

RETURN TO
WILLOW RANCH DEVELOPMENT
P.O. BOX 2190
PARK CITY, UTAH 84060

DECLARATION OF COVENANTS, CONDITIONS AND

RESTRICTIONS OF

SILVER POINTE CONDOMINIUMS

(A Utah Condominium Project)

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ALAN SPRIGGS, SUMMIT CO RECORDER
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**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF
SILVER POINTE CONDOMINIUMS**

(A Utah Condominium Project)

This Declaration of Covenants, Conditions and Restrictions, hereinafter referred to as "Declaration," is made and executed in Summit County, State of Utah, this 15th day of August, 1999, by Willow Ranch Development Company, collectively designated and referred to hereinafter as "Declarant," pursuant to the provisions of the Utah Condominium Ownership Act (Sections 57-8-1 through 57-8-36 Utah Code Annotated (1953 as amended)).

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located at Park City, Summit County, Utah, and more particularly described as set forth on Exhibit "A" attached hereto and incorporated by reference with a street address of 505 Rossie Hill Drive, Park City, Utah.

WHEREAS, Declarant is the owner of certain units and certain other improvements heretofore constructed or hereafter to be constructed upon the aforesaid premises which property shall constitute a condominium project under the terms of the provisions of the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated, 1953) and it is the desire and the intention of the Declarant to develop the project into condominiums and to sell and convey the individual units together with undivided ownership interests in the common areas and facilities to various purchasers subject to the covenants, conditions and restrictions herein reserved to be kept and observed; and

WHEREAS, Declarant has prepared under the supervision of Alliance Engineering, License _____, a Registered Utah Land Surveyor, a record of survey map of the Silver Pointe Condominiums, hereinafter refers to as "Plat", which document is dated _____, 1999, as Filing No. _____, concurrently herewith; and

WHEREAS, Declarant desires and intends by filing this Declaration and the aforesaid Plat to submit the above-described property and the building and other improvements constructed thereon together with all appurtenances thereto, to the provisions of the aforesaid act as a condominium project and to impose upon said property mutually beneficial restrictions under a general rule of improvement for the benefit of all of the said condominium units and the owners thereof.

NOW, THEREFORE, the Declarant does hereby publish and declare that all of the property described above is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the Act and the following covenants, conditions, restrictions, uses, limitations and obligations all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into a

condominium and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns and any person or persons acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees, assigns, tenants, employees, and any other person who may in any manner use the property or any part thereof.

1. **Definitions.** All terms used in this Declaration (including the recitals and attachments thereof) shall have the meanings as defined in the Utah Condominium Ownership Act; and, specifically for clarification, the following terms shall have the meaning indicated:

A. "Approved Color List" shall mean those colors ("Approved Colors") described on the Park City Design Guidelines

B. "Approved Plants List" shall mean those plants ("Approved Plants") described on the Park City Plant List of Approved Drought Tolerant Plants, as it may be amended from time to time and native evergreens, aspens and willows.

C. "Association of unit owners" or "association" means the Silver Pointe Condominiums Owners' Association, Inc., a Utah nonprofit corporation, the certificate of incorporation and bylaws of which shall govern the administration of this condominium project and the members of which shall be all of the owners of the condominium units of this condominium project.

D. "Builder" shall mean the person or entity engaged by an Owner for the purpose of constructing, altering, or maintaining a Permitted Improvement. In this context, the Owner may also be the Builder, provided that if the Owner is not acting as Builder, the Builder shall be a duly licensed contractor as defined by Utah State law.

E. "Building" means the building improvements comprising a part of the property.

F. "City" shall mean Park City Municipal Corporation and its appropriate departments, officials, and boards.

G. "Committee" shall mean the architectural committee created under Article 4 of this Declaration.

H. "Common areas and facilities or elements" shall mean the land on which the building is located; and all portions of the property not located within any unit or limited common area, and also includes, but not by way of limitation, the outer walls and roofs of the building; the yards, gardens, parking areas and storage spaces; installations consisting of central services, if any, such as power, light, gas, telephone, hot and cold water, heating, refrigerators, air fans, compressors, ducts and in general all apparatus and installations, if any, existing for common use; any utility pipes, connections, lines or systems servicing more than a single unit and all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used therewith; and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use; and all repairs and replacements of any of the foregoing.

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I. "Common expenses" means and includes:

(1) All sums lawfully assessed to the unit owners against the common areas, facilities or elements by the association in accordance with the provisions of the Act, this Declaration, the Bylaws or otherwise;

(2) Expenses of administration and management, maintenance, repair or replacement of the common areas, facilities or elements;

(3) Expenses declared common expenses by the unit owners.

J. "Condominium Act" or the "The Act" shall mean the Utah Condominium Ownership Act (Title 57, Chapter 8, UCA, 1953).

K. "Condominium unit" means a Unit together with the undivided interest in the general and limited common areas and facilities or elements appurtenant to such unit.

L. "Declaration" shall mean this Declaration of covenants, conditions and restrictions, together with any subsequent amendments or additions, and any other matters or conditions shown on the official Plat of the Silver Pointe Condominium, which are incorporated into this Declaration by reference.

M. "Declarant" shall mean and refer to the signer of this Declaration.

N. "Dwelling" or "Dwelling Unit" shall mean the single family residence or duplex built or to be built on any Unit.

O. "Entire premises," "premises," or "property" means and includes the land, the buildings, all improvements and structures thereon, and all rights, easements and appurtenances belonging thereto.

P. "Excavation" shall mean any disturbance to the surface of the land, including the removal of native vegetation, and also including trenching which results in removal of soil or rock from a depth of more than 12 inches from the natural surface of the land, or any grading of the surface. Excavation shall include any activities for which an excavation or grading permit would be required under the Uniform Building Code as adopted by the City.

Q. "Family" shall mean one household of persons related to each other by blood, adoption or marriage, or one group of not more than five people not related living together as a unit who maintain a common household.

R. "Fill" shall mean the depositing of earth, soil, rock or other materials to the surface of the land, whether imported from off-site or resulting from the re-grading of excavated material from on-site, to raise the natural elevation of the surface. Fill shall also include any fill material as defined under the Uniform Building Code, as adopted by the City.

S. "Floor Area" shall mean the total of all floor surfaces surrounded by the exterior walls of any Dwelling or habitable structure on all levels. Porches, patios, balconies and decks are not counted as Floor Area unless under roof and enclosed on three sides

by the walls of the Dwelling. The maximum Floor Area for each Unit is as designated on the Plat.

T. "Improvement" shall mean all structures and appurtenances of every type and kinds, including but not limited to buildings, Dwelling Units, garages, storage buildings, walkways, retaining walls, sprinklers, pipes, driveways, landscaping, pools, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

U. "Limited common areas or elements" mean and include those common areas and facilities designated in the Declaration as reserved for use of a certain unit or units to the exclusion of the other units as designated on the Plat.

V. "Limits of Disturbance Area" shall mean the area within each Unit which is the outer limit of the area which may be disturbed by construction activity.

W. "Mortgage" means any mortgage installment land purchase contract, deed of trust, or other security instrument by which a condominium unit or any part thereof is encumbered.

X. "Mortgagee" shall mean a beneficiary under or holder of a trust deed or seller under an installment land purchase contract as well as a mortgage.

Y. "Owner" or "Unit Owner" shall mean the person or persons owning a unit in fee simple and an undivided interest in the common areas and facilities; provided, however, that the term "owner" shall not refer to any mortgagee, as herein defined, unless such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Z. "Person" shall mean and include a legal entity as well as a natural person.

AA. "Permitted Improvements" shall mean any Improvements installed, constructed, maintained or allowed to stand on the Property in conformity with this Declaration.

BB. "Plat" shall mean the Plat of the Silver Pointe as approved by the City and recorded in the office of the Summit County Recorder, and any amendments that may be made from time to time a copy of which is attached hereto.

CC. "The Project" or "The Condominium Project" shall mean the above-described real property referred to in this Declaration to be divided into condominiums, including all structures, improvements, appurtenances and common areas located thereon or belonging thereto.

DD. "Record" means to file or record with the office of the County Recorder of Summit County, State of Utah.

EE. "Trustees" shall mean the duly elected and acting board of trustees of the Silver Pointe Homeowners Association.

FF. "Unit" shall mean the element of a condominium which is independently owned, encumbered, or conveyed but not owned in common with the owners of

other condominiums in the project as shown on the Plat. The boundary lines of each unit are the interior surfaces of its perimeter walls, bearing walls, floors, ceilings, windows and window frames, doors and door frames, and trim and includes both the portions of the building and grounds and improvements so described as a unit and the space so encompassed. Units 1, 10, and 11 are detached single family homes; Units 2 and 3 are a duplex; Units 4 and 5 are a duplex; Units 6 and 7 are a duplex; and Units 8 and 9 are a duplex.

2. **Name.** The Condominium Project, as submitted to the provisions of the Condominium Act, shall be known as the "Silver Pointe Condominiums"

HOMEOWNERS ASSOCIATION

3. **Homeowners Association Purposes.** To effectively enforce this Declaration, the Declarant has created a Utah Non-Profit corporation called Silver Pointe Homeowners Association, Inc. The Association shall be comprised of the Owners of Units within the Silver Pointe Condominiums Project, and is established to perform the following functions and exercise the following rights and powers for the benefit of the Owners and the enforcement of these covenants. Membership in the Association is deemed an appurtenance to the Unit, and is transferable only in conjunction with the transfer of the title to the Unit. The Association shall have and exercise, as necessary, the following powers:

3.1. **Enforcement Powers.** The Association shall have the power to enforce this Declaration by actions in law or equity brought in its own name, the power to retain professional services needed for the enforcement of these covenants and to incur expenses for that purpose. The Officers of the Association shall have the authority to compromise claims and litigation on behalf of the Association resulting from the enforcement of these covenants. The Trustees of the Association shall have the exclusive right to initiate enforcement actions in the name of the Association, however, this shall not limit the individual rights of Unit Owners to personally enforce this Declaration in their own name. The Association may appear and represent the interests of the Subdivision at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners. Owners may appear individually

3.2. **Maintenance Responsibilities.** The Association may own or be granted easements over portions of the Property within the Condominium Project. The responsibility to maintain and properly control the use of these parcels, when granted, vests in the Association, which has the power to perform maintenance services, construct Permitted Improvements, and in all other respects manage or supervise the management of those portions of the Property

3.3. **Association's Obligation to Accept Grant of Open Space.** The Owners, and the Association, agree to accept a grant of the fee or an easement to portions of the Property which may be designated as Open Space. Any such grant will be made free of liens and financial encumbrances, except taxes and accruing expenses and made subject to this Declaration. Open Space granted to the Owners or Association may be subject to conservation easements or similar third party limitations on use and access. Declarant or its successors are under no obligation to grant or arrange for the grant of any land to the Owners or the Association. Consideration for any such grant will not exceed Ten Dollars, and Grantor will bear all transactional expenses.

3.4. **Snow Removal.** The City will probably require the Association to provide snow removal service within the Condominium Project. Until such time as the snow

removal service has been assumed by the City, the Association shall be responsible for snow removal, and shall have the power to make assessments against the owners, including the Owners of unimproved Units, for purposes of providing this service.

3.5. Assessments. The Association has the power to levy assessments against each Unit as necessary to carry out its functions. All assessments will be equal on all Units, whether vacant or improved. Assessments will be made annually to meet the anticipated and recurring expenses of the Association including, but not limited to, the costs of landscape maintenance, taxes, water, reimbursement of expenses incurred by the Trustees and Architectural Committee in performance of their obligations, and enforcement of this Declaration. Notice of the Assessment and the proposed amount of the annual Assessment will be given in advance along with the notice of the annual meeting of the Association, provided that the amount of the proposed assessment may be increased or decreased at the meeting in which it is approved by the Owners.

The Association may also levy special assessments to cover unanticipated expenses or shortfalls. No special assessment will be levied without approval of the Owners in a meeting called for that purpose.

3.6. Assessments Constitute Lien, Mortgage Protection. Any validly imposed assessment by the Association shall constitute a lien against the Units in the Project. The Association shall have the right to foreclose on that lien when any assessment remains unpaid for a period of more than 90 days from the date the assessment was levied, but if the lien is not foreclosed upon, it may be renewed from year to year by recording a new notice of the lien, together with accumulated interest. The lien of the Association against any Unit shall have priority from the date that the first Notice of Lien on a specific Unit is recorded in the office of the Summit County Recorder, and is subordinate to any previously recorded liens or encumbrances filed against that Unit, specifically including any purchase money mortgage or trust deed. Notwithstanding the lien rights of the Association, the obligation to pay assessments is a personal obligation of the Owner of each Unit, and the Association may proceed to collect against the Owner, or the prior Owner of any Unit in the event of a sale. No Mortgagee or Beneficiary under a Trust Deed who takes title by foreclosure or non-judicial sale, shall be held liable for the unpaid assessments of the Owner whose Unit was acquired by the Mortgagee or Beneficiary under a Trust Deed.

3.7. Statement of Account. Any Owner may request the Association to provide a statement of his account to any lender or prospective buyer of that Unit showing the assessments to be paid in full, or the amount of any past due assessments. The Buyer or lender for whom such a statement was prepared will be entitled to rely on its accuracy, and will not be held liable for any amounts not shown on the statement.

3.8. Formative Documents. The Articles of Incorporation and the By-laws of the Association are included as Exhibits A and B and incorporated by reference as part of this Declaration.

3.9 Duties and Powers of the Association. In addition to the duties and powers enumerated in the Articles of Incorporation and bylaws, or as elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

A. Own and/or maintain and otherwise manage all of the common areas, and all facilities, improvements, and landscaping thereon, including but not limited to the

private streets and street fixtures, parking areas, fences, and all other property acquired by the Association.

B. Pay any real and personal property taxes and other charges assessed against the common areas.

C. Have the authority to obtain, for the benefit of all of the common areas, utility services, including all water, gas, and electric services and refuse collection.

D. Grant easements where necessary for utilities and sewer facilities over the common areas to serve the common areas and the Units.

E. Maintain such policy or policies of insurance as the Board of Trustees of the Association deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its members, all as more specifically set forth below.

F. Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall provide for the right of the Association to terminate the same upon reasonable notice to said manager or managing agent, or prior thereto for cause.

G. Have the power to establish and maintain a working capital and contingency fund in an amount to be determined by the Board of Trustees of the Association.

H. Have the power to adopt and establish by resolution such building management and operational rules as the Association may deem necessary, desirable and convenient for the maintenance, operation, management and control of the Project, and the Association may, from time to time by resolution, alter, amend and repeal such rules. Unit owners shall, at all times, obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all Unit owners and/or occupants of the Project.

I. In the event Unit Owners or Officers and Trustees of the Association reach an impasse or are deadlocked with respect to any action requested by an Owner, then the aggrieved Owner and/or the Association shall submit themselves to binding arbitration in accordance with the rules and regulations of the American Arbitration Association as they may be amended from time to time. The fees and costs of the arbitration shall be borne by the Association.

3.10. Compliance with Provisions of Declaration and Bylaws. Each owner shall comply strictly with the provisions of this Declaration, the provisions of the Certificate of Incorporation and Bylaws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto and as may be lawfully amended from time to time. Failure so to comply shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the managing agent or board of trustees in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved owner.

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3.11. **Liability for Assessments.** All owners of vacant or improved Units shall be obligated to pay the assessments imposed by the board of trustees or managing agent of the Association to meet the common expenses. The assessments shall be made equally according to each owner's ownership interests in and to the common areas and facilities which is 1/11 or 9.09% per Unit, and as depicted on the Plat. Assessments for the common expenses, including insurance, shall be due semi-annually in advance on the first day of each month or as the board may otherwise direct. The managing agent or board of trustees shall prepare and deliver or mail to each owner an itemized quarterly statement showing the various estimated or actual expenses for which the assessments are made. Contribution for monthly assessments shall be prorated if the ownership of a condominium Unit commences on a day other than the first day of a month.

No owner may exempt himself from liability for their contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas or facilities, or by abandonment of their Unit.

3.12. **Assessment for Common Expenses.** The assessments made upon the owners by the Association shall be based upon the cash requirements deemed to be such aggregate sum as the managing agent or board of trustees of the Association shall from time to time determine is to be paid by all of the condominium Unit owners, to provide for the payment of all actual and estimated expenses growing out of or connected with the maintenance and operation of the common areas and facilities. Said sum may include, among other things, the following: expenses of management; taxes and special assessments, until separately assessed; fire insurance with extended coverage and vandalism and malicious mischief insurance with endorsements attached issued in the amount of the maximum replacement value of all of the condominium Units; casualty and public liability and other insurance premiums; landscaping and care of grounds; common lighting and heating; repairs and renovations; garbage collections; wages; water charges; legal and accounting fees; management fees; expenses and liabilities incurred by the managing agent or board of trustees under or by reason of this declaration; the payment of any deficit remaining from a previous period; the creation of a reasonable contingency or other reserve or surplus fund as well as other costs and expenses relating to the common areas and facilities. The commission or failure of the board to fix the assessment for any month shall not be deemed a waiver, modification or a release of the owners from their obligation to pay.

a. **Annual Budget.** Annual Assessments shall be determined on a May 1 through April 30 fiscal year basis. On or before April 1 each year, the Association shall prepare or cause to be prepared an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any), and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

b. **Notice and Payment.** Annual assessments shall be made on a May 1 through April 30 fiscal year basis. The Association shall furnish to each Owner a copy of the budget and notify each Owner as to the amount of the annual Assessment with respect to their Condominium on or before April 15 each year for the fiscal year commencing on May 1 next following such date. Each Annual Assessment shall be payable in four (4) equal quarterly installments due on the first day of each quarter during the fiscal year to which the assessment relates or at

the discretion of the Board of Trustees in monthly and/or unequal installments; provided, however, that the first Annual Assessment shall be based upon and shall be payable in installments during the balance of the fiscal year remaining after the date hereof. All unpaid installments of any Annual Assessment shall bear interest at the rate of one and one-half percent (1-1/2%) per month (or at such lesser rate equal to the maximum interest rate allowed by applicable law) from the date each such installment is due until paid. The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment, but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

c. **Inadequate Funds.** In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Section 8.03 below, except that the vote therein specified shall be unnecessary.

d. **Special Assessments.** In addition to the Annual Assessments authorized by this Article, the Association may levy, at any time and from time to time, upon affirmative vote of at least 7 of 11 Unit Owners (63%) of the total votes of the Association, Special Assessments, payable over such periods as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including without limitation Common Expenses). This Section shall not be construed as an independent source of authority for the Association or incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of such Special Assessments and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of one and one-half percent (1-1/2%) per month (or at such lesser rate equal to the maximum interest rate allowed by applicable law) from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

3.13. **Lien for Nonpayment of Common Expenses.** All sums assessed but unpaid for the share of common expenses chargeable to any condominium Unit, including interest thereon at eighteen percent (18%) per annum, shall constitute a lien on such Unit superior (prior) to all other liens and encumbrances except: (1) tax and special assessment lien on the Unit in favor of any assessment Unit and special district, and (2) encumbrances on the owner's condominium recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

To evidence such lien the board of trustees or managing agent may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of the condominium Unit and a description of the condominium Unit. Such a notice shall be signed by one of the board of trustees or by the managing agent and may be recorded in the office of the recorder of the County of Summit, State of Utah. Such lien for the common expenses shall attach from the date of the failure of payment of the assessment, and may be enforced by the foreclosure on the defaulting owner's condominium Unit by the association in like manner as a mortgage or deed of trust on real property upon the recording of a notice or claim thereof. In any such foreclosure the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The owner shall also be required to pay to the Association a reasonable rental for the condominium Unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid on the condominium Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

The amount of the common expenses assessed against each condominium Unit shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing same.

Any encumbrancer holding a lien on a condominium Unit may pay any unpaid common expense 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 their encumbrance.

3.14. Liability for Common Expense Upon Transfer of Condominium Unit.

Upon payment of a reasonable fee not to exceed ten dollars (\$10.00) and upon the written request of any owner or any mortgagee or prospective mortgagee of a condominium Unit, the Association, by its managing agent or board of trustees, shall issue a written statement setting forth the amount of the unpaid common expenses, if any, with respect to the subject Unit, the amount of the current monthly assessment and the date such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which should be conclusive upon the association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness is complied with within ten (10) days, all unpaid common expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for their proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided however, that upon payment of a reasonable fee not to exceed ten dollars (\$10.00), and upon written request, any prospective grantee shall be entitled to a statement from the managing agent or board of trustees, setting forth the amount of the unpaid assessments, if any, with respect to the subject Unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within ten (10) days of such request, then such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the subject Unit.

If any owner shall, at any time, let or sublet any Unit and shall default for a period of one (1) month in payment of any assessments, the Association may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of such owner occupying the Unit, the rent due or becoming due up to the amount of such assessment due, together with all penalties provided herein. Such payment of rent to the Association shall be sufficient payment and discharge of such tenant or subtenant as between such tenant or subtenant and such owner to the extent of the amount so paid.

3.15. Mortgaging a Condominium Unit -- Priority. Any owner shall have the right from time to time to mortgage or encumber their interest by deed of trust, mortgage or other security instrument.

3.16. Mortgage Protection. Notwithstanding all other provisions hereof:

A. The liens created hereunder upon any condominium shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to the provisions hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

B. The Association shall give a written notification to a holder of a recorded first mortgage on any Unit within the project, of any default by the mortgagor of such Unit in the performance of the mortgagor's obligations created under this Declaration and the Plat in connection herewith, which default is not cured within thirty (30) days.

C. Unless the Act otherwise provides or unless all Unit owners and all holders of first mortgage liens on individual Units have given their prior written approval, the owners of the condominium project or the board of trustees of the Association shall not be entitled to:

(1) Change the pro rata interest or obligations of any Unit for purposes of levying assessments and determining shares of the common areas and facilities and proceeds of the project;

(2) Partition or subdivide any Unit or the common areas and facilities of the project; nor

(3) By act or omission seek to abandon the condominium status of the project except as provided by statute in case of substantial loss of the Units and common areas and facilities of the condominium project.

D. No amendment to this paragraph shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

E. By subordination agreement executed by the Association, the benefits of subparagraphs A, B, C and D, above may be extended to mortgages not otherwise entitled thereto.

ARCHITECTURAL COMMITTEE

4. **Introduction.** It is the intention and purpose of this Declaration to impose Architectural Design Standards of a type and nature that result in Dwellings and Improvements which are compatible with the area landscape. The placement, massing, dimensions, materials, colors, and public view aspects of the Improvements will be guided, but still allow for diversity in style and the vitality in design. All Improvements shall be in accordance with the design criteria set forth in the Plat (the "Architectural Design Standards").

To accomplish this goal, the Declarant hereby establishes the Architectural Committee, which is empowered to oversee and enforce the Architectural Design Standards set forth in this Declaration. This review is in addition to any architectural review required by Park City Municipal Corporation (see 4.7 below).

4.1. **Architectural Committee Created.** The Committee will consist of three members, who shall be members of the Board of Trustees of the Homeowners Association. The initial committee will consist of three people appointed by the Declarant, who do not need to be Owners. At the time 73% of the Units are sold to persons other than the Declarant, two members of the Committee will be elected from the Board of Trustees, to replace the appointees of the Declarant. At the time that 80% of the Units are sold to persons other than the Declarant, or following the second anniversary of the recording of the original Plat (whichever occurs first), all three members of the Committee will be elected by the Unit owners from the Board of Trustees.

4.2. **Approval by Committee.** No improvements of any kind, including without limitation the construction of any Dwelling Unit, garage, parking area, driveway, or other hard surfaced area in excess of 100 square feet, swimming pools, outdoor hot tubs or spas, fences, walls, curbs, poles, trampolines, satellite dishes or antenna, solar panels, or any other permanent structure may be constructed, installed, maintained or allowed to stand in the Project without the prior written approval of the Committee. No excavation, grading, filling, draining, landscaping, or installation or removal of existing vegetation shall be made without the prior written approval of the Committee. Approval of the Committee will be sought in the following manner:

a. **Plans submitted.** Plans for the construction of any new Dwelling Unit must be submitted to the Committee for review. It is recommended that preliminary plans be submitted before the expense of final construction drawings is incurred. The plan must be in sufficient detail to show the location on the Unit of the exterior walls of the Dwelling Unit and all other structures to be built with it; detailed drawings of all elevations of all buildings showing locations of windows, doors, roof pitches, decks and other exterior elements; a list of exterior siding and roofing materials and/or a sample, including color samples; and a landscape plan showing the location of driveways, walkways, patios, decks and other hard surfaced or irrigated areas and the areas to be disturbed by construction and the means of restoring those areas. In the

case of an addition or modification to an existing Dwelling, the Committee may waive any of the foregoing requirements.

b. **Review Fee.** The applicant will pay a review fee to the Committee of \$100 for each new dwelling, \$20 for each addition or remodel, or, in the case of Improvements which cost less than \$1,000, or which make no structural changes, the applicant will pay a fee of \$10. The primary purpose of the fee is to document the date of submission, but the Committee may also use the proceeds to pay for its expenses in reviewing the plans and giving notice of meetings. No fee will be accepted until the Committee determines the submission to be complete.

c. **Review.** Within 15 days from receipt of a complete submission, the Committee will review plans and make an initial determination whether or not the plans comply with the conditions imposed by this Declaration. If they do not, the plans will be rejected. If they are in compliance, the Committee will approve the plans. The Committee may also approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans for review. The Committee will review preliminary plans, without fee, and make its comments known to the Owner, provided, however, that no preliminary approval is to be considered a final approval, and no final approval will be granted on less than a complete submission. Upon approval, the Committee and the Owner will each sign a copy of the plans, which shall be left to the Committee. Any construction that is not in strict compliance with the approved plans is prohibited.

d. **Written Record.** The Committee will maintain a written record of its actions, and maintain in its files a copy of all plans approved or rejected for a period of five years.

e. **Failure to Act.** If the Committee has not approved or rejected any submission within 45 days after payment of the review fee and submission of complete plans, the submission is deemed to have been disapproved.

4.3. **Variances.** Variances to the Architectural Design Standards contained in this Declaration, or modifications to the size or shape or location of the Limits of Disturbance Area on any Unit, may be granted when strict application would create an unforeseen or unreasonable hardship to the Owner of any Unit. No such variance may be granted without the unanimous consent of the Committee.

4.4. **Extraordinary Costs.** Whenever it deems appropriate, and with the consent of the Board of Trustees, the Committee may engage the services of an architect, or civil or structural engineer to assist in its review of any proposed Improvements. All costs of such additional review will be paid by the Applicant, provided however that no architect or engineer will be hired without advance notice to the Applicant of the intention to hire a review architect or engineer, and the aspects of the proposal that caused the Committee to believe that professional review was required, and the estimated cost of that review. If the applicant does not withdraw the proposal within five days after receipt of that notice, he is deemed to have consented to the Committee retaining such professional assistance. Whenever the Committee retains outside

professional services in its review, the reviewing architect or engineer is acting only in an advisory capacity, and the applicant, for himself and his successors and assigns, waives any and all claims against the Committee in the event that advice from, or conditions imposed by, the reviewing professional prove ineffective, unnecessary, or inappropriate to the circumstances. The costs of such review will be billed directly to the applicant.

4.5. General Design Review. The Committee will use its best efforts to provide a consistent pattern of enforcement, and consistent application of the Architectural Design Standards of this Declaration. These Standards are, of necessity, general in nature, and the Committee shall apply them in a manner that results in a high quality, attractive, and well-designed community.

4.6. Declarant, Trustees and Committee not Liable. The Declarant, the Trustees, and the Committee and its members shall not be liable to the applicant for any damages, or to the Owners of Units within the Subdivision for their actions, inactions, or approval or disapproval of any set of plans submitted to the Committee for review. In the absence of bad faith or malicious actions, the Owners shall have no claim against the Declarant or Committee as a result of the performance or failure to perform the duties created by this Declaration. Each Owner has the right to enforce this Declaration against another Owner, and may seek independent redress if he believes the Committee has acted improperly.

4.7. Limitations on Review. The Committee's review is limited to those matters expressly described in this Declaration. The Committee shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws, or ordinances affecting the development or improvement of the Property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes to plans as may be subsequently required to bring them into conformity with any applicable codes must be reviewed and approved by the Committee prior to construction.

4.8. Approval to Proceed. The Committee shall promptly issue as Certificate of Approval to the Owner once the plans have been approved and the pre-construction conference has been held, and all other conditions of construction set forth in this Declaration have been satisfied.

4.9. Ownership. The Condominium Project is hereby divided into the units as described and as shown on the Plat recorded concurrently herewith, which units, together with their appurtenant interests in the common areas and facilities and limited common areas herein established, shall constitute separate freehold estates for all purposes provided by the Declaration.

5.0. Description of Project. The project consists of four duplex residential units containing two (2) Units each and three (3) single family homes. The units are currently unbuilt. They are to be built in the areas designated on the Plat. Any area within the designated location not occupied by a Unit shall be deemed limited common area. All Units are to be constructed in accordance with the Architectural Design Standards. The condominium Units are intended for, and shall be utilized as, residential units for the owner's personal use or for nightly short or long term rental and other similar uses; and for such other adjunct and related services, as determined by the Association.

5.1. Designation of Units. The building and the units therein, the unit numbers and their location are indicated on the Plat, which is incorporated herein by reference.

5.2. **Common Areas and Facilities.** The common areas and facilities have been defined and described in Definition C of paragraph 1, above, and are also designated on the Plat.

5.3. **Limited Common Areas and Facilities.** The limited common areas and facilities in the project have been designated on the Plat. Unit Owners are responsible for the improvement, maintenance and repair of Limited Common Area as follows: Units 1 through 5 are responsible for the Limited Common Area for parcel 1 as designated on the Plat; Unit 6 is responsible for its Limited Common Area as designated on the Plat; Units 7 and 8 are responsible for their Limited Common Area as designated on the Plat; Units 9 and 10 are responsible for their Limited Common Area as designated on the Plat; and Unit 11 is responsible for its Limited Common Area as designated on the Plat. No Unit Owner or their guests may obstruct a Limited Common Area.

5.4. **Voting - Common Expense - Ownership in Common Areas and Facilities.** The percentage of undivided ownership in the common areas and facilities assigned and appurtenant to each unit is set forth as follows and shall be used for all purposes including voting and sharing of the common expenses. The allocation of undivided interests in the common areas and facilities was accomplished in the following manner. Each Unit's interest shall be 1/11 of the total interest (or 9.09%). All Unit Owners shall be responsible for their pro rata share of expenses, whether a Unit has a structure built or not.

5.5. **Service of Process.** The person to receive service of process in the cases contemplated by the Act is:

Willow Ranch Development Corp.
Post Office Box 2190
Park City, Utah 84060

5.6. **Exclusive Ownership and Possession by Owner.** Each owner shall be entitled to exclusive ownership and possession of their unit. Each owner shall be entitled, for each Unit owned, to a 1/11th undivided interest in the common areas and facilities, subject to the provisions of this Declaration and the Association's Articles of Incorporation and Bylaws as they relate to said common areas. The percentage of the undivided interest of each owner in the common areas shall have a permanent character and shall not be altered without the consent of all owners expressed in an amended declaration duly recorded. The percentage of the undivided interest in the common areas shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens from the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument; provided, however, that a transfer by a Unit owner to the Association of their undivided interest in the common areas and facilities shall not be deemed a violation of the provisions of this paragraph 10. Each Unit owner may use the common areas in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of other owners.

The common areas and facilities shall remain undivided and no Unit owner or any other person shall bring any action for partition or division of any part thereof unless the property has been removed from the provisions of the Utah Condominium Ownership Act.

An owner shall not be deemed to own the utilities running through their Unit or fixtures or appliances which are utilized for, or serve more than one Unit. An owner shall be

deemed to own and shall have the exclusive right to paint, repair, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, floors, ceiling, windows and doors bounding their Unit.

5.7. Owner's Obligation to Repair. Except for those portions which the Association is required to maintain and repair hereunder, each owner shall at the owner's expense keep the interior and exterior of their Unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, including roofs, walls, foundations, etc., keeping the same in good condition, and shall repair all damage to the Common Areas and Limited Common Area and Facilities for which the owner is responsible. Additionally, Owners shall maintain, repair and replace as necessary, all doors and windows (and appurtenant hardware and accessories) to their Unit and any separate air conditioning, water heating, or other separate utility unit that services their Unit. Owners shall have the exclusive right and discretion to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows, and doors bounding their Unit.

For purposes of maintenance, repair, alteration and remodeling, Owners shall be deemed to own the windows, doors, interior walls, the materials (such as but not limited to plaster, gypsum dry walls, paneling, wallpaper, brick, stone, paint, wall and floor tile, and flooring making up the finished surfaces of the perimeter walls, ceilings and floors within their Unit and the Unit doors and windows. Owners shall not be deemed to own any utilities running through their Unit which serve more than one Unit except as a tenant in common with the other owners. Such right to repair, alter and remodel shall carry the obligation to replace any finishing materials removed with similar or other types or kinds of finishing materials of equal or better quality. All fixtures and equipment installed within the Unit commencing at a point where the utilities lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") enter the Unit shall be maintained and kept in repair by the Owner thereof.

Owners shall promptly discharge any lien which may hereafter be filed against their Unit and shall otherwise abide by the provisions of Section 57-8-19 of the Utah Condominium Act, relating to liens against Units. Owners shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim of any lien against the Unit of any other owner or against the common areas for construction performed or for labor, materials, services or other products incorporated in or otherwise attributable to the Owner's Unit at such other's request.

Each Owner shall be liable to the Association for any damage to the Common Area or Limited Common Area not fully reimbursed to the Association by insurance, if the damage is sustained because of the negligence or willful misconduct of the Owner, his guests, tenants, or invitees, or any other persons deriving their right and easement of use and enjoyment of the Common Area from the Owner, or his or their respective family and guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or the person for whom the Owner may be liable as described above. The cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against the Unit and may be enforced as provided hereby for the enforcement of any other Assessment.

Owners of Units 2, 3, 4, 5, 6, 7, 8 and 9, which are "twin homes," shall provide to its common wall neighbor evidence of insurance and payment of taxes so as to not impair the

value of a Unit. In the event Owners of twin home Units cannot agree as to the level of repair and maintenance required on a Unit, the aggrieved Unit Owner shall bring the issue before the Association, whose decision shall be binding on the Unit Owners.

5.8 Prohibition Against Structural Changes by Owner. The owner shall do no act nor any work that will impair the structural soundness or integrity of the buildings or safety of the property or impair any easement or hereditament without the written consent of all owners. The owner shall not paint, decorate or alter any portion of the exterior of the building or other common area, or any other area contained therein without first obtaining written consent of the Association or its duly authorized agent.

5.9 Limitation on the Use of the Units and the Common Areas. The Units and common areas shall be occupied and used as follows:

A. Without the prior written consent of all the Unit owners, no owner shall occupy or use their Unit, or permit the same or any part thereof to be occupied or used for any purpose other than for residential use and related rentals, as defined in paragraph 4, above.

B. There shall be no obstruction of the common areas. Nothing shall be stored in the common areas without the prior consent of the Association.

C. No noxious or offensive activity shall be carried on in any Unit or in the common areas, nor shall anything be done therein which may be or become an annoyance or nuisance to the other owners.

D. Nothing shall be done or kept in any Unit or in the common areas which will increase the rate of insurance thereon, without the prior written consent of the Association. No owner shall permit anything to be done or kept in their Unit or in the common area which will result in the cancellation of insurance on any Unit or any part of the common areas, or which would be in violation of any law. No waste will be committed in the common area.

E. Each Unit owner shall be entitled to signs in accordance with applicable law and as approved by the Association or its duly authorized representative. A Unit owner shall not permit any other sign of any kind to be displayed on the exterior of any Unit or in any portion of the common areas; the Association being charged with the placement of an appropriate sign relating to the project as a whole, near the front of the property and in accordance with all applicable codes, ordinances and regulations including any restrictions or requirements imposed upon Declarant as a condition to the issuance of a building permit by Park City Municipal Corporation.

F. Nothing shall be altered or constructed in or removed from the common areas, except upon the written consent of the Association.

G. Except in areas designated on the Plat or by the Association, no rubbish, trash, garbage or other waste shall be stored, kept, deposited, or burned within the Condominium Project. All trash, rubbish, garbage or other waste within the boundaries of the Condominium Project shall be kept only in sanitary containers. Each Unit shall be kept free of trash and refuse by the owner of such Unit. No person shall allow any unsightly, unsafe or dangerous conditions to exist on or in any Unit.

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H. None of the rights and obligations of the owners created herein or by the deed creating the Unit shall be altered in any way by encroachment due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner if said encroachment occurred due to the willful conduct of said owner.

I. Any requirement, uses or restrictions imposed upon Declarant by Park City Municipal Corporation as a condition to the issuance to Declarant of a building permit.

5.10. Right to Combine Units. Subject to the provisions of this Declaration and the limitations set forth in this Section, any Owner may combine two adjoining Units within the Project.

5.11. Limits of Disturbance Area Revision. As a result of the combination of Units, the Limits of Disturbance Areas of the two Units must be revised. The Owner of the Units must submit the proposed Limits of Disturbance Area for the combined Unit to the Committee for its review. In no case may the combined Limits of Disturbance Area exceed the sum of the two Limits of Disturbance Areas for the Units if developed independently. Siting of the Dwelling should spread the resulting building mass more or less evenly over the combined Units. In no event shall the entire Dwelling mass be allocated to a single Unit. In all circumstances City approval shall be required.

5.12. Dwelling Size. The maximum Dwelling size for the Dwelling on the combined Units shall not exceed the sum of the maximum allowable Dwelling sizes stated in this Declaration for the two Units if developed independently.

5.13. Driveways and Utilities. The driveway and utility corridor requirements of this Declaration are based on each Dwelling, not on each Unit, and no additional driveway, curb-cut, or utility width is permitted for a combined Unit.

5.14. Combination Deemed Permanent. The combination of Units is deemed to be permanent and the Units may not be independently sold once construction has recommenced on the Improvements for the combined Unit.

5.15. Record Notice of Combination. The Owner of any Units that have been combined will execute and deliver to the Committee a notice in recordable form, containing the name of the Owner and the legal description of the Units combined, which Notice will state that the two Units have been combined and cannot subsequently be subdivided. The Committee shall record this Notice with the Summit County Recorder upon the commencement of construction.

6.0. Reservation for Access-Maintenance, Repair and Emergencies. The owners shall have the irrevocable right, to be exercised by the managing agent or board of trustees of the Association, to have access to each Unit from time to time during reasonable hours as may be necessary for the inspection, maintenance, repair or replacement of any of the common areas or facilities therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the common areas or to another Unit or Units.

Damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the common areas or facilities, or as a result of

emergency repairs within another Unit at the instance of the association shall be a common expense of all of the owners; provided, however, that if such damage is the result of the negligence of a Unit owner, then such Unit owner shall be responsible for all of such damage. Restoration of the damaged improvements shall be substantially the same as the condition of such improvements prior to the damage.

6.1. Failure of the Association to Insist on Strict Performance and Waiver. The failure of the Association or its authorized agent to insist in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions contained in this Declaration, the Articles of Incorporation, the Bylaws or the Plat, or to exercise any right or option, shall not be construed as a waiver or a relinquishment for the future of such terms, covenants, conditions or restrictions and they shall remain in full force and effect. In the event of the receipt by the Association or its agents of any assessment from an owner, with knowledge of such a breach, no waiver by the Association or its agent of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Association or its agent.

6.2. Limitation of the Association's Liability. The Association and its agents shall not be liable for any failure of water supply or other services to be obtained and paid for by the Association hereunder or for injury or damage to person or property caused by the elements or by another owner or person in the project, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any part of the building, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless caused by gross negligence of the Association or its duly authorized employees or agents. No diminution or abatement of common expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common areas or from any action taken to comply with a law, ordinance or order of a governing authority.

6.3. Administration and Management. The administration and management of this condominium project shall be governed by this Declaration, and by the Articles of Incorporation and Bylaws of Silver Pointe Condominiums Owners' Association, Inc., a Utah nonprofit corporation, hereinafter referred to as the "Association." A true copy of the initial Bylaws of such corporation are attached to this Declaration as Exhibit "B" and shall be recorded simultaneously with this declaration. An owner of a condominium Unit, upon becoming an owner, shall be a member of the Association and shall remain a member for the period of their ownership. An exclusive agent for the operation and management of this condominium complex may be appointed by the Association.

6.4. Amendments. In addition to the amendment procedure provided by law and elsewhere in this Declaration, the Unit owners shall have the right to amend this Declaration and/or the Plat upon the approval and consent of the owners of three-fourths (3/4) of the undivided interests in the project which amendment(s) shall be effective upon proper recordation with the Summit County Recorder.

6.5. Taxes. It is acknowledged that under the Condominium Ownership Act, each Unit and each of said Units' percentage of the undivided interest in the common areas of the project is subject to separate assessment and taxation by each assessing authority and special district for all types of taxes authorized by law. Each owner will, therefore, pay and discharge any and all taxes which may be assessed against any of said Units of which he is the owner, against the percentage of undivided interests in the common areas of any such Unit,

to the extent not assessed to and paid for by the Association, and/or against the items of personal property located in or upon any Unit of which he is the owner.

6.6. **Consequences of Condemnation.** If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the property shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

(1) **Proceeds.** All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "condemnation award," shall be payable to the Association.

(2) **Complete Taking.** In the event that the entire project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant thereto shall terminate. The condemnation award shall be apportioned among the owners on the basis of each owner's percentage interest in the common areas and facilities, provided that if a standard different from the value of the property as a whole is employed to measure the condemnation award in the negotiation, judicial decree, or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the condemnation award to which each owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the following order:

1. For payment of the balance of the lien of any first mortgage;
2. For payment of taxes and special assessments liens in favor of any assessing entity;
3. For payment of unpaid common expenses;
4. For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
5. The balance remaining, if any, shall be paid to the condominium Unit owner.

(3) **Partial Taking.** In the event that less than the entire project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each owner shall be entitled to a share of the condemnation award to be determined in the following manner: As soon as practicable the Association shall, reasonably and in good faith, allocate the condemnation award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the owners, as follows: (a) the total amount allocated to taking of or injury to the general common elements shall be apportioned among the owners on the basis of each owner's percentage interest in the general common elements, (b) the total amount allocated to severance damages shall be apportioned to those condominium Units, or portions thereof, which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular

Unit and/or improvements an owner has made within their own Unit shall be apportioned to the particular Unit involved, and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the condemnation award is already established in negotiation, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner provided in the next preceding paragraph.

(4) **Reorganization.** In the event a partial taking results in the taking of a complete Unit, the owner thereof automatically shall cease to be a member of the Association. Thereafter the Association shall reallocate the ownership, voting rights and assessment ratio determined in accordance with this declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the owners or remaining Units for amendment of this declaration as provided herein. The provisions of this paragraph 28, shall be construed so as to comply with the provisions of Section 57-8-32.5, Utah Code Annotated, 1953 and as may be subsequently amended. In the event of conflict, the said statute shall control.

(5) **Reconstruction and Repair.** Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in paragraph 29 below.

6.9. **Damage and Destruction.** In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the building, shall be used to reconstruct it. As used in this paragraph, "reconstruct" means restoring the building to substantially the same condition in which it existed prior to the fire, casualty or other disaster, with each Unit and the common areas having the same vertical and horizontal boundaries as before. Such reconstruction shall be accepted by the Association.

If the insurance proceeds are insufficient to reconstruct the building, damage to or destruction of the building shall be promptly repaired and restored by the Association, using proceeds of insurance, if any, on the building for that purpose, and the Unit owners shall be liable for assessments for any deficiency. However, if three-fourths or more of the building is destroyed or substantially damaged and if the owners, by a vote of at least three fourths of the voting power, do not voluntarily within 100 days after such destruction or damage make provisions for reconstruction, the Association shall record, with the County Recorder, a notice setting forth such facts, and upon the recording of such notice (1) the property shall be deemed to be owned in common by the owners; (2) the undivided interest in the property owned in common which shall appertain to each owner shall be the percentage of undivided interest previously owned by such owner in the common areas; (3) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the owners of the property; and (4) the property shall be subject to an action for partition at the suit of any owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the owners in a percentage equal to the percentage of undivided interest owned by each owner in the common areas, after first paying out of the respective shares of the owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each owner.

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Notwithstanding all other provisions hereof, the owners may, by an affirmative vote of at least three-fourths of the voting power, at a meeting of Unit owners duly called for such purposes, elect to sell or otherwise dispose of the property. Such action shall be binding upon all Unit owners and it shall thereupon become the duty of every Unit owner to execute and deliver such instruments and perform all acts as in manner and form may be necessary to effect the sale.

6.8. **Insurance.** The Association shall obtain and maintain, at all times, a policy or policies insuring the Association, the Unit owners and their agents and employees against any liability to the public or the owner(s) of the Units' common areas, and its/their invitees or tenants, incident to the ownership and/or use of the common areas of the condominium project, issued by such insurance companies and with such limits of liability as determined by the Association. Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross-liability endorsement wherein the rights of named insureds under the policy or policies shall not be prejudiced as in respect to their, her or their action against another named insured.

In addition, the Association may obtain insurance for such other risks of a similar or dissimilar nature as are or shall hereafter customarily be covered with respect to common areas or other condominium projects similar in construction, design and use.

6.9. **Mailing of Notices.** Each owner shall register their mailing address with the Association and all notices or demands intended to be served upon any owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the owner at such registered mailing address. All notices or demands intended to be served upon the Association shall be given by registered or certified mail, postage prepaid, to the address of the Association as designated in the Bylaws of the Association. All notices or demands to be served on mortgagees pursuant hereto shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the mortgagee at such address as the mortgagee may have furnished to the Association in writing. Unless the mortgagee furnishes the Association such address, the mortgagee shall be entitled to receive none of the notices provided for in this Declaration. Any notice referred to in this section shall be deemed given when deposited in the United States mail in the form provided for this section.

7.0. **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of operating the subject property as a condominium project and as specified herein. Failure to enforce any provision hereof shall not constitute a waiver of the rights to enforce said provision or any other provision hereof. The provisions of this Declaration shall be in addition and supplemental to the Condominium Ownership Act of the State of Utah and to all other provisions of law.

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

7.2. **Reallocation of Undivided Interests.** In the event the Project is expanded in accordance with the provisions of this Declaration and the Condominium Act, and in each such event, the undivided interests in the Common Areas and the votes appurtenant to the Units shall be reallocated among all of the Units in the Project, including the Units added to the Project. A part of the entire interest in the Common Areas shall be allocated to each Unit in proportion to the size of such Unit, and the total of the undivided interests so allocated to all of


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the Units in the Project shall add up to one hundred percent (100%). The size of each Unit shall be determined on the basis of the approximate number of square feet of floor space within such Units and percentages of undivided interests may be rounded off. The votes shall be similarly reallocated.

7.3. Effective Date. This Declaration shall take effect upon recording.

IN WITNESS WHEREOF, the undersigned have executed this instrument on the date first above indicated.

WILLOW RANCH DEVELOPMENT CO.

By: 
Its: President

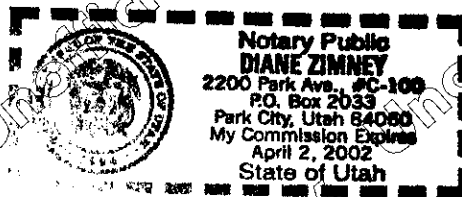
STATE OF UTAH

COUNTY OF SUMMIT

ss.

The foregoing instrument was acknowledged before me this 7th day of February, 1998, by Robert W. Dunsen

NOTARY PUBLIC and SEAL



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