

MASTER DECLARATION

HIDDEN COVE CONDOMINIUMS

This Declaration of Covenants, Conditions and Restrictions is made pursuant to Utah Code Ann. §57-8-1 et.seq. (1953, as amended) to establish the Hidden Cove Condominiums.

RECITALS

WHEREAS, Declarant is the owner of all the real property located in Washington County, State of Utah, more particularly described below, and

WHEREAS, Declarant is desirous of subjecting the property described below, with the improvements thereon, to the Utah Condominium Ownership Act, (Utah Code Ann. § 57-8-1 et.seq., 1953, as amended) dividing, selling and conveying the same to various purchasers subject to the covenants, conditions and restrictions herein.

DECLARATION

Declarant does hereby declare that the following described real property located in Washington County, Utah, is subject to the following conditions, covenants and restrictions, and the map recorded herewith, entitled "Hidden Cove Condominiums", consisting of three sheets, prepared and certified by Lloyd Ried Pope, a Utah Registered Land Surveyor:

Beginning at the Southeast Corner of Block 15, Plat "D", ST. GEORGE CITY SURVEY and running thence S 48°16'24" E 20.13 feet along the Block line; thence N 0°06'46" W 336.75 feet; thence N 89°53'06"W 15.00 feet; thence N 0°06'46" W 268.02 feet to the Northeast corner of said Block 15; thence S 87°51'01" W 178.84 feet along the North line of said Block 15 to the Northeast corner "CANNON PARKVIEW TOWNHOMES"; thence along the boundary line of said townhomes as follows: S 0°05'59" W 197.40 feet; thence N 89°54'01" W 33.00 feet; thence S 0°05'59" W 102.97 feet; thence leaving said townhomes boundary and running S 89°09'32" E 86.97 feet to an existing fence; thence N 2°07'40" W 40.94 feet along said fence; thence S 89°56'04" E 102.31 feet; thence S 0°06'46" E 301.54 feet to the South line of said Block 15; thence S 48°16'24" E 33.59 feet to the point of beginning.

Containing 1.508 acres.

which all are for the purpose of protecting the value and desirability of, and which shall be construed as covenants of equitable servitude and shall run with the land and be binding on all parties having any right, title or interest in the property 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, the following terms shall have the indicated meanings:

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REGISTERED SOUTHERN UTAH TITLE

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REGISTERED SOUTHERN UTAH TITLE

Section 1. "Declaration" shall mean and refer to this instrument.

Section 2. "Map" or "Plat" shall mean and refer to the Map entitled "Hidden Cove Condominiums" consisting of three sheets, prepared by Lloyd Reid Pope, a Utah Registered Land Surveyor, recorded concurrently herewith.

Section 3. "Act" shall mean and refer to the Condominium Ownership Act, Utah Code Ann. §57-8-1 et. seq. (1953, as amended).

Section 4. "Condominium Project" shall mean and refer to the entirety of the units and common area.

Section 5. "Unit" shall mean and refer to the area or space contained in the perimeter walls of each of the individually numbered areas on the map designated for private ownership.

Section 6. "Common Areas and Facilities" shall mean and refer to the area designated "common area" on the map, and all other area not included within any unit, and shall specifically include, but not be limited to:

- i. the real property within the condominium project as described on the map;
- ii. that portion of the property not specifically included in the respective units as herein defined;
- iii. all foundations, columns, girders, beams, supports, mainwalls, roofs, stairways, exterior walkways, driveways, streets, such recreational areas and facilities as may be provided, yards, fences, service and parking areas and entrances and exits, and in general all other apparatus, installations and other parts of the property necessary or convenient to the existence, maintenance and safety of the common areas and facilities or normally in common use;
- iv. these areas specifically set forth and designated in the Map as "Common Ownership" or "Common Area"; and
- v. All common areas and facilities as defined in the Act, whether or not expressly listed herein.

Section 7. "Limited Common Areas" shall mean and refer to the designated areas shown on the map in double cross hatching.

Section 8. "Condominium" shall mean and refer to the entire ownership of any unit owner.

Section 9. "Unit Owner" shall mean and refer to the entity, person or group of persons owning a unit in fee simple and an appurtenant undivided interest in the fee simple estate of the common areas. Regardless of the number of parties participating in ownership of each unit, those parties shall be treated, as a group, as one "unit owner".

Section 10. "Association" means all of the unit owners acting as a group in accordance with the declaration and bylaws, in the "H C Homeowners' Association."

Section 11. "Management Committee" shall mean and refer to the governing body of the condominium project.

Section 12. "Bylaws" shall mean and refer to the Bylaws of the Association, appended hereto as Exhibit A.

Section 13. "Common Expenses" shall mean and include:

- i. all sums lawfully assessed against the unit owners;
- ii. expenses of administration, maintenance, repair or replacement of the common areas and facilities;
- iii. expenses agreed upon as common expenses by the Association;
- iv. expenses declared common expenses by provisions of the Act, by this Declaration, by the Bylaws, or by the Management Committee.

Section 14. "Mortgagee" includes both mortgagees and trust deed beneficiaries with a lien position on any unit.

## ARTICLE II UNIT OWNERSHIP

Section 1. Division into Units. In order to establish a plan of condominium ownership, the condominium project is hereby divided into the following separate free-hold estates:

- a. The 20 separately designated and legally described freehold estates consisting of the units as defined above and designated on the map. Each unit consists
  - i. horizontally of the area within the interior surface of the sheetrock on walls which form the exterior of the building, and the lines as drawn on the map as constituting boundaries between the unit and common or limited common areas or between the unit and other units, and
  - ii. vertically from the exterior surface of the floor of the unit up to the interior surface of the ceiling. Mechanical equipment and appurtenances located within any one unit or located without said unit but designated and designed to serve only that unit, such as appliances, electrical receptacles and outlets, air conditioning and compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim consisting of, inter alia and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the unit and serving only the unit, and any structural members of any other property of any kind, including fixtures and appliances within any unit, which are removable without jeopardizing the soundness, safety or usefulness of the remainder of the building within which the unit is situated shall be considered part of the unit.

Appurtenant to and inseparable from each unit shall be a percentage ownership in common areas and facilities and a par value according to the following table:

<u>Unit #</u>	<u>% Ownership in Common Areas and Facilities</u>	<u>Par Value</u>
1	4.25	17
2	4.25	17
3	4.25	17
4	4.25	17
5	4.25	17
6	4.25	17
7	4.25	17
8	4.25	17
9	5.50	22
10	5.50	22
11	5.50	22
12	5.50	22
13	5.50	22
14	5.50	22
15	5.50	22
16	5.50	22
17	5.50	22
18	5.50	22
19	5.50	22
20	5.50	22
Total	<u>100%</u>	<u>400</u>

No unit may be further subdivided. No unit owner shall execute any deed, mortgage, lease or other instrument conveying, leasing or encumbering title to his unit without including therein all interests appurtenant thereto, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of any interests appurtenant to any unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the unit to which such interests are appurtenant, or as part of a sale, transfer or other disposition of such part of interests appurtenant to all units, as provided by the Utah Condominium Ownership Act.

Units may not be combined in use if owned by the same unit owner.

b. Limited Common areas, designated on the map, by double cross hatched areas include carports, balconies, decks and covered decks appurtenant to certain units as contained in the Plat. The exclusive right to use and occupy each limited common area shall be appurtenant to and shall pass with the title to the unit with which it is associated. Each owner of a unit is hereby granted an irrevocable and exclusive license to use and occupy the limited common areas and facilities reserved exclusively for the use of his unit.

c. A freehold estate consisting of the remaining portion of the real property as defined above as the "common areas and facilities." Every owner shall have a right and easement of use and enjoyment in and to the common area which easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area.

(ii) The right of the Association to limit the number of guests of members using the common area.

(iii) The right of the Association to suspend the voting rights of a member for any period during which any assessment against his lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(iv) With the approval of all first mortgagees on lots and two-thirds (2/3) of the owners, the right of the Association to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the common area to any private individual, corporate entity, public agency, authority, or utility. The granting of easements for public utilities or other public purposes consistent with the intended use of such common area by the Association shall not be deemed a transfer within the meaning of the next preceding clause, and shall not require the prior written assent of the first mortgagees but shall require the written assent of two-thirds (2/3) of each class of members.

(v) The right of the Association to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.

(vi) The right of each individual unit owner to the exclusive use of the limited common area adjacent and appurtenant to his respective lot.

Section 2. Description of Building. Each unit is to be of wood frame construction erected on wood joists and shake shingle (timberline grade) roof. Units 9-20 shall have an attached two-car garage. Each garage shall be erected upon a concrete slab. Units 1-8 shall have access to a detached carport.

Each unit shall contain either two or three bedrooms and one, two or two and one-half baths. Each unit constructed will be finished as follows: self-contained electric equipment to supply heat and hot water; exterior finish of stucco and brick and shingles; interior walls of painted sheetrock, exterior walls fully insulated; all kitchen floor finishings of sheet vinyl, bathroom floors of sheet vinyl; all other floors of wall-to-wall continuous filament nylon carpeting; kitchens will be equipped with an oven and range, dishwasher, wood or formica wall cabinets; bathrooms with bathroom vanities, fiberglass bathtubs or shower enclosures and vitreous china toilets. Each unit will be separately metered for electricity. There will be one water meter for the condominium. Each unit's water supply system will be connected to a public sewerage disposal system.

A more detailed description of the units, including the number of stories and rooms is found on the map.

### ARTICLE III H C HOMEOWNERS ASSOCIATION

Section 1. Membership. Each unit owner shall automatically, upon becoming the owner of a unit, be a member of H C Homeowners Association, hereinafter referred to as the "Association," and shall remain a member of said Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease. The Management Committee or its delegate may require as a condition to recognition of a unit owner as member that the unit owner provide proof of ownership.

Section 2. Voting. Each unit owner shall receive a certificate showing his proportionate undivided interest in the common elements and par value and stating that he shall be entitled to vote at all meetings of unit owners. Each unit owner shall be entitled to a number of votes equal to the par value of his unit. A unit which has been acquired by the Management Committee in its own name or in the name of its agents, designee or nominee on behalf of all of the unit owners shall not be entitled to vote so long as it continues to be so held. If a unit is owned by more than one person or entity, as joint tenants, tenants by the entirety or as tenants in common or in partnership, the persons or entities owning such unit shall reach agreement as to the matter voted upon and cast their vote for their unit. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the unit concerned unless a written objection is made prior to said meeting or verbal objection is made at said meeting by another co-owner of the same unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists. Notwithstanding other provisions of this Declaration or the Bylaws, the Declarant shall be entitled to votes equal to five (5) times the par value for each unit (whether or not completed) in which it holds the interest required for membership in the Association. The

Declarant's disproportionate voting power shall automatically cease and the Declarant shall have one vote for each unit of par value on the first to occur of the following events:

(a) When the par value of units held by other purchasers totals 300.

(b) The expiration of seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Washington County, Utah.

Section 3. Management Committee. The affairs of the Association shall be governed by a Management Committee composed of three (3) persons elected by the Association. The Management Committee shall have the power to manage the condominium project in accordance with the Act, this Declaration and the Bylaws.

Section 4. Indemnification. The Management Committee, and each of them, shall be indemnified by the unit owners against any loss, damage, claims or liability, including reasonable counsel fees, suffered or incurred by reason of his position, except to the extent such damage, claim, loss or liability is covered by any type of insurance.

Section 5. Books and Records. The unit owners and all first mortgagees shall be entitled to examine the books and records of the Association or Management Committee and make extracts or copies therefrom at reasonable hours.

#### ARTICLE IV COMMITTEE OPERATION

Section 1. Assessments. The Management Committee shall have authority to set and levy assessments to become part of the common expenses, said assessments to be for the following purposes:

- (a) payment of taxes, insurance and common utility charges
- (b) payment of cost of repairing, replacing, maintaining, construction and acquiring additions to the common areas and facilities;
- (c) establishment and maintenance of an adequate reserve fund for the replacement of the common area and facilities, which by their nature, will require replacement on a periodic basis;
- (d) payment of administrative expenses of the association;
- (e) payment of prior years' deficits;

The assessment provided for herein shall be set on an annual basis and shall commence to accrue on the date fixed by the Management Committee to be the date of commencement. The Management Committee shall fix the amount of the annual assessment against each unit at least sixty (60) days in advance of the commencement of the assessment period, except that in the first year of operation the assessment may be set at any time.

The first annual assessments shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days prior to the commencement of each new assessment period, the Management Committee shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto.

The due dates shall be established by the Management Committee upon which dates the assessments for any year shall become due and payable; provided, that the Management Committee may provide for the payment of annual assessments in twelve (12) equal monthly installments throughout the assessment year.

The Management Committee shall prepare a roster of the units and the assessments and payments applicable thereto at the same time that it shall fix the amount of the annual assessment. The assessment shall be charged by the Management Committee to the units according to their par value.

The Management Committee shall assess a unit or units in excess of par value for actual disproportionate use of common utilities, or for disproportionate maintenance, repair or improvement of common or limited area adjacent to the unit or units, but shall not disproportionately assess the unit for any other reason and may not relieve a unit from assessment by reason of non-occupancy.

Notwithstanding other provisions of this declaration, units owned by Declarant shall not be subject to assessments nor shall the Declarant have personal liability for the assessments. This provision shall not be amended with the written consent of the Declarant.

Section 2. Rulemaking Power. The Management Committee may, from time to time and subject to the provisions of this Declaration and the Bylaws, adopt, amend and repeal rules and regulations, governing, among other things, use of any common areas under the jurisdiction of the Association, parking restrictions and limitations, limitations upon vehicular travel on the properties, and restrictions on other activities or improvements on the properties which creates a hazard.

Section 3. Recordation of Rules. A copy of the said Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each owner and may be, but need not be, recorded. Upon such mailing or other delivery, said Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration and the Bylaws.

Section 4. Management Agreement. The Management Committee shall have the power to enter into management agreements for a term not to exceed one (1) year, cancelable upon thirty (30) days notice.

## ARTICLE V

### LIEN

Section 1. Common Expense Lien It shall be the personal obligation of every unit owner to pay his share of the common expenses, as assessed by the Management Committee.

Interest shall accrue on any unpaid balance at the rate of 18% per annum, and the unit owner shall be liable for reasonable attorney's fees in collection of said funds or in enforcement of any covenants herein against the said unit owner. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or



waiving the lien securing the same. If any unit owner shall fail or refuse to make any payment of the common expenses when due, the amount thereof, with interest and reasonable attorney's fees incurred in collection or enforcement, shall constitute a lien on the interest of the owner in the property, and upon the recording of notice thereof by the manager or management committee shall be a lien upon the unit owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded except only

- (1) tax and special assessment liens on the unit in favor of any assessing unit, and special district, and
- (2) encumbrances on the interest of a unit owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded notices.

The Association shall give any institutional first mortgagee notice of any delinquency or default of ninety (90) days duration or more. Each holder of a first mortgage (or deed of trust) on a unit and any purchaser from it who comes into possession of the unit by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to power of sale or otherwise will take the unit free of, and shall not be liable for, any claims for unpaid assessments and charges against the unit which accrue prior to the time such holder comes into possession of the unit.

Section 2. Foreclosure. The lien for nonpayment of common expenses may be enforced by the sale or foreclosure of the unit owner's interest by the Management Committee, such sale or foreclosure to be conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages, as elected by the Management Committee.

There is hereby conferred upon the Management Committee a power of sale to be exercised consistent with the applicable provisions of law. In the event election is made to foreclose the interest of the defaulting unit owner by the method provided by law for foreclosure of trust deeds, the notice of default in payment may also serve as a notice of default under the applicable laws, and the Management Committee may designate any person or entity to be Trustee under said notice and give the same, to give notice of sale and execute a trustee's deed.

In any foreclosure, the unit owner shall be required to pay the costs and expenses of such proceedings and reasonable attorney's fees. In the case of foreclosure, the owner shall be required to pay a reasonable rental for the unit from the time of commencement of the foreclosure and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the other lien security.

Section 3. Statement of Amount. The Management Committee shall, upon the written request of any unit owner or any encumbrancer or prospective encumbrancer of a unit, upon payment of a reasonable fee not to exceed \$10, issue to a person or persons requesting, a written statement setting forth the unpaid common expenses with respect to the unit covered by the request, which shall be conclusive upon the remaining unit owners and upon the Management Committee in

favor of all persons who give value thereon in good faith, without contrary notice. Unless the request for a statement of indebtedness shall be complied with within ten days, all unpaid common expenses which became due prior to the date of the making of such request shall be subordinate to the lien or position of ownership held by the person requesting the statement. Any encumbrancer holding a lien on a unit may pay any unpaid common expenses payable with respect to such unit and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrance.

ARTICLE VI  
INSURANCE

Section 1. Property Damage and Liability Insurance. The Management Committee shall procure the following types of property damage and public liability insurance:

(a) A "master" or "blanket" policy of property insurance equal to full replacement value (exclusive of land, foundation, excavation and other like items) of the condominium project with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement, affording protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage and such other risks as are customarily covered in similar projects.

(b) A comprehensive policy of public liability insurance covering all of the common areas in the condominium project, with a Severability of Interest Endorsement or equivalent coverage which would preclude the company from denying the claim of a unit owner because of the negligent acts of the Association or another unit owner, with limits not less than \$1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence, including protection against water damage liability, liability for non-owned and hired automobiles, liability for property of other and such other risks as are customarily covered in similar projects.

Section 2. Provisions of Section 1 Policies. Any insurance obtained pursuant to Section 1 above shall provide that:

(a) the named insured under any such policies shall be the Association of the condominium project, as a trustee for the unit owners and shall have standard mortgagee clauses;

(b) insurance coverage obtained and maintained pursuant to the requirements of Section 1 may not be brought into contribution with insurance purchased by the unit owners or their mortgagees;

(c) coverage must not be prejudiced by (i) any act of neglect of the unit owners when such act or neglect is not within the control of the Association or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control;

(d) coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to any and all insureds, including holders of first mortgages

(e) the insurer shall waive subrogation as to any and all claims against the Association, the owner of any condominium unit and/or their respective agents, employees or tenants, and of any defenses based on co-insurance or on invalidity arising from the acts of the insured;

(f) any provisions that the carrier may elect to restore damage in lieu of a cash settlement shall not be exercisable without the prior written approval of the Association or when in conflict with any requirement of law.

Section 3. Use of Proceeds. Except as provided by statute in case of substantial loss to the units and/or common area and facilities of the condominium project, unless at least two-thirds (2/3) of the first mortgagees (voting based upon the par value for each unit mortgage held), or owners (if there is no first mortgage) of the individual condominium units have given their prior written approval, the Association shall not be entitled to use hazard insurance proceeds for losses to any condominium property for other than the repair, replacement or reconstruction of such condominium property.

Section 4. Fidelity Insurance. The Association must maintain adequate fidelity coverage to protect against dishonest acts by the Management Committee, their agents and employees and all others who are responsible for handling funds of the Association meeting the following requirements:

(a) naming the Association as an obligee;

(b) written in an amount equal to at least 150% of the estimated annual operating expenses of the condominium project, including operating expenses, receipts, and reserves;

(c) containing waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

Section 5. Premiums. Any insurance premiums shall be common expenses.

Section 6. Individual Owner's Insurance. Insurance obtained by the Association shall not prejudice the rights of the individual owners to obtain insurance, and said unit owners shall insure their personal property and installed fixtures.

## ARTICLE VII

### DAMAGE; CONDEMNATION

Section 1. Damage or Destruction. In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Management Committee shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild, restore, or repair such damaged or destroyed portions of the development to its former condition.

It shall be the responsibility of the unit owner:

(a) to maintain, repair, or replace at his own expense all portions of the unit which may cause injury or damage to the other units or to the common elements.

(b) to paint, wallpaper, decorate and maintain the interior surfaces of all walls, ceilings and floors within the unit.

(c) to perform his responsibilities in such a manner and at such reasonable hours so as not to unreasonably disturb other unit owners in the building.

(d) To refrain from repairing, altering, replacing, painting, decorating or changing the exterior of the unit or any exterior appendages whether exclusively used by the unit owner or otherwise without obtaining the written consent of the Management Committee.

Section 4. Alteration or Improvement of Units. No structural alterations shall be made to any unit. No alteration or improvement to the unit which would alter or affect the common elements may be made by any unit owner without the written consent of the Management Committee. No application shall be filed with any governmental authority for a permit covering an addition, alteration or improvement to be made in a unit which alters or affects the common elements, unless approved and executed by the Management Committee without, however, incurring any liability on the part of the Associations, or any of them, to any contractor, subcontractor, materialman, architect or engineer by reason of such addition, alteration or improvement or to any person having any claim for injury to person or damage to property arising therefrom. Consent shall be requested in writing. The Management Committee shall have the obligation to answer within forty (40) days and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration. The Management Committee may require that the unit owner making such improvement, alteration or addition obtain such insurance coverages and in such amounts, as the Management Committee deems proper.

Section 5. Prohibited Uses. No unit owner shall permit anything to be done or kept in his unit or in the common areas and facilities which is in violation of any law, ordinance or regulation of any governmental authority.

Section 6. Signs. No sign or billboard of any kind shall be displayed to the public view on any portion of the condominium project except signs

(1) advertising the property for sale or rent not larger than 12" by 24" or

(2) supplied by the Association.

(3) signs used by Declarant, its successors or assigns, to advertise the property during the construction and sales period.

Section 7. Quiet Enjoyment. No noxious or offensive activity shall be carried on upon any part of the condominium project nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the unit owners or which shall in any way increase the rate of insurance.

Section 2. Utilities. There is hereby created a blanket easement upon, across, over and under all of the condominium for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephone and electricity, data transmission and television transmission systems. By virtue of this easement, it shall be expressly permissible for all public utilities service the properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties.

Section 3. Police Fire and Ambulance Service. An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the common areas and facilities and units in the performance of their duties.

Section 4. Maintenance by Association. An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in any unit in case of emergency or to perform the duties of maintenance and repair, in the event the same are neglected by the unit owner or for the purpose of repair to the common areas and facilities.

Section 5. Other Easements. The easements provided for in this Article IX shall in no way affect any other recorded easement on said premises.

#### ARTICLE X RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions shall govern the rights of first mortgagees:

Section 1. Preservation of Regulatory Structure and Insurance. Unless the holders of 100% of all first mortgagees and 75% of the unit owners shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of living units, the exterior maintenance of living units or the upkeep of the common areas of the property;

(b) to fail to maintain fire and extended coverage on insurable portions of the common areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or

(c) to use hazard insurance proceeds for losses to the common areas for other than the repair, replacement or reconstruction of improvements on the common areas.

Section 2. Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) at least one hundred percent (100%) of all first mortgagees (based on one vote for each mortgagee) of the units and (2) the owners of at least seventy-five percent (75%) of the units (not including units owned by Declarant) the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the common areas, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved; or

(b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a unit or the owner thereof.

Neither this paragraph nor the insurance provision contained in Article VI may be amended without the prior approval of all first mortgagees. Nothing in this paragraph shall limit the right of Declarant to amend these Declarations as provided elsewhere in this Declaration.

Section 3. Notice of Matters Affecting Security. The Association shall give written notice to any first Mortgagee of any unit requesting such notice under the circumstances enumerated in Article VII or whenever any of the following matters come up for consideration or effectuation by the Association:

(a) abandonment or termination of the condominium development established by this Declaration;

(b) material amendment of the Declaration or By-Laws of the Association; or

(c) any decision to terminate professional management of the common areas and assume self-management by the owners.

## ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. The Association, Management Committee or any unit owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association, Management Committee or any unit owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. 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.

Section 2. Severability. All of said conditions, covenants and reservations contained in this declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Association and owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph,

sentence, clause and phrase of this Declaration, irrespective of the invalidity of unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, Management Committee or the owner of any unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns.

Section 4. Amendment. The covenants, conditions and restrictions of this declaration may be amended by an instrument signed by unit owners holding not less than seventy-five percent (75%) of the voting power.

Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.

Section 5. Notices. Any notice required to be sent under the provisions of this Declaration shall be conclusively deemed to have been given when deposited in the U.S. Mail, postage paid, to the last known address of the person who is entitled to receive it.

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully express.

Section 7. Waivers. No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 8. Topical Headings. The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

#### ARTICLE XII

##### ASSIGNMENT OF POWERS

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned.

#### ARTICLE XIII

##### AGENT FOR SERVICE

Lillian E. Nelson, 341 W. 670 N. Circle, St. George, Utah, is hereby appointed agent for service of process in those cases provided under the Utah Condominium Ownership Act. Utah Code Ann. §57-8-10 (h). This resident agent may be changed by Management Committee filing with the Secretary of State in the manner provided for use of assumed names.

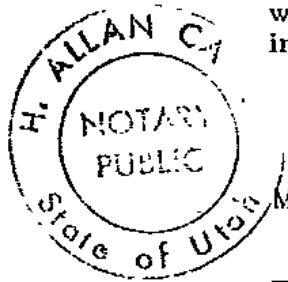
IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 23 day of April, 1984.

Lillian E. Nelson  
Lillian E. Nelson

James E. Nelson  
James E. Nelson

STATE OF UTAH )  
  ) ss.  
COUNTY OF WASHINGTON )

On the 23<sup>rd</sup> day of APRIL, 1984, personally appeared before me Lillian E. Nelson, and James E. Nelson who duly acknowledged to me that they executed the foregoing instrument.



My Commission Expires: 7/15/86

[Signature]  
NOTARY PUBLIC  
Residing at: St. George, UT 84770



## BYLAWS OF H C HOMEOWNERS ASSOCIATION

For the administration of the Condominium Project, the following Bylaws are adopted:

## ARTICLE I

PLAN OF OWNERSHIP

Section 1. Ownership. The project located at approximately 500 West Diagonal, St. George, Utah known as "Hidden Cove Condominiums" is submitted to the provisions of Utah Code Ann. §57-8-1 et. seq. (1953, as amended).

Section 2. Bylaws Applicability. The provisions of these Bylaws are applicable to the condominium project.

Section 3. Personal Application. All present or future unit owners, tenants, or any other person that might use the facilities of the project in any manner, are subject to the regulations set forth in these Bylaws, attached to the recorded Declaration.

The mere acquisition or rental of any of the units of the condominium project or the mere act of occupancy of any of said units will signify that these Bylaws and the Declaration are accepted, ratified, and will be complied with.

## ARTICLE II

VOTING, MAJORITY OF OWNERS, QUORUM, PROXIES

Section 1. Membership. Each unit owner shall automatically, upon becoming the owner of a unit, be a member of Hidden Cove Homeowners' Association, hereinafter referred to as the "Association," and shall remain a member of said Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease. The Management Committee or its delegate may require as a condition to recognition of a unit owner as member that the unit owner provide proof of ownership.

Section 2. Voting. Each unit owner shall receive a certificate showing his proportionate undivided interest in the common elements and par value and stating that he shall be entitled to vote at all meetings of unit owners. Each unit owner shall be entitled to a number of votes equal to the par value of his unit. A unit which has been acquired by the Management Committee in its own name or in the name of its agents, designee or nominee on behalf of all of the unit owners shall not be entitled to vote so long as it continues to be so held. If a unit is owned by more than one person or entity, as joint tenants, tenants by the entirety or as tenants in common or in partnership, the persons or entities owning such unit shall reach agreement as to the matter voted upon and cast their vote for their unit. A vote cast at any association meeting by any of such owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the unit concerned unless an objection is immediately made by another owner of the same unit. In the event

such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

Section 3. Consent in Lieu of Vote. In any case in which the Declaration or Bylaws require for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from members entitled to cast at least the stated percentage of all membership concerned. The following additional provisions shall govern any application of this Section 3:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any member.

(b) The total number of votes required for authorization or approval under this Section 3 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a unit which occurs after consent has been obtained from the owners thereof shall not be considered or taken into account for any purpose. A change in ownership from the Declarant to an individual unit owner shall, however, be effective in that regard and shall entitle the new owner to give or withhold his consent.

(d) Unless the consent of all members whose memberships are appurtenant to the same unit are secured, the consent of none of such members shall be effective.

Section 4. Par Values. Each unit owner shall have a number of votes equal to the par value of his unit, as established in the declaration.

Section 5. Majority of Owners. As used in these Bylaws the terms "majority of owners" shall mean those owners holding 51% of the votes in accordance with the par values established in the Declaration.

Section 6. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of a "majority of owners" as defined in Section 5 of this Article shall constitute a quorum.

Section 7. Proxies. Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary before the appointed time of each meeting.

### ARTICLE III ASSOCIATION MEETINGS

Section 1. Place of Meetings. Meetings of the Association shall be held at a suitable place convenient to the unit owners as may be designated by the Management Committee.

Section 2. Annual Meetings. The first annual meeting of the Association shall be held on July 1, 1984. Thereafter, the annual meetings of the Association shall be held on the second Friday of January of each succeeding year, unless otherwise provided by resolution of the Management Committee. At such meetings there shall

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

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

(c) 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;

(d) The power and authority to convey or transfer any interest in real property, so long as any vote or consent necessary under the circumstances has been obtained;

(e) 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;

(f) The power and authority to add any interest in real property obtained pursuant to paragraph (e) above to the condominium project, so long as such action has been authorized by the necessary vote or consent;

(g) The authority to promulgate such reasonable rules, 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 interest of the unit owners; and

(h) 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 unit owners.

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.

Section 3. Other Duties. In addition to duties imposed by the Declaration, these Bylaws or by resolution of the Association, the Management Committee shall have the following powers:

(a) Care, upkeep and surveillance of the project and the common areas and facilities and the limited common areas and facilities.

(b) Bringing and defending actions by or against the Association pertinent to the operation of the condominium.

(c) Borrowing money on behalf of the condominium when required in connection with the operation, care, upkeep and maintenance of the common elements, provided, however that (i) the consent of at least eighty per cent (80%) in par value of all unit owners, obtained at a meeting duly called and held for such purpose in accordance with the provisions of the Bylaws, shall be required for the borrowing of any sum in excess of \$2,000 and (ii) no lien (other than the lien of assessment) to secure repayment of any sum borrowed may be created on any unit or its appurtenant interest in the common elements without the consent of the unit owner.

(d) Collection of monthly assessments from the owners.

(e) Employing and terminating the employment of employees and independent contractors, purchasing supplies and equipment, entering into contracts and generally having the powers of manager in connection with the condominium.

(f) Such other duties as set forth in the Declaration of Condominium.

Section 4. Management Agent. The Management Committee may employ for the Association a management agent or agents at a compensation established by the Committee to perform such duties and services as the Committee shall authorize.

Section 5. Election and Term of Office. At the first annual meeting of the Association the term of office of one committeeman shall be fixed at three (3) years. The term of office of one committeeman shall be fixed at two (2) years, and the term of office of one committeeman shall be fixed at one (1) year. At the expiration of the initial term of office of each respective committeeman, his successor shall be elected to serve a term of three (3) years. The committeemen shall hold office until their successors have been elected and hold their first meeting.

Section 6. Vacancies. Vacancies in the Management Committee caused by any reason other than the removal of a committeeman by a vote of the Association shall be filled by vote of the majority of the remaining committeemen, even though the number voting affirmatively for a replacement committeeman may constitute less than a quorum; and each person so elected shall be a committeeman until a successor is elected at the next annual meeting of the Association.

Section 7. Removal of Committeemen. At any regular or special meeting duly called, any one or more of the Committeemen may be removed with or without cause by a majority of the unit owners and a successor may then and there be elected to fill the vacancy thus created. Any committeeman whose removal has been proposed by the unit owners shall be given an opportunity to be heard at the meeting.

Section 8. Organization Meeting. The first meeting of a newly elected Management Committee shall be held within ten (10) days of election at such a place as shall be fixed by the committeemen at the meeting at which such committeemen were elected, and no notice shall be necessary to the newly elected committeemen in order legally to constitute such meeting, providing a majority of the whole committee shall be present.

ARTICLE VII  
RIGHT OF ENTRY

(a) An owner shall grant the right of entry to the Management Agent or to any other person authorized by the Management Committee of the Association in case of any emergency originating in or threatening his unit, whether the owner is present at the time or not.

(b) An owner shall permit other owners, or their representatives, when so required, to enter his unit for the purpose of performing installations, alterations or repairs to the mechanical or electrical services, provided that requests for entry are made in advance and that such entry is at a time convenient to the owner. In case of an emergency, such right of entry shall be immediate.

ARTICLE VIII  
MORTGAGES

Section 1. Notice of Association. An owner who mortgages his unit shall notify the Association through the Management Agency, if any, or the chairman of the Management Committee in the event there is no Management Agent of the name and address of his mortgagee; and the Association shall maintain such information in a book entitled, "Mortgagees of Units" and shall comply with applicable provision in the Declaration respecting mortgagees.

Section 2. Notice of Unpaid Assessments. The Association shall at the request of a mortgagee of a unit report any unpaid assessments due from the owner of such unit, and provide such other notice as set forth in the Declaration.

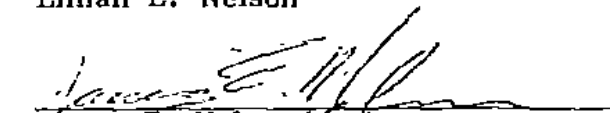
ARTICLE IX  
AMENDMENTS: CONSTRUCTION

Section 1. Bylaws. These Bylaws may be amended by the Association in a duly constituted meeting for such purpose and no amendment shall take effect unless approved by owners representing at least eighty per cent (80%) of the par value in the condominium project.

Section 2. Construction. These Bylaws shall be construed wherever possible as consistent with the Declaration, and the Utah Condominium Ownership Act. Wherever there is a conflict between the Declaration or said statute and these Bylaws, the Declaration or the statute shall control.

DATED this 23 day of April, 1984.

  
Lillian E. Nelson

  
James E. Nelson