all insurance proceeds shall be used therefor. Reconstruction and repair shall be carried out in the following manner:

(1) Estimate of Cost. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association will obtain reliable and detailed estimates of cost to replace the damaged property in condition as good as that before the casualty.

(2) Assessments. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction or repair by the Association, assessments shall be made against the unit owners in sufficient amounts to provide funds to pay the estimated cost. If at any time during the reconstruction and repair, or upon completion of reconstruction or repair, it is determined that the insurance funds and assessments are insufficient to carry out restoration and repair, assessment shall be made against the unit owners in sufficient amount to provide funds for the payment of such additional costs.

(3) Damage Exceeding Three-fourths of the Building; Insufficient Insurance Proceeds for Reconstruction. If three-fourths or more of a building is destroyed or substantially damaged and if the insurance proceeds are insufficient to

reconstruct the building and if the unit owners by a vote of at least three-fourths of the unit owners do not voluntarily, within 120 days after such destruction and damage, make provision for reconstruction, the Association shall record, with the County Recorder, a notice setting forth such facts, and upon recording such notice:

(a) The property shall be deemed to be owned in common by the unit owners in said building;

(b) The undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common areas;

(c) The property shall be subject to an action for partition at the suit of any unit owner, in which event the net proceeds of the insurance, if any, shall be considered as one fund and shall be divided among the unit owners in said building in a percentage equal to the percentage of undivided interest owned by each owner in the property after first paying out the respective shares of the unit owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each unit owner.

ARTICLE XI  
MAINTENANCE AND REPAIR OF UNITS

1. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of:

a. all portions of the unit which contribute to the support of the building, excluding, however, interior walls, ceiling and floor surfaces, and including, without intending to limit the same to, outside walls of the building, structural slabs, roof, interior boundary walls of units and load-bearing columns;

b. all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which may be contained in the unit but excluding therefrom, appliances, office machinery and plumbing fixtures;

BOOK 22226 PAGE 631

c. all incidental damage cause to a unit by such work as may be done or caused to be done by the Association in accordance herewith;

d. cause the building, appurtenances and grounds of the condominium to be maintained according to reasonably acceptable standards, including, but not limited to, lawn care, exterior cleaning, exterior painting, plumbing, carpentry, and such other normal maintenance and repair work as may be necessary;

e. make contracts for sewer, water, exterior lights, refuse collection, exterior electric service, vermin extermination, and other necessary service. Also, place orders for such equipment, tools, appliances, materials and supplies as are necessary to properly maintain the condominium;

f. cause to be placed and kept in force necessary insurance needed adequately to protect the Association, its members and mortgagees holding mortgages covering condominium parcels, as their respective interest may appear (or to require by law), including, but not limited to, public liability insurance, fire and extended coverage insurance, as is more particularly set forth in the Declaration of Condominium.

Funds for the payment of the above and foregoing shall be assessed against the unit owners as a common expense.

Follows: 2. The Responsibility of the Unit Owner shall be as

a. To maintain, repair and replace at his expense, all portions of the unit, including but not limited to exterior door and all glass doors and windows associated with the unit.

b. Not to paint or otherwise decorate or change the appearance of any portion of the building not within the walls of the unit, unless the written consent of the Association is obtained.

c. To promptly report to the Association or its agent any defect or need for repairs or maintenance, the responsibility for the remedying of which is with the Association.

d. Not to make any alterations in the portions of the unit or the building which are to be maintained by the Association or remove any portion thereof or



make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the building without first obtaining the written consent of the Board of Directors of the Association and all first mortgagees of individual units, nor shall any unit owner impair any easement without first obtaining the written consents of the Association and of the unit owner or owners for whose benefit such easement exists.

3. Nothing herein contained, however, shall be construed so as to impose a contractual liability upon the Association for maintenance, repair and replacement, but the Association's liability shall be limited to damages resulting from negligence.

ARTICLE XII  
MEMBERSHIP AND VOTING RIGHTS

1. The Declarant shall have the exclusive right to name the Board of Directors of the Association until the earlier of the following events.

a. One hundred twenty (120) days after the date by which seventy-five percent (75%) of the units have been conveyed to unit purchasers; or

b. Three (3) years from the date of this Declaration (Date of Declaration is June \_\_\_\_, 1984).

ARTICLE XIII  
MORTGAGEE PROTECTION

Unless two-thirds (2/3) of the mortgagees (based upon one vote for each first mortgage owned), or owners (other than the Declarant) of the individual condominium units have given their prior written approval, the Association shall not be entitled to:

1. By act or omission, seek to abandon or terminate the condominium project, without prior approval of the American Fork City Council.

2. Charge pro rata the interest or obligation of any individual condominium unit for the purpose of:

a. levying assessments or changes or allocating distributions of hazard insurance proceeds or condemnation awards, or

BOOK 2226  
PAGE 633

b. determining the pro rata share of ownership of each condominium unit in the common areas.

3. Partition or subdivide any condominium unit;

4. By act or omission, seek to abandon, 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 by the condominium project shall not be deemed a transfer with the meaning of this clause.);

5. Use hazard insurance proceeds for losses to any condominium property (whether to the units or common areas) for other than the repair, replacement or construction of such condominium property, except as provided by statute, in case of substantial loss to the units and/or common areas of the condominium project;

6. A first mortgagee, upon request, is entitled to written notification from the Association of any default in the performance by an individual unit owner of any obligation to the Association by the owner which is not cured within sixty (60) days. First mortgagees may jointly or singly pay taxes or other charges which are in default and which are or may become a charge against any of the common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy. First mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

#### ARTICLE XIV ADMINISTRATION

The administration of the property, including but not limited to the acts required of the Association, shall be governed by the following provisions:

1. The Association shall be incorporated under the name of Colonial Pines Owners Association, Inc. as a non-profit corporation under the laws of the State of Utah.

2. The By-laws of the Association shall be adopted pursuant to the Non-profit Corporation Code of the State of Utah.

3. The duties and powers of the Association shall be those set forth in this Declaration, the Articles of Incorporation and the By-laws together with those reasonably implied to effect the purposes of the Association and this Declaration; provided, however, that if there are conflicts or inconsistencies between

this Declaration or the By-laws, the terms and provisions of this Declaration shall prevail and the unit owners covenant to vote in favor of such amendments in the Articles of Incorporation and/or By-laws as will remove such conflicts or inconsistencies. The powers and duties of the Association shall be exercised in the manner provided by the Articles of Incorporation and the By-laws and any duties or rights of the Association which are granted by or to be exercised in accordance with the provision of this Declaration, shall be so exercised except that wherever this Declaration requires the act or approval of the Board of Directors of the Association, such act or approval must be that of the Board done or given in accordance with the By-laws.

4. The Association by and through its Board of Directors, is hereby vested with the power to delegate its powers, duties and authority granted by this Declaration, by entering into a management contract with such persons or organizations as the Board of Directors may elect. Subject, however, to the right granted to Declarant in this Declaration.

ARTICLE XV  
COMPLIANCE AND DEFAULT

Each unit owner shall be governed by and shall comply with the terms of the Condominium Documents and Regulations adopted pursuant thereto and said Documents and Regulation as they may be amended from time to time. A default shall entitle the Association or other unit owners to the following relief:

1. Legal Proceedings. Failure to comply with any of the terms of the Condominium Documents and Regulations adopted pursuant thereto, shall be ground for relief which may include, without intending to limit the same, to an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association or if appropriate, by an aggrieved unit owner.

2. All unit owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or by that of any employees, invitees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by the use, misuse, occupancy or abandonment of any unit or its appurtenances. Nothing herein contained however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

3. Costs and Attorney's Fees. In any proceeding arising because of an alleged default by a unit owner, the prevailing party shall be entitled to recover the costs of the

proceeding and such reasonable attorney's fees as may be determined by the Court.

4. No Waiver of Rights. The failure of the Association or of a unit owner to enforce any right, provision, covenant, or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association or unit owner to enforce such right, provision, covenant or condition in the future.

5. All rights, remedies and privileges granted to the Association or a unit owner pursuant to any terms, provisions, covenants or conditions of the Condominium Documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party the Condominium Documents or at law or in equity.

ARTICLE XVI  
TERMINATION

The Condominium shall be terminated, if at all, in the following manner:

1. Approval must be obtained by the American Fork City Council.

2. Seventy-five percent (75%) of the unit owners may remove all of the Condominium or a portion thereof from the provisions of the Utah Condominium Ownership Act by an instrument to the effect, duly recorded in the Utah County Recorder's Office, provided that the holders of all liens upon any of the units affected consent thereto by instruments duly recorded.

3. Destruction. If it is determined in the manner elsewhere provided that the property shall not be reconstructed after casualty, this condominium, including all units, shall be subject to partition at the suit of any unit owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of a partition sale together with any common funds shall be divided in proportion to the unit owners' respective undivided ownership in the common areas and facilities. Upon such sale, the condominium shall be deemed removed from the provisions of the Utah Condominium Ownership Act.

4. The removal of the condominium from the provisions of the Utah Condominium Ownership Act shall not bar the subsequent resubmission of the land and buildings involved to the provisions of the act.

ARTICLE XVII  
LIENS

1. Protection of Property. All liens against a unit other than for mortgages, trust deeds, taxes, or special assessment will be satisfied or otherwise removed within thirty (30) days from the day the lien attaches. All taxes and special assessments upon a unit shall be paid before becoming delinquent.

2. Notice of Lien. A unit owner shall give notice to the Association of every lien upon his unit other than for trust deeds, mortgages, taxes and special assessments within five (5) days after the attaching of the lien herein.

3. Notice of Suit. Unit owners shall give notice to the Association of every suit or other proceeding which will or may affect the title to his unit or any other part of the property, such notice to be given within five (5) days after the unit owner receives notice thereof.

4. Failure to Comply. Failure to comply with this Article concerning liens will not affect the validity of any judicial sale.

ARTICLE XVIII  
CONDEMNATION

Should any part of the common property or units be condemned and an award given therefor, it shall be allocated as follows:

1. If any portion of the common areas and facilities are taken by eminent domain the award for the it shall be allocated to the unit owners in proportion to their respective undivided interest in the common areas and facilities.

2. If any units are taken by eminent domain, the undivided interest in the common areas and facilities appertaining to these units shall thence forth appertain to the remaining units, being allocated to them in proportion to their respective undivided interest in the common areas and facilities.

3. Condemnation proceeding and the awards given therefor shall be governed by the provisions of Title 57-8-32.5, Utah Code Annotated, 1953.

ARTICLE XIX  
COVENANTS RUNNING WITH THE LAND

1. All provisions of the Condominium Documents shall be construed to be covenants running with the land and with every

part thereof and interest therein including but not limited to every unit and the appurtenances thereto; and every unit owner and claimant of the property or any part thereof or interest therein, and his heirs, executors, administrators, successors and assigns shall be bound by all of the provisions of the Condominium Documents.

2. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the twenty (20) years period by an instrument signed by not less than ninety percent (90%) of the Unit Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Unit owners, subject to the then existing American Fork City Ordinances and the approval of the American Fork City Council. Any amendment must be recorded.

ARTICLE XX  
GENERAL PROVISIONS

1. Provisions Relating to Declarant.

a. The Declarant specifically disclaims any intent to have made any warranty or representation in connection with the property or the Condominium Documents except as specifically set forth therein and no person shall rely upon any warranty or representation not so specifically made therein. Estimates of common expenses are deemed accurate, but no warranty or guaranty is made or intended, nor may one be relied upon. All warranties required by the Federal Housing Administration or the Veterans Administration shall also apply.

2. Service of Process. The person to receive service of process in cases provided herein or in the Utah Condominium Act is: Oral T. Dalton, whose address is 663 East 770 North, American Fork, Utah 84003. The person so designated may be changed from time to time by the Association.

3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

4. Captions. Captions used in the Condominium Documents are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of Condominium Documents.

BOOK 2226 PAGE 638

5. FHA/VA Approval. Until all of the units have been conveyed to unit purchasers, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

6. Binding Nature of Pre-existing Agreements. The following documents signed by Dalton & Fullmer, a Utah Partnership, prior to the existence of Colonial Pines Owners Association, Inc. shall be binding upon the Association and are part of the conditions under which the City of American Fork has agreed to approve the condominium development: This Declaration with its attached exhibits, and the Maintenance Agreement between Dalton & Fullmer and American Fork City.

DECLARANT:

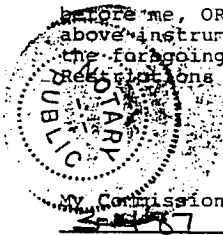
DALTON AND FULLMER, a  
Utah Partnership

By *Oral T. Dalton*  
Partner

By *James Fullmer*  
Partner

STATE OF UTAH            )  
                                  ): ss  
COUNTY OF UTAH        )

On the 24 day of June, 1984, personally appeared before me, ORAL T. DALTON and JAMES FULLMER, the signers of the above instrument, who duly acknowledged to me that they executed the foregoing Declaration of Covenants, Conditions, and Restrictions on behalf of Dalton and Fullmer, a Utah Partnership.



*Bruce E. Fullmer*  
NOTARY PUBLIC  
Residing in Utah County, Utah

17653