

No. 329367

RECORDED AT THE REQUEST OF _____

UTAH TITLE AND ABSTRACT COMPANY

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BOOK 152 OF RECORDS PAGE 149 FEE 71.00

DONNA S. MCKENDRICK TOOELE COUNTY RECORDER
Tooele County Recorder

DECLARATION AND BYLAWS

of the

BENCH MARK VILLAGE

A

Condominium Project Created

Pursuant to the Utah Condominium

Ownership Act

APPENDIX B

DESCRIPTION OF LAND

Beginning at a point which is 1326.93 feet north and 826.81 feet east of the south $\frac{1}{4}$ corner, section 27 T3S, R4W, SLB&M, Tooele City, Tooele County, Utah. Thence N. 89 degrees 31'10" East 257.28 feet, North 165 feet, East 121.40 feet, th. South 163.98 feet; thence North 89 degrees 31'10" East 266 feet, North 331.76 feet, West 228.41 feet, North 149.59 feet, and West 78.45 feet; then North 54 degrees 45' West 229.39 feet; thence South 70 degrees 10' West 250.95 feet, South 19 degrees 50' East 20 feet, and South 70 degrees 10' West 100.69 feet; thence South 19 degrees 50' East 511.37 feet to the point of Beginning and containing 7.70 acres.

APPENDIX C

TABLE OF BUILDING NUMBERS AND UNIT TYPES

<u>Building Number</u>	<u>Unit Numbers</u>	<u>Unit Types</u>
1	1-6	B
2	7-10	C
3	11-14	C
4	15-16	C
5	17-18	C
7	23-26	C
8	27-30	C
9	31-36	B
10	37-42	B
11	43-46	C
18	66-67	A
19	68-71	A
20	72-75	A

APPENDIX D

LEGAL DESCRIPTION OF ADDITIONAL LAND

Beginning at a point which is 1805.78 feet North and 654.14 feet East of the South quarter corner of Section 27, Township 3 South, Range 4 West, Salt Lake Base and Meridian Tooele County, Utah; and running thence North 70 degrees 10' East 100.69 feet; thence North 19 degrees 50' West 20 feet; thence North 70 degrees 10' East 250.95 feet; thence South 54 degrees 45' East 229.39 feet; thence East 78.45 feet; thence South 149.59 feet; thence East 203.50 feet; thence North 346.38 feet; thence West 230.36 feet; thence South 72 degrees 35' West 239.55 feet; thence North 54 degrees 45' 00" West 1264 feet; thence North 18 degrees 36' West 176.46 feet; thence South 55 degrees 32' West 250.10 feet; thence North 57.32 feet; thence South 57 degrees 00' West 136.46 feet; thence South 19 degrees 50' East 156.09 feet to the point of beginning and containing 3.58 acres.

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DECLARATION

BENCH MARK VILLAGE

THIS DECLARATION is made and executed by Twin Peaks, Inc., a Utah corporation ("declarant"), and by the undersigned who constitute all of the owners of Bench Mark Village, Phases I and II, pursuant to the provisions of the Utah Condominium Ownership Act, as amended, Utah Code Ann. §§ 57-8-1 through 57-8-36 (Repl. vol. 1963), hereinafter referred to as the "act."

1. Recitals.

1.1. Declarant, and the persons joining in this declaration, are the sole owners of the real property and improvements ("property") located at Bench Mark Village, City of Tooele, County of Tooele, State of Utah, hereinafter more particularly described, and are recording this Declaration to create a condominium pursuant to the Act and to consolidate existing and future phases of Bench Mark Village into one condominium project.

1.2. Declarant and the undersigned owners, by recording this declaration, intend that the provisions of the act shall apply to the property.

1.3. The covenants, conditions and restrictions contained in this declaration and in the appendices hereto shall be enforceable equitable servitudes and shall run with the land.

1.4. Declarant has filed simultaneously herewith a record of survey map ("map"), as required by section 57-8-13(1) of the act.

1.5. The administration of the property shall be governed by by-laws which are embodied in a separate instrument, a true copy of which are appended to and recorded with this declaration as appendix A.

1.6. All terms used in this declaration and the appended by-laws shall have the same definition as the terms defined in the act, unless the act allows for a variation of the terms and such variation is contained herein.

1.7. The property shall be known as Bench Mark Village. The mailing address of the property is Bench Mark Village, Tooele, Utah 84074.

2. Description of the Land.

The land on which the buildings and improvements are located is particularly described in appendix B.

3. Description of the Buildings.

3.1. The project consists of thirteen (13) buildings. A table setting forth the building numbers together with the unit numbers and type of unit located in each building is set forth in Appendix C. Of the three types of units, type A units have one main level and a full walk-out basement or patio level; type B units are two-level townhouses with a full basement, and type C units are one-level units with a full basement. Each building is supplied with natural gas, water, sewer and electricity services.

3.2. There are fifty-two designated units in the project.

3.3. The buildings are constructed with concrete foundations, wood and slump block veneer exterior walls and hand split cedar shake shingle or built-up gravel roofs. The walls between units in the same building are doublewall construction with accoustical sounding board. Each unit has its own entrances, a double-car garage or carport, and a patio area.

3.4. The project also has a clubhouse adjacent the swimming pool. The clubhouse has two levels. The main level contains a clubroom with a fireplace, the showers and changing rooms for the swimming pool, together with bathrooms and showers. A large deck is located off the main level. On the lower level, there is a large recreation room with a fireplace, kitchen, and sewing area, post office, and pool equipment room.

3.5. The buildings are more fully depicted on the map.

4. Description of Units.

4.1. The units are depicted on the map. With respect to the type A units, the upper level has a kitchen, dinette, living room, bathroom, and master bedroom; and the lower level contains a family room, bedroom and bath and an unfinished room. Type B units contain on the main floor a kitchen, dinette, living room, and one-half bath and, on the upper level, two bedrooms, two baths, and a deck. Type B units also have a full, unfinished basement. Type C units have one main level which contains a living room, dining room, kitchen, two bathrooms, two bedrooms, and a laundry room. Type C units also have a full unfinished basement. Each unit has a separate furnace, air conditioner, and water heater.

4.2. A unit shall include the land beneath the unit lying within the perimeter of the foundation. A unit shall also include the garage or carport attached to the unit, as well as the attached patio, deck, door-step, and porches. The boundary lines of each unit shall be: the perimeter walls to the exterior surfaces thereof or to the middle of party walls separating two contiguous units, as the case may be; the interior surface forming the lower-most portion of the roof; the windows; and doors (with the exception of the exterior surfaces thereof). Without limitation, a unit shall include all interior walls and all utility pipes, lines, systems, fixtures and appliances found within the boundary lines of the unit and servicing only that unit.

5. Description of Common Areas and Facilities.

The common areas and facilities shall mean and include: all the land in the project with the exception of the land beneath each unit as described in paragraph 4 herein, all portions of the property not contained within any unit, including, but not by way of limitation: the exteriors of all buildings, garages, carports, and patios (with the exception of windows), roofs, grounds, gardens, (except gardens located on patios as part of a unit), guest parking areas, clubhouse, swimming pool, installations of all central services, including power, light, and water, all apparatus and installations existing for common use; all driveways, roads; any utility pipes, lines or systems servicing more than a single unit; all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally common in use, or which have been designated as common areas and facilities in the map and all repairs and replacements of any of the foregoing.

6. Reservation of Right to Expand the Project.

6.1. Declarant hereby explicitly reserves the right to expand the condominium project. No consent of any existing or future unit owners need be obtained by declarant for the expansion. The right to expand the project shall be exercised by declarant by recording an amended map, together with an amended declaration, containing the legal description of the land added to the project and a reallocation of the undivided interests in the common areas and facilities in accordance with the provisions of the Act and the declaration, with each unit having after the expansion an equal undivided interest in the common areas and facilities.

6.2. Declarant must exercise its option within five (5) years from the date of the filing of this declaration or the option shall expire.

6.3. Legal descriptions by metes and bounds of the two parcels of land, parcel A and parcel B, that may be added to the condominium project ("additional land") are set forth in Appendix D. It is the present intention of declarant to add both parcels to the project, but declarant reserves the right to add either parcel in the order it desires. If declarant chooses to add either parcel of additional land to the project, all of the said parcel must be added.

6.4. The map presently contains a diagram showing the description of the land and the location of the proposed improvements on the additional land, but declarant can give no assurances that the location or exact outline of improvements will not change as presently shown on the map.

6.5. The maximum number of units that may be created on the additional land is twenty-three (23). A maximum of sixteen (16) units may be added on parcel A and a maximum of seven (7) units may be added on parcel B. All of the proposed units will be restricted exclusively to residential use and will be subject to the same use and occupancy restrictions as set forth in paragraph 8 hereof.

6.6. The structures on the additional land will be similar with structures presently within the project in terms of quality of construction, principal materials to be used, and general architectural style.

6.7. There will be no other improvements made on the additional land except the units described herein, together with the improvements necessary to make the additional units compatible with the existing units, such as roads, landscaping, utilities, etc.

6.8. The units on parcel A will be substantially identical to at least one or more of the types of units presently within the condominium project, but no assurances can be given with respect to the units to be erected on parcel B. Declarant reserves the right to create limited common areas and facilities within any portion of the additional land, but no assurances can be given with respect to the types, sizes, and maximum number of such areas.

7. Percentage of Undivided Interest in Common Areas and Facilities.

Each unit shall have an equal undivided interest in the common areas and facilities.

8. Purpose of the Property.

8.1. The purpose of the property is to provide residential housing, parking and recreational facilities for unit owners, their respective families, tenants, guests and servants.

8.2. The units and common areas and facilities shall be occupied and used as follows:

8.2.1. A unit owner shall not permit his unit to be occupied or used other than as a private residence for a single family, without the express approval of the management committee or its designee.

8.2.2. A unit owner shall not permit his parking space(s) to be used for any other purposes except to park a vehicle.

8.2.3. A unit owner shall not obstruct the common areas and facilities. A unit owner shall not place or store anything within the common areas and facilities without the prior written consent of the management committee or its designee except in the limited common areas and facilities appurtenant to his unit specifically designated or approved by the management committee for storage.

8.2.4. Without the prior written consent of the management committee or its designee, a unit owner shall not permit anything to be done or kept in his unit that would result in an increase in the cost of insurance on the property, or that would result in the cancellation of insurance with respect to all or any part of the property, or that would be in violation of any governmental law, ordinance, or regulation.

8.2.5. No advertising signs, billboards, objects of unsightly appearance or nuisances shall be erected, placed, or permitted to remain on any unit, except one "For Rent" or "For Sale" sign of not more than five square feet, nor shall any unit be used in any way or for any purpose which may endanger the health or unreasonably disturb the other owners. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the property, except activities intended primarily to serve residents in the property. The foregoing restrictions shall not apply to the commercial activities, sign and billboards, if any, of the declarant or its agents during the construction and sales period or by the management committee in furtherance of its powers and purposes set forth hereinafter and in its bylaws, and rules and regulations, as the same may be amended from time to time.

8.2.6. A unit owner shall not permit any animals of any kind to be raised, bred, or kept in his unit, except that the management committee may provide in its rules and regulations that dogs, cats, and other household pets may be kept in units subject to the rules and regulations adopted by the management committee.

8.2.7. A unit owner shall not permit any obnoxious or offensive activity or nuisance to be carried on in his unit.

8.2.8. A unit owner shall not alter, construct in, or remove anything from the common areas and facilities, except with the prior written consent of the management committee or its designee.

8.2.9. A unit owner shall not violate any of the rules and regulations for the use of units or the common areas and facilities adopted by the management committee and furnished in writing to the unit owners.

8.2.10. Except in the individual patio areas designated for the exclusive use of owners, no planting or gardening shall be done upon the property and no fences, hedges or walls shall be erected or maintained upon said property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the management committee or its designated representative.

8.2.11. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on the property or any unit. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the property or any unit.

8.2.12. No exterior television, radio or other antennas shall be placed, allowed or maintained upon any unit or upon any structure or portion of the improvements situated and located upon the property without

the prior written approval of the management committee or their designated representative.

8.2.13. All utilities, fixtures and equipment installed within a unit commencing at a point where the utility lines, pipes, wires, conduits, or systems enter the exterior walls of a unit, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditement, nor do any act nor allow any condition to exist which will adversely affect the other units or their owners.

9. Agent for Service of Process.

9.1. The name and address of the person in Tooele County, State of Utah, appointed as first agent to receive service of process in matters pertaining to the property is: Ms. Myrtle Lovlin, Bench Mark Village, Tooele, Utah 84074.

9.2. The agent for service of process may be changed from time to time by the management committee by recording an appropriate affidavit.

10. Association of Unit Owners: Management Committee.

10.1. 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, the 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 agents for the unit owners in the manner specified by the act, this declaration, or the bylaws, is: "Bench Mark Village Association, an association of unit owners under the Utah Condominium Ownership Act."

10.2. The management and maintenance of the property and the business, property and affairs of the Bench Mark Village Association ("association") shall be managed by a management committee, consisting of seven (7) members, who must be unit owners. The management committee shall be elected as provided in the bylaws. All agreements and determinations with respect to 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.

10.3. The management committee shall have all the powers, duties, and responsibilities as are now or may hereafter be provided by the act, this declaration and bylaws, including but not limited to the following:

10.3.1. To make and enforce all house rules and administrative rules and regulations covering the operation and maintenance of the property.

10.3.2. 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 therefor; provided, however, that any management agreement may be terminable by the management committee for cause upon thirty (30) 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.

10.3.3. 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 and adjacent, contiguous property for the benefit of the association.

10.3.4. To determine and pay the common expenses.

10.3.5. To assess and collect the proportionate share of common expenses from the unit owners.

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

10.3.7. To open bank accounts on behalf of the association and to designate the signatures therefor.

10.3.8. To purchase, hold, sell, convey, mortgage or lease any one or more units in the name of the association or its designee.

10.3.9. To bring, prosecute and settle litigation for itself, the association and the property, provided that it shall make no settlement which results in a liability against the management committee, the association, or the property in excess of \$5,000 without prior approval of a majority of unit owners.

10.3.10. To obtain insurance for the association with respect to the units and the common areas and facilities, as well as workmen's compensation insurance.

10.3.11. To repair or restore the property following damage or destruction, or a permanent taking by the power or 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.

10.3.12. 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, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances, and office supplies.

10.3.13. To keep adequate books and records.

10.3.14. 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 property.

10.4. The management committee may delegate to a manager or managing company all of its foregoing powers, duties and responsibilities referred to in paragraph 10.3. above except: the final determination of common expenses, budgets and assessments based thereon; the promulgation of house rules and administrative rules and regulations; the power to enter into any contract involving more than \$5,000 in any one fiscal year; the opening of bank accounts; the power to purchase, hold, sell, convey, mortgage or lease any units in the name of the association or to bring, prosecute and settle litigation.

10.5. Members of the management committee, the officers and any assistant officer, agents and employees 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 for them in their capacity as such; and (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 or by virtue of their capacity as such.

10.6. 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 counsel fees, incurred or imposed, or arising out 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 or shall be threatened to be made a party by reason of the fact that he is or was a member of the management committee or an officer or assistant officer, agent or employee of the association, other than to the extent, if any, that such liability or expense shall be attributable to his willful misconduct or bad faith, provided, in the case of any settlement, that the management committee shall have approved the settlement, which approval is not to be unreasonably withheld. 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 collectible as such.

11. Maintenance, Alteration and Improvement.

11.1. 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.

11.1.1. Specifically, the management committee shall also maintain, alter or repair the exterior of each unit, including the roofs, gutters, downspouts, exterior building surfaces, and exterior surfaces of all garages and carports. The exterior and interior surfaces of patios (excluding concrete decks or floors), the asphalt surfaces under the carports and all other exterior improvements. Said maintenance, replacement, or repair shall be a common expense even though part of the foregoing may be part of a unit, by definition.

11.1.2. The management committee shall also maintain, alter, replace and repair all guest parking areas, and all conduits, ducts, plumbing and wiring and other facilities for the furnishing of heat, gas, light, power, air conditioning, water and sewer contained in the portions of the units that service part or parts of the property other than the unit in which they are contained.

11.1.3. All incidental damages caused to a unit by the maintenance, alteration, replacement and repair of the common areas and facilities or utility services shall be repaired promptly at the expense of the management committee.

11.1.4. For the purpose solely of performing maintenance, alteration or repair required by this section, the management committee, its agents or employees shall have the right, after reasonable notice to the unit owner, to enter upon any unit or unit exterior at reasonable hours of any day except Sunday.

11.2. The unit owners shall have the responsibility to maintain, repair, replace and keep in a clean and sanitary condition, at the unit owner's expense, all portions of the owner's unit, except those portions to be maintained, altered, repaired and replaced by the management committee. The unit owners shall keep clean and in a sanitary condition their storage areas and balconies and patios, if any.

11.3. Each interior wall separating contiguous units shall constitute a party wall and, to the extent not inconsistent with the provisions of this paragraph, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

11.3.1. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

11.3.2. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any unit owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such unit owners to call for a larger contribution from the other unit owner under any rule of law regarding liability for negligent or willful acts or omissions.

11.3.3. Notwithstanding any other provision of this paragraph, a unit owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

11.3.4. The right of any unit owner to contribution from any other unit owner under this paragraph shall be appurtenant to the land and shall pass to such unit owner's successors in title.

11.3.5. In the event of any dispute arising concerning a party wall, or under the provisions of this paragraph, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the management committee shall select an arbitrator for the refusing party.

11.4. 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 the 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.

12. Insurance.

12.1. The management committee shall obtain and maintain at all times insurance of the type and kind as provided herein and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other properties similar to the property in construction, design and use. The management committee shall make every reasonable effort to obtain insurance with the following provisions or endorsements:

12.1.1. Exclusive authority to adjust losses shall be vested in the management committee as insurance trustee or any successor trustee as designated by the management committee;

12.1.2. The insurance coverage shall not be brought into contribution with insurance purchased by individual unit owners or their respective mortgagees;

12.1.3. Each unit owner may obtain additional insurance covering his real property interest at his own expense;

12.1.4. The insurer waives its right of 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 acts of the insured;

12.1.5. The insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of any one or more individual unit owners or their respective lessees, employees, agents, contractors, and guests;

12.1.6. The insurance coverage cannot be cancelled, 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 fifteen (15) days;

12.1.7. Such policies shall provide that coverage shall not be prejudiced by (a) any act or neglect of the owners of condominium units when such act or neglect is not within the control of the owners association or (b) by failure of the owners association to comply with any warranty or condition with regard to any portion of the premises over which the owners association has no control; and

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

12.2. The management committee, for the benefit of the property 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 current "replacement cost" exclusive of land, foundation, excavations, and other items normally excluded from coverage) of the entire condominium project (including all units, all common areas and

facilities, all building service equipment and the like and any fixtures or equipment within the units) with an "Agreed Amount Endorsement" or its equivalent, a "Demolition 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, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage. The limits and coverage of said insurance shall be reviewed at least annually by the management committee and shall include an appraisal of the property. Said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees, if any, of each unit.

12.3. The management committee shall obtain a policy or policies of insurance insuring the management committee, the unit owners and their respective lessees, servants, agents or guests against any liability to the public or to the owners of units, 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 exposure 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 Five Hundred Thousand Dollars (\$500,000) for any one person injured in any one occurrence, and shall not be less than One Hundred Thousand Dollars (\$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 automobile, liability for property of others, and host liquor liability, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.

12.4. 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.

12.5. 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, all improvements made by the unit owner to his unit, the value of which is in excess of One Thousand Dollars (\$1,000). 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.

12.6. Any unit owner who obtains individual insurance coverage covering any portion of the property, other than 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 thirty (30) days after obtaining such insurance coverage.

12.7. No unit owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease 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.

12.8. 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, and all others who handle or are responsible for handling funds of the association, including professional managers and their employees. Such fidelity bonds shall meet the following requirements:

12.8.1. All such fidelity bonds shall name the association as an obligee;

12.8.2. Such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the association, including reserves;

12.8.3. Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve with compensation from any definitions of "employee" or similar expression; and

12.8.4. Such bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the mortgagees of the units.

13. Destruction or Damage.

13.1. In case of fire or any other disaster which causes damage or destruction to all or part of the property, the management committee, with the help of an independent appraisal, shall determine the percentage of the property that was destroyed or substantially damaged. If less than seventy-five percent (75%) of the property was destroyed or substantially damaged, the management committee shall arrange for the prompt repair and restoration of the damaged or destroyed portion of the property using the proceeds of insurance on the property for that purpose, and the unit owners shall be liable for assessment for any deficiency, if any, in proportion to their respective percentages of undivided interest in the common areas and facilities. Reconstruction of the property shall mean the restoring of the damaged or destroyed property 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 paragraph 15 hereof shall apply.

13.2. If seventy-five percent (75%) or more of the property is destroyed or substantially damaged, the management committee shall, within one hundred (100) days after such destruction or damage, call a special meeting of the unit owners for the purpose of deciding whether or not the property shall be repair and restored. If at least three-fourths (3/4) of the unit owners, in person or by proxy, vote to repair or restore the property, the management committee shall promptly arrange for the reconstruction of the property, using the proceeds of insurance on the property 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 paragraph 15 hereof shall apply. However, if at least three-fourths (3/4) of the unit owners do not vote to make provision for reconstruction, the management committee shall record, with the County Recorder, a notice 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 in the property; 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 owner in the property, after first paying out of the respective shares of the unit owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the property owned by each unit owner.

13.3. For purposes of this paragraph 13, 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.

13.4. The management committee shall timely notify in writing each mortgagee of a unit whenever damage to a unit exceeds \$1,000 and damage to the common areas and facilities exceeds \$10,000.

14. Termination.

14.1. In the event three-fourths (3/4) of the building is destroyed or substantially damaged and if the unit owners vote not to reconstruct the building, the property shall be removed from the provisions of the act without further agreement one hundred and one (101) days after such destruction or damage.

14.2. All of the unit owners may remove the property from the provisions of the act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the units consent or agree by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owners in the property.

14.3. After removal of the property from the act, the unit owners shall own the property and all assets of the association as tenants in common and the respective mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the unit owners. Such undivided interests of the unit owners shall be the same as the percentage of undivided interest in the common areas and facilities appurtenant to the owners' units prior to removal from the act.

14.4. This paragraph 14 cannot be amended without consent of all unit owners and all record owners or mortgages on units.

15. Eminent Domain.

15.1. 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 holder of all liens affecting the units, 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.

15.2. The procedures 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 mortgagee's lien shall remain undisturbed.

16. Mortgage Protection.

16.1. The term "mortgage" as used in this declaration and bylaws shall mean any recorded mortgage having priority over other mortgages and shall include a recorded deed of trust. The term "mortgagee" shall mean the owner and holder of a mortgage and shall include a beneficiary under a deed of trust.

16.2. 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 in the necessary information, the management committee shall maintain another roster which shall contain the name and address of each mortgagee of a unit. Each notice shall consist of a certified copy of the recorded instrument evidencing the title of the mortgagee. 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.

16.3. Any mortgagee on any unit is entitled to written notification from the management committee of any default by the mortgagor of such unit in the performance of such mortgagor's obligation under the declaration which is not cured within thirty (30) days.

16.4. Any mortgagee shall have the right to examine the books and records of the association during normal business hours and shall be entitled to receive copies of annual reports and other financial data within ninety (90) days following the end of any fiscal year and shall be entitled to receive notice of all meetings of the association and may designate a representative to attend all such meetings.

16.5. A mortgagee of any unit who comes into possession of the unit pursuant to the remedies provided in the mortgage, foreclosure of mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims or unpaid assessments or charges against the mortgage 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 assessment or charges to all units, including the mortgaged unit).

16.6. The liens created under the act or pursuant to this declaration or bylaws upon any unit shall be subject and subordinate to, and shall not affect the rights of a mortgagee upon such interest made in good faith and for value, provided that after the foreclosure sale, which said liens, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

16.7. No unit may be partitioned or subdivided without the prior written approval of the mortgagee of the affected unit.

16.8. No amendment to this paragraph shall affect the rights of a mortgagee recorded prior to the recordation of any such amendment not otherwise entitled thereto.

17. Leasing of Units.

17.1. 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 provisions of the declaration and bylaws and that failure of the lessee to comply with the terms of said documents shall be a default under the lease.

17.2. No unit owner shall be permitted to lease his unit for transient or hotel purposes.

17.3. No unit owner shall lease less than the entire unit.

17.4. The provisions of this paragraph shall not apply to a lender in possession of a unit following a default in a first mortgage.

18. Encroachments.

18.1. None of the rights and obligations of any unit owners created by this declaration, bylaws or by any deed conveying a unit shall be affected in any way by an encroachment: (i) by any portion of the common areas and facilities upon any unit; (ii) by any unit upon any portion of the common areas and facilities, or (iii) by any unit upon another unit due to settling or shifting of the building or other structure, including the rebuilding of the building and 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 and facilities 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 and facilities.

18.2. There are hereby created valid easements for the maintenance of any encroachments permitted by this paragraph 18 of this declaration so long as such encroachments exist.

19. Conveyances, Easements.

19.1. Every deed, lease, mortgage or other instrument may describe a unit by its identity number and letter designation set forth in appendix C and in the map. 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, even though the same is not exactly mentioned or described.

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

19.2.1. 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.

19.2.2. 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 the common areas and facilities.

19.2.3. 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.

20. Sale or Lease.

20.1. In the event any unit owner shall wish to resell or lease his unit, and shall have received a bona fide offer therefor from a prospective purchaser or tenant, written notice thereof together with an executed copy of such offer and the terms thereof shall be given to the management committee for all of the unit owners. The management committee, on behalf of the unit owners, shall have the right to purchase or lease the subject contracted unit 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 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.

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

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

20.4. In no case shall the right of first refusal reserved herein affect the right of a unit owner to subject his unit to a trust deed, mortgage or other security instrument. A holder of a deed of trust or a mortgage who takes title to a unit pursuant to remedies or provisions contained in the deed of trust or mortgage or through any statutory power of sale or foreclosure shall be exempt from the application of this paragraph 20.

The failure of or refusal by the management committee 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 received any subsequent bona fide offer from a prospective purchaser or tenant.

21. Amendment.

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 three-fourths (3/4) in the aggregate of ownership interest in the common areas and facilities, which amendment shall be effective upon recording.

22. Assessments.

The making and collection of assessments from unit owners for their share of common expenses shall be pursuant to the bylaws and subject to the following provisions:

22.1. Each owner shall be liable to pay \$39.50 as an initial monthly common expense assessment.

22.1.1. Declarant agrees to pay a monthly assessment to the association in an amount equal to ten percent (10%) of the regular monthly unit assessments with respect to each unit in the project that is a recorded unit, but which is not completed. Declarant agrees to pay a full assessment with respect to each such unit when each such unit is completed. Until the project is expanded as provided in paragraph 6 of this declaration or until five years from the date of the recording of this declaration, Declarant agrees also to pay a monthly assessment to the association in an amount equal to ten percent (10%) of the regular unit assessments with respect to all 23 units contemplated on the additional land. Declarant agrees to pay a full assessment with respect to each said 23 future units when each such unit is completed. "Completed unit" shall mean a unit that is completed on the exterior according to plans and is painted on the interior.

22.1.2. The management committee may increase the monthly assessment by five percent (5%) annually without a vote of the unit owners. However, if the management committee elects to increase the monthly assessments above five percent (5%) annually, any such increase above five percent (5%) must be approved by a majority of owners attending a duly called meeting in person or proxy.

22.2. Assessments and any installments thereof not paid on or before thirty-five (35) days after the date when due shall bear interest at the rate of one percent (1%) per month, 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.

22.3. A lien for unpaid assessments shall also secure reasonable attorney's fees and all costs and expenses including taxes, if any, incurred by the management committee incident to the collection of such assessment or enforcement of such a lien.

22.4. 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.

22.5. 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 in the property. 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.

22.6. 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 single improvement exceeding the sum of Five Thousand Dollars (\$5,000) made by the management committee without the same having been first voted on and approved by two-thirds (2/3) majority of those present in person or by proxy of the association at a meeting duly called for that purpose. The foregoing shall not apply in connection with damage or destruction referred to in paragraph 13 hereof or to such structural alterations, capital additions to or capital improvements of the common areas and facilities as are necessary in the management committee's reasonable

judgment to preserve or maintain the integrity of the common areas and facilities of the property.

22.7. If the unit owner shall, at any time, let or sublet 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 or subtenant of the owner the rent due or becoming due in the payment of such rent to the management committee shall be sufficient payment and discharge of such tenant or subtenant and the owner to the extent of the amount so paid.

23. 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 one vote. If there is more than one unit owner with respect to a particular unit, any or all of such unit owners may attend any meeting of the association, but it shall be necessary for all such unit owners present to act unanimously in order to cast the votes pertaining to their unit.

24. 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 twenty-four (24) 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 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 to the management committee. Notice to the management committee shall be addressed to: Management Committee, Bench Mark Village Association, Bench Mark Village, Tooele, Utah 84074.

25. No 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 a 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.

26. Enforcement.

Each unit owner shall strictly comply with the provisions of the declaration, the bylaws, the house rules and administrative rules and regulations and decisions issued pursuant thereto. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the management committee or its designee on behalf of the unit owners, or in an appropriate case, by an aggrieved unit owner.

27. Declarant's Use.

Declarant and persons it may select from time to time shall have the right of ingress and egress over, upon and across the common areas and facilities and the right to store materials therein and to make such other use thereof as may be reasonably necessary incident to the refurbishing, development and sale of all of the units.

28. 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.

29. 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.

30. Law Controlling.

This declaration, the map and the bylaws shall be construed and controlled by and under the laws of the State of Utah.

31. Effective Date.

This declaration shall take effect when recorded.

William E. Selington Jr. by Alan K. Spelman with power of Attorney.
Marjorie K. Selington by Alan K. Spelman with power of Attorney

IN WITNESS WHEREOF, the undersigned, being the Declarant and all the owners of Bench Mark Village Phases I and II hereunto set their hands this 30th day of August, 1977, and this 13th day of September 1977.

TWIN PEAKS, INC. Declarant

OWNERS:

Charles N. Johnson Elaine L. Johnson 69
Charles L. Wood Louise Wood
Mae D. Strong Barbara B. Strong #025
Carleton H. Clithers
Georgia R. Clithers
Sandra E. Brande
Robert L. Carranza Be. Ann W. Carranza
Fayette P. McFarland-Carranza Mrs. Johnson
No. Manto
Bernice K. Robert Joanne D. Roberts
Patricia W. Gibbs John W. Gibbs, MD
Lynett G. Gillespie
Mary K. Kuhn Joann E. Klein
Vandora D. Johnson
Maurice H. Murphy Irene Murphy
Gloria E. Pomeroy
Julian W. Puffer
Donald C. Miller
Samuel D. White Ida L. White

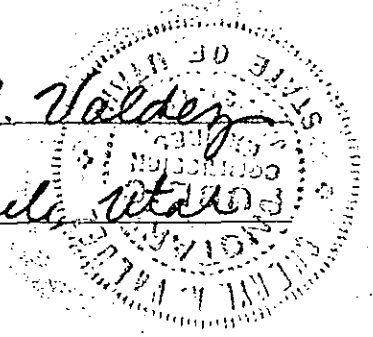
By George Busianis Pres
By J. Rex Kirk Vice Pres.
James D. Bower James H. Bower
Doris L. Hill Joan Hill
Lynette E. Johnson
Thomas B. Johnson
Ronald L. Elton Kathy Elton
Donald L. Warren, M.D. Jane Weaver
George Busianis
Jack W. Bower
Myrtle Gray Larkin
Ronald L. Bachery Bonnie L. Lowberry
Magdalen Curry
Anne Kearns Peter H. Kearns
Thomas D. Tate Karen D. Tate
Dina Kearns
Louise Bayliss
Leo M. Matus
Judith Ann Matus
Ray K. Kirgi Ellen L. Kirgin
Edith H. Bierk
John L. Keller Shelly
Mavis L. Reedman

STATE OF UTAH)
) SS.
COUNTY OF TOOELE)

On the 30th day of August, 1977, personally appeared before me George Busianis and J. Rex Kirk, who being by me duly sworn did say, each for himself, that he, the said George Busianis is the President, and that he, the said J. Rex Kirk, is the Vice President of Twin Peaks, Inc., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of

its board of directors and said George Buzianis and J. Rex Kirk each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Cheryl A. Valdez
Notary Public



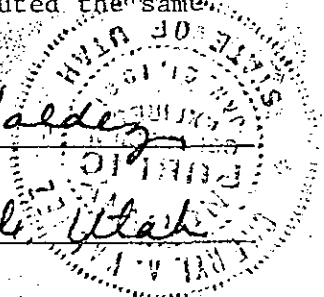
My Commission Expires 1/21/81 Residing in Tooele, Utah

On the 30th day of August, 1977, the above persons; namely, and the 13th day of September, 1977.

Clarke N. Johnsen & Elaine L. Johnsen, his wife, Charles W. Wood & Louise Wood, his wife,
Max D. Strong & Barbara B. Strong, his wife, Carleton H. Colthier & Georgia K. Colthier
his wife, Shiela F. Brande, Robert C. Carranza & ReMon W. Carranza, his wife, Fayette P
McFarland & Colleen McFarland, his wife, Everett J. Roberts & Joanne D. Roberts, his
wife, John T. Gibbs & Patricia D. Gibbs, his wife, Lucy T. Gillispie, J. Rex Kirk Jr. &
Joanne C. Kirk, his wife, Vaudys D. Fulmer, Maurice H. Murphy & Irene Murphy, his wife
Clovilla E. Doman, Joann Huffman, Donald O. Miller, Samuel D. White, & Ida L. White,
his wife, James R. Bowers & Frances G. Bowers, his wife, Daniel B. Hill & Joan Hill,
his wife, Taylor Swenson & Norma B. Swenson, his wife, Ronald L. Elton & Kathy Elton,
his wife, Donald L. Weaver & Jane Weaver, his wife, George Buzianis, Ralph N. Lovlin &
Myrtle May Lovlin, his wife, Donald L. Rowberry & Bonnie L. Rowberry, his wife, ***

personally appeared before me and duly sworn that they executed the same.

Cheryl A. Valdez
Notary Public



My Commission Expires 1/21/81 Residing in Tooele, Utah

Magdalen Curry, Peter F. Kearns & Anne Kearns, his wife, Thomas G. Tate & Karen W. Tate, his wife, Louis Buzianis and Dina Buzianis, his wife, Leo Mantes & Judy Ann Mantes, his wife, Gary A. Kirigin & Ellen F. Kirigin, his wife, Edith D. Bjerk John S. Hallene & Shirley Hallene, his wife, Marie L. Reardon, William E. Ellington Jr. by Alan K. Jeppesen with Power of Attorney & Marjean K. Ellington, his wife, by Alan K. Jeppesen with Power of Attorney.