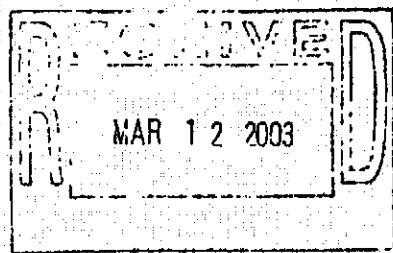


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DECLARATION OF CONDOMINIUM

FOR

PLUM CREEK CONDOMINIUMS PLAT A  
AN EXPANDABLE UTAH CONDOMINIUM PROJECT

THIS DECLARATION is made and executed as of the 14<sup>TH</sup> day of OCTOBER, 2003,  
by SUNDANCE HOMES, LLC, a Utah limited liability corporation, ("Declarant").

ENT 202442:2003 PG 1 of 50  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2003 Dec 31 11:11 am FEE 186.00 BY SS  
RECORDED FOR EAGLE MOUNTAIN CITY

RECITALS:

A. Declarant is the record owner of that certain real property (the "Land") located in the city of Eagle Mountain, Utah County, Utah more particularly described in Article II hereof.

B. Various improvements have been or will be made to the Land so as to enable its use and operation as a condominium project. The construction of all such improvements has been, or will be, performed in accordance with the information contained in the Record of Survey Map and in this Declaration.

C. Declarant desires, by filing this Declaration and the Record of Survey Map, to submit the Land and all improvements now or hereafter constructed thereon to the provisions of the Act as a condominium project to be known as the "Plum Creek Condominiums".

D. Declarant intends to sell and convey to various purchasers the fee title to the individual Units contained in the Project, together with the undivided ownership interests in the Common Areas and Facilities appurtenant to such Units, subject to the covenants, restrictions, and limitations herein set forth.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby makes the following Declaration:

I. DEFINITIONS

When used in this Declaration (including the Recitals and By-Laws and other exhibits attached hereto) the following terms shall have the meaning indicated. Any term used herein

which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act.

1.1 Additional Lands shall mean and refer to addition real property subject to Declarant's unilateral right of expansion provided in Article XII of this Declaration which property is particularly described in Exhibit "B" attached to this Declaration and incorporated herein by this reference.

1.2 Act shall mean and refer to the Utah Condominium Ownership Act (Chapter 57-8-1 Utah Code Annotated, 1953, as amended).

1.3 Association of Unit Owners or Association shall mean and refer to all of the Owners taken as or acting as a group in accordance with this Declaration as more fully set out in Section 5.1 of this Declaration.

1.4 Building shall mean and refer to one of the buildings containing one or more Units that have been or will hereafter be constructed on the Land, as such buildings are shown on the Survey Map and any supplements thereto and as further described in Section 3.1 of this Declaration.

1.5 Bylaws shall mean and refer to the Bylaws attached as Exhibit "D" to this Declaration as the same may hereafter be modified or amended.

1.6 Common Areas and Facilities or Common Areas shall mean, refer to, and include all Common Areas and Facilities designated as such in the Survey Map and supplements thereto and all portions of the Project not specifically included within the individual Condominium Units as more fully described in Section 3.3 of this Declaration and all Common Areas as defined in the Act, whether or not enumerated herein.

1.7 Common Expenses shall mean and refer to all sums which are expended on behalf of all the Unit Owners and all sums which are required by the Management Committee to perform or exercise its functions, duties, or rights under the Act, this Declaration, the Bylaws, any management agreement for operation of the Project, and such rules and regulations as the Management Committee may from time to time make and adopt. By way of illustration but not limitation, Common Expenses shall include: (i) expenses of administration, maintenance, operation, repair and replacement of those elements of the Common Areas and Facilities that must be maintained and/or replaced on a periodic basis and reserves as may be from time to time established by the Committee; (ii) expenses agreed upon by the Association or the Management Committee and lawfully assessed against the Unit Owners in accordance with this Declaration or the Bylaws; (iii) expenses declared to be Common Expenses by the Act or by this Declaration or the Bylaws; and (iv) any valid charge against the Project as a whole.

1.8. Condominium Unit or Unit means and refers to a separate a single Unit as described in Section 3.2 of this Declaration together with an undivided interest in the Common Areas and Facilities and the appurtenant right to the exclusive use of Limited Common Areas associated with such Unit.

1.9. Condominium Project or Project shall mean and refer to the Plum Creek Condominiums and shall consist of the Property.

1.10. Declarant shall mean and refer to SUNDANCE HOMES, LLC, a Utah limited liability corporation, or any successor or assign which, either by the operation of law, or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Project as SUNDANCE HOMES, LLC.

1.11. Declaration shall mean and refer to this instrument as the same may hereafter be modified or amended and all supplements thereto.

1.12. Land shall mean and refer to and consist of the real property described in Article II of this Declaration submitted to the terms of the Act by Article II hereof and all real property added to the Project by Supplements to this Declaration and the Survey Map.

1.13. Limited Common Areas shall mean and refer to those Common Areas designated herein or on the Survey Map as reserved for the use of a certain Unit or Units to the exclusion of the other Units as further described in Section 3.4 of this Declaration.

1.14. Management Committee or Committee shall mean and refer to the Management Committee of the Association of Unit Owners.

1.15. Mortgage shall mean and include both a first mortgage and a first deed of trust by which a Unit or any part thereof is encumbered.

1.16. Mortgagee shall mean and include both a mortgagee under a first mortgage on any Unit and a beneficiary under a first deed of trust on any Unit.

1.17. Percentage Interest shall mean and refer to an undivided percentage interest of each Unit Owner in the Common Areas and Facilities as set out in Exhibit "C" to this Declaration as the same may be modified from time to time as provided in Article XII of this Declaration.

1.18. Property shall mean and refer to the Land, the Buildings, and all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

1.19. Record of Survey Map, Survey Map or Map shall mean and refer to the Record of Survey Map filed in connection herewith executed and acknowledged by Declarant, consisting of \_\_\_\_\_ pages, and prepared and certified to by \_\_\_\_\_, a duly registered Utah Land Surveyor, as the same may hereafter be modified, amended or supplemented.

1.20. Unit Owner or Owner shall mean and refer to the owner of the fee in a Unit and the percentage of undivided interest in the Common Areas and Facilities which is appurtenant thereto. The Declarant shall be deemed the Owner of all unsold Units. In the event a Unit is the subject of an executory contract of sale, the contract purchaser shall, upon notice to the Committee by the purchaser, unless the seller and the purchaser have otherwise agreed and have informed the Committee in writing of such agreement, be considered the Unit Owner for purposes of voting and Association membership.

## II. SUBMISSION

2.1. Submission to Act. There is hereby submitted to the provisions of the Act, that certain parcel of real property situated in the City of Eagle Mountain, Utah County, State of Utah more particularly described in Exhibit "A" attached to this Declaration and incorporated herein by this reference and all improvements now or hereafter constructed thereon.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

SUBJECT TO all liens for current and future taxes, assessments and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Land or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Survey Map or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line or similar facility which traverses or partially occupies the above-described Land at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

2.2. Covenants to Run With Land. This Declaration and all the provisions hereof shall constitute covenants running with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. By acquiring any interest in

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

### III. DESCRIPTION OF BUILDING, UNITS AND COMMON AREAS

3.1.1 Description of Townhouse Buildings. Each building will have two stories with a basement. Each Building will contain four 2 story units with a basement. Phase 1 of the Project shall consist of thirteen Buildings and 52 Townhouse units.

3.1.2 Description of Condominium Buildings. Each Building will have two stories with no basement. Each Building will contain 24 units. Phase 1 of the project shall consist of two Buildings and 48 Condominium Units.

3.1.3 Description of the Buildings. The Buildings will be constructed principally of concrete foundations with exterior walls of wood, stucco veneer, vinyl or wood composition siding, asphalt shingles roofing, interior walls of wood studs, plywood and dry wall plaster. Each Building is supplied with electricity, water, sewage service, maser cable TV, natural gas and air conditioning. All Buildings and other improvements, including reconstruction and additions, shall conform to the architectural drawings and plans approved by the City of Eagle Mountain for the construction of the Project as defined specifically in the development agreement between the Declarant and the City of Eagle Mountain. The Buildings and other improvements are fully depicted on the Survey Map.

3.2. Description of the Condominium Units. The boundary lines of each Condominium Unit are the undecorated and unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, interior surfaces of windows and doors, window frames and door frames and trim. Each Unit shall include both the portions of the Building that are not Common Areas and Facilities within such boundary lines and the space so encompassed. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors, and systems, fixtures, or appliances found within the boundary lines of the Unit and servicing only that Unit. Exhibit C hereto contains a table setting forth the number designation of each Building and Unit. The Units are more particularly described in the Survey Map.

3.3 Description of Common Areas and Facilities. The Common Areas and Facilities shall include one ball court, one sand lot/volley ball court, one pavilion, three tot lots, parking areas, landscaping, roadways, walkways, utility systems and entry. The location and the configuration of the Improvements referred to in the foregoing sentence are depicted on the Survey Map. The Common Areas and Facilities shall mean and include: the improvements referred to above, the Land, all portions of the Project and all Property not contained within any Unit, including, but not by way of limitation: the foundations, columns, girders, beams, supports, main walls, roofs, corridors, stairs, stairways, and entrances and exits of the Buildings; installation of all central services, including power, light, water pumps, motor, fans, ducts, and in general all apparatus and installations existing for common use; all patios, courts and driveways; any utility pipes, 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; all Limited Common Areas as herein described; all other parts of the Property necessary or convenient to the existence, maintenance and safety or normally common in use, or which

have been designated as Common Areas and Facilities in the Survey Map; and all repairs and replacements of any of the foregoing.

3.4. Description of Limited Common Areas. Limited Common Areas mean and include those portions of the Common Areas and Facilities reserved for the use of certain Units to the exclusion of other Units. The Limited Common Areas shall include the assigned parking spaces and storage areas as set forth in the Survey Map as well as balconies or patios that are immediately adjacent to the contiguous with the Units, as more particularly identified in the Survey Map. The use and occupancy of designated Limited Common Areas shall be reserved to its associated Unit and each Unit Owner is hereby granted an irrevocable license to use and occupy said Limited Common Areas. Each Unit shall have at least two parking spaces designated for its exclusive use as Limited Common Area.

3.5. Percentages of Undivided Interest in Common Areas and Facilities. The percentage of undivided interest in the Common Areas and Facilities appurtenant to each Unit and its Owner for all purposes, including voting, is set forth in Exhibit C. Each Unit shall have an equal undivided interest in the Common Areas and Facilities regardless of the size or value of the Unit.

3.6. Combination of Units. An Owner of two or more adjoining Units shall have the rights, upon the approval of the Management Committee and the Mortgagees of said Units, and in compliance with all applicable zoning or other ordinances, to combine any two adjoining Units as if they were one Unit. To the extent permitted in the written consent of the Management Committee, any walls, floors or other structural separations between any two such Units, or any space which would be occupied by such structural separations but for the utilization of the two Units as one Unit, may, for as long as the two Units are utilized as one Unit, be utilized by the Owner of the adjoining Units as Limited Common Areas, except to the extent that any such structural separations are necessary to contain facilities necessary for the support, use or enjoyment of other parts of the Project..

#### IV. PURPOSE AND USE OF PROJECT AND UNITS

4.1. Purpose of Project and Units. The purpose of the Project and the respective Units thereof is to provide residential housing, parking and recreational facilities for Unit Owners, their respective families, tenants, guests and invitees.

4.2. Use of Units. The Units shall be occupied as single family residences and a Unit Owner shall not permit its Unit to be occupied or used other than as a private residence for a single family dwelling.

4.3. Restrictions on Use of Condominium Units and Common Areas. The use and occupancy of the Condominium Units and Common Areas by Unit Owners, their respective

families, tenants, guests and invitees shall be subject to the following restrictions and conditions:

4.3.1. A Unit Owner shall not permit any obnoxious, destructive or offensive activity or nuisance shall be carried on in his Unit or the Limited Common Areas appurtenant to his Unit or in the Common Areas, or any part thereof, which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

4.3.2. Nothing shall be done or kept in any Unit or in the Limited Common Areas appurtenant to a Unit which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Limited Common Areas appurtenant to the Units or the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

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

4.3.4. A Unit Owner shall keep the patios or balconies that are Limited Common Areas appurtenant to his Unit clean and sightly at all times and shall not use said patios or balconies for storage except with the express written approval of the Management Committee.

4.3.5. A Unit Owner shall not permit any sign of any kind to be displayed to the public view from his Unit or from the Limited Common Areas appurtenant to his Unit without the prior written consent of the Management Committee.

4.3.6. A Unit Owner shall not permit any animals of any kind to be raised, bred, or kept in his Unit or in the Limited Common Areas appurtenant to his Unit, except that household pets may be kept or housed in Units when expressly permitted in writing by the Management Committee. Each Owner who desires to keep in pet in such Owner's Unit shall apply in writing the Management Committee for permission to keep such pet. In no event shall any pet be permitted in an portions of the Common Areas unless carried or on a leash. Each Owner who keeps a pet in a Unit shall promptly remove all pet waste from the Common Areas and Facilities. Each Owner who keeps a pet in a Unit shall indemnify and hold all other Owners, the Association and Management Committee harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such pet in the Project. If a pet disturbs other Owners by barking or biting or in other ways becoming obnoxious, the Management Committee will give notice to the Owner of such pet to cause such annoyance to be discontinued; and if such annoyance is not discontinued and corrected, the Management

Committee may revoke its permission to keep the pet in the Project and the pet shall be removed therefrom.

4.3.7. There shall be no obstructions of the Common Areas and Facilities by the Unit Owners, their tenants, guests or invitees without the prior written consent of the Management Committee. Nothing shall be altered on, constructed in or removed from the Common Areas except upon the prior written consent of the Management Committee.

4.3.8. A Unit Owner shall not place or store anything within the Common Areas without the prior written consent of the Management Committee, except in the Limited Common Areas appurtenant to its Unit specifically designated or approved for storage.

4.3.9. No damage to or waste of the Common Areas or any part thereof shall be committed by any Owner or his respective family, tenants, guests and invitees, and each Owner shall indemnify and hold the Management Committee and the other Unit Owners harmless against all loss resulting from any such damage or waste caused by such Owner or his respective family, tenants, guests and invitees.

4.3.10. A Unit Owner shall not permit his parking spaces to be used for any other purposes except to park a vehicle.

4.3.11. The Management Committee may by Rules and Regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas. The Management Committee may adopt rules and regulations relating to the driving, parking standing and storing of motor vehicles in, on or about the Project. No Owner shall violate the rules and regulations as adopted from time to time by the Management Committee.

## V. ASSOCIATION OF UNIT OWNERS - MANAGEMENT COMMITTEE

5.1. Association of Unit Owners. The persons or entities who are, at the time of reference, the Unit Owners constitute an unincorporated association and not a legal entity, the characteristics and nature of which are determined by the Act, this Declaration and the Bylaws. The name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and disposed of, bank accounts shall be opened and suits shall be brought and defended by the Management Committee or officers thereof on behalf of and as agents for the Unit Owners in the manner specified in the Act, this Declaration or the Bylaws is: "Rock Creek Condominium Association, an association of unit owners under the Utah Condominium Act".

5.2. Voting At any meeting of the Association of Unit Owners, each Unit Owner, including Declarant, either in person or by proxy, shall be entitled to the number of votes which is equal to the percentage of undivided interest of the Common Areas and Facilities

assigned to his Unit or Units in Appendix C to this Declaration. If there is more than one Owner with respect to a particular Unit, any or all of such Owners may attend any meeting of the Association, but it shall be necessary for all such Owners present to act unanimously in order to cast the votes pertaining to their Unit. In those cases in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for the authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the necessary percentage of undivided ownership interest.

5.3. Management Committee. The management and maintenance of the Project, the Property and the business and affairs of the Association of Unit Owners shall be managed by a Management Committee as provided in the Bylaws. The Management Committee shall be elected as provided in the Bylaws. All agreements and determinations with respect to the Project and the Property lawfully made or entered into by the Management Committee shall be binding upon all of the Unit Owners and their successors and assigns.

5.4. Powers and Duties of Management Committee. The Management Committee shall have all the powers, duties and responsibilities which are now or may hereafter be provided by the Act, this Declaration and the Bylaws, including but not limited to the following:

5.4.1. To make and enforce house rules and administrative rules and regulations covering the operation and maintenance of the Property.

5.4.2. To engage the services of a manager or managing company, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation for their services; provided however, that any management agreement may be terminable by the Management Committee upon thirty days' written notice and that the term of any said management agreement may not exceed one year, renewable by agreement for successive one year periods.

5.4.3. To operate, maintain, repair, improve, and replace the Common Areas and Facilities, including the entering into of agreements for the use and maintenance of the Common Areas and Facilities for the benefit of the Association.

5.4.4. To determine and pay the Common Expenses.

5.4.5. To assess and collect the proportionate share of Common Expenses from the Unit Owners.

5.4.6. To enter into contracts, deeds, leases, and/or written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

5.4.7. To open bank accounts on behalf of the Association and to designate the signatures therefore.

5.4.8. To purchase, hold, sell, convey, mortgage, or lease any one or more Units in the name of the Association or its designee.

5.4.9 To bring, prosecute and settle litigation for itself, the Association and the Project, provided that it shall make no settlement which results in liability against the Management Committee, the Association or the Project in excess of \$15,000 without prior approval by a majority of the votes of Unit Owners.

5.4.10. To obtain insurance for the Association with respect to the Units and Common Areas and Facilities as well as workmen's compensation insurance and such other insurance required by the Act, this Declaration or the Bylaws or determined to be necessary or advisable by the Management Committee as provided by the Act, this Declaration or the Bylaws.

5.4.11. To repair or restore the Property following damage or destruction or a permanent taking by a power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Property from the provisions of the Act.

5.4.12. To own, purchase or lease, hold and sell or otherwise dispose of on behalf of the Unit Owners, items of personal property necessary to or convenient in the management of the business and affairs of the Association and the Management Committee and in the operation of the Property.

5.4.13. To keep adequate books and records.

5.4.14. To do all other acts necessary for the operation and maintenance of the Property, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project.

5.5. Limitation of Liability of Management Committee and Officers. Members of the Management Committee and the officers of the Association: (i) shall not be liable to the Unit Owners as a result of their activities as such for any mistake of judgement, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to a Unit Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Unit Owner or any person or entity direct or imputed by virtue of acts performed by them except for their own willful misconduct or bad faith or acts performed by them in their capacity as such; (iv) shall have no personal liability arising out of the use, misuse or condition of the Property which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

5.6. Indemnification of Management Committee and Officers. The Unit Owners shall indemnify and hold harmless any person, his heirs and personal representatives from and against all personal liability and all expenses, including attorney's fees, incurred or imposed or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, instituted by any one or more Unit Owners or any other persons or entities to which he shall be threatened to be made a party by reason of the fact that he was a member of the Management Committee or an officer of the Association, other than to the extent, if any, such liability or expense shall be attributable to his willful misconduct or bad faith, provided, further that in the case of any settlement that the Management Committee shall have approved, the indemnification shall apply only when the Management Committee approves the settlement as being in the best interests of the Association. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or vote of Unit Owners or of the Management Committee or otherwise. The indemnification by the Unit Owners as contained herein shall be paid by the Management Committee on behalf of the Unit Owners and shall constitute a Common Expense and shall be assessed and collectable as such.

## VI. MAINTENANCE, ALTERATION AND IMPROVEMENT

6.1. Maintenance of Common Areas and Facilities. The maintenance, alteration, replacement and repair of the Common Areas and Facilities shall be the responsibility of the Management Committee and the cost thereof shall be a Common Expense. The Management Committee shall also maintain, alter, replace and repair all parking areas, balconies and patios and all conduits, ducts, plumbing and wiring and other facilities for the furnishing of heat, gas, light, power, air conditioning, water and sewer that may be contained in portions of the Units, but which service part or parts of the Building other than the Unit in which they are contained. All incidental damages caused to a Unit by the maintenance, alteration, replacement and repair of the Common Areas and Facilities or utilities shall be repaired promptly by the Management Committee as a Common Expense.

6.2. Maintenance of Units. Unit Owners shall, at their own cost and expense, maintain, repair, paint, wax, tile, paper or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of their Units, as well as all walls, ceilings, floors, windows and doors within the boundaries thereof. In addition, each Unit Owner shall otherwise keep the interior of his Unit in good repair, in a clean and sanitary condition, and shall be responsible for the maintenance, repair or replacement of any cabinetry, plumbing fixtures, water heaters, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in or are used for his Unit, even though not within its boundaries. The Unit Owners shall keep clean and in a sanitary condition their storage areas, balconies or patios, if any. The Management Committee shall be responsible for cleaning and general maintenance of all parking areas.

6.3. Right of Access for Maintenance and Repairs. The Management Committee or manager shall have the irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for maintenance, repair, or replacement of any of the Common Areas and Facilities or for making emergency repairs necessary to prevent damage to the Common Areas and Facilities or to another Unit or Units. Each Unit Owner or occupant shall deposit a key to the Unit with the Management Committee or manager to be used for emergency access to the Unit.

## VII. INSURANCE

7.1. Insurance Requirements. The Management Committee shall obtain and maintain at all times insurance of the types and kinds as provided herein and including insurance for all other risks, of a similar or dissimilar nature, as or shall hereafter customarily be covered with respect to other properties similar to the Project in construction, design and use. The Management Committee shall make a reasonable effort to obtain insurance with the following provisions or endorsements:

7.1.1. Exclusive authority to adjust losses shall be vested in the Management Committee as insurance trustees or any successor trustee as designated by the Management Committee.

7.1.2. The insurance coverage shall not be brought into contribution with insurance purchased by individual Unit Owners or their respective Mortgagees.

7.1.3. Each Unit Owner may obtain additional insurance covering his real property, fixtures, or personal interest at his own expense, so long as such additional or other insurance does not have the effect of decreasing the amount which may be realized under any insurance maintained by the Management Committee.

7.1.4. The insurer waives its rights or subrogation as to any and all claims against the Association, each Unit Owner, and/or their respective agents, employees or tenants, and of all defenses based upon co-insurance or upon invalidity arising from the act of the insured.

7.1.5. The insurance coverage cannot be canceled, invalidated or suspended because of the conduct of any one or more individual Unit Owners or their respective lessees, employees, agents, contractors, and guests.

7.1.6. The insurance coverage cannot be canceled, invalidated or suspended because of the conduct of any officer or employee of the Association or Management Committee or their employees, agents, or contractors, without prior demand in writing that the Management Committee cure the defect and then only if the defect is not cured within 15 days.

7.1.7. Such policies shall provide that coverage shall not be prejudiced by any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association or failure of the Association to comply with any warranty or condition with regard to any portion of the Project over which the Owners Association has no control.

7.1.8. The insurance coverage shall provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to any and all insureds' named thereon, including all Mortgagees.

7.1.9. All policies of property insurance shall provide that, notwithstanding any provisions thereof which give the insurer the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Management Committee (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the Association may be a party, or any requirement of Law.

7.2. Property Insurance. The Management Committee, for the benefit of the Project and the Unit Owners, shall maintain a "master" or "blanket" policy of property insurance in an amount equal to the full replacement value (i.e. 100% of the current "replacement cost" exclusive of land, foundations, excavations, and other items normally excluded from coverage) of the entire Condominium Project (including all Buildings, Units, all Common Areas and Facilities, service equipment and any fixtures or equipment, but not contents furnished or installed by Unit Owner within the Units) with an "Agreed Amount Endorsement" or its equivalent, and, if necessary, an "increased Cost of Construction Endorsement" or "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, payable to the insurance trustee to be disbursed in accordance with the terms of this Declaration. Such insurance will afford protection against at least the loss or damage by fire and other hazards covered by the standard extended coverage endorsement, debris removal, vandalism, malicious mischief, windstorm, and water damage. The limits and coverage of said insurance shall be reviewed at least annually by the Management Committee. Said policy or policies shall provide for a separate loss payable endorsement in favor of the Mortgagee of each Unit, if any, as their interests may appear.

7.3. Liability Insurance. The Management Committee shall obtain a comprehensive policy or policies of public liability insurance insuring the Association, the Management Committee, the Unit Owners and their respective lessors, agents or guests against any liability to the public or to the Unit Owners, members of the households of Unit Owners and their respective invitees or tenants, incident to the ownership and/or use of the Property, and including the personal liability to the Unit Owners, incident to the ownership and/or use of the Property. Limits of liability under such insurance shall not be less than \$1,000,000 for any one person injured in any one occurrence, and shall not be less than \$100,000 for property damage in each occurrence. The limits in coverage of said liability policy or policies shall be reviewed at least annually by the Management Committee and increased at its discretion. Said

policy or policies shall be issued on a comprehensive liability basis and, if possible, shall provide cross-liability endorsements for possible claims of any one or more or group of insureds against any one or more or group of insureds, without prejudice to the right of a named insured under the policies to maintain an action against another named insured. Such coverage will include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

7.4. Fidelity Coverage. The Management Committee shall maintain adequate fidelity coverage to protect against dishonest acts on the part of members of the Management Committee, officers, and employees of the Association, including professional managers and their employees. Such fidelity bonds meet the following requirements:

7.4.1 All such fidelity bonds shall name the Association as the insured.

7.4.2. Such fidelity bonds shall be written in an amount equal to at least 50% of the estimated annual operating expenses of the Association, including reserves.

7.4.3. Such fidelity bonds shall include as part of any definitions of "employee" or similar expression both persons who serve with and without compensation.

7.4.4. Such bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days prior written notice to the Mortgagees of the Units.

7.5. Governmental Requirements. Notwithstanding any other provisions contained herein to the contrary, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond coverage meeting the insurance and fidelity bond requirements for condominium projects established by Federal National Mortgage Association and Government National Mortgage Association so long as either is a Mortgagee or owner of a Unit within the Project, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.

7.6. Other Insurance. The foregoing provisions of this Article VII shall not be construed to limit the power or authority of the Management Committee to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Management Committee may deem proper from time to time.

7.7. Notice of Improvements to Units. Each Unit Owner shall be required to notify the Management Committee of, and shall be liable for any increased insurance premium for insurance maintained by the Management Committee, occasioned by improvements made by the Unit Owner to his unit, the aggregate value of which is in excess of \$10,000. Each Unit

Owner shall bear the risk of loss for all improvements made to his Unit that were not the subject of notice to the Management Committee.

7.8. Insurance by Unit Owners. Any Unit Owner may obtain individual insurance coverage at his own expense so long as such insurance does not have the effect of decreasing the amount that the Management Committee, on behalf of all of the Unit Owners, may realize under any insurance policy that the Management Committee may have in force covering the Property or any part thereof at any time. Any Unit Owner who obtains individual insurance coverage, other than on personal property belonging to such Unit Owner, shall be required to file a copy of such individual policy or policies with the Management Committee within 30 days after obtaining such insurance coverage.

## VIII. ASSESSMENTS

8.1. Agreement to Pay Assessment. Declarant, for each Unit owned by it within the Project, hereby covenants, and each Owner of any Unit by the acceptance of a deed therefor, whether or not it be so expressed in the deed, or by entering into a sale and purchase contract, shall be deemed to covenant and agree with each other and with the Association to pay to the Association annual assessments made by the Association for the Common Expenses and special assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established and collected from time to time pursuant to the Bylaws and subject to the provisions of in this Article VIII.

8.2. Apportionment of Expenses Each Unit Owner shall be liable for a proportionate share of the Common Expenses and shall share in the common profits, such shares being the same as the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Unit owned by the Unit Owner as set forth in Exhibit C.

8.3. Commencement of Assessments. Assessments for Common Expenses on any Unit shall commence on that date which is the date of closing of a sale of the Unit, or the date of occupancy of the Unit, whichever occurs first, without regard to who is designated as the Owner thereof.

8.4. Assessments for Capital Improvements. The Management Committee may include in the monthly assessments amounts representing contributions to the capital of the Association to be used for the replacement of or additions to capital items or improvements to the Project. Said amounts shall be set up as capital accounts for each Unit. In the event of transfer of a Unit, the capital account shall be deemed transferred to the Unit transferee. Except as otherwise provided herein, in assessing the Unit Owners for capital improvements to the Common Areas and Facilities, for which there are not sufficient amounts in the respective capital accounts, there shall be no assessment, whether part of the annual budget or otherwise, for any single improvement exceeding the cost of \$15,000 made by the Management Committee without such expenditure having been first voted on and approved by those holding

two-thirds of the votes present in person or by proxy at a meeting duly called for that purpose. The foregoing shall not apply in connection with damage or destruction referred to in Article IX of this Declaration or to such structural alterations, capital additions to or capital improvements of the Common Areas and Facilities as necessary in the Management Committee's reasonable judgment to preserve or maintain the integrity of the Common Areas and Facilities of the Project.

8.5. Establishment of Reserve. Upon the first transfer of any Unit by the Declarant, the transferee of such Unit shall pay to the Association an amount equal to two times the then current amount of the monthly installments of the Annual Assessment for such Unit. The obligations to pay such amount pursuant to this Section 8.5. shall be in addition to the obligation to pay any other amounts pursuant to this Declaration, the Bylaws or by law, including but not limited to Annual and Special Assessments, associated with such Unit.

8.6. Interest on Delinquent Assessments. Assessments and any installments thereof not paid on or before ten days after the date when due shall bear interest at the rate of 18% per annum, or at such rate of interest as may be set by the Management Committee, from the date when due until paid. All payments on account shall be first applied to interest and then to the assessment payment first due.

8.7. Lien for Assessments. Any unpaid annual or special assessments shall constitute a continuing lien on the interest of any Unit Owner, which shall also secure reasonable attorney's fees and all costs and expenses incurred by the Management Committee incident to the collection of such assessment or enforcement of such a lien. Such lien shall be superior to all other liens and encumbrances on such Unit, recorded or unrecorded, except only for: (i) valid tax and special assessments liens on the Unit in favor of any governmental assessing authority; (ii) the lien of a Mortgage; and (iii) encumbrances on the interest of the Unit Owner recorded prior to the date a notice of lien under this Section is recorded which by law would be a lien prior to subsequently recorded encumbrances. To evidence a lien for sums assessed hereunder, the Management Committee may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by the Committee and may be recorded. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or judicial foreclosure by the Committee in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure of a lien for assessments, the Unit Owner subject to the lien shall be required to pay a reasonable rental for the Unit, and the Management Committee shall be entitled to the appointment of a receiver to collect the same. The Management Committee shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof. A release of notice of lien shall be executed by the Management Committee and recorded in the Office of the County Recorder of Salt Lake County, Utah,

upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien. Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created hereunder, and upon such payment such encumbrancer shall be subrogated to all rights of the Management Committee with respect to such lien, including priority. If a Unit Owner shall, at any time, let his Unit and shall default for a period of one month in the payment of assessments, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Management Committee shall discharge such tenant from his obligation for rent to the Owner and the Owner from his obligation to the Association, to the extent of the amount so paid.

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

8.9. Statement of Account. Upon payment of a reasonable fee not to exceed ten dollars (\$10.00), or such other amount as may in the future be allowed by the Act, and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Committee shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit; the amount of the current yearly assessment and the date that such assessment becomes or became due; any credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums; and such statement shall be conclusive upon the Committee in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within 20 days, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the 20 day period provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten days, and the purchaser subsequently acquires the Unit.

8.10. Personal Liability of Purchaser for Assessments. Subject to the provisions of Section 8.9, a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

## IX. DESTRUCTION, CONDEMNATION AND TERMINATION

9.1. Destruction or Damage. In the case of fire or other damage or destruction to all or part of the Property, the Management Committee, with the help of an independent appraiser if necessary or advisable, shall determine the percentage of the Project or the portion thereof that was destroyed or damaged and shall proceed as follows:

9.1.1. If Less than 75 percent of the Project or the portion thereof is destroyed or substantially damaged, the Management Committee shall arrange for the prompt repair and restoration of the Project or the portion thereof using the proceeds of insurance on the Project for that purpose, and the Unit Owners shall be liable for assessment for the deficiency, if any, in proportion to their respective percentages of undivided interests in the Common Areas and Facilities. Reconstruction of the Project or the portion thereof shall mean the restoring of the Project or the portion thereof to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas and Facilities having the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of Section 9.2 hereof shall apply.

9.1.2. If 75 percent or more of the Project or the portion thereof is destroyed or substantially damaged, the Management Committee shall, within 100 days after such destruction or damage, call a special meeting of the Unit Owners for the purpose of deciding whether or not the Project or the portion thereof shall be repaired and restored. If the proceeds of insurance on the Project or the portion thereof are sufficient to reconstruct the Project or the portion thereof, then unless the Unit Owners representing 75 percent of the undivided interests in the Common Areas affirmatively vote not to restore the Project or the portion thereof, the Management Committee shall promptly arrange for the reconstruction of the Project or the portion thereof, using the proceeds of insurance on the Project or the portion thereof for that purpose. If the proceeds of insurance on the Project or the portion thereof are not sufficient to reconstruct the Project or the portion thereof, then if the Unit Owners representing at least 75 percent of the undivided interests in the Common Areas, in person or by proxy, vote to repair or restore the Project or the portion thereof, the Management Committee shall promptly arrange for the reconstruction of the Project or the portion thereof, using the proceeds of insurance on the Project or the portion thereof for that purpose, and the Unit Owners shall be liable for assessment for any deficiency, if any, in proportion to their respective percentage of undivided interest in the Common Areas and Facilities. If the destruction or damage is by reason of eminent domain, the provisions of Section 9.2 hereof shall apply.

9.1.3. If 75 percent or more of the Project or the portion thereof is destroyed or substantially damaged and the reconstruction of the Project or the portion thereof is not approved as provided in Section 9.1.2, the Management Committee shall record, with the County Recorder, a notice of setting forth such facts, and upon the recording of such notice: (i) the Property shall be deemed to be owned in common by the Unit Owners; (ii) the

undivided interest in the Property owned in common which shall appertain to each Unit Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas and Facilities; (iii) 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 Unit Owner according to their undivided interest in the Common Areas; and (iv) the Property shall be subject to an action for partition at the suit of any Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property shall be considered as one fund and shall be divided among all Unit Owners in a percentage equal to the percentage of undivided interest owned by each Unit Owner in the Common Areas and Facilities, after first paying out of the respective shares of the Unit Owners, to the extent sufficient for such purposes, all sums necessary to satisfy the Mortgage on the Unit owned by each Unit Owner.

9.1.4. For purposes of this Section 9.1, the terms "disaster," "destruction" or "substantial damage" shall mean and include a temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation.

9.2. Eminent Domain Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation (all of which shall be defined as "eminent domain"), the Management Committee, each Unit Owner, and every Mortgagee, shall be entitled to timely written notice thereof and the Management Committee shall and the Unit Owners, at their respective expense, may participate in the proceedings incident thereto. The provisions governing the allocation of awards by reason of eminent domain shall be determined in accordance with Section 57-8-32.5 of the Act; provided, that the priority of any Mortgage shall remain undisturbed.

9.3. Termination. All of the Unit Owners may agree that the Units are obsolete or the Project should otherwise be abandoned or terminated and that the same should be sold. Such plan or agreement must have the written unanimous approval of every Mortgagee. In such instance, the Management Committee shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice, the entire Property shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Survey Map and the Bylaws. The sales proceeds shall be apportioned among the Owners and disbursed in the same manner as provided in Section 9.1.3 of this Declaration.

## X. MORTGAGE PROTECTION

10.1. Roster of Unit Owners and Mortgagees. The Management Committee shall maintain a roster of Unit Owners from the evidence of change of ownership furnished to the

Management Committee, which roster shall include the mailing addresses of Unit Owners. If the Management Committee has been given notice and the necessary information, the Management Committee shall maintain another roster which shall contain the name and address of each Mortgagee or insurer or guarantor of a Mortgage of a Unit. Each notice shall consist of a certified copy of the recorded instrument evidencing the title of the Mortgage. The Mortgagee shall be stricken from the roster upon receipt by the Management Committee of a request from the Mortgagee or of a certified copy of a recorded release or satisfaction of the Mortgage. Notice of such removal shall be given to the Mortgagee unless the removal is requested by the Mortgagee.

10.2. Notice of Default by Unit Owners. The Mortgagee under any Mortgage on a Unit is entitled to written notification from the Management Committee of: (i) any default by the mortgagor of such Unit in the performance of such Owners obligation under the Declaration which is not cured within 30 days; (ii) any condemnation loss or casualty loss which affects a material portion of the Project or such Unit; (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or (iv) any proposed action which would require the consent of Mortgagees.

10.3. Right to Examine Books Etc. Any Mortgagee shall have the right to examine the books and records of the Association during normal business hours and, upon request shall be entitled to received copies of annual reports, financial statements and other financial data for the preceding fiscal year, and shall be entitled to receive written notice of all meetings of the Association and may designate a representative to attend all such meetings.

10.4. Priority of Liens. A Mortgagee of any Unit who comes into possession of the Unit pursuant to the remedies provided in the Mortgage or by deed in lieu of foreclosure, shall take the property free of any claims or unpaid assessments or charges against the mortgaged Unit which accrued prior to the time such Mortgagee comes into the possession of the Unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units, including the mortgaged Unit). The liens created under the Act or pursuant to this Declaration or the Bylaws upon any Unit shall be subject and subordinate to any Mortgage on that Unit, and shall not affect the rights of the Mortgagee pursuant to a Mortgage upon a Unit, recorded prior to the date such liens arose and which is made in good faith and for value, provided that after the foreclosure of any such Mortgage, any assessments created pursuant to this Declaration or the Bylaws after the date of such sale shall have the same effect and be enforced in the same manner against the Purchaser at such sale as would be the case for any other Unit Owner.

10.5. Amendment of Article X. No amendment to Article X of this Declaration shall affect the rights of the Mortgagee under any Mortgage recorded prior to the recordation of any such amendment who does not joint in the execution thereof.

## XI. CONVEYANCE, EASEMENTS AND ENCROACHMENTS

11.1. Conveyancing. Every deed, lease, mortgage, instrument of conveyance or sale, or other instrument affecting title to a Unit shall describe the Unit by its designation set forth in Exhibit C and in the Survey Map with appropriate reference to the Survey Map and this Declaration, as each shall appear on the records of the County Recorder of Utah County, State of Utah. Every such description shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber or otherwise affect the Unit Owner's corresponding percentage of undivided ownership in the Common Areas and Facilities, as a tenant-in-common, as set forth in Exhibit C, also incorporating all rights and limitations incident to ownership described in this Declaration and the Bylaws, even though the same are not exactly mentioned or described. A description shall be deemed sufficient if it appears in substantially the following form:

Unit \_\_\_\_\_, as shown in the Record of Survey Map for Plum Creek Condominiums appearing in the Records of the County Recorder of Salt Lake County, State of Utah, in Book No. \_\_\_\_\_, Page No. \_\_\_\_\_, of Plats, and as defined and described in the Declaration for Ranch Condominiums, recorded the \_\_\_\_\_ day of \_\_\_\_\_, 2003, as Entry No. \_\_\_\_\_. The Declaration of Plum Creek Condominiums includes Exhibit's A, B, C and D attached thereto.

11.2. Easements. Every deed, lease, mortgage or other similar instrument shall be deemed to:

11.2.1. Except and reserve with respect to a Unit; (i) any portion of the Common Areas and Facilities lying within said Unit; (ii) easements through said Unit, appurtenant to the Common Areas and Facilities and all other Units, for support and repair of the Common Areas and Facilities and all other Units; and (iii) easements, appurtenant to the Common Areas and Facilities, for encroachment upon the air space of said Unit by those portions of the Common Areas and Facilities located within said Unit by those portions of the Common Areas and Facilities located within said Unit.

11.2.2. Include with respect to a Unit nonexclusive easements for ingress and support of said Unit through the Common Areas and Facilities, for the repair of said Unit through all other Units and through all Common Areas and for the use of the Limited Common Areas associated with the Unit as indicated in this Declaration and the Survey Map.

11.2.3. Except and reserve, with respect to the undivided percentage interest in the Common Areas and Facilities, nonexclusive easements appurtenant to all Units for ingress, egress, support and repair and exclusive easements appurtenant to each Unit for the use of the balcony, patio, and any storage area as set forth in the Survey Map.

11.2.4. Include, with respect to the undivided percentage interest in the Common Areas and Facilities, nonexclusive easements through each Unit for support and repair of the Common Areas and Facilities and nonexclusive easements for encroachments upon the air space of all of the Units by and for the portions of the Common Areas and Facilities lying within the Units.

11.3. Easement for Completion of Project. The Declarant shall have a transferable easement over the Common Areas for the purpose of completing construction of the Project, including and expansion thereof, and making improvements thereon as shown on the Survey Map and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent damage is inflicted on any part of the Project by any person utilizing said easement, the Declarant and the person causing the damage shall be liable to the Association for the prompt repair of such damage.

11.4. Easement for Utilities. The Declarant hereby dedicates to the City of Eagle Mountain, whether described in the Survey Map or not, an easement for the location of all utilities owned by the City of Eagle Mountain to the point of sale to the Association or the Unit Owner and with respect to the facilities for telecommunication installation, to the point of use within each Unit.

11.5. Encroachments. None of the rights and obligations of any Unit Owner created by this Declarations, the Bylaws or by any deed conveying a Unit shall be affected in any way by any encroachments (i) by any portion of the Common Areas and Facilities upon any Unit; (ii) by any Unit upon another Unit or upon the Common Areas due to settling or shifting of the Project or the portion thereof or other structure, including the rebuilding of the Building or other structure after fire or other casualty or an eminent domain taking or delivery of a deed in lieu of condemnation, unless there occurs an encroachment that results from the willful or negligent act or omission of the Unit Owner of the encroaching Unit, or of the owners of the Units to which the use of the encroaching Limited Common Areas is appurtenant, or of the Management Committee in the event of an encroachment by any portion of the Common Areas and Facilities other than the Limited Common Areas. There are hereby created valid easements for the maintenance of any encroachments permitted by this Section so long as such encroachments exist.

## XII. EXPANDABLE CONDOMINIUM

12.1. Reservation of Right to Expand. The Declarant hereby reserves the option and right, from time to time at any time and in any order, to expand the Project pursuant to Section 57-8-13.6 of the Act and this Article XII to include additional Units on the Additional Land or any portion thereof. The Consent of the Owners in the Project shall not be required for such expansion and the Declarant may proceed with such expansion at its sole option and as its sole action. The option and right to expand the Project to include the Additional Land shall expire seven (7) years after the recording to this Declaration; provided however, that

Declarant may, at any time prior to the expiration of such period, terminate its option to expand by recording in the office of the County Recorder for Utah County, Utah an executed and notarized document terminating this option. The Declarant need not add all or any portion of the Additional Land to the Project, however, Declarant may, at its sole discretion add all or any portion or portions of the Additional Land to the Project and may do so at different times.

12.2. Preparation and Recording of Supplemental Map and Supplemental Declaration. The expansion of the Project to include additional units on the additional land shall be accomplished by the filing for record by Declarant in the office of the County Recorder for Utah County, Utah no later than seven (7) years after the recording to this Declaration with regard to the Additional Land or any portion thereof that is being added to the Project: (i) a supplemental record of survey map ("Supplemental Survey Map") which shall describe the land added to the Project and shall comply in all respects with the Act; and (ii) a supplement to the Declaration ("Supplemental Declaration") which shall contain a legal description of the Additional Land or portion thereof added to the Project and shall reallocate the individual interests in the Common Areas to that the Units created on the land added to the Project shall be allocated undivided interests in the Common Areas and Facilities on the same basis as Units initially included in the Project. Each such Supplemental Declaration shall assign and identifying number to each Unit, if any, included on the land added to the Project. Each such Supplemental Declaration shall describe or delineate the Limited Common Areas such as parking spaces, patios, decks for the Units, if any, added to the Project.

12.3. Effect of Supplemental Declarations and Supplemental Survey Maps. Each deed of a Unit shall be deemed to irrevocably reserve to Declarant the power to appoint to the Unit and Unit Owners, from time to time, the percentages of the Common Areas and Facilities set forth in the Supplemental Declaration. The proportionate interest of each Unit Owner in the Common Areas and Facilities after any expansion of the Project shall be an interest determined by dividing equally the 100 percent undivided interest of the Project as expanded by the total number of Units after the expansion of the Project. Accordingly, upon the recordation of a Supplemental Survey Map and a Supplemental Declaration incident to any expansion, the revised schedule of undivided interests in the Common Areas and Facilities contained therein shall automatically become effective for all purposes and shall fully supersede the schedule set out in Exhibit C to the Declaration or any similar schedule contained in any Supplemental Declaration associated with any prior Supplemental Declaration. In the event of such expansion, the definitions used in this Declaration shall automatically be expanded to encompass and refer to the Project as so expanded. The recording of Supplemental Declarations and Supplemental Survey Maps shall operate to vest in Owners of Units in the Project, and any Mortgage of any Unit in the project undivided ownership interests in the new Common Areas added to the Project as the result of such expansion. The new Units shall be subject to all of the terms and conditions of this Declaration and of Supplemental Declarations.

12.4 Maximum Number of Units. The improvements to be placed on the Additional Land and added to the Project may not include more than 8 additional Buildings and may not include more than 32 additional Units and the maximum number of Buildings in the project may not exceed 23. No more than 12 Units per acre may be created on any portions of the Additional Land hereafter added to the Project.

12.5. General Liability Policy for Expansion of Project. The Declarant shall purchase at its own expense and maintain a general liability insurance policy in the sum of not less than \$1,000,000 to cover any liability which owners of previously sold Units are exposed to as a consequence of further and future expansion of the Project.

12.6. No Assurances Regarding Compatibility of Improvements and Units. Although Declarant intends to erect Buildings and other structures and to create Units on any of the Additional Lands added to the Project similar to and compatible with the Buildings, Units and structures in the initial phase of the Project, Declarant makes no assurances in those regards. Declarant reserves the right to select the design and configuration of any Buildings, Units and any other improvements erected on the additional Land added to the Project that in the judgment of the Declarant may be required to achieve the best development of the Project. However, all additional Units created must be restricted to multifamily residential housing limited to one family per Unit and all improvements to be placed on any Additional Land added to the Project shall relate to and/or support such use.

### XIII. AMENDMENT

13.1. Amendment by Unit Owners. Except as otherwise provided in this Declaration and except as prohibited by the Act, the provisions of this Declaration may be amended by an instrument in writing signed and acknowledged by Unit Owners who own 75 percent in the aggregate of the ownership interest in the Common Areas and Facilities, which amendment shall be effective upon recording, and upon approval of Mortgagees where necessary. Any material amendment to this Declaration, including, but not limited, to any such amendment which would alter the percentage interests in the Common Areas and Facilities, other than those alterations allowed in Article XII, must be approved in writing by all Mortgagees.

13.2. Amendment by Declarant. Within six months from the recording date hereof, Declarant reserves the right to amend the Declaration if required by the Federal National Mortgage Association, Government National Mortgage Association or by some other governmental agency or lending institution, provided that such amendment does not materially affect the rights of Unit Owners or Mortgagees.

14.1. Leases of Units. All leases of Units shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the terms of this Declaration and Bylaws and that failure of the lessee to comply with the terms of said documents shall be a default under the lease. Prior to the execution, all leases must be submitted to the Management Committee for its approval, approval being indicated by authorized signature of the Management Committee on the lease document.

14.2. Limitations on Leasing. Units shall be leased only for use as single family residences and shall not be leased for transient or hotel purposes. No Unit Owner shall lease less than the entire Unit.

## XV. GENERAL PROVISIONS

15.1. Agent for Service of Process. The name and address of the person in Utah County, State of Utah, appointed agent to receive service of process in cases authorized by the Act is Grant Gifford. The agent for service of process may be changed by the Management Committee by recording an appropriate affidavit.

15.2. Notices Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to be delivered 48 hours after a copy of the same has been deposited in the U.S. postal service, postage prepaid, return receipt requested. Notice to Unit Owners shall be addressed to each Unit Owner at the address given in writing by such Unit Owner to the Management Committee for the purpose of service of such notice or to the Unit of such Unit Owner if no such address has been given to the Management Committee. Such address may be changed from time to time by notice in writing addressed to the Management Committee.

15.3. Waiver. The failure of the Management Committee or its contractors to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or the Bylaws, 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 relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Management Committee or its contractor of the payment of any assessment from a Unit Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Management Committee.

15.4. Enforcement. Each Owner or occupant of a Unit shall strictly comply with, and all interests in all Units shall be subject to, the terms of the Act, the terms of this Declaration,

the By-Laws, and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee on behalf of Unit Owners, or, in a proper case by an aggrieved Unit Owner.

15.5. Declarant's Model Units, Sales Offices and Advertising Signs Declarant and Declarant's duly authorized agents, representatives and employees shall have the right to establish and maintain model Units and sales offices within the Project, the right to use such model Units and sales office during the period that Units in the Project remain unsold. Declarant reserves the right to relocate the same from time to time within the Project. Declarant further reserves the right to maintain advertising signs on the Project and place the same in any location and to relocate, replace and remove the same in the sole discretion of the Declarant during the period that Units in the Project remain unsold.

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

15.7. Severability The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

15.8. Law Controlling - Conflicts. This Declaration, the Survey Map and the Bylaws shall be construed and controlled by and under the laws of the State of Utah. This Declaration is set forth to comply with the requirements of the Act. In the event of any conflict between this Declaration and the provisions of the Act, the provisions of the Act shall control.

15.9. Captions The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

15.10. Effective Date. This Declaration shall take effect upon recording in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED on the day and year first above written.

SUNDANCE HOMES, LLC

By Grant A. Hillford  
Its Manager

STATE OF UTAH )  
 )  
 :ss.  
 )  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day  
of October, 2003 by Grant R. Difford, as President of  
Sundance Homes, LLC.

Melanie Watkins  
Notary Public  
Residing at 10777 N. 4800W. Highland UT 84003

My Commission Expires:  
6-20-2006



**EXHIBIT A**

**PLUM CREEK CONDOMINIUMS  
PROPERTY DESCRIPTION**

PLUM CREEK - PHASE 1  
EAGLE MOUNTAIN  
Property Description  
March 10, 2003

BEGINNING AT A POINT WHICH IS LOCATED S 89°02'43" E 1214.83 FEET AND NORTH 125.95 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 20, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN;

RUNNING THENCE N 89°09'24" W 424.11 FEET; THENCE N 00°33'29" E 362.70 FEET; THENCE N 89°26'34" W 241.10 FEET; THENCE N 33°58'16" E 385.84 FEET; THENCE N 74°29'52" E 97.56 FEET; THENCE S 31°46'13" E 140.72 FEET; THENCE S 39°32'25" E 186.78 FEET; THENCE S 66°32'57" E 61.53 FEET; THENCE EAST 33.11 FEET; THENCE N 77°18'42" E 71.19 FEET; THENCE SOUTH 444.81 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINING: 6.23 AC  
BASIS OF BEARING: STATE PLANE

**EXHIBIT B**

**ADDITIONAL LANDS**

**PLUM CREEK BOUNDARY DESCRIPTIONS**

**EAGLE MOUNTAIN**

Property Description

March 11, 2003

**PHASE 1**

BEGINNING AT A POINT WHICH IS LOCATED S 89°02'43" E 1214.78 FEET AND NORTH 125.95 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 20, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN;

RUNNING THENCE N 89°09'24" W 424.11 FEET; THENCE N 00°33'29" E 362.70 FEET; THENCE N 89°26'34" W 241.10 FEET; THENCE N 33°58'16" E 385.84 FEET; THENCE N 74°29'52" E 97.56 FEET; THENCE S 31°46'13" E 140.72 FEET; THENCE S 39°32'25" E 186.78 FEET; THENCE S 66°32'57" E 61.53 FEET; THENCE EAST 33.11 FEET; THENCE N 77°18'42" E 71.19 FEET; THENCE SOUTH 444.81 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINING: 6.23 AC

BASIS OF BEARING: STATE PLANE

**PHASE 2**

BEGINNING AT A POINT WHICH IS LOCATED S 89°02'43" E 1214.78 FEET AND NORTH 641.05 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 20, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN;

RUNNING THENCE S 83°12'02" W 124.92 FEET; THENCE N 15°48'10" W 91.16 FEET; THENCE N 31°13'27" W 259.25 FEET; THENCE N 70°25'27" W 71.02 FEET; THENCE N 33°58'16" E 626.68 FEET; THENCE SOUTH 838.14 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINING: 3.62 AC

BASIS OF BEARING: STATE PLANE

**TICKVILLE WASH**

BEGINNING AT A POINT WHICH IS LOCATED S 89°02'43" E 1214.78 FEET AND NORTH 570.77 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 20, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN;

RUNNING THENCE S 77°18'42" W 71.19 FEET; THENCE WEST 33.11 FEET; THENCE N 66°32'57" W 61.53 FEET; THENCE N 39°32'25" W 186.78 FEET; THENCE N 31°46'13" W 140.72 FEET; THENCE S 74°29'52" W 97.56 FEET; THENCE N 33°58'16" E 171.53 FEET; THENCE S 70°25'27" E 71.02 FEET; THENCE S 31°13'27" E 259.25 FEET; THENCE S 15°48'01" E 91.16 FEET; THENCE N 83°12'02" E 124.92 FEET; THENCE SOUTH 70.28 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINING: 1.18 AC

BASIS OF BEARING: STATE PLANE

# EXHIBIT C

ENT 202442:2003 P6 32 of 50 11

Exhibit C

(Units, Undivided Ownership Interests)

<u>UNIT NO</u>	<u>SIZE</u>	<u>UNDIVIDED OWNERSHIP INTERETS</u> (Percentage)
A-1	1,215	.012620
A-2	1,215	.012620
A-3	1,215	.012620
A-4	1,215	.012620
A-5	1,264	.013129
A-6	1,264	.013129
A-7	1,264	.013129
A-8	1,264	.013129
A-9	1,264	.013129
A-10	1,264	.013129
A-11	1,264	.013129
A-12	1,264	.013129
B-1	1,215	.012620
B-2	1,215	.012620
B-3	1,215	.012620
B-4	1,215	.012620
B-5	1,264	.013129
B-6	1,264	.013129
B-7	1,264	.013129
B-8	1,264	.013129
B-9	1,264	.013129
B-10	1,264	.013129
B-11	1,264	.013129
B-12	1,264	.013129

Plum creek Condominiums

C-1	1289	.013389
C-2	1262	.013108
C-3	1262	.013108
C-4	1289	.013389
D-1	1289	.013389
D-2	1262	.013108
D-3	1262	.013108
D-4	1289	.013389
E-1	1289	.013389
E-2	1262	.013108
E-3	1262	.013108
E-4	1289	.013389
F-1	1289	.013389
F-2	1262	.013108
F-3	1262	.013108
F-4	1289	.013389
G-1	1289	.013389
G-2	1262	.013108
G-3	1262	.013108
G-4	1289	.013389
H-1	1289	.013389
H-2	1262	.013108
H-3	1262	.013108
H-4	1289	.013389
I-1	1289	.013389
I-2	1262	.013108
I-3	1262	.013108
I-4	1289	.013389
J-1	1289	.013389
J-2	1262	.013108
J-3	1262	.013108

J-4	1289	.013389
K-1	1289	.013389
K-2	1262	.013108
K-3	1262	.013108
K-4	1289	.013389
L-1	1289	.013389
L-2	1262	.013108
L-3	1262	.013108
L-4	1289	.013389
M-1	1289	.013389
M-2	1262	.013108
M-3	1262	.013108
M-4	1289	.013389
N-1	1289	.013389
N-2	1262	.013108
N-3	1262	.013108
N-4	1289	.013389
O-1	1289	.013389
O-2	1262	.013108
O-3	1262	.013108
O-4	1289	.013389

Plum creek Condominiums

**EXHIBIT D**

**BYLAWS  
OF  
PLUM CREEK CONDOMINIUM ASSOCIATION**

EXHIBIT "D"

BYLAWS

OF

PLUM CREEK CONDOMINIUM ASSOCIATION

An Association of Unit Owners Under  
The Utah Condominium Ownership Act

The administration of the Plum Creek Condominiums and the Plum Creek Condominium Association shall be governed by these Bylaws, the Act and the Declaration.

1. Application of Bylaws.

All present and future Unit Owners, Mortgagees, and occupants of Units and their lessees, agents, guests, employees, and other persons who may use the facilities of the Project in any manner are subject to the Declaration, these Bylaws and all rules made pursuant thereto and any amendment thereof. The acceptance of a deed of conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that the provisions of the Declaration and these Bylaws (and any rules and regulation made pursuant thereto), as they may be amended from time to time, are accepted, ratified and will be complied with.

2. Management Committee.

2.1. The administration of the Project on behalf of the Association shall be conducted by a Management Committee who shall be Unit Owners and residents of the State of Utah, provided, however, that during such time as the Declarant appoints the members of the Management Committee as provided in Section 2.11, the persons so appointed shall not be required to be either Unit Owners or residents of the State of Utah. The actual number of members of the Committee shall be either three or five natural persons as determined by the Declarant during such time as Declarant appoints the Members and thereafter shall be determined by the vote of the Unit Owners.

2.2. At each annual meeting of the Association, subject to the provisions of Section 2.11, the Association shall elect members to fill vacancies on the Management Committee. At least 30 days prior to any annual meeting of the Association, the Management Committee shall elect from the Unit Owners a nominating Committee of not less than three members (none of whom shall be members of the then Management Committee) who shall recommend to the annual meeting one nominee for each position on the Management Committee to be filled at that particular annual meeting. Nominations for positions on the Management Committee may also be able by petition filed with the secretary of the Association at least seven days prior to the annual meeting of the Association, which petition shall be signed by ten or more Unit

Owners and signed by the nominee named therein indicating his willingness to serve as a member of the Management Committee, if elected.

2.3. Members of the Management Committee shall serve for a term of two years; provided, however, that two members of the Management Committee first elected by the Unit Owners shall serve for an initial term of one year while the other member(s) shall serve for initial terms of two years. Thereafter, all Management Committee members elected or appointed shall serve for a two-year term or the unexpired term of the person in whose place they were appointed. The terms of no more than three members will end each year. The members of the Management Committee shall serve until their respective successors are elected, or until their death, resignation or removal. Any member of the Management Committee who fails to attend four consecutive Management Committee meetings or fails to attend at least six of the Management Committee meetings held during any calendar year shall forfeit his membership on the Management Committee.

2.4. Any member of the Management Committee may resign at any time by giving written notice to the chairman of the Association, or the remaining Management Committee members. Any member of the Management Committee may be removed from membership on the Management Committee by a two-thirds majority vote of the Association. Whenever there shall occur a vacancy on the Management Committee due to forfeiture, death, resignation, removal or any other cause, the remaining members of the Committee shall appoint a successor member to serve until the next annual meeting of the Association, at which time said vacancy shall be filled by the Association for the unexpired term, if any.

2.5. The members of the Management Committee shall receive no compensation for their services, other than reimbursement of expenses, unless expressly approved by a majority of the Association, provided, however, that any member of the Management Committee may be employed by the Association in another capacity and receive compensation for such employment.

2.6. The Management Committee, for the benefit of the Project and the Association, shall manage the business, property and affairs of the Project and the Association and enforce the provisions of the Declaration, these Bylaws, the house rules and the administrative rules and regulations governing the Project. The Management Committee shall have the powers, duties, and responsibilities with respect to the Property as contained in the Act, the Declaration and these Bylaws.

2.7. Regular meetings of the Management Committee shall be held at such places within the State of Utah as the Management Committee shall determine. At least six such meetings shall be held during each fiscal year after the first annual meeting of the Association. At all meetings of the Management Committee, a majority of the members shall constitute a quorum for the transaction of business, and the acts of the majority of the members present at a meeting at which a quorum is present shall be the acts of the Committee.

The Management Committee shall annually elect all of the officers of the Association. The meeting for the election of officers shall be held at the first meeting of the Management Committee immediately following the annual meeting of the Association.

2.8. Regular meetings of the Management Committee may be held without call or notice. The person or persons calling a special meeting of the Management Committee shall, at least ten days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called, and if an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of the matters listed on the agenda.

2.9. Special meetings of the Management Committee may be called by the chairman or by any two Management Committee members.

2.10. Any member of the Management Committee may, at any time, waive notice of any meeting of the Management Committee in writing, and such waiver shall be deemed equivalent to the giving of notice to the member. Attendance by a member of the Management Committee at a meeting shall constitute a waiver of notice of such meeting except when a Management Committee member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the Management Committee are present at any meeting of the Management Committee, no notice shall be required and any business may be transacted at such meeting.

2.11. Until a date six years from the recording of the Declaration, or until Units to which three-fourths of the undivided interest in the Common Areas and Facilities appertain have been conveyed, including Units added by the expansion of the Project as provided in the Declaration, whichever occurs first, the Declarant, or some other person or persons selected or to be selected by Declarant, shall have the option to appoint and remove all members of the Management Committee, appoint and remove all officers of the Association, or at Declarant's option, may exercise the powers and responsibilities otherwise assigned by the Declaration, these Bylaws, and the Act to the Association. Declarant shall have the option at any time after the recording of the Declaration to turn over to the Association the total responsibility for electing and removing members of the Management Committee.

2.12. The Management Committee, for the benefit of the Project and the Association, shall enforce the provisions of the Declaration, these Bylaws, and the rules and regulations governing the Property; and, subject to restrictions of Section 5.3 of these Bylaws, shall acquire, arrange and pay for out of the Common Expense fund at least the following:

2.12.1. Water, sewer, garbage collection, electrical, telephone, gas and other necessary utility services for the Common Areas and Facilities.

2.12.2. Water, sewer, electrical, gas or other necessary utility costs for Units and limited Common Areas and Facilities which are not separately metered or charged, the cost thereof, so far as practicable, to be specifically assessed to the Owners of the Units affected thereby.

2.12.3. A policy or policies of fire insurance, with extended coverage endorsements, for the full insurable replacement value of the Units and Common Areas and Facilities as provided in Section 7.2 of the Declaration, or such other fire and casualty insurance as the Management Committee shall determine gives substantially equal or greater protection to the Unit Owners and their Mortgagees. The limits and coverage of such policies shall be reviewed at least annually by the Management Committee as per the Declaration and increased in its discretion. Insurance proceeds shall be payable and applicable as provided in Article VII of the Declaration.

2.12.4. A policy or policies of public liability insurance insuring the Management Committee, the Association and the individual Unit Owners against any liability to any persons or persons incident to the Ownership and/or use of the Property. Such policy or policies shall be consistent with the provisions of Section 7.3 of the Declaration. Limits of liability under such insurance shall be as provided in said Section.

2.12.5. Workmen's Compensation Insurance to the extent necessary to comply with any applicable laws.

2.12.6. The services of a manager to manage its affairs as provided in the Declaration, as well as such other personnel as the Management Committee shall determine shall be necessary or proper for the operation of the Common Areas and Facilities, whether such personnel are employed directly by the Management Committee or are furnished by the manager.

2.12.7. Legal and accounting services necessary or proper in the operation of the Project and the Common Areas and Facilities or the enforcement of the Declaration.

2.12.8. A fidelity bond as provided in the Declaration.

2.12.9. Painting, maintenance, repair and all landscaping of the Common Areas and Facilities, and such furnishings and equipment for the Common Areas and Facilities as the Management Committee shall determine are necessary and proper, and the Management Committee shall have the exclusive right and duty to acquire the same for the Common Areas and Facilities, provided, however, that the interior surfaces of each Unit shall be painted, maintained and repaired by the Unit Owner thereof, all such maintenance to be at the sole cost and expense of that particular Unit Owner.

2.12.10. Any other material, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Management Committee is required to secure or pay for pursuant to the terms of the Declaration or Bylaws or which in its opinion shall be necessary or proper for the operation of the Common Areas and Facilities or for the enforcement of the 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 specifically assessed to the Owners of such Units.

2.12.11. Maintenance and repair of any Unit, if such maintenance or repair is reasonably necessary in the discretion of the Management Committee to protect the Common Areas and Facilities or preserve the appearance and/or value of the Property, and the Unit Owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity therefore delivered by the Management Committee to said Unit Owner; provided that the Management Committee shall levy a special assessment against the Condominium Unit of such Unit Owner for the cost of said maintenance or repair.

2.12.12. The Management Committee shall have the exclusive right to contract all goods, services and insurance; payment to be made from the Common Expense fund. This provision shall not be construed to prohibit the Management Committee from delegating such authority to the manager as it deems proper.

2.13. After the first election of the members of the Management Committee, Declarant shall execute, acknowledge and record an affidavit stating the names of the members of the Management Committee. Thereafter, any two persons who are designated of record as being members of the most recent Management Committee (regardless of whether or not they shall still be members) may execute, acknowledge and record an affidavit stating the names of all of the members of the then current Management Committee. The most recently recorded of such affidavits shall be prima facie evidence that the persons named therein are all of the incumbent members of the Management Committee and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

2.14. The fiscal year shall be determined by the Management Committee.

### 3. Meetings of the Association.

3.1. The presence in person or by proxy at any meeting of the Association of Unit Owners owning at least 50 percent of the undivided interests in the Common Areas and Facilities in response to notice to all Unit Owners of record properly given shall constitute a quorum. In the event that Unit Owners owning such 50 percent interests are not present in person or by proxy, the meeting shall be adjourned for 24 hours, at which time it shall reconvene and any number of Unit Owners present at such subsequent meeting shall constitute

a quorum. Unless otherwise expressly provided in the Declaration, any action may be taken at any meeting of the Unit Owners upon a majority vote of the Unit Owners who are present in person or by proxy and who are voting.

3.2. A Unit Owner shall be deemed to be "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall have fully paid all due installments of assessments made or levied against him and his Unit by the Management Committee as hereinafter provided, together with all interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him and against his Unit, prior to the date fixed for such annual or special meeting.

3.3. At all meetings of the Association, Unit Owners may vote in person or by proxy executed in writing by the Unit Owner or his duly authorized attorney in fact. Proxies shall be filed with the secretary of the Management Committee before or at the time of the meeting. Unless otherwise specified therein, each proxy shall be valid for 11 months from the date of its execution.

3.3. There shall be an annual meeting of the Association on the second Thursday of \_\_\_\_\_ each year at 7:00 p.m. or such other time as set by the Management Committee, either at the Project or at such other reasonable place as may be designated. The Management Committee shall give written notice of the time and place of the annual meeting, said notice to be delivered to the Unit Owners not less than ten days prior to the date fixed for said meeting.

3.4. Special meetings of the Association may be held at any time at the Project or at some other reasonable place to consider matters which, by the terms of the Declaration, the Act, or these Bylaws, require the approval of all or some of the Unit Owners, or for any other reasonable purpose. Special meetings shall be called by written notice, signed by a majority of the Management Committee, or by Unit Owners representing at least one-third in interest of the undivided Ownership of the Common Areas and Facilities and delivered to all Unit Owners not less than 15 days prior to the date fixed for said meeting. The notices shall specify the date, time and place of this meeting, and the matters to be considered.

3.5. Robert's Rules of Order (latest edition) shall govern the conduct of the Associations' meetings when not in conflict with the Declaration or these Bylaws.

#### 4. Committee Officers.

4.1. The Management Committee shall perform its functions and responsibilities through those members of the Committee who are elected as officers annually by the Committee, and through such agents or employees as the Committee may appoint. The primary officers shall consist of a chairman, vice chairman, secretary and treasurer. The offices of secretary and treasurer may be combined as one office. The Management Committee may appoint such assistant officers as the Management Committee may deem

necessary. No officer shall receive compensation for serving as such unless a majority of Unit Owners vote otherwise.

4.2. The chairman shall be the chief executive of the Management Committee and shall preside at all meetings of the Association and of the Management Committee and may exercise the powers ordinarily allocable to the presiding officer of an Association, including the appointment of committees. The chairman shall exercise general supervision over the Property and its affairs. He shall sign on behalf of the Association all conveyances, mortgages and contracts of material importance to its business. He shall do and perform all acts which the Management Committee may require.

4.3. The vice chairman shall perform the functions of the chairman in the absence or inability of the chairman.

4.4. The secretary shall keep minutes of all proceedings of the Management Committee and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Association and the Management Committee. In the absence or inability of the chairman or vice chairman, the secretary shall perform the functions of the chairman.

4.5. The treasurer shall be responsible for the fiscal affairs of the Association, but may delegate the daily handling of funds and the keeping of records to a manager or managing company.

4.6. If the Management Committee appoints other officers, such officers shall perform such duties as may be prescribed or delegated from time to time by the Management Committee.

4.7. Any officer or agent shall be subject to removal, with or without cause, at anytime by the affirmative vote of a majority of the members of the Management Committee then serving.

4.8. All agreements, contracts, deeds, leases, checks and other instruments of the Project for expenditures or obligations shall be executed by any two officers of the Management Committee or by such other person or persons as may be designated by the Management Committee.

#### 5. Common Expenses: Assessments.

5.1. All assessments shall be made in accordance with the general provisions of Article VIII of the Declaration.

5.2. It shall be the responsibility of the Management Committee to determine questions relating to the maintenance, repair and replacement of all Common Areas and Facilities. The Management Committee shall establish and update at least annually a Capital Improvement Table which shall list each major capital improvement in the Project (e.g. roofs, road, building exteriors, clubhouse, swimming pool and tot lot, etc.), each items' useful life, the present cost of replacement, the estimated cost to replace the item at the end of its useful life, the percentage and amount of the Common Assessment currently set aside in the reserve account to replace the item at the end of its useful life and the amount of money currently set aside in the reserve account for the replacement of the item. The Common Assessment shall include amounts necessary to establish and maintain reserve accounts for the replacement of each major capital improvement in the Project at the end of its useful life.

5.3. Except as provided otherwise in these Bylaws or the Declaration, there shall by no single structural alteration, capital addition to, or capital improvement of the Common Areas and Facilities requiring an expenditure in excess of \$15,000, unless those holding two thirds of the votes present in person or by proxy at a duly called meeting shall approve the expenditure for such structural alterations, capital addition to, or capital improvement of the Common Areas and Facilities.

5.4. Prior to the end of each fiscal year of the Association, the Management Committee shall estimate the Common Expenses and capital contributions necessary for the following year and prepare a budget based thereon. The estimated expenses and contributions may include such amounts as the Management Committee may deem proper for general working capital, for the general operating reserve, for reserve funds for replacements of all major capital improvements and for major maintenance, plus estimated utility to other costs for Units and limited Common Areas and Facilities which are not separately metered or charged. It shall so take into account any expected income, surplus or deficit in the Common Expenses for any prior year. The estimated Common Expenses and capital contributions shall be assessed on a monthly basis to the Unit Owners in proportion to their percentage of undivided interest in the Common Areas and Facilities as set forth in the Declaration. If the estimated Common Expenses prove inadequate for any reason, including nonpayment of any Unit Owner's assessments, the Management Committee may, by resolution duly adopted, make additional assessments, which shall be assessed to the Unit Owners in the same manner as the estimated Common Expenses. Each Unit Owner shall be obligated to pay to the Management Committee assessments made pursuant to this Section on or before the first day of each month, or in such other reasonable manner as the Management Committee shall designate. The funds received by the Management Committee from assessments shall be kept in either capital accounts or in the common expense fund and shall be expended by the Management Committee only in accordance with the provisions of the Act, the Declaration and these Bylaws.

5.5. Every determination by the Management Committee with respect to the Common Expenses and common expenditures necessary to maintain the Property, that is made within

the bounds of the Act, the Declaration, and these Bylaws, shall be final and conclusive as to the Unit Owners and shall be deemed necessary and properly made for such purposes.

5.6. The rights, duties and functions of the Management Committee set forth in the this Section may be exercised by Declarant for the period ending 30 days after the election of the first Management Committee hereunder.

5.7. The failure by the Management Committee before the expiration of any year, to estimate the Common Expenses as required herein, shall not be deemed a waiver or modification in any respect of the provisions of the Declaration or these Bylaws or a release of the Unit Owner from the obligation to pay any past or future assessments, and the estimated Common Expenses fixed for the previous and current year shall continue until a new estimate is fixed.

5.8. Amendments to this Section 5 shall be effective only upon written consent of the Unit Owners owning 75 percent of the undivided interests in the Common Areas and Facilities and their Mortgagees.

5.9. No Unit Owner may exempt himself from liability for Common Expenses by waiver of the use or enjoyment of any of the Common Areas and Facilities or by abandonment of his Unit.

5.10. The treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Common Areas and Facilities, specifying and itemizing the maintenance, repair and replacement expenses of the Common Areas and Facilities and any other expenses incurred. Such record shall be available for examination by the Unit Owners during regular business hours. In accordance with the Unit Owners, the treasurer shall keep an accurate record of such assessments and of the payments thereof by each Unit Owner.

5.11. All common expense assessments shall be a separate, distinct and personal liability of the owner of the Unit at the time each assessment is made. The Management Committee shall have the rights and remedies contained in the Act and in the Declaration to enforce the collection of assessments for Common Expenses.

5.12. Any person who shall have entered into a written agreement to purchase a Unit shall be entitled to obtain a written statement from the treasurer setting forth the amount of unpaid assessments charged against the Unit and its Owners, and if such statement does not reveal the full amount of the unpaid assessments of the date it is rendered, neither to purchaser nor the Unit shall be liable for the payment of an amount in excess of the unpaid assessments shown thereon, provided that the former Unit Owner-grantor shall remain so liable. Any such excess which cannot be promptly collected from the former Unit Owner-grantor shall be reassessed by the Management Committee as a common expense to be collected from all Unit Owners, including without limitation, the purchaser of the Unit, his successors and assigns.

The new Unit Owner shall and the former Unit Owner shall not be liable for any assessments made after the date of transfer of title to a Unit, even though part or all of the assessment relates to expenses incurred or advances made by the Management Committee during a period prior to that date.

5.13. In the event that title to a Unit is transferred at sheriff's sale pursuant to execution upon any lien against the Unit, the Management Committee shall give notice in writing to the sheriff of any unpaid assessments for Common Expenses which are a lien against the Unit, and for any expenses of or advances by the Management Committee which have not theretofore been reduced to a lien, which shall be paid out of the proceeds of the sale prior to the distribution of any balance to the former Unit Owner against whom the execution was issued. The purchaser at such sheriff's sale and the Unit involved shall not be liable for unpaid assessments for Common Expenses nor for any expenses of or advances by the Management Committee which became due prior to the sheriff's sale of the Unit. Any such unpaid assessments which cannot be promptly collected from the former Unit Owner shall be reassessed by the Management Committee as a Common Expense to be collected from all of the Unit Owners, including the purchaser who acquired title at the sheriff's sale, his successors and assigns. To protect its rights to collect unpaid assessments for Common Expenses which are a lien against a Unit, and for any expenses of and advances by the Management Committee, the Management Committee may on behalf of all the Unit Owners, purchase the Unit at a sheriff's sale, provided such action is authorized by the affirmative vote of a majority of the members of the Management Committee.

5.14. In addition to the statements issuable to purchasers of Units, the Management Committee shall provide a current statement of unpaid assessments for Common Expenses and for any expenses of and advances by the Management Committee in respect of the Unit, to the Unit Owner, to any person who shall have entered into a binding agreement to purchase the Unit and to any Mortgagee on request at reasonable intervals.

5.15. In each case where all or part of any assessments for Common Expenses and for any expenses of and advances by the Management Committee cannot be promptly collected from the persons or entities liable therefor under the Act, Declaration of Bylaws, the Management Committee shall reassess the same as a common expense, without prejudice to its rights of collection against such persons or entities.

## 6. Litigation.

6.1. If any action is brought by one or more but less than all Unit Owners on behalf of the Association, and recovery is had, the plaintiff's expenses, including reasonable counsel's fees, shall be a Common Expense provided, however, that if such action brought against the Unit Owners or against the Management Committee, the officers, employees, or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if

proved, be borne by all the Unit Owners, the plaintiff's expenses, including counsel fees, shall not be charged or borne by the other Unit Owners, as a Common Expense or otherwise.

6.2. Complaints brought against the Association, the Management Committee or the officers, employees or agents thereof, in their respective capacities as such, or the Project as a whole, shall be directed to the Management Committee, which shall promptly give written notice thereof to the Unit Owners and any Mortgagees and shall be defended by the Management Committee, and the Unit Owners and Mortgagees shall have no right to participate other than through the Management Committee in such defense. Complaints against one or more, but less than all Unit Owners shall be directed to such Unit Owners, who shall promptly give written notice thereof to the Management Committee and to the Mortgagees affecting such Units, and shall be defended by such Unit Owners.

#### 7. Abatement and Enjoyment of Violations by Unit Owners.

The violation of any house rules or administrative rules or regulations adopted by the Management Committee or the breach of any provisions contained herein, or the breach of any provision of the Declaration, shall give the Management Committee the right, in addition to any other rights set forth in these Bylaws:

7.1. To enter the Unit in which or as to which such violation or breach exists and to similarly abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Management Committee shall not thereby be deemed guilty in any manner of trespass; or

7.2. To bring suit for damages suffered and to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. In the event the Management Committee is required to commence legal action to enforce its rights hereunder, the Unit Owner or other person in violation or breach shall also pay all costs and reasonable attorney's fees incurred by the Management Committee.

#### 8. Lease of Units by Owners.

8.1. Any Unit Owner who leases his Unit shall file with the Management Committee or manager a copy of the rental or lease agreement affecting said Unit and shall obtain prior written approval of the lease by the Management Committee. The provisions of the Declaration, these Bylaws and the rules and regulations shall apply with equal force to renters or lessees of Unit.

8.2. Any Unit Owner who rents or leases his Unit shall be responsible for the conduct of his tenants, and upon written notice from the Management Committee or the manager said

Unit Owner shall be responsible for correcting violations of the Declaration, Bylaws, or rules and regulations of the Association committed by such tenants.

8.3. If a Unit Owner fails to correct violations by tenants within 72 hours of such notice, the Management Committee or manager shall be deemed to be the agent of the Unit Owner and empowered to take any enforcement action the Unit Owner would be entitled to take, the cost of such action to be assessed to the Unit Owner and payable within 30 days of assessment. Such costs shall be collected and enforced in the same manner as common assessments under the Declaration and these Bylaws.

8.4. The power of the Management Committee or manager hereunder shall include, but not be limited to, any and all legal remedies available under the laws of the State of Utah. Any Unit Owner by the act of renting or leasing his Unit shall be deemed to have consented to these procedures and shall indemnify and save harmless the Management Committee and the manager from and against any and all liability therefor. It is expressly understood that the remedies available to the Management Committee or manager shall include but not be limited to the right to seek eviction of the tenant without any liability to the Unit Owner.

9. Office. The office of the Project and of the Management Committee shall be located at the Project or at such other place as may be designated from time to time by the Management Committee.

10. Accounting.

10.1. The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the treasurer.

10.2. At the close of each fiscal year, the books and records of the Management Committee shall be reviewed by an independent public accountant approved by the Management Committee. A report of the review shall be prepared and submitted to Unit Owners at or before the next annual meeting of the Association. In the event that at the Owners of least two-thirds of the undivided interests in the Common Areas and Facilities vote to do so for any year, a certified audit by a Certified Public Accountant shall be obtained by the Management Committee.

10.3. The books and accounts of the Association shall be available for inspection at the office of the Association by any Unit Owner or his Mortgagee or their authorized representative during regular business hours at the expense of said Unit Owner.

11. Special Committees.

The Management Committee by resolution may designate one or more special committees, each committee to consist of two or more Unit Owners, which to the extent

provided in said resolution, shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the Management Committee. Such special committees shall keep regular minutes of their proceedings and report the same to the Management Committee when required. The members of such special committee or committees designated shall be appointed by the Management Committee. The Management Committee may appoint Unit Owners to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

12. Management Rules and Regulations.

The Management Committee shall have the right to adopt and amend such rules and regulations as may be authorized by the Act and the Declaration for the purpose of governing the details of the operation and use of the Common Areas and Facilities and setting forth restrictions on, and requirements respecting the use and maintenance of Units and limited Common Areas and Facilities. Copies of the rules and regulations shall be provided for each Unit Owner prior to the time the same shall become affective.

13. Amendment of Bylaws.

These Bylaws may be amended by approval of those holding two-thirds of the votes present in person or by proxy at a meeting of the Association duly called for such purpose. Upon such an affirmative vote, the Management Committee shall acknowledge the amended Bylaws, setting forth the fact of the required affirmative vote of the Unit Owners and the amendment shall be effective upon recording. Any material amendment to these Bylaws, however, including, but not limited to, any amendments which might affect or change the percentage interest of Unit Owners in the Common areas, must also be approved in writing by the Mortgagees.

14. Severability.

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

15. Captions.

The captions herein are inserted only as a matter of convenience and for references and in no way to define, limit or describe the scope of these Bylaws nor the intent of any provision hereof.

16. Effective Date.

These Bylaws shall take effect upon recording of the Declaration of which they are a part.

EXECUTED DEC. 19, 2003.

SUNDANCE HOMES, LLC

By *Grant A. Rufford*  
Its *Manager*