

ENABLING DECLARATION  
ESTABLISHING A PLAN FOR  
CONDOMINIUM OWNERSHIP

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BRIAN HEAD VILLAGE, RESORT CONDOMINIUMS  
PHASE NO. I

This Declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration," is made and executed in Iron County, State of Utah, this 25 day of August, 1970 by R. Terence Marten, Edgar J. Thompson, David A. Hutchison, Peter D. Fraser, C. Joanne Thompson, Diane Hutchison, and Deanna Marten (hereinafter referred to as "Grantor") pursuant to the provisions of the Utah Condominium Ownership Act,

WITNESSETH:

WHEREAS, Grantor owns certain real property herein described; and

WHEREAS, said Grantor has improved said property by constructing thereon a twenty (20) unit multifamily structure known as Brian Head Village, Resort Condominiums, Phase I, said structure constituting a "Condominium Project" under the terms of the provisions of the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated 1953), and having been constructed in accordance with plans and specifications prepared by McLean and Schultz, Consulting Engineers, Fullerton, California, said plans being on record in the office of the Tax Assessor of the City of Cedar, County of Iron, State of Utah, FHA Project No. 105-34001, and consisting of sheets 1A through 12 and specification sheets 1 through 39, etc., all inclusive; and

WHEREAS, said Grantor hereby establishes by this declaration a plan for the individual ownership of the real property estates consisting of the area or space contained in each of the apartment units in said multifamily structure, and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining real property which is hereinafter defined and referred to herein as the "common areas and facilities."

NOW, THEREFORE, said Grantor, the fee owner of the following property located in the vicinity of Brian Head Ski Resort on Highway 143, Iron County, State of Utah and more particularly defined as:

Beginning at a point North 183.77 feet and East 145.27 feet from the SW corner Section 2, T36S, R9W, Salt Lake Base and Meridian; thence N 43° 50' 00" W 65.00 feet, N 46° 10' 00" E 20.00 feet, N 43° 50' 00" W 105.62 feet, North 132.50 feet, East 175.00 feet, S 43° 50' 00" E 145.00 feet, S 46° 10' 00" W 238.00 feet to point of beginning.

Containing 1.0858 acres.

156720

Recorded at request of Edgar J. Thompson Fee Paid 27.00  
Date AUG 25 1970 By John D. Thacker Clerk Iron County  
Page 225-257  
Entered 153 Indexed ✓ Filed ✓

hereby makes the following declaration as to divisions, covenants, restrictions, limitations, conditions and uses to which the above described real property and improvements thereon, may be put, hereby specifying that said declaration shall constitute covenants to run with the land and shall be binding on said Grantor, its successors and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns:

- A. Said Grantor, in order to establish a plan of condominium ownership for the above described property and improvements, hereby covenants and agrees that it hereby divides said real property into the following separate freehold estates.
  1. The twenty (20) separately designed and legally described freehold estates consisting of the spaces or areas, being the area or space contained in the perimeter wall of each of the twenty (20) apartment units in said multifamily structure constructed on said property, said spaces being defined and referred to herein as "apartment spaces."
  2. A freehold estate consisting of the remaining portion of the real property is described and referred to herein as the "common areas and facilities," which definition includes the multifamily structure and the property upon which it is located, and specifically includes, but is not limited to, the land, roof, main walls, slabs, staircases, halls, parking spaces, storage spaces, community and commercial facilities, swimming pool, pumps, water tank, trees, pavement, balconies, pipes, wire conduits, air conditioners and ducts, or other public utility lines.
- B. For the purpose of this declaration, the ownership of each "apartment space" shall include:
  1. The respective undivided interest in the common areas and facilities specified and established in Exhibit "D" hereof, and each "apartment space" together with the undivided interest is defined and hereinafter referred to as "family unit."
  2. A portion of the "common areas and facilities" is hereby set aside and allocated for the restricted use of the respective "apartment spaces" as shown on a survey attached hereto and made as part hereof as Exhibit "A", and said areas shall be known as "restricted common areas and facilities."
- C. The individual "apartment spaces" hereby established and which shall be individually conveyed are described in the survey attached hereto as Exhibit "A".
- D. The undivided interest in the "common areas and facilities" hereby established and which shall be conveyed with each respective "apartment space" and the proportionate shares of the separate owners of the respective "family units" in the profits and common expenses in the "common areas and facilities," as well as their proportionate representation for voting purposes in the Association of Owners set forth and included herein as Exhibit "B".

The above respective undivided interests established and to be conveyed with the respective "apartment spaces" as indicated above, cannot be changed, and said Grantor, its successors and assigns, and grantees, covenant and agree that the undivided interests in the "common areas and facilities" and the fee titles to the respective "apartment spaces" conveyed therewith, shall not be separated or separately conveyed, and each said undivided interest shall be deemed to be conveyed or encumbered with its respective "apartment space".

E. Said Grantor, its successors and assigns, by this declaration, and all future owners of the "family units," by their acceptance of their deeds, covenant and agree as follows:

1. There shall be no judicial partition of the project or any part thereof, nor shall Grantor or any person acquiring any interest in the project or any part thereof seek any such judicial partition, until the happening of the conditions set forth in Paragraph I hereof in the case of damage or destruction or unless the property has been removed from the provisions of the Condominium Act as provided in Section 57-8-22 thereof; provided, however, that if any condominium shall be owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants. But such partition shall not affect any other condominium.
2. That the "apartment spaces" shall be occupied and used by the respective owners only as a private dwelling for the owner, his family, tenants and social guests and for no other purpose.
3. The owner of the respective "apartment spaces" shall not be deemed to own the un-decorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding his respective "apartment space," nor shall said owner be deemed to own pipes, wires, conduits, or other public utility lines running through said respective "apartment spaces" which are utilized for, or serve more than one "apartment space" except as tenants in common with the other "family unit" owners as heretofore provided in "D". Said owner, however, shall be deemed to own the walls and partitions which are contained in said owner's respective "apartment space" and also shall be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint, wallpaper, etc.
4. The owners of the respective "apartment spaces" agree that if any of the "common areas and facilities" encroaches upon the "apartment spaces," a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event the multifamily structure is partially or totally destroyed, and then rebuilt, the owners of "apartment spaces" agree that minor encroachment of parts of the "common areas and facilities" due to construction shall be permitted and that valid easement for said encroachment and the maintenance thereof shall exist.
5. That an owner of a "family unit" shall automatically, upon becoming the owner of a "family unit or units," be a member of Brian Head Village, Phase I 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.
6. That the owners of "family units" covenant and agree that the administration of the condominium shall be in accordance with the provisions of the Declaration, the By-Laws of the Association which are made a part hereof and attached as Exhibit "C", and shall be subject to the terms of a Regulatory Agreement executed by the Association and the Commissioner of the Federal Housing Administration, which Agreement is made a part hereof and is attached as Exhibit "D".

7. That each owner, tenant or occupant of a "family unit" shall comply with the provisions of this Declaration, the By-Laws, decisions and resolutions of the Association or its representative, and the Regulatory Agreement, as lawfully amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief.
8. That this Declaration shall not be revoked or any of the provisions herein amended except by an instrument in writing signed and acknowledged by record owners holding seventy-five percent (75%) of the total vote hereunder which amendment shall be effective upon recordation in the office of the Recorder of Iron County State of Utah.
9. That no owner of a "family unit" may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by the abandonment of his "family unit."

- F. All sums assessed by the Association shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment assessed to the Owner of any condominium plus interest at seven percent (7%) and costs, including reasonable attorneys' fees, shall become a lien upon such condominium upon recordation of a notice of assessment as provided in Section 57-8-20 of the Condominium Act. The said lien for nonpayment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only
1. Tax and special assessment liens on the unit in favor any assessment unit, and special district, and
  2. All sums unpaid on the first mortgage of record.

Such lien may be foreclosed by suit by the manager or Board of Directors, acting on behalf of the owners of the family units, in like manner as a mortgage of real property. In any such foreclosure the family unit owner shall be required to pay a reasonable rental for the family unit, if so provided in the By-Laws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The manager or Board of Directors, acting on behalf of the owners of the family units, shall have power, unless prohibited herein, to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

- G. Where the mortgages of a first mortgage of record or other purchaser of a family unit obtains title to the unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association, chargeable to such family unit which became due prior to the acquisition of title to such family unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the family units including such acquirer, his successors and assigns.

- H. In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the buildings, shall be applied to such reconstruction. Reconstruction of the buildings, as used in this paragraph means restoring the buildings to substantially the same condition in which they existed prior to the fire, casualty or other disaster, with each

"family unit" and the Common Area having the same vertical and horizontal boundaries as before. Such reconstruction shall be accomplished or caused to be accomplished by the Board of Directors of the Association of Owners.

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 Manager of Management Committee, using proceeds of insurance, if any, on the buildings for that purpose, and the Unit owners shall be liable for assessment for any deficiency. However, if three-fourths or more of the buildings are destroyed or substantially damaged and if the Owners, by a vote of at least three-fourths of the voting power, do not voluntarily, within one hundred days after such destruction or damage, make provision for reconstruction, the Manager or Management Committee shall record, with the county recorder, a notice setting forth such facts, and upon a 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 Area;
  3. Any liens affecting any of the condominiums shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owner in 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 Area, 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. 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 purpose, 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 to perform all acts as in manner and form may be necessary to effect the sale.
- I. In a voluntary conveyance of a "family unit" the grantee of the unit shall be jointly and severally liable with the grantor of the unit for all unpaid assessments by the Association against the latter for his 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. However, any such grantee shall be entitled to a statement from the manager or Board of Directors of the Association, as the case may be, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the family unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth.

- J. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the By-Laws, shall be deemed to be binding on all owners of family units, their successors and assigns.
- K. That the Board of Directors of the Association of Owners, or the management Agent, or Manager shall obtain and continue in effect blanket property insurance in form and amounts satisfactory to mortgagees holding first mortgages covering family units. That the Board of Directors shall further obtain and maintain at all times insurance of the type and kind and in at least the amounts provided in Exhibit "C" and including insurance for such other risks, or a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use, which insurance shall be governed by the following provisions:
1. All policies shall be written with a company licensed to do business in the State of Utah and holding a rating of "AAA" or better by Best's Insurance Reports;
  2. Exclusive authority to adjust losses under policies hereafter in force in the project shall be vested in the Board of Directors of the Association of Owners or their authorized representatives;
  3. In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder, be brought into contribution with insurance purchased by individual owners or their mortgages;
  4. Each Owner may obtain additional insurance at his own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board of Directors, in behalf of all of the Owners, may realize under any insurance policy which the Board of Directors may have in force on the project at any particular time;
  5. Each Owner shall be required to notify the Board of Directors of all improvements made by the Owner to his Unit, the value of which is in excess of One Thousand Dollars (\$1,000.00);
  6. Any Owner who obtains individual insurance policies covering any portion of the project other than personal property belonging to such Owner, shall be required to file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after purchase of such insurance;
  7. The Board of Directors shall be required to make every effort to secure insurance policies that will provide for the following:
    - a. A waiver of subrogation by the insurer as to any claims against the Board of Directors, the Manager, the Owners and their respective servants, agents, and guests;
    - b. That the master policy on the project cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Owners;
    - c. That the master policy on the project cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors or Manager without a prior demand in writing that the Board of Directors or Manager cure the defect;

- d. That any "no other insurance" clause in the master policy exclude individual owners' policies from consideration;
8. The Board of Directors shall conduct an annual insurance review for the Association to ensure the adequacy of the insurance coverage. This review shall include an appraisal of the improvements in the project by a representative of the insurance carrier writing the master policy.
- L. That insurance premiums for any blanket insurance coverage shall be a common expense to be paid by monthly assessments levied by the Association of Owners; and that such payments shall be held in a separate escrow account of the Association of Owners and used solely for the payment of the blanket property insurance premiums as such premiums become due.
- M. That so long as said Grantor, its successors and assigns, owns one or more of the family units established and described herein, said Grantor, its successors and assigns shall be subject to the provisions of this Declaration and of Exhibits "A", "B", "C" and "D" attached hereto; and said Grantor covenants to take no action which would adversely affect the rights of the Association with respect to assurances against latent defects in the property or other right assigned to the Association, the members of such association and their successors in interest, as their interests may appear, by reason of the establishment of the condominium.
- N. The terms "Declaration" and "Condominium Ownership" as used herein shall mean and include the terms "Master Deed" and "Apartment Ownership" respectively.
- O. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.
- P. 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 affect the validity or enforceability of any other provision hereof.
- Q. The respective "family units" shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days; or (b) any rental if the occupants of the "family unit" are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. Other than the foregoing obligations, the owners of the respective "family units" shall have the absolute right to lease same provided that said lease is made subject to the covenants and restrictions contained in this Declaration and further subject to the By-Laws and Regulatory Agreement attached hereto.

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This Declaration shall take effect upon recording.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 25 day  
of August 1970.

GRANTOR

By *R. Terence Martin*  
R. Terence Martin

By *Edgar J. Thompson*  
Edgar J. Thompson

By *David A. Hutchison*  
David A. Hutchison

By *Peter D. Fraser*  
Peter D. Fraser

By *C. Joanne Thompson*  
C. Joanne Thompson

By *Diane Hutchison*  
Diane Hutchison

By *Deanna Marten*  
Deanna Marten



156223

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Before me, Neil Day, a Notary Public in and for said Alameda County, personally appeared R. Terence Marten known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

Neil Day

Before me, Neil Day, a Notary Public in and for said Alameda County, personally appeared Edgar J. Thompson known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

Neil Day

Before me, Neil Day, a Notary Public in and for said Alameda County, personally appeared David A. Hutchison known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

Neil Day

Before me, Belle Albert, a Notary Public in and for said Marin County, personally appeared Peter D. Fraser known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.



Belle Albert  
State of California, Marin County

Before me, Neil Day, a Notary Public in and for said Alameda County, personally appeared C. Joanne Thompson known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

Neil Day

Before me, Kathrine L. Burns, a Notary Public in and for said Orange County, personally appeared Diane Hutchison known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.



Kathrine L. Burns  
State of California, County of Orange

Before me, Kathrine L. Burns, a Notary Public in and for said Orange County, personally appeared Deanna Marten known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.



Kathrine L. Burns  
State of California  
County of Orange

156722

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EXHIBIT A

BIRLAN HEAD VILLAGE RESORT CONDOMINIUMS PHASE I

Plot Plan and Surveyors Certificate, Sheets 1 and 2, Recorded as  
Entry Number 156722 in the Iron County Records Office, State of Utah,  
on August 25, 1970.

## EXHIBIT B

BRIAN HEAD VILLAGE CONDOMINIUM PROJECTPHASE NO. 1

<u>Unit Number</u>	<u>Building Number</u>	<u>% Ownership in Common Area (Also Determinative of Voting Rights &amp; Pro Rata Share of Common Expenses)</u>
1	A	4.228
2	A	5.772
3	A	4.228
4	A	5.772
1	B	4.228
2	B	5.772
3	B	4.228
4	B	5.772
1	C	4.228
2	C	5.772
3	C	4.228
4	C	5.772
1	D	4.228
2	D	5.772
3	D	4.228
4	D	5.772
1	E	4.228
2	E	5.772
3	E	4.228
4	E	5.772
TOTAL		100.00

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EXHIBIT C

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BY-LAWS  
OF  
HOMEOWNERS ASSOCIATION OF  
BRIAN HEAD VILLAGE RESORT CONDOMINIUMS  
PHASE I

ARTICLE I  
PLAN OF APARTMENT OWNERSHIP

**Section 1. Apartment Ownership.** The project located at Brian Head Ski Resort on Highway 143, County of Iron, State of Utah, known as "Brian Head Village, Resort Condominiums, Phase I," is submitted to the provisions of the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated 1953).

**Section 2. By-Laws Applicability.** The provisions of these By-Laws are applicable to the project. (The term "project" as used herein shall include the land.)

**Section 3. Personal Application.** All present or future owners, tenants, future tenants, or their employees, or any other person that might use the facilities of the project in any manner, are subject to the regulations set forth in these By-Laws and to the regulatory Agreement, attached as Exhibit "D" to the recorded Plan of Apartment Ownership.

The mere acquisition or rental of any of the family units (hereinafter referred to as "units") of the project or the mere act of occupancy of any of said units will signify that these By-Laws and the provisions of the Regulatory Agreement are accepted, ratified, and will be complied with.

ARTICLE II  
VOTING, MAJORITY OF OWNERS, QUORUM, PROXIES

**Section 1. Voting.** Voting shall be on a percentage basis and the percentage of the vote to which the owner is entitled is the percentage assigned to the family unit or units in the Master Deed and as set forth hereunder in Exhibit "B".

**Section 2. Majority of Owners.** As used by these By-Laws the term "Majority of Owners" shall mean those owners holding 41% of the votes in accordance with the percentages assigned in the Master Deed and Exhibit "B".

**Section 3. Quorum.** The presence in person or by proxy of owners having 60% of the total votes shall constitute a quorum.

**Section 4. Proxies.** Votes may be cast in person or by proxy. Proxies must be in writing, signed by the owner and be filed with the Secretary before the appointed time of each meeting.

Any designation of an agent to act for an Owner may be revoked at any time by written notice to the Secretary and shall be deemed revoked when the Secretary shall receive actual notice of the death or judicially declared incompetence of such Owner or of the conveyance by such Owner of his condominium. Where there is more than one record

Owner, any or all of such persons may attend any meeting of the Owners, but it shall be necessary for those present to act unanimously in order to cast the votes to which they are entitled. Any designation of an agent to act for such persons must be signed by all such persons.

### ARTICLE III ADMINISTRATION

Section 1. Association Responsibilities. The owners of the units will constitute the Association of Owners (hereinafter referred to as "Association") who will have the responsibility of administering the project, approving the annual budget, establishing and collecting monthly assessments and arranging for the management of the project pursuant to an agreement, containing provisions relating to the duties, obligations, removal and compensation of the management agent. Except as otherwise provided, decisions and resolutions of the Association shall require approval by a majority of owners.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the project or such other suitable place convenient to the owners as may be designated by the Board of Directors.

Section 3. Annual Meetings. The first annual meeting of the Association shall be held on           . Thereafter, the annual meetings of the Association shall be held on the first Tuesday of March each succeeding year. At such meetings there shall be elected by ballot of the owners a Board of Directors in accordance with the requirements of Section 5 of Article IV of these By-Laws. At the annual meeting, the Board of Directors shall present an audit of the common expenses, itemizing receipt and disbursements for the preceding calendar year, the allocation thereof to each Owner, and the estimated common expenses for the coming calendar year. Within ten (10) days after the annual meeting, said statement shall be delivered to the Owners not present at said meeting. The owners may also transact such other business of the Association as may properly come before them.

Section 4. Special Meetings. It shall be the duty of the President to call a special meeting of the owners as directed by resolution of the Board of Directors or upon a petition signed by owners having one-third (1/3) of the total votes and having been presented to the Secretary, or at the request of the Federal Housing Commissioner or his duly authorized representative. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths of the owners present, either in person or by proxy.

Section 5. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held to each owner of record, at least thirty (30) but not more than sixty (60) days prior to such meeting. The mailing of a notice in the manner provided in this Section shall be considered notice served. Notices of all meetings shall be mailed to the Director of the local insuring office of the Federal Housing Administration.

Section 6. Adjourned Meetings. In the event that a quorum is not present at any meeting, the owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the owners in accordance with the provisions of Section 5 hereof, and at the

Acting the presence of owners holding in excess of thirty percent of the total votes shall constitute a quorum for the transaction of business; but in the event a quorum is not present at that meeting, the owners present, though less than a quorum, may give notice to all the owners in accordance with Section 5 of an adjourned meeting, and, at that meeting, whatever owners are present shall constitute a quorum. Unless otherwise expressly provided in these By-Laws any action may be taken at any meeting of the owners upon the affirmative vote of a majority of the voting power of the owners present and voting provided that a quorum is present as provided for above.

**Section 7. Order of Business.** The order of business at all meetings of the owners of units shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Report of Federal Housing Administration Representative, if present.
- (f) Report of committees.
- (g) Election of inspector of election.
- (h) Election of directors.
- (i) Unfinished business.
- (j) New business.

#### ARTICLE IV

##### BOARD OF DIRECTORS

**Section 1. Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors composed of five (5) persons, all of whom must be owners of units in the project.

**Section 2. Powers and Duties.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these By-Laws directed to be exercised and done by the owners.

**Section 3. Other Duties.**

1. **Authority of the Management Committee.** The Management Committee, for the benefit of the condominiums and the owners, shall enforce the provisions hereof and shall acquire and shall pay for out of the common expense fund hereinafter provided for, the following:
  - (a) Water, sewer, garbage collection, electrical, telephone and gas and other necessary utility service for the Common Area (and to the extent not separately metered or charged, for the Units);
  - (b) A policy or policies of fire insurance as the same are more fully set forth in paragraph K of the Enabling Declaration, with extended coverage endorsement, for the full insurable replacement value of the Units and Common Area, payable as provided in paragraph L of the Enabling Declaration, or such other fire and casualty insurance as the Board of Directors shall determine gives substantially equal or greater protection to the owners, and their mortgages, as their respective interests may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgages of each condominium if any;

- (c) A policy or policies insuring the Board of Directors, the Owners and the Manager against any liability to the public or to the owners (of Units and of the Common Area, and their invitees, or tenants), incident to the ownership and/or use of the project, and including the personal liability exposure of the owners. Limits of liability under such insurance shall not be less than Three Hundred Thousand Dollars (\$300,000.00) for any one person injured, for any one accident, and shall not be less than One Hundred Thousand Dollars (\$100,000.00) for property damage each occurrence (such limits and coverage to be reviewed at least annually by the Board of Directors and increased in its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.
- (d) Workmen's compensation insurance to the extent necessary to comply with any applicable laws;
- (e) The services of a person or firm to manage its affairs (herein called "the Manager") to the extent deemed advisable by the Board of Directors as well as such other personnel as the Board of Directors shall determine shall be necessary or proper for the operation of the Common Area, whether such personnel are employed directly by the Board of Directors or are furnished by the Manager;
- (f) Legal and accounting services necessary or proper in the operation of the Common Area of the enforcement of the Declaration;
- (g) A fidelity bond naming the Manager, and such other persons as may be designated by the Management Committee as principals and the owners as obligees, for the first year in an amount at least equal to twenty-five percent (25%) of the estimated cash requirement for that year as determined under Section 1 of Article VI hereof, and for each year thereafter in an amount at least equal to twenty-five percent (25%) of the total sum collected through the common expense fund during the preceding year;
- (h) Maintenance and repair of all Common Area utilities including:
  - (1) Electrical service, whether above or under-ground.
  - (2) All on-site water pipes serving the Project and all plumbing serving common walls in the Condominium Buildings.
  - (3) Septic System, including pumping out of septic tanks and maintenance and repair of existing or any additions to the absorption fields in and around the Common Area.
- (i) Painting, maintenance, repair and all landscaping of the Common Area, and such furnishings and equipment for the Common Area as the Board of Directors shall determine are necessary and proper, and the Board of Directors shall have the exclusive right and duty to acquire the same for the Common Area; provided, however, that the interior surfaces of each Unit shall be painted, maintained and repaired by the owners thereof, all such maintenance to be at the sole cost and expense of the particular owner;
- (j) Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, snow removal, taxes or assessments which the Board of Directors is required to secure or pay for pursuant to the terms of the Declaration or by law or which in its opinion shall be necessary or proper for the operation of the Common Area or for the enforcement of this Declaration, provided that if any such materials, supplies, labor, services, maintenance, repairs, structural

alterations, insurance, taxes or assessments are provided for particular Units, the cost thereof shall be specially assessed to the owners of such Units.

- (c) Maintenance and repair of any Unit, if such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the Common Area or preserve the appearance and value of the project, and the owner or owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board of Directors to said owner or owners, provided that the Board of Directors shall levy a special assessment against the condominium of such owner or owners for the cost of said maintenance or repair.

The Board of Directors power heretofore enumerated shall be limited in that they shall have no authority to acquire and pay for out of the common expense fund capital additions and improvements (other than for purposes of replacing portions of the Common Area, subject to all the provisions of this Declaration) having a cost in excess of Two Thousand Dollars (\$2,000.00) except as expressly provided herein.

- (4) The Board of Directors shall have the exclusive right to contract for all goods, services and insurance, payment for which is to be made from the common expense fund.

The Board of Directors shall not be liable for any failure of water supply or other service to be obtained and paid for by the Board of Directors 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 parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless caused by gross negligence of the Board of Directors. 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 Area or from any action taken to comply with any law, ordinance or orders of a governmental authority.

Each member of the Board of Directors shall be indemnified by the owners against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a member of the Board of Directors, or any settlement thereof, whether or not he is a member of the Board of Directors at the time such expenses are incurred, except in such cases wherein the member of the Board of Directors is adjudged guilty of willful misfeasance or negligence in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only if the Board of Directors approves such settlement and reimbursement as being for the best interests of the Board.

**Section 4. Management Agent.** The Board of Directors may employ for the Association a management agent at a compensation established by the Board to perform such duties and services as the Board shall authorize including, but not limited to, the duties listed in Section 3 of this Article.



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

**Section 6. Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association.

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

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

**Section 9. Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least two such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.

**Section 10. Special Meetings.** Special meetings of the Board of Directors may be called by the President on three days notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least three Directors.

**Section 11. Waiver of Notice.** Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**Section 12. Board of Directors Quorum.** At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

#### ARTICLE V

#### OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by and from the Board of Directors. The Directors may appoint an assistant treasurer, and an assistant secretary, and such other officers as in their judgment may be necessary.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board and shall hold office at the pleasure of the Board.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of president of an Association, including but not limited to the power to appoint committees from among the owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to so do on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall be responsible for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

## ARTICLE VI

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## OBLIGATIONS OF THE OWNERS

Section 1. Assessments. All owners are obligated to pay monthly assessments imposed by the Association to meet all project communal expenses, which may include a liability insurance policy premium and an insurance premium for a policy to cover repair and reconstruction work in case of hurricane, fire, earthquake or other hazard. The assessments shall be made pro rata according to the value of the unit owned, as stipulated in the Master Deed. Such assessments shall include monthly payments to a General Operating Reserve and a Reserve Fund for Replacements as required in the Regulatory Agreement attached as Exhibit "D" to the plan of Apartment Ownership.

- (a) Within thirty (30) days prior to the beginning of each calendar year the Board of Directors shall estimate the net charges to be paid during such year (including a reasonable provision for contingencies and replacements and less any expected income and any surplus from the prior year's fund). Said "estimated cash requirement" shall be assessed to the Owners pursuant to the percentages set forth in the schedule in Exhibit "IP". If said sum estimated proves inadequate for any reason, including non-payment of any owner's assessment, the Board of Directors may at any time levy a further assessment, which shall be assessed to the owners in like proportions, unless otherwise provided herein. Each owner shall be obligated to pay assessments made pursuant to this paragraph to the Board of Directors in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board of Directors shall designate. Until January 1 of the year immediately following the conveyance of the first unit to an owner, the amount assessed each owner shall be as set forth above except that the amount shall be pro-rated according to the fraction of the year remaining before January 1, payment shall consist of One Hundred Dollars (\$100.00) per unit, due and payable no later than fifteen (15) days following conveyance of title to the owner. The amount so paid shall be used by the Management Committee for the purpose of establishing a general operating reserve fund for use in connection with the management and operation of the project;
- (b) All funds collected hereunder shall be expended for the purposes designated herein.
- (c) The omission by the Board of Directors before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions herein, or a release of the owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed. Amendments to this paragraph shall be effective only upon unanimous written consent of the owners and their mortgagees. No owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his unit.
- (d) The Manager or Board of Directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by the owner at convenient hours of week days.

## Section 2. Maintenance and Repair.

- (a) Every owner must perform promptly all maintenance and repair work within his own unit, which if omitted would affect the project in its entirety or in a part belonging to other owners, being expressly responsible for the damages and liabilities that his failure to do so may engender.
- (b) All the repairs of internal installations of the unit such as water, light, gas, power, sewage, telephones, air conditioners, sanitary installations, doors, windows, lamps, and all other accessories belonging to the unit area shall be at the owner's expense.
- (c) An owner shall reimburse the Association for any expenditures incurred in repairing or replacing any common area and facility damaged through his fault.

## Section 3. Use of Family Units - Internal Changes.

- (a) All units shall be utilized for residential purposes only.
- (b) An owner shall not make structural modifications or alterations in his unit or installations located therein without previously notifying the Association in writing, through the Management Agent, if any, or through the President of the Board of Directors, if no management agent is employed. The Association shall have the obligation to answer within thirty (30) days and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration.

## Section 4. Use of Common Areas and Facilities.

- (a) An owner shall not place or cause to be placed in the lobbies, vestibules, stairways, elevators and other project areas and facilities of a similar nature both common and restricted, any furniture, packages or objects of any kind. Such areas shall be used for no other purpose than for normal transit through them.

## Section 5. Right of Entry.

- (a) An owner shall grant the right of entry to the management agent or to any other person authorized by the Board of Directors 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.

## Section 6. Rules of Conduct.

- (a) No owner shall occupy or use his unit or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the owner and the owner's family or the owner's lessees or guests.
- (b) There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board of Directors.
- (c) Nothing shall be done or kept in any unit or in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Board of Directors. No owner shall permit anything to be done or kept in his unit or in the Common

Area which will result in the cancellation of insurance on any unit or any part of the Common Area, or which would be in violation of any law. No waste will be committed in the Common Area.

- (d) No sign of any kind shall be displayed to the public view on or from any unit or the Common Area except a suitable sign advertising the existence of said condominium apartments without the prior consent of the Board of Directors.
- (e) No animals, livestock or poultry of any kind shall be raised, bred, or kept in any unit or in the Common Area, except that dogs, cats or other household pets may be kept in units, subject to rules and regulations adopted by the Board of Directors.
- (f) Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board of Directors.
- (g) There shall be no violation of rules for the use of the Common Area adopted by the Board of Directors and furnished in writing to the owners, and the Board of Directors is authorized to adopt such rules.
- (h) Modification of any kind to the exterior of any building, either to the structure or the appearance thereof, including but not limited to awnings, sun shades, balcony covers, balcony enclosure, fences, air conditioning, service fans, window guards, flags, or landscaping may not be made without approval of the Board of Directors.
- (i) No clothes or other materials can be hung from the windows or any part thereof, draped from a balcony, railing, or fence, or otherwise shown without reasonable discretion upon the part of the owner.
- (j) Tools, sporting goods, cooking equipment, bicycles and other personal articles and equipment must be kept within the unit, or in the owner's private storage area.
- (k) Unit owners may have planter boxes on their balconies for the purpose of growing flowers. However, no hanging vines or growth is permitted outside the balcony area.
- (l) All signs of any kind within the condominium displayed to public view in any way must be approved by the management. In general, approval will only be given to individual owners for signs identifying their units. The size, type and colors must be approved by the management and mounted in accordance with management specifications.
- (m) All television and radio antennae are not to be attached permanently onto the building. All television and radio antennae to be mounted must be approved by the management and mounted in accordance with management specifications. If there is a master television antenna or community type system installed (cable, etc.) or otherwise provided, all unit owners will remove all temporary antennae, regardless of whether there is a charge for hookup and/or utilization of a community antenna system.
- (n) There shall be no use of common green areas except for uses which do not injure or scar the Common Area or the vegetation thereon; increase the maintenance thereof; or cause unreasonable embarrassment, disturbance, or annoyance to owners in their enjoyment of the common green areas.
- (o) There shall be no fires for any purpose whatever on any part of the Common Area. There shall be no large outdoor barbecues (hobachis excepted) used without express consent of the management.
- (p) Common green areas may be used for such temporary outdoor activities as dining, skating, art show, exhibits, etc., but shall require prior approval from the management, and such use must be such as will not permanently alter or materially injure the landscape or appearance of the common green.
- (q) Owners shall be held responsible for the actions of their children and their guests.
- (r) Each unit is entitled to one reserved parking space in close proximity to the building. All other cars will park in unreserved parking lots adjacent to the condominium area.

- (s) All boats, trailers and campers are to be parked in only areas designated by the management.
- (t) All vehicles shall be restricted to designated roads, service areas, and parking areas.
- (u) No units shall be used for any business or commercial purpose without prior approval of management, but this will not be construed to preclude corporate ownership.
- (v) No offensive activities shall be carried on in the condominium, nor anything be done or placed within the units which may be a nuisance or cause unreasonable embarrassment, disturbance, or annoyance to other owners or the public.
- (w) None of the rights and obligations of the owners created herein, or by the Deed creating the condominiums shall be altered in any way by encroachments 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 or owners if said encroachment occurred due to the willful conduct of said owner or owners.
- (x) Any owner may delegate, subject to the above restrictions, his right to enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

The failure of the Board of Directors or Manager to insist in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of these By-Laws, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future, of such term, covenant, condition or restriction but such term, covenant, condition or restrictions shall remain in full force and effect. The receipt by the Board of Directors or Management of any assessment from an owner, with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board of Directors or Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors or Manager.

#### ARTICLE VII

##### AMENDMENTS TO PLAN OF APARTMENT OWNERSHIP

Section 1. By-Laws. These By-Laws 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 75% of the total voting power as set forth in the Master Deed and attachment "B" above.

#### ARTICLE VIII

##### MORTGAGES

Section 1. Notice to Association. An owner who mortgages his unit, shall notify the Association through the Management Agent, if any, or the President of the Board of Directors in the event there is no Management Agent, the name and address of his mortgagee; and the Association shall maintain such information in a book entitled "Mortgages of Units."

**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.

**Section 3.** In the event any owner of a condominium shall wish to resell or lease the same, and shall have received a bona fide offer therefor from a prospective purchaser or tenant, the remaining owners shall be given written notice thereof together with an executed copy of such offer and the terms thereof. Such notice and copy shall be given to the Board of Directors for all of the owners. The remaining owners through the Board or a person named by the Board, shall have the right to purchase or lease the subject condominium upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing owner, and a matching downpayment or deposit is provided to the selling or leasing owner during the twenty-one (21) day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase or lease.

In the event any owner shall attempt to sell or lease his condominium without affording to the other owners the right of first refusal on any proposal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of an owner to subject his condominium to a trust deed, mortgage or other security instrument.

The failure of or refusal by the Board to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when a owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

In the event of any default on the part of any owner under any first mortgage made in good faith and for value, which entitled the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed for the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of this section, and the purchaser (or grantee under such deed in lieu of foreclosure) of such condominium shall be thereupon and thereafter subject to the provisions of the Declaration. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall then be the holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the condominium free and clear of the provisions of this section but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

The transfer of a deceased joint tenant's interest to the surviving joint tenant or the transfer of a deceased's interests to a devisee by will or his heirs at law under intestacy laws shall not be subject to the provisions of this section.

If an owner of a condominium can establish to the satisfaction of the Board of Directors that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of paragraph 21.

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ARTICLE IX  
COMPLIANCE

These By-Laws are set forth to comply with the requirements of the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated, 1953).

In case any of these By-Laws conflict with the provisions of said statute, it is hereby agreed and accepted that the provisions of the statute will apply.





EXHIBIT "D"

REGULATORY AGREEMENT\*

AGREEMENT dated this 25th day of August, 1976, by and between  
HOMEOWNERS ASSOCIATION OF BRIAN HEAD VILLAGE PHASE I  
(Association) whose address is Brian Head Ski Resort, Utah \*\*  
party of the first part, and as Federal  
Housing Commissioner (hereinafter called the Commissioner) acting pursuant to authority granted him by the  
National Housing Act, as amended, (hereinafter referred to as the Act), party of the second part.

WHEREAS, the Association has the responsibility for administering the  
Condominium and desires to aid members in obtaining financing for the purchase of family units in the condomin-  
ium; and

WHEREAS, mortgagees may be unwilling to lend sums to the members of the Association without FHA  
mortgage insurance; and

WHEREAS, the Commissioner is unwilling to endorse notes for mortgage insurance pursuant to Section 234  
of Title II of the Act unless and until the Association shall be entering into the covenants and agreements set  
forth below, consent to be regulated and restricted by the Commissioner as provided in the Act:

NOW, THEREFORE, in consideration of One Dollar (\$1.00) in hand paid, and other good and valuable con-  
siderations by each party to the other, the receipt of which is hereby acknowledged, and in order to induce the  
Commissioner to endorse for mortgage insurance the notes secured by mortgages covering family units in the con-  
dominium, and in order that the Association may be regulated and restricted by the Commissioner as provided for  
in the Act and the applicable Regulations, the parties hereto agree as follows: that whenever a Contract of Mort-  
gage Insurance for a mortgage covering a family unit in the condominium is in effect, or during any period of time  
as the Commissioner shall be the owner, holder, or reinsurer of any mortgage covering a family unit in the condo-  
minium, or during any time the Commissioner is the owner of a family unit in the condominium or is obligated to  
insure a mortgage covering any family unit in the condominium:

1. The Association shall establish and maintain a reserve fund for replacements by the allocation and pay-  
ment monthly to such reserve fund an amount to be designated from time to time by the Commissioner.  
Such fund shall be deposited in a special account with a safe and responsible depository approved by the  
Commissioner and may be in the form of a cash deposit or invested in obligations of, or fully guaranteed  
as to principal by, the United States of America. The reserve fund is for the purpose of effecting re-  
placements of structural elements and mechanical equipment of the condominium and for such other pur-  
poses as may be agreed to in writing by the Commissioner. Disbursements from such fund may be made  
only after receiving the consent in writing of the Commissioner.
2. The Association shall establish and maintain a general operating reserve by allocation and payment there-  
to monthly of a sum equivalent to not less than 3 percent of the monthly assessments chargeable to the  
owners of family units in the condominium pursuant to the by-laws. Upon accrual in said General Oper-  
ating Reserve Account, of an amount equal to 15 percent of the current annual amount of assessments  
chargeable to the owners of family units in the condominium pursuant to the by-laws, the rate of such  
monthly allocations may, by appropriate action of the Association, be reduced from 3 percent to 2 percent  
provided, however, that in the event withdrawals from such account reduce it below said 15 percent ac-  
crual, the rate of such monthly deposits shall immediately be restored to 3 percent; at any time there-  
after upon accrual in said General Operating Reserve Account of an amount equal to 25 percent of the  
current annual amount of assessments chargeable to the owners of family units in the condominium pur-  
suant to the by-laws, such monthly deposits may, by appropriate action of the Association, be discontinued  
and no further deposits need be made into such General Operating Reserve so long as said 25 percent  
level is maintained and provided, further, that upon reduction of such reserve below said 25 percent level,  
monthly deposits shall forthwith be made at the 3 percent rate until the 25 percent level is restored.  
This reserve shall remain in a special account and may be in the form of a cash deposit or invested in ob-  
ligations of, or fully guaranteed as to principal by, the United States of America, and shall at all times be  
under the control of the Association. This cumulative reserve is intended to provide a measure of finan-  
cial stability during periods of special stress and may be used to meet deficiencies from time to time as a

\* To be attached to the recorded Plan of Apartment Ownership and to be executed and dated as of the date of  
recording.

\*\* Insert name of Association of Owners as designated in the By-Laws of the Condominium, or the name of the  
Corporation, if the Association is incorporated.

- result of delinquent payments of assessments by owners of family units in the condominium and other contingencies. Disbursements totalling in excess of 20 percent of the total balance in the reserve as of the close of the preceding annual period may not be made during any annual period without the consent of the Commissioner. Reimbursements shall be made to the account upon payment of delinquencies for which funds were withdrawn from the reserve.
3. The Association will not employ a management agent for the buildings nor enter into a management contract nor undertake "self-management" unless the Commissioner has approved in writing the proposed management agent, form of management contract or other management arrangements.
  4. The Association shall not without prior approval of the Commissioner, given in writing, remodel, reconstruct, demolish or subtract from the premises constituting the condominium.
  5. The Association shall not without prior approval of the Commissioner given in writing:
    - (a) amend or change the Plan of Apartment Ownership or the by-laws of the Association;
    - (b) fail to establish and maintain the Fund for Replacements and general operating reserve as set forth herein;
    - (c) fail to provide for the management of the condominium in a manner approved by the Commissioner;
    - (d) fail to keep in full force and effect an elevator contract satisfactory to the FHA covering the maintenance and replacement of parts of any elevator or related equipment, or, if such contract shall be allowed to expire, then fail to accrue an additional sum in such amount as shall be designated by the Commissioner to be sufficient to allow for deferred and future replacements as part of the annual Reserve for Replacement Fund collected by the Association so as to insure that Funds will be available for replacement of elevator parts and related equipment.
  6. The Association shall maintain the common areas and facilities, and each owner of a family unit shall maintain the family unit, in good repair and in such condition as will preserve the health and safety of the members.
  7. The books, contracts, records, documents and papers of the Association and all of the property of the condominium shall be subject to inspection and examination by the Commissioner or his duly authorized agent at all reasonable times.
  8. The owner of a family unit shall not execute or file for record any instrument which imposes a restriction upon the sale, leasing or occupancy of his family unit on the basis of race, color, or creed.
  9. The Association agrees that if at any time the owner of a family unit fails to pay his monthly assessment as provided in the by-laws, the Association will, upon direction of the Commissioner, initiate necessary legal action to collect the assessment.
  10. Upon a violation of any of the above provisions of this Agreement by the Association, or by any owner of a family unit, or upon the failure of the Association to abide by and carry out the provisions of the Plan of Apartment Ownership and the By-Laws, the Commissioner may give written notice thereof to the Association or to the owner of a family unit, by registered or certified mail. If such violation is not corrected to the satisfaction of the Commissioner within 15 days after the date such notice is mailed, or within such additional period of time as is set forth in the notice, without further notice the Commissioner may declare a default under this Agreement and upon such default the Commissioner may:
    - (a) In the case of a default by the owner of a family unit:
      - (i) If the Commissioner holds the note of the defaulting owner declare the whole of said indebtedness due and payable and then proceed with the foreclosure of the mortgage;
      - (ii) If said note is held by an FHA-insured mortgagee - notify the mortgagee of such default, and the mortgagee, with the prior written consent of the Commissioner, may declare the whole indebtedness due, and thereupon proceed with the foreclosure of the mortgage, or assign the note and mortgage to the Commissioner as provided in the Regulations.
    - (b) In the case of a default by the Association or by the owner of a family unit:
 

Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, or for such other relief as may be appropriate, since the injury to the Commissioner arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

11. The covenants and agreements herein set out shall be deemed to run with the land and the property described in the Plan of Apartment Ownership, and to bind all owners of family units, present and future.
12. As used in this Agreement the term:
- (a) "Mortgage" shall include "Deed of Trust";
  - (b) "Note" shall include "Bond";
  - (c) "Mortgagee" shall include the "Beneficiary" under Mortgage or Deed of Trust however designated;
  - (d) "Default" means a default declared by the Commissioner when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Commissioner after written notice;
  - (e) "Plan of Apartment Ownership" shall include all legal documents, deeds, by-laws, plans and specifications, required by the laws of the jurisdiction to establish condominium ownership.
- (The use of the plural shall include the singular; the singular the plural; and the use of any gender shall be deemed to include all genders.)
13. This instrument shall bind, and the benefits shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in office or interest, and assigns.
14. The invalidity of any clause, part or provision of this agreement shall not affect the validity of the remaining portions thereof.
15. The Association agrees and assumes the obligation to have this Agreement recorded in the appropriate land records in the jurisdiction in which the real property herein described is situated; and in the event of failure to do so, it is agreed that the Commissioner may have the same recorded at the expense of the Association.
16. It is specifically agreed between the parties hereto that the breach of any of the terms of this Agreement by the Association or by an owner of a family unit will substantially damage and injure the Commissioner in the proper performance of his duties under the provisions of the Act, and will impede and injure the proper operations intended under such Act; that such damage will be irrespective of and in addition to any damage to the security of the mortgaged premises or to any financial damage the Commissioner may suffer as insurer; that, except for the agreements herein contained, the Commissioner would not issue and would not be authorized to issue a Contract of Mortgage Insurance, and that mortgagees may not be willing to lend sums of money to owners of the family units on the security of mortgages covering such units, unless the same were insured by the Commissioner.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement the day and year first above written.

WITNESS:

HIGH SKI LIMITED Acting for:  
ASSOCIATION OF OWNERS OF CONDOMINIUM  
BRIAN HEAD VILLAGE RESORT CONDOMINIUM PHASE-I

*R. Terence Martin*  
R. Terence Martin, General Partner (SEAL)

*Edgar J. Thompson*  
Edgar J. Thompson, General Partner (SEAL)

*David A. Hutchison*  
David A. Hutchison, General Partner  
FEDERAL HOUSING COMMISSIONER

By *Carroll M. Sullivan*  
(Authorized Agent)

ACKNOWLEDGMENT OF ASSOCIATION OF OWNERS OF CONDOMINIUM  
(In accordance with the form in State where property is located)