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DECLARATION OF CONDOMINIUM OWNERSHIP
AND OF
EASEMENTS, RESTRICTIONS, AND COVENANTS FOR
"EDELWEISS"

- - TABLE OF CONTENTS - -

Preamble	Submission to Utah Condominium Ownership Act
	Legal Discription of Property
	Apartment Ownership
	Association
	Common Area and Facilities
	Common Expenses
	Special Expenses
Exhibit A	Plat Plan and Surveyors Certificate
Exhibit B	Plans and Specifications
	Plot Plan of Buildings and Common Areas
	Ownership of Apartments by Percentage
Exhibit C	Bylaws of Homeowners Association of Condominiums
Article I	Plan of Apartment Ownership
II	Voting, Majority of Owners, Quorum, Proxies
III	Administration
IV	Board of Directors
V	Officers
VI	Obligation of the Owners
VII	Amendments to Plan of Apartment Ownership
VIII	Mortgages

167188

Recorded at Southern Utah Title Co.
 Request of Jean M. Handley
 Date MAR 16 1973 11:29 AM Fee \$2.50 Bl. 181 Page 455-489
 By Cora J. Thibault County Recorder
 Encl. Ind'd Deputy
 Abat'd Proof

DECLARATION OF CONDOMINIUM OWNERSHIP

AND OF

EASEMENTS, RESTRICTIONS, AND COVENANTS

ENABLING DECLARATION
ESTABLISHING A PLAN FOR
CONDOMINIUM OWNERSHIP

"EDELWEISS" RESORT CONDOMINIUMS

PHASE NUMBER I

This Declaration of Covenants, Conditions, and Restrictions; hereinafter called "Declaration," is made and executed in Iron County, State of Utah, this _____ day of _____ by Edelweiss, a Utah partnership pursuant to the provisions of the Utah Condominium Ownership Act,

WITNESSETH:

WHEREAS, "Edelweiss" Development, (hereinafter referred to as "Grantor") owns certain real property herein described; and

WHEREAS, said Grantor has improved said property by construction thereon a thirty-three (33) unit multifamily structure known as Edelweiss, Resort Condominiums, Phase I, said structure constituting a "Condominium Project" under the terms of the provisions of the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated 1953), will be constructed in accordance with plans and specifications prepared by Dobson Construction Company, Cedar City, Utah, said plans being on record in the office of the Tax Assessor of the City of Cedar, County of Iron, State of Utah, and consisting of sheets 1 through 7, and specification sheets 1 through 4, etc., all inclusive; and

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

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

Lot 21 and 22 of Block B Brian Head Unit 3. A subdivision according to the

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

- A. Said Grantor, in order to establish a plan of condominium ownership for the above described property and improvements, hereby covenants and agrees that it hereby divides said real property into the following separate freehold estates.
1. The Thirty-three (33) separately designed and legally described freehold estates consisting of the spaces or areas, being the area of space contained in the perimeter walls of each of the thirty-three (33) apartments units in said multifamily structure constructed on said property, said spaces being defined and referred to herein as "apartment spaces".
 2. A freehold estate consisting of the remaining portion of the real property is described and referred to herein as the "common areas and facilities", which definition includes the multifamily structure and the property upon which it is located, and specifically includes, but is not limited to, the land, roof, main walls, slabs, staircases, halls, parking spaces, storage spaces, community and commercial facilities, swimming pool, pumps, water tank, trees, pavement, balconies, pipes, wire conduits, flues or other public utility lines and laundry facility building and improvements which are located on said common area.
- B. For the purpose of this declaration, the ownership of each "apartment space" shall include the respective undivided interest in the common areas and facilities specified and established in "D" hereof, and each "apartment space" together with the undivided interest is defined and hereinafter referred to as "family unit".
- C. The individual "apartment spaces" hereby established and which shall be individually conveyed are described in a survey attached hereto and made a part hereof as Exhibit "A".
- The undivided interest in the "common areas and facilities" hereby established and which shall be conveyed with each respective "apartment space" and the proportionate shares of the separate owners of the respective "family units" in the profits and common expenses in the "common areas and facilities", as well as their proportionate representation for voting purposes in the Association of Owners set forth and included herein as Exhibit "B".

The above respective undivided interests established and to be conveyed with the "apartment spaces" as indicated above, cannot be changed, and said Grantor

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

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

6. That the owners of "family units" covenant and agree that the administration

7. That each owner, tenant or occupant of a "family unit" shall comply with the provisions of this Declaration, the By-Laws, decisions and resolutions of the Association or its representative, and the Regulatory Agreement, as lawfully amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

8. That this Declaration shall not be revoked or any of the provisions herein amended except by an instrument in writing signed and acknowledged by record owners holding seventy-five percent (75%) of the total vote hereunder, together with all of the first mortgagees of said units, which amendment shall be effective upon recordation in the office of the Recorder of Iron County, State of Utah.

9. That no owner of a "family unit" may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by the abandonment of his "family unit".

F. All sums assessed by the Association shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment assessed to the Owner of any condominium plus interest at nine percent (9%) and costs, including reasonable attorney's fees, shall become a lien upon such condominium upon recordation of a notice of assessment as provided in Section 57-8-20 of the Condominium Act. The said lien for nonpayment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

- 1. Tax and special assessment liens on the unit in favor any assessment unit, and special district, and
- 2. All sums unpaid on the first mortgage of record.

Such lien may be foreclosed by suit by the manager of Board of Directors, acting on behalf of the owners of the family units, in the like manner as a mortgage of real property. In any such foreclosure the family unit owner shall be required to pay a reasonable rental for the family unit, if so provided in the

- G. Where the mortgagees of a first mortgage of record or other purchaser of a family unit obtains title to the unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association, chargeable to such family unit which become due prior to the acquisition of title to such family unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the family units including such acquirer, his successors and assigns.
- H. In case of fire, casualty or any other disaster causing destruction or damage to the building or buildings in the condominium project, the following procedure shall apply:
- (1) If loss arising from such destruction or damage to any unit does not exceed the sum of \$500.00, the Management Committee shall be responsible for repairing, rebuilding, and/or restoring the property to the condition it was in immediately prior to such destruction or damage, and the Management Committee shall in this connection be entitled to use for such purpose the proceeds of any insurance policies which it may have in force on the said building or buildings as of the date of such destruction or damage.
 - (11) In the event that such destruction or damage to any one unit exceeds the sum of \$500.00 but is less than 25% of the unit damaged or partially destroyed, the proceeds of any insurance policies shall be paid in a trust to a bank or trust company in the State of Utah, agreeable to all mortgagees of the premises and the Management Committee, and such proceeds shall be employed in repairing, rebuilding and/or restoring the property to the condition it was in immediately prior to such destruction or damage under a disbursement schedule and pursuant to appropriate agreement between such mortgagees and the Management Committee.
 - (111) In the event that such destruction or damage amounts to 25% or more of the value of the property damaged

paragraph of the extent of any damage to the project shall be made by a group of three appraisers who shall be selected by the Management Committee for that purpose. In the event that all of such appraisers cannot agree on the extent of the damage or destruction to the unit or units in the condominium project, the decision of any two with respect thereto shall be conclusive unless unit owners representing the ownership of not less than 75% of the units agree to the withdrawal of the condominium project from the provisions of this act and to its subsequent disposal. If the unit owners determine that the premises shall be repaired, rebuilt or restored to the same condition that they were in immediately prior to such destruction or damage, then the procedure outlined in (ii) above with respect to the handling of insurance proceeds shall apply and be employed. In the event that the cost of such repair, rebuilding or restoration shall exceed the amount realized by the Management Committee from the proceeds of any insurance policy or policies as above provided, then all of the unit owners shall contribute to such additional cost in relation to their undivided interests in the common areas and facilities.

However, if three-fourths or more of the buildings are destroyed or substantially damaged and if the Owners by a vote of at least three-fourths of the voting power, do not voluntarily, within one hundred days after such destruction or damage, make provision for reconstruction, the Manager or Management Committee shall record, with the county recorder, a notice setting forth such facts, and upon a recording of such notice:

1. The property shall be deemed to be owned in common by the Owners;
2. The undivided interest in the property owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Area;
3. Any liens affecting any of the condominiums shall be deemed to be transferred in accordance with the existent priorities to the undivided interest of the Owner in the property; and

property owned by each Owner, in order of their priorities. Notwithstanding all other provisions hereof, the owners may, by an affirmative vote of at least three-fourths of the voting power, at a meeting of the Unit Owners duly called for such purpose, elect to sell or otherwise dispose of the property. Such action shall be binding upon all Unit Owners and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale. Upon such sale or disposition of proceeds derived therefrom, said proceeds shall be first applied to pay existing liens in order of their priority and thereafter distributed to the unit owners.

- I. In a voluntary conveyance of a "family unit" the grantee of the unit shall be jointly and severally liable with the grantor of the unit for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the manager or Board of Directors of the Association, as the case may be, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the family unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth.
- J. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the By-Laws shall be deemed to be binding on all owners of family units, their successors and assigns.
- K. That the Board of Directors of the Association of Owners, or the management Agent, or Manager shall obtain and continue in effect blanket property insurance in form and amounts satisfactory to mortgagees holding first mortgages covering family units. That the Board of Directors shall further obtain and maintain at all times insurance of the type and kind and in at least the amounts provided in Exhibit "C" and including insurance for such other risks, or a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use, which insurance shall be governed by the following provisions:

All policies shall be written with a company licensed to do

3. In no event shall the insurance coverage be obtained and maintained by the Board of Directors hereunder be brought into contribution with insurance purchased by individual owners or their mortgagees;
4. Each Owner may obtain additional insurance at his own expense; provided however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board of Directors, in behalf of all of the owners, may realize under any insurance policy which the Board of Directors may have in force on the project at any particular time;
5. Each Owner shall be required to notify the Board of Directors of all improvements made by the Owner to his Unit, the value of which is in excess of Five Hundred Dollars (\$500.00);
6. Any Owner who obtains individual insurance policies covering any portion of the project other than personal property belonging to such Owner, shall be required to file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after purchase of such insurance;
7. The Board of Directors shall be required to make every effort to secure insurance policies that will provide for the following:
 - a. A waiver of subrogation by the insurer as to any claims against the Board of Directors, the Manager, the Owners and their Respective servants, agents, and guests;
 - b. That the master policy on the project cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Owners;
 - c. That the master policy on the project cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors or Manager without a prior demand in writing that the Board of Directors or Manager cure the defect;
 - d. That any "no other insurance" clause in the master policy exclude individual owners' policies from consideration;
8. The Board of Directors shall conduct an annual insurance review for the Association to ensure the adequacy of the

- L. That insurance premiums for any blanket insurance coverage shall be a common expense to be paid by monthly assessments levied by the Association of Owners; and that such payments shall be held in a separate escrow account of the Association of Owners and used solely for the payment of the blanket property insurance premiums as such premiums become due, and the association of owners shall submit to all first mortgagees of family units proof of payment of insurance premiums upon request by such mortgagees at no cost.
- M. That so long as said Grantor, its successors and assigns, owns one or more of the family units established and described herein, said Grantor, its successors and assigns, shall be subject to the provisions of this Declaration and of Exhibits "A", "B", "C" and "D" attached hereto; and said Grantor covenants to take no action which would adversely affect the rights of the Association with respect to assurances against latent defects in the property or other right assigned to the Association, the members of such association and their successors in interest, as their interests may appear, by reason of the establishment of the condominium.
- N. The terms "Declaration" and "Condominium Ownership" as used herein shall mean and include the terms "Master Deed" and Apartment Ownership respectively.
- O. The term "mortgagee" shall mean a deed of trust as well as a mortgage, and a mortgagee shall mean a beneficiary or trustee of a deed of trust as well as a mortgagee. Foreclosure sale shall also mean a sale pursuant to a deed of trust.
- P. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.
- Q. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

This declaration shall take effect upon recording.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 14th day of March, 1973.

EDELWEISS

By *Evan W. Dobson*
Evan W. Dobson

By *Georg A. Hartlmaier*
Georg A. Hartlmaier

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

On this 14th day of March, 1973, personally appeared before me Evan W. Dobson and Georg A. Hartlmaier, the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

Edward A. [Signature]
Notary Public
Resident of ST. GEORGE, UTAH

My Commission Expires:

JULY 19, 1974

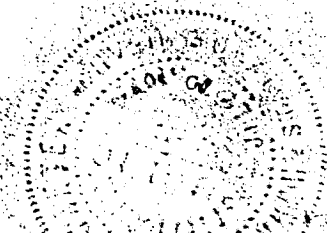


EXHIBIT A

"EDELWEISS" RESORT CONDOMINIUMS

PHASE I

Plat Plan and Surveyors Certificate, Sheets 1 to 2, inclusive,
Recorded as Entry Number 167189 in the Iron County Recorders
Office, State of Utah, on March 16, 1973.

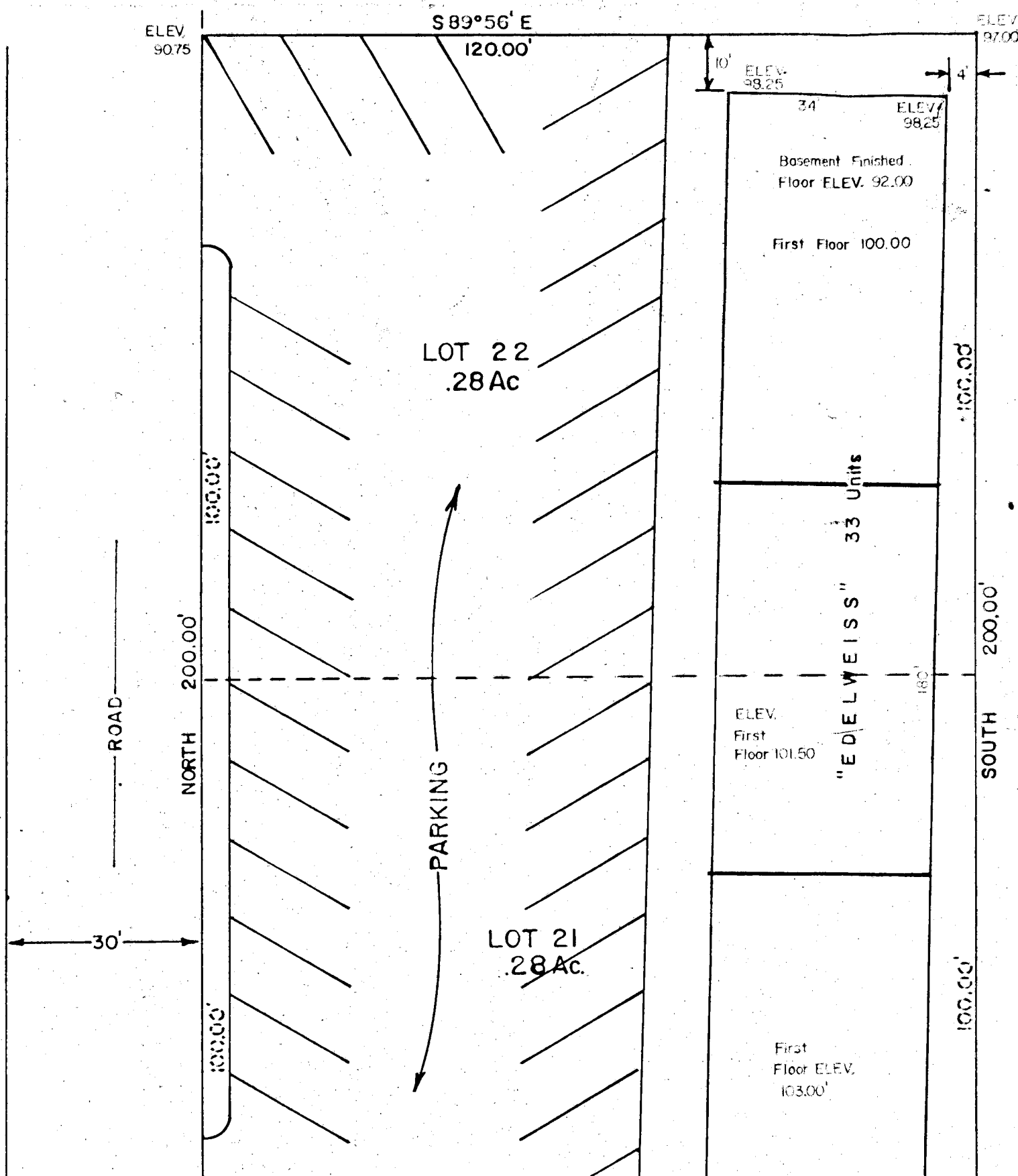


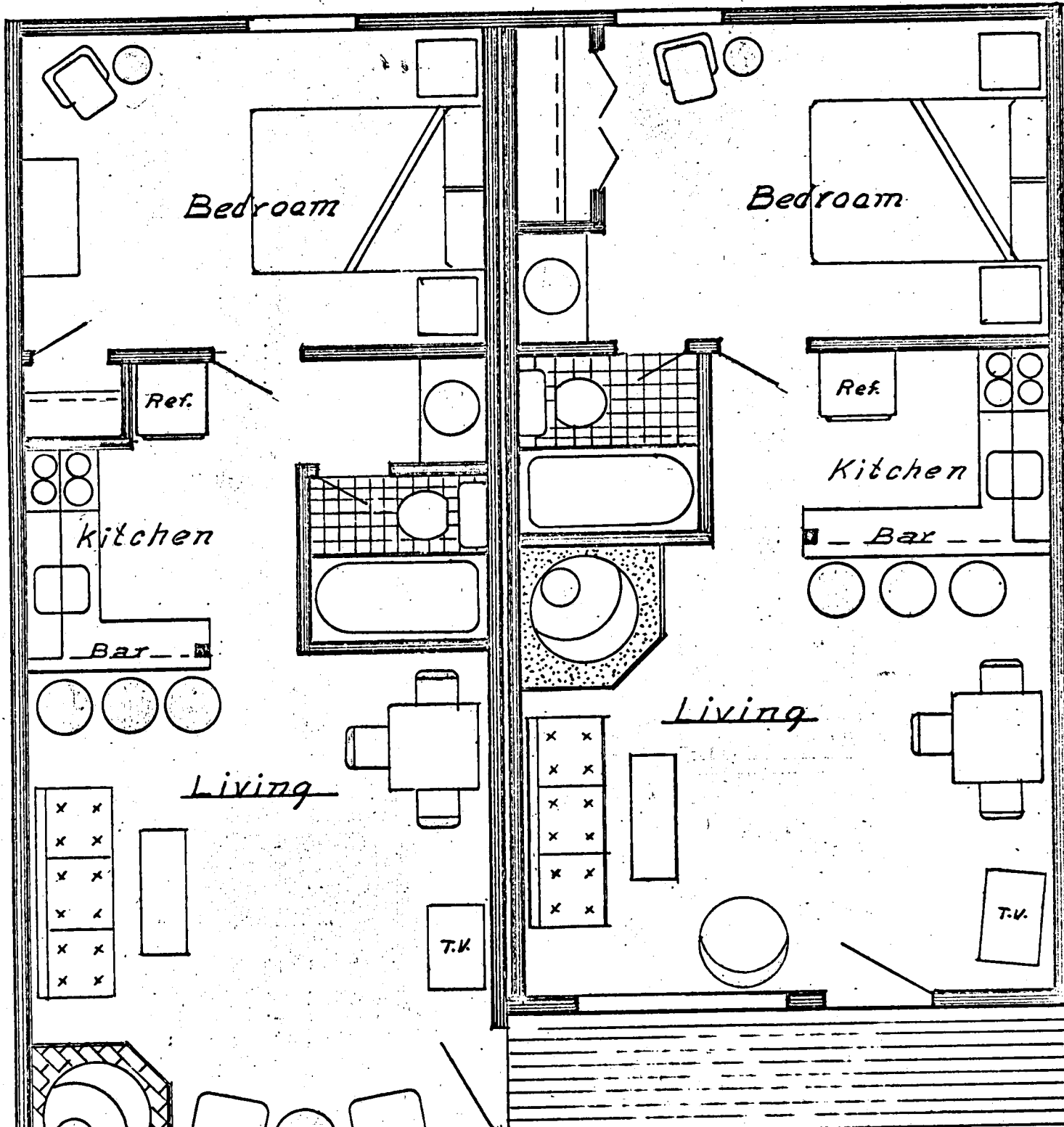
EXHIBIT B

"EDELWEISS" CONDOMINIUM DEVELOPMENT

PHASE I

Percentage Ownership in Common Areas and Facilities

<u>Percentage Unit Number</u>	<u>Ownership in Building Number</u>	<u>Plan Number</u>	<u>Ownership Percentage</u>
101	A	A-1	2.78
102	A	A-1	2.78
103	A	A-1	2.78
104	A	A-1	2.78
105	A	A-1	2.78
106	A	A-1	2.78
201	A	A-1	2.78
202	A	A-2	2.78
203	A	A-2	2.78
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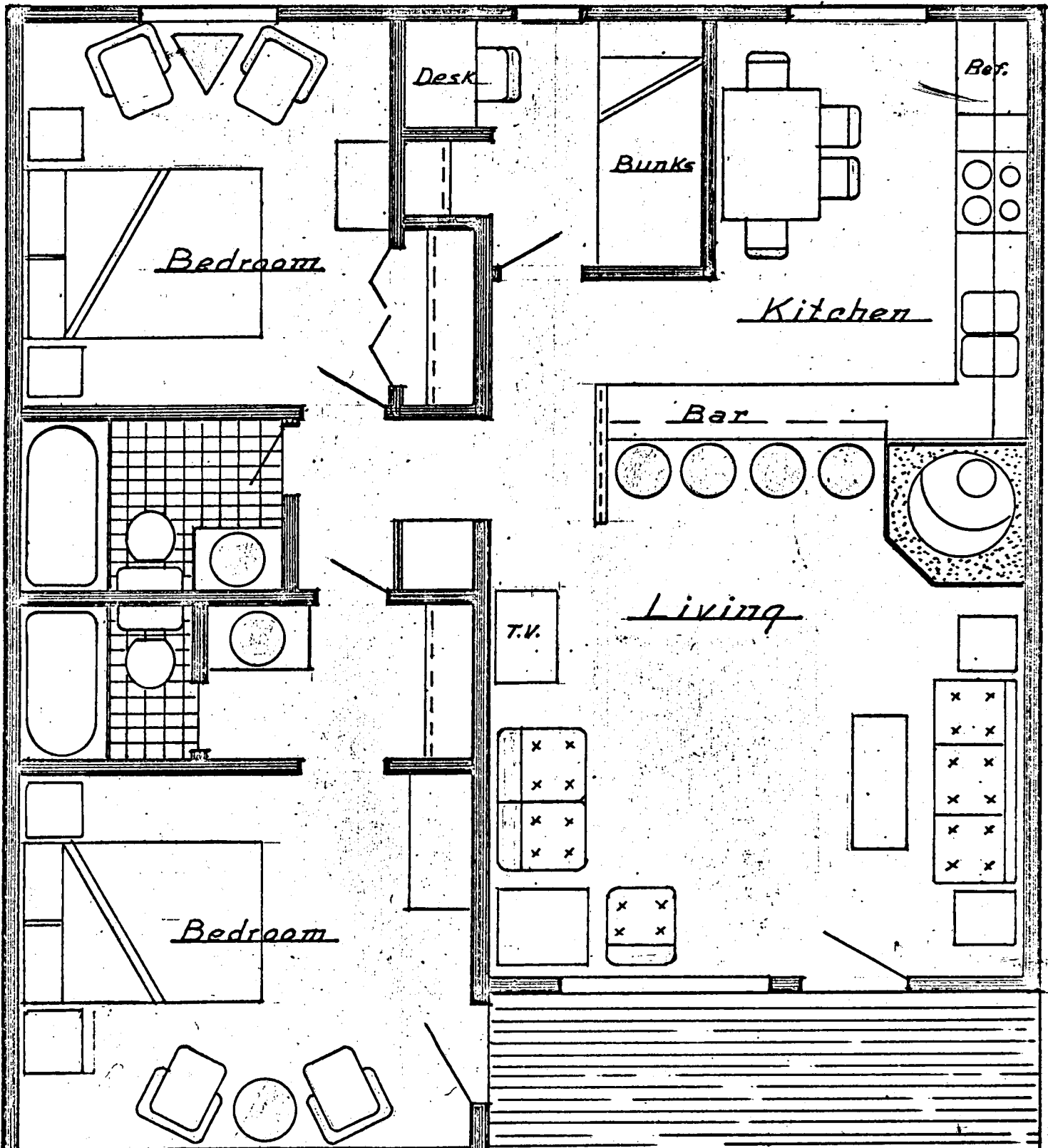


EXHIBIT C

BYLAWS

of

**HOMEOWNERS ASSOCIATION OF
EDELWEISS RESORT CONDOMINIUMS**

PHASE I

ARTICLE I

PLAN OF APARTMENT OWNERSHIP

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

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

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

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

ARTICLE II

VOTING, MAJORITY OF OWNERS, QUORUM, PROXIES

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

Section 2. Majority of Owners. As used in these By-Laws the term "Majority of

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

Any designation of an agent to act for an Owner may be revoked at any time by written notice to the Secretary and shall be deemed revoked when the Secretary shall receive actual notice of the death or judicially declared incompetence of such Owner or of the conveyance by such Owner of his condominium. Where there is more than one record Owner, any or all of such persons may attend any meeting of the Owners, but it shall be necessary for those present to act unanimously in order to cast the votes to which they are entitled. Any designation of an agent to act for such persons must be signed by all such persons.

ARTICLE III

ADMINISTRATION

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

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

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

Section 4. Special Meetings. It shall be the duty of the President to call a special meeting of the owners as directed by resolution of the Board of Directors or upon a petition signed by owners having one-third (1/3) of the total votes and having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted

Section 6. Adjourned Meetings. In the event that a quorum is not present at any meeting, the owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the owners in accordance with the provisions of Section 5 hereof, and at the meeting the presence of owners holding in excess of thirty percent of the total votes shall constitute a quorum for the transaction of business; but in the event a quorum is not present at that meeting, the owners present, though less than a quorum, may give notice to all the owners in accordance with Section 5 of an adjourned meeting, and, at that meeting, whatever owners are present shall constitute a quorum.. Unless otherwise expressly provided in these By-Laws any action may be taken at any meeting of the owners upon the affirmative vote of a majority of the voting power of the owners present and voting provided that a quorum is present as provided for above.

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

- (a) Roll Call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Report of Committees.
- (f) Election of inspector of election.
- (g) Election of directors.
- (h) Unfinished business.
- (i) New business.

ARTICLE IV

BOARD OF DIRECTORS

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

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

Section 3. Other Duties.

1. Authority of the Management Committee. The Management Committee, for the benefit of the condominiums and the owners, shall enforce the provisions hereof and shall acquire and shall pay for out of the common expense fund hereinafter provided for, the following:

Units and Common Area, payable as provided in paragraph I of the Enabling Declaration, or such other fire and casualty insurance as the Board of Directors shall determine gives substantially equal or greater protection to the owners, and their mortgages, as their respective interests may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgages of each condominium, if any;

- (c) A policy or policies as the same are more fully set forth in paragraph L of the Declaration insuring the Board of Directors, the Owners and the Manager against any liability to the public or to the owners of Units and of the Common Area, and their invitees, or tenants, incident to the ownership and/or use of the project, and including the personal liability exposure of the owners. Limits of liability under such insurance shall not be less than Three Hundred Thousand Dollars (\$300,000.00) for any one person injured, for any one accident, and shall not be less than One Hundred Thousand Dollars (\$100,000.00) for property damage each occurrence (such limits and coverage to be reviewed at least annually by the Board of Directors and increased in its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.
- (d) Workman's Compensation insurance to the extent necessary to comply with any applicable laws;
- (e) The services of a person or firm to manage its affairs (herein called "the Manager") to the extent deemed advisable by the Board of Directors as well as such other personnel as the Board of Directors shall determine shall be necessary or proper for the operation of the Common Area, whether such personnel are employed directly by the Board of Directors or are furnished by the Manager;
- (f) Legal and accounting services necessary or proper in the operation of the Common Area of the enforcement of the Declaration;
- (g) A fidelity bond naming the Manager, and such other persons as may be designated by the Management Committee as principals and the owners as obligees, for the first year in an amount at least equal to twenty-five percent (25%) of the estimated cash requirement for that year as determined under Section 3 hereof, and for each year thereafter in an amount at least equal to twenty-five percent (25%) of the total sum collected through the common expense fund during the preceding year;
- (h) Maintenance and repair of all Common Area utilities including:
 - (1) Electrical service, whether above or under ground.
 - (2) All on-site water pipes serving the Project and all plumbing serving common walls in the Condominium Buildings.

have the exclusive right and duty to acquire the same for the Common Area; provided, however, that the interior surfaces of each Unit shall be painted, maintained and repaired by the owners thereof, all such maintenance to be at the sole cost and expense of the particular owner;

- (j) Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, snow removal, taxes or assessments which the Board of Directors is required to secure or pay for pursuant to the terms of the Declaration or by law or which in its opinion shall be necessary or proper for the operation of the Common Area or for the enforcement of this Declaration, provided that if any such materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for particular Units, the cost thereof shall be specially assessed to the owners of such Units.
- (k) Maintenance and repair of any Unit, if such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the Common Area or preserve the appearance and value of the project, and the owner or owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice or the necessity of said maintenance or repair delivered by the Board of Directors to said owner or owners, provided that the Board of Directors shall levy a special assessment against the condominium of such owner or owners for the cost of said maintenance or repair.

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

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

The Board of Directors shall not be liable for any failure of water supply or other service to be obtained and paid for by the Board of Directors hereunder, or for injury or damage to person or property caused by the elements or by another owner or person in the project, or resulting from electricity, water, rain, dust, or sand which may leak or flow from outside or from any parts of the building, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless caused by gross negligence of the Board of Directors. No diminution or abatement of common expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area or from any action taken to comply with any law, ordinance or orders of a governmental authority.

Each member of the Board of Directors shall be indemnified by the owners against

duties; provided that in the event of a settlement the indemnification shall apply only if the Board of Directors approves such settlement and reimbursement as being for the best interest of the Board.

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

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

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

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

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

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

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

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

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

ARTICLE V

OFFICERS

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

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

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

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

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

ARTICLE VI

OBLIGATIONS OF THE OWNERS

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

(a) Within thirty (30) days prior to the beginning of each calendar year the Board of Directors shall estimate the net charges to be paid during such year (including a reasonable provision for contingencies and replacements and less any expected income and any surplus from the prior year's fund). Said "estimated cash requirement" shall be assessed to the Owners pursuant to the percentages set forth in the schedule in Exhibit "B". If said sum estimated proves inadequate for any reason, including non-payment of any owner's assessments, the Board of Directors may at any time levy a further assessment, which shall be assessed to the owners in like proportions, unless otherwise provided herein. Each owner shall be obligated to pay assessments made pursuant to this paragraph to the Board of Directors in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board of Directors shall designate. Until January 1 of the year immediately following the conveyance of the first unit to an owner, the amount assessed each owner shall be as set forth above except that the amount shall be pro-rated according to the fraction of the year remaining before January 1, payment shall consist of One Hundred Dollars (\$100.00) per unit, due and payable no later than fifteen (15) days following conveyance of title to the owner. The amount so paid shall be used by the Management Committee for the purpose of establishing a general operating reserve fund for use in connection with the management and operation of the project.

(b) All funds collected hereunder shall be expended for the purposes designated herein.

(c) The omission by the Board of Directors before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions herein, or a release of the owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed. Amendments to this paragraph shall be effective only upon unanimous written consent of the owners and their mortgagees. No owner may exempt himself

Section 2. Maintenance and Repair.

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

Section 3. Use of Family Units - Internal Changes.

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

Section 4. Use of Common Areas and Facilities.

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

Section 5. Right of Entry.

- (a) An owner shall grant the right of entry to the management agent or to any other person authorized by the Board of Directors of the Association in case of any emergency originating in or threatening his unit, whether the owner is present at the time or not.
- (b) An owner shall permit other owners, or their representatives, when so required, to enter his unit for the purpose of performing installations, alterations or repairs to the mechanical or electrical services, provided that requests for entry are made in advance and

- (b) There shall be no obstruction of the Common Area. Nothing shall be Stored in the Common Area without the prior consent of the Board of Directors.
- (c) Nothing shall be done or kept in any unit or in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Board of Directors. No owner shall permit anything to be done or kept in his unit or in the Common Area which will result in the cancellation of insurance of any unit or any part of the Common Area, or which would be in violation of any law. No waste will be committed in the Common Area.
- (d) No sign of any kind shall be displayed to the public view on or from any unit or the Common Area except a suitable sign advertising the existence of saidcondominium apartments without the prior consent of the Board of Directors.
- (e) No animals, livestock or poultry of any kind shall be raised, bred, or kept in any unit or in the Common Area.
- (f) Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board of Directors.
- (g) There shall be no violation of rules for the use of the Common Area adopted by the Board of Directors and furnished in writing to the owners, and the Board of Directors is authorized to adopt such rules.
- (h) Modification of any kind to the exterior of any building, either to the structure or the appearance thereof, including but not limited to awnings, sun shades, balcony covers, balcony enclosure, fences, air conditioning, service fans, window guards, flags, or landing may not be made without approval of the Board of Directors.
- (i) No clothes or other materials can be hung from the windows or any part thereof, draped from a balcony, railing, or fence, or otherwise shown without reasonable discretion upon the part of the owner.
- (j) Tools, sporting goods, cooking equipment, bicycles and other personal articles and equipment must be kept within the unit, or in the owner's private storage area.
- (k) Unit owners may have planter boxes on their balconies for the purpose of growing flowers. However, no hanging vines or growth is permitted outside the balcony area.
- (l) All signs of any kind within the condominium displayed to public view in any way must be approved by the management. In general, approval will only be given to individual owners for signs identifying their units. The size type and colors must be approved by the management and mounted in accordance

remove all temporary antennae, regardless of whether there is a charge for hookup and/or utilization of a community antenna system.

- (n) There shall be no use of common green areas except for uses which do not injure or scar the Common Area or the vegetation thereon; increase the maintenance thereof; or cause unreasonable embarrassment, disturbance, or annoyance to owners in their enjoyment of the common green areas.
- (o) There shall be no fires for any purpose whatever on any part of the Common Area. There shall be no large outdoor barbecues (Habachis excepted) used without express consent of the management.
- (p) Common green areas may be used for such temporary outdoor activities as dining, skating, art show, exhibits, etc., but shall require prior approval from the management, and such use must be such as will not permanently alter or materially injure the landscape or appearance of the common green.
- (q) Owners shall be held responsible for the actions of their children and their guests.
- (r) Each unit is entitled to one reserved parking space in close proximity to the building. All other cars will park in unreserved parking lots adjacent to the condominium area.
- (s) All boats, trailers and campers are to be parked in only areas designated by the management.
- (t) All vehicles shall be restricted to designated roads, service areas, and parking areas.
- (u) No units shall be used for any business or commercial purpose without prior approval of the management, but this will not be construed to preclude corporate ownership.
- (v) No offensive activities shall be carried on in the condominium, nor anything be done or placed within the units which may be a nuisance or cause unreasonable embarrassment, disturbance, or annoyance to other owners or the public.
- (w) None of the rights and obligations of the owners created herein, or by the Deed creating the condominiums shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the willful conduct of said owner or owners.
- (x) Any owner may delegate, subject to the above restrictions, his right to enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

The receipt by the Board of Directors or Management of any assessment from an owner, with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board of Directors or Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors or Manager.

ARTICLE VII

AMENDMENTS TO PLAN OF APARTMENT OWNERSHIP

Section 1. By-Laws. These By-Laws may be amended by the Association in a duly constituted meeting for such purpose and no amendment shall take effect unless approved by owners representing at least 75% of the total voting power as set forth in the Master Deed and attachment "B" above, together with approval of all of the first mortgagees of the units.

ARTICLE VIII

MORTGAGEES

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

Section 2. Notice of Unpaid Assessments. The Association shall at the request of a mortgagee of a unit report any unpaid assessments due from the owner of such unit.

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

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

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

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

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

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

ARTICLE IX

COMPLIANCE

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

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

EXHIBIT D

ARTICLE V

ASSESSMENTS AND MAINTENANCE FUND

1. Creation of Maintenance Fund and Obligation for Assessments. The Board shall establish a "maintenance fund" for the administration, maintenance, repair, replacement and improvement of the common areas and facilities of the property, for the exercise and performance of its powers and duties, as hereinabove set forth, and for the benefit of all of the apartment owners, and the administration, maintenance and operation of the property as first class apartment buildings or for the enforcement of the restrictions set forth in this Declaration, which fund shall be financed or funded by assessments as hereinafter provided, paid by all apartment owners. The fund shall be administered on a fiscal year basis, which fiscal year shall end on September 30, of each year.

Each year, on or before August 31, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services, and supplies which will be required for the administration, maintenance, repair, replacement and improvement of the common areas and facilities of the property during the ensuing fiscal year, for the exercise and performance of the powers and duties of the Board as hereinabove set forth, and for the benefit of all of the apartment owners and the administration, maintenance and operation of the property as first class apartment buildings or for the enforcement of the restrictions set forth in this Declaration, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements and shall notify each owner in writing as to the amount of such estimate, with reasonable itemization thereof. Said "estimated cash requirement" shall be assessed to the apartment owners according to each apartment owner's percentage of ownership in the common areas and facilities as set forth herein.

On or before October 1st, of each year, and the 1st of each and every month of said year, each apartment owner shall be obligated to pay to the Board or as it may direct, 1/12th of the assessment made pursuant to this paragraph.

The suggested expense for first year operation is as follows:

Insurance	Estimated	\$10 per month
Office Expenses (Telephone, etc.)	Estimated	\$ 5 per month
Advertising	Estimated	\$ 5 per month
Legal and Accounting	Estimated	} \$10 per month
Snow Removal	Estimated	
Garbage Pickup	Estimated	

2. Management of the Maintenance Fund and Collection of the Assessments. The Maintenance fund and assessments shall be managed and assessments shall be collected in the following manner:

On or before the date of the annual meeting of each calendar year, the Board shall supply to all apartment owners an itemized accounting of the administration, maintenance and other expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each apartment owner's percentage of ownership in the common areas and facilities to the next monthly installment due from apartment owners under the current year's estimate, until exhausted, and any net shortage shall be added according to each apartment owner's percentage of ownership in the common areas and facilities to the installments due in the succeeding six months after rendering of the accounting.

The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year, shall be charged first against such reserve. If said "estimated cash requirement" proves inadequate for any reason, including non-payment of any apartment owners assessment, the Board may at any time levy a further assessment, which shall be assessed to the apartment owner's according to each owner's percentage ownership in the common areas and facilities. The Board shall serve notice of such further assessment on all apartment owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly maintenance payment which is due not more than ten (10) days after the delivery or mailing of such notice of further assessment. All apartment owners shall be obligated to pay the adjusted monthly amount.

When the first Board elected takes office, it shall determine the "estimated cash requirement", as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31st of the calendar year in which said election occurs. Assessments shall be levied against the apartment owners during said period as provided in this Article.

The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the apartment owner shall not constitute a waiver or release in any manner of such apartment owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the apartment owner shall continue to pay the monthly maintenance charge at the then existing monthly rate established for the previous period until the monthly maintenance payment which is due not more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

The Board shall keep full and correct detailed books of account and records in chronological order of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. The records and the vouchers shall be available for inspection by any apartment owner or

RENTAL AGREEMENT

EXHIBIT E

THIS RENTAL AGREEMENT is made and entered into effective the _____ day of _____, 19____, by and between the undersigned, owners of an apartment in the Edelweiss Condominium Project, Brian Head Ski Resort, Utah, hereinafter collectively called "Owner", and the Edelweiss Association, hereinafter called "Association".

WHEREAS the Owner, owners of other apartments in the Edelweiss Condominium Project and the Association desire to create and operate a rental pool of several apartments in said condominium project, subject to the supervision, management and control of the Association.

NOW THEREFORE, in consideration of the mutual promises, conditions, and covenants hereinafter set forth, the parties hereto agree as follows:

1. The Owner hereby employs Georg Ski Shop as the exclusive rental agent for his apartment, to rent the same during the winter and summer tourist seasons.

2. It is specifically understood and agreed that the Owner's apartment will be rented, from time to time, together with other apartments in the Edelweiss Condominium Project, all of which apartments shall constitute a rental pool and the rental receipts from all of the apartments, after deducting expenses, a depreciation charge and the rental agent's fees, shall be divided among the several Owners as hereinafter set forth.

3. The Owner shall:

A. Pay the Association a fixed fee of four dollars and fifty cents (\$4.50) plus the sum of ten percent of net rental pool receipts, as hereinafter defined, derived from rentals obtained by the Association, as a rental agent's fees.

B. Give adequate, advance notice, in writing, to the Association or such person as it designates when he will make personal use or allow some third person to use his apartment.

4. The Association shall:

A. Use its best efforts to rent all of the apartments in the rental pool, on a fair and equitable basis, throughout both

All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied against less than all the apartment owners, and for such adjustments as may be required to reflect delinquent or unpaid assessments) shall be deemed to be held for the benefit, use and account of all the apartment owners in the same percentages as their percentage ownership of the common areas and facilities specified herein.

If an apartment owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the members of the Board may bring suit for and on behalf of themselves and as representatives of all owners to enforce collection thereof or to foreclose the lien therefor as hereinafter provided; and there shall be added to the amount due the costs of said suit, together with legal interest and reasonable attorney's fees to be fixed by the Court.

To the extent permitted by the Utah Statutes, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided, shall be and become a lien or charge against the apartment ownership of the apartment owner involved when payable and may be foreclosed by an action brought in the names of the Board as in the case of foreclosure of liens against real estate. Said lien shall take effect and be in force when and as provided in the Utah laws, provided, however, that encumbrances owned or held by any bank, insurance company or savings and loan association shall be subject as to priority after written notice to said encumbrancer of unpaid common expenses only to the lien of all common expenses on the encumbered apartment which become due and payable subsequent to the date said encumbrancer either takes possession of the apartment, accepts a conveyance of any interest therein, or files suit to foreclose his lien.

Any encumbrancer may from time to time request in writing a statement from the Board setting forth the unpaid common expenses with respect to the apartment covered by his encumbrance and, unless the request shall be complied with within twenty (20) days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien of such encumbrancer.

In the event of a voluntary conveyance of an apartment ownership, the grantor and grantee shall be jointly and severally liable for all unpaid common expenses and assessments for common expenses related to said apartment ownership to the time of such grant or conveyance.

Amendments to this Article V shall only be effective upon unanimous written consent of the apartment owners and their mortgagees. No apartment owner may waive or otherwise escape liability for the assessments provided for herein by non-user of the common areas and facilities or by abandonment of his or her apartment.

C. Take all reasonable steps to screen guests for desirability and to collect amounts due from guests.

D. Deposit all rental receipts collected in connection with the rental pool in a separate bank account and provide fidelity bond coverage for its employees who handle such receipts.

E. Maintain full and complete records of rentals and expenses for each apartment, allow the Owner or his representative to examine such records at any reasonable time during business hours, render to the Owner a monthly statement of rentals and expenses of his apartment and remit to the Owner his share of the net amount due from the rental pool periodically.

5. Where the Owner rents his apartment by a specific, written referral, he shall receive the rental receipts from such referral after deducting expenses for necessary clean-up and maid service, linen and housekeeping supplies.

6. "Net Rental Pool Receipts" shall mean total rentals received during a month, being the accounting period used herein, less all commissions or fees due third parties, other than the Association, if any, less all depreciation deposited to the Depreciation Account and less expenses for necessary clean-up and maid service and housekeeping supplies.

7. Where the Association rents the Owner's apartment, as hereinabove provided, each Owner shall receive:

A. A percentage of the rental pool receipts remaining, after deductions for all commissions or fees due third parties, other than the Association, if any, all depreciation payable to the Owners, all expenses for necessary clean-up and maid service, linen and housekeeping supplies, and all rental agents fees paid to the Association, determined by dividing the number of days an Owner's apartment was available for rent during a period by the number of days all of the apartments in the rental pool were available for rent during the same period.

8. This agreement shall continue in full force and effect until a new rental agreement is signed, unless terminated earlier by either party on thirty days written notice; provided that upon termination, the Owner shall honor all reservations made by the Association, prior to the receipt of such written notice.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals effective