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Bradley R. Helsten, Esq.
Nelson Rasmussen & Christensen
215 South State Street, Suite 900
Salt Lake City, Utah 84111

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**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
OF
EMPIRE COVE @ MILLCREEK,
a Planned Unit Development and Subdivision**

BK 8188 PG 2986

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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
EMPIRE COVE @ MILLCREEK,
A PLANNED UNIT DEVELOPMENT AND SUBDIVISION**

THIS SUPERCEDING DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EMPIRE COVE @ MILLCREEK, A PLANNED UNIT DEVELOPMENT AND SUBDIVISION is executed this day 30 of October, 1998, by **K.N.B. HOLDINGS, L.L.C.**, a Utah limited liability company, **BARBARA E. TEW** and **NELLIE J. MORGAN** (hereinafter "Declarant").

RECITALS:

WHEREAS, capitalized terms in this Declaration are defined in Article I; and

WHEREAS, the Declarant holds legal title to a certain tract of real property located in Salt Lake County, Utah, and more particularly described in Article II of this Declaration. It is intended that the various Lots described in this Declaration, will be conveyed to Owners in fee simple; and

WHEREAS, by this Superceding Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property and the interests therein conveyed and to establish thereon a planned unit development in accordance with the terms hereof.

NOW, THEREFORE, it is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Superceding Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Declarant, its successors and assigns and all owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

ARTICLE I. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated.

1. "**Articles**" or "**Articles of Incorporation**" shall mean and refer to the Articles of Incorporation of the Association which shall be filed with the Utah State Department of Commerce, Division of Corporations and Commercial Code at or about the time this Declaration is filed for record.

2. "**Association**" shall mean and refer to Empire Cove Owners Association, Inc., a Utah nonprofit corporation.

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3. **"Board of Trustees" or "Board"** shall mean and refer to the governing board of the Association which shall be appointed or elected in accordance with the Declaration, the Articles of Incorporation and Bylaws of the Association.

4. **"Bylaws"** shall mean and refer to the Bylaws of the Association as amended from time to time.

5. **"Common Areas"** shall mean and refer to that part of the Property which is not included within the Lots, including all roadways within the Project and all improvements other than utility lines now or hereafter constructed or located thereon. The Common Area to be owned by the Association prior to the time of the conveyance of the first Lot are described as follows:

BEGINNING AT THE NORTHWEST CORNER OF LOT 6, BLOCK 20, 10 ACRE PLAT A, BIG FIELD SURVEY, SAID POINT ALSO BEING S 00°11'40" W 1760.373 FEET AND S 89°48'20" E 33.000 FEET FROM A MONUMENT LOCATED IN THE INTERSECTION OF 3300 SOUTH AND 700 EAST, AND RUNNING THENCE ALONG THE WEST LINE OF LOT 7, BLOCK 20, N 00°11'40" E 93.019 FEET; THENCE N 89°58'30" E 170.160 FEET; THENCE S 00°12'48" W 11.970 FEET; THENCE N 89°58'31" E 176.450 FEET; THENCE S 00°12'50" W 81.070 FEET; THENCE S 89°58'40" W 71.480 FEET; THENCE S 00°12'50" W 172.593 FEET TO THE CENTERLINE OF EMPIRE AVE.; THENCE S 89°59'11" W ALONG SAID CENTERLINE 74.977 FEET; THENCE N 00°12'50" E 148.583 FEET; THENCE S 89°58'42" W 49.985 FEET; THENCE S 00°12'48" W 20.020 FEET; THENCE S 89°58'44" W 150.121 FEET TO THE WEST LINE OF LOT 6, BLOCK 20; THENCE N 00°11'40" E ALONG SAID LINE 44.020 FEET TO THE POINT OF BEGINNING.

CONTAINS: 1.167 ACRES OR 11 LOTS.

6. **"Common Expense Fund"** shall mean and refer to the fund created or to be created pursuant to the provisions of Article V of this Declaration and into which all monies of the Association shall be deposited. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

7. **"Common Expenses"** shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of the Project and Association as described in Article V hereof and which determine the assessments made to Owners.

8. **"Declaration"** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Empire Cove, as the same may hereafter be modified, amended and supplemented.

9. **"Declarant"** shall mean and refer to K.N.B. Holdings, L.L.C., a Utah limited liability company, Barbara E. Tew and Nellie J. Morgan, and/or any successor thereof which, either by

operation of law or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Property (or a portion thereof) as did its predecessor.

10. "**Eligible Mortgagee**" shall mean and refer to a First Mortgagee which has requested notice of certain matters from the Association in accordance with Section 1 of Article XI of this Declaration.

11. "**FNMA**" shall mean and refer to the Federal National Mortgage Association.

12. "**First Mortgage**" shall mean any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

13. "**First Mortgagee**" means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

14. "**Lot**" shall mean and refer to any of the separately encumbered and individually described parcels of land now or hereafter shown on the Plat. Except where the context specifically otherwise requires, reference to a Lot shall include reference to the Twinhome thereon.

15. "**Manager**" shall mean and refer to the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and Project.

16. "**Member**" shall mean and refer to every person who holds membership in the Association.

17. "**Mortgage**" shall mean any mortgage, deed of trust, or other document pledging any portion of a Lot or interest therein as security for the payment of a debt or obligation.

18. "**Mortgagee**" shall mean a beneficiary of a Mortgage as well as named Mortgagee.

19. "**Owner**" shall mean the person or persons, including the Declarant, owning in fee simple a Lot in the Project, as such ownership is shown by the records of the County Recorder of Salt Lake County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Lot pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Lot under contract (until such contract is fully performed and legal title conveyed of record).

20. **"Plat"** shall mean and refer to the map for Empire Cove @ Millcreek, a Planned Unit Development and Subdivision, recorded in the office of the County Recorder of Salt Lake County, Utah, and all amendments thereto.

21. **"Project"** shall mean and refer to the Property and the plan of development and ownership of the Property created and governed by this Declaration, the Articles and the Bylaws.

22. **"Property"** shall mean and refer to the entire tract of real property now or hereafter covered by the Plat. A description of the real property covered by the Plat on the effective date of this Declaration is set forth in Article II of this Declaration.

23. **"Twinhomes"** shall mean and refer to a structure or portion of a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

24. **"Twinhomes Building"** shall mean and refer to a structure containing Twinhomes of two dwelling units, constituting a portion of the Project.

25. **"Twinhome Building Exteriors"** shall mean and refer to those portions of the Twinhome Buildings which are open to the elements such as roofs, exterior walls, exterior doors, footings, foundations, basement walls and window wells.

ARTICLE II. PROPERTY DESCRIPTION

The Property initially associated with the Project which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property situated in Salt Lake County, State of Utah:

BEGINNING AT THE NORTHWEST CORNER OF LOT 6, BLOCK 20, 10 ACRE PLAT A, BIG FIELD SURVEY, SAID POINT ALSO BEING S 00°11'40" W 1760.373 FEET AND S 89°48'20" E 33.000 FEET FROM A MONUMENT LOCATED IN THE INTERSECTION OF 3300 SOUTH AND 700 EAST, AND RUNNING THENCE ALONG THE WEST LINE OF LOT 7, BLOCK 20, N 00°11'40" E 93.019 FEET; THENCE N 89°58'30" E 170.160 FEET; THENCE S 00°12'48" W 11.970 FEET; THENCE N 89°58'31" E 176.450 FEET; THENCE S 00°12'50" W 81.070 FEET; THENCE S 89°58'40" W 71.480 FEET; THENCE S 00°12'50" W 172.593 FEET TO THE CENTERLINE OF EMPIRE AVE.; THENCE S 89°59'11" W ALONG SAID CENTERLINE 74.977 FEET; THENCE N 00°12'50" E 148.583 FEET; THENCE S 89°58'42" W 49.985 FEET; THENCE S 00°12'48" W 20.020 FEET; THENCE S 89°58'44" W 150.121 FEET TO THE WEST LINE OF LOT 6, BLOCK 20; THENCE N 00°11'40" E ALONG SAID LINE 44.020 FEET TO THE POINT OF BEGINNING.

CONTAINS: 1.167 ACRES OR 11 LOTS.

The actual Lots located on the foregoing are described on the attached **Exhibit "A"**.

ARTICLE III. THE ASSOCIATION

1. Membership. Each Owner shall be entitled and required to be a Member of the Association. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. An Owner shall be entitled to one membership for each Lot owned by him. Each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of such Lot shall automatically constitute a devise, encumbrance, conveyance or other disposition of the Owner's membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a Member of the Association and membership in the Association may not be transferred except in connection with the transfer of a Lot. The Association shall make available to the owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Lot current copies of the Declaration, Articles Bylaws and other rules governing the Project and other books, records and financial statements of the Association. The term "available" as used in this Section 1 shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

2. Board of Trustees. Until such time as the responsibility for electing the Board of Trustees of the Association is turned over to the Owners, the Declarant shall have the exclusive right to appoint and remove all such Trustees. This exclusive right of the Declarant to appoint the Trustees shall terminate after the first to occur of the following:

- A. Three years from the date on which the first Lot in the Project is conveyed;
- or
- B. Four months after 75% of the Lots have been conveyed by Declarant.

3. Votes. The Association shall have one class of voting membership. The members shall be all Owners. Each owner shall be entitled to the number of votes appurtenant to his or her Lot, as set forth in Exhibit "A" to the Declaration. The number of votes appurtenant to each Lot shall be permanent and shall not change in the event an Owner modifies a Twinhome to increase or decrease its size. In the event that there is more than one Owner of a particular Lot, the votes relating to such Lot shall be exercised as such Owners may determine among themselves. No Lot shall have more than the number of votes shown on Exhibit "A", regardless of the number of persons having an ownership interest in the Lot. The votes cast at any Association meeting by any such Owners, whether in person or by proxy, shall be conclusively presumed to be the votes

attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the votes involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

4. Professional Management. The Association may carry out through the Manager those of its functions which are properly the subject of delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management agreement executed on or before the termination of Declarant's control of the appointment of the Board of Trustees as described in Section 2 of this Article III may be terminated by the Association without cause at any time after termination of such control. The above term and termination provisions shall not apply to any other types of service contracts.

5. Amplification. The provisions of this Section may be amplified by the Articles and the Bylaws; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

ARTICLE IV. PROPERTY RIGHTS IN COMMON AREA AND LOTS

1. Easement of Enjoyment. Each Member shall have an equal undivided interest, right and easement of use and enjoyment in and to the Common Area. Each Owner shall have an unrestricted right of ingress or egress to and from its Lot over and across such Common Area, and the non-exclusive right to the use of any parking areas within the Common Areas, if any. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family members, household guest, tenant, lessee, contract purchaser, or other person who resides on such Member's Lot.

2. Easements for Encroachments. In the event the construction, reconstruction, repair, shifting, settlement or any other movement of any portion of the improvements causes any part of a Twinhome built in substantial accord with the boundaries for such twinhome as depicted on the Plat to encroach upon the Common Areas, or upon an adjoining Lot, or if any part of the Common Areas encroaches or shall encroach upon a Lot or twinhome for any such reasons, an easement for such encroachment and for the maintenance of the same shall and does exist. There is also hereby created an easement for any encroachment by any roof overhang upon an adjoining Lot or any part of the Common Area.

3. Limitation on Easement. A Member's equal undivided interest, right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

A. The right of the Association to suspend a Member's voting right in the Association and a Member's right to the use of any recreational facilities included in the Common Area for any period during which (i) an assessment on such Member's Lot remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

B. The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Area;

C. The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children; and providing other governmental or municipal service.

4. Party Walls. Each wall or ceiling-floor physical boundary which is built as part of the original construction (or reconstruction) of the townhouses upon the Lots and placed on the dividing line between the Lots shall constitute a "Party Wall" and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to all Party Walls within the Project. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners who make use of such Party Wall. If a Party Wall is destroyed or damaged by fire or other casualty, the provisions of Article VII hereof shall apply. Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes a Party Wall to be damaged shall bear the entire cost of furnishing repairs to the Party Wall. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

5. Form for Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot may describe the interest or estate involved substantially as follows:

"Lot No. _____ of the Empire Cove @ Millcreek, a Planned Unit Development and Subdivision, together with all improvements located thereon, as said Lot is identified in the Plat of said development recorded in the office of the Salt Lake County Recorder and in the Declaration of Covenants, Conditions and Restrictions of Empire Cove @ Millcreek, a planned unit development and subdivision, also recorded in the Office of Salt Lake County Recorder, State of Utah,

as Entry No. _____. TOGETHER WITH a right and easement of use and enjoyment in and to the Common Area described, as provided for and in the percentage shown, in said Declaration of Covenants, Conditions and Restrictions."

Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

6. Transfer of Title. The Declarant agrees to cause the conveyance to the Association of title to the Common Area free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities), upon the first conveyance of a Lot from Declarant to a third-party purchaser, or the formation of and filing of the incorporation documents of the association, whichever occurs last.

ARTICLE V. ASSESSMENTS

1. Agreement to Pay Assessments. The Declarant for each Lot owned by it within the Project and each Owner of any Lot by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article V. In any event, all Lots shall be allocated the then applicable assessments upon conveyance of the first Lot. Notwithstanding anything contained herein to the contrary, until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Twenty-five Dollars (\$25.00) per month. K.N.B. Holdings, L.L.C., further agrees to pay all assessments on behalf of all Lot Owners for a period of six (6) months from the date of the recording of this Declaration.

A. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year by up to fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership.

B. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above fifteen percent (15%) only by a vote of at least sixty-seven percent (67%) of the votes determined in accordance with Section 3 of Article III) of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

C. The Board may fix the annual assessment at an amount not in excess of the maximum.

2. Annual Assessments. Annual assessments shall be computed and assessed against all Lots in the Project as follows:

A. Common Expense. Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Area. Such estimated expenses may include, without limitation, the following: expenses of management; operation and maintenance costs of the roads; real property taxes and special assessments on the Common Area; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance of the Common Area, the entry fence and security gate, if any, landscaping; Common Area road maintenance and repair, snow removal or plowing; wages of Association employees, including fees for a Manager; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Area that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. The aggregate of all such items shall constitute the Common Expenses, and all funds received from assessments under this Section 2.A shall be part of the Common Expense Fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

B. Apportionment. Common Expenses shall be apportioned among and assessed to all Lots and their Owners in accordance with the number of votes allocated to each Lot, as set forth on **Exhibit "A"**, which is attached hereto and incorporated herein by this reference. The Declarant shall be liable for the amount of any assessments against Lots owned by it. Notwithstanding the foregoing, the Owner of Lot 9 shall not be assessed any amount for Common Area road maintenance, repair, snow removal or snow plowing, the assessment for such expenses shall be apportioned among the remaining Lots and their owners on a pro rata basis as set forth on **Exhibit "B"**.

C. Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin on the date of the conveyance of the first Lot by Declarant. On or before December 1 of each year thereafter, the Board of Trustees shall prepare and furnish to each Owner, or cause to be prepared and furnished to each owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

D. Notice and Payment. Except with respect to the first fiscal year, the Board of Trustees shall notify each Owner in writing as to the amount of the annual assessment against his or her Lot on or before December 1 each year for the fiscal year beginning on January 1 next following. Except as otherwise provided by the Board, each annual assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year shall be based upon such portion of the first fiscal year. All unpaid installments of any annual assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from fifteen (15) days after the date each such installment became due until paid. The Board of Trustees shall also have the right to assess a late fee of up to five percent (5%) of any assessment installment not paid within fifteen (15) days following the due date thereof. In addition, in the event that any installment of the annual assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the annual assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the annual assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate established by the Board not to exceed eighteen percent (18%) per annum from such date until paid in full. The failure of the Board of Trustees to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment.

E. Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board of Trustees may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Article V Section 3 below, except that the vote therein specified shall be unnecessary.

3. Special Assessments. In addition to the annual assessments authorized by this Article, the Board of Trustees may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of at least sixty-seven percent (67%) of the voting power of the Association in person or by proxy at a meeting called for such purpose, special assessments, payable over such periods as the Board of Trustees may determine, for the purpose of defraying, in whole or in part, the cost of any conversion, expansion, construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in accordance with the number of votes allocated to each Lot, as set forth on **Exhibit "A"**. Notice in writing of the amount of each such special assessment and the time for payment thereof shall be given promptly

to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

4. Uniform Rate of Assessment. The amount of any annual or special assessment against each Lot shall be fixed at a uniform rate based on the number of votes allocated to each Lot, as set forth on **Exhibit "A"**. Annual assessments may be collected on a monthly basis and special assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the special assessment.

5. Notice and Quorum for Any Action Authorized Under Sections 1 and 3. Written notice of any meeting called for the purpose of taking any action authorized under Sections 1 or 3 of this Article shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes (exclusive of suspended voting rights) of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6. Lien for Assessments. All sums assessed to Owners of any Lot within the Project pursuant to the Project pursuant to the provisions of this Article V, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Article V, the Board of Trustees may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Salt Lake County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. The Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot in the manner provided by Utah law for the foreclosure of mortgages or to foreclose the lien in substantially the same manner with respect to notices and publication, as power of sale foreclosure of deeds of trust. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessment against the Lot which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Trustees shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Lot in the name of the Association.

7. Personal Obligation of Owner. The amount of any annual or special assessment against any Lot shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Area or by abandonment of his Lot or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessment hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

8. Personal Liability of Purchaser. The personal obligation of an Owner to pay unpaid assessments against his Lot as described in Section 7 of this Article V shall not pass to successors in title unless assumed by them. Provided, however, a lien to secure unpaid assessments shall not be affected by the sale or transfer of the Lot unless foreclosure by a First Mortgagee is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

9. Reserves and Working Capital. In addition to its day-to-day operating funds, the Association shall establish the following funds:

A. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area the Association is obligated to maintain, repair or replace. The reserve fund shall be maintained out of regular assessments for Common Expenses.

B. Working Capital Fund. The Declarant shall establish and maintain for the Project, a working capital fund equal to at least two monthly installments of the annual assessment of each Lot. Each Lot's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Lot. Notwithstanding the foregoing, the contribution to the working capital fund for each unsold Lot shall be paid by the Declarant to the Association within sixty (60) days after the date of the conveyance of the first Lot in the Project. With respect to each Lot for which the Declarant pays the contribution to the working capital fund, Declarant shall be reimbursed for such contribution either by the purchaser of such Lot at the time of the closing of the sale to such purchaser or by the Association upon termination of the Declarant's control of the Association as described in Section 2 of Article III hereof, whichever is earlier. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the working capital fund are not to be considered advance payments of any regular assessment. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Owners. The Declarant shall not use the working capital

fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

10. Evidence of Payment of Annual and Special Assessments. Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or other person a written certificate stating (a) that all annual and special assessments (including interest, costs and attorneys' fees, if any, as provided in Section 2 above) have been paid with respect to any specified Lot as of the date of such certificate, or (b) if all annual and special assessments have not been paid, the amount of such annual and special assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Lot in question.

ARTICLE VI. OPERATION AND MAINTENANCE

1. Maintenance of Twinhomes. Each Lot and Twinhome shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Twinhome or Lot. The Association shall have no obligation regarding maintenance or care of Twinhome or Lots except as set forth in Section 2 of this Article VI or elsewhere in this Declaration.

2. Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Area as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive and generally in good condition and repair. The Association shall also provide for the maintenance of the entry fence and security gate, if any. The expenses incurred by the Association for such purposes shall be paid for with funds from the Common Expense Fund.

3. Insurance. The Association shall at all times maintain in force insurance which is consistent with FNMA's insurance coverage requirements and which meets the following minimum requirements:

A. Hazard Insurance. A "master" or "blanket" type policy of property insurance shall be maintained covering the Common Area.

B. Fidelity Bonds. The Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members, and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the

handling of funds to a Manager, the Manager shall provide "blanket" fidelity bonds, with coverage identical to such bonds required of the Association, for the Manger's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of fidelity bond coverage required shall be based upon the Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association, or the Manager, as the case may be, at any given time during the term of each bond. A lesser amount of fidelity insurance coverage is acceptable for the Project so long as the Association and the Manager adhere to the following financial controls: (1) the Association or the Manager maintains separate bank accounts for the working account and the reserve account, each with appropriate access controls, and the bank in which funds are deposited send copies of the monthly bank statements directly to the Association; (2) the Manager maintains separate records and bank accounts for each Association that uses its services and the Manager does not have authority to draw checks on or to transfer funds from the Association's reserve account; or (3) two members of the Board must sign any checks written on the reserve account. Nevertheless, in no event may the amount of such bonds be less than the sum equal to three months' aggregate assessments on all Lots. The bonds required shall meet the following additional requirements: (1) the fidelity bonds shall name the Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Association as part of the Common Expenses; and (4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association, to any Insurance Trustee, and to each servicer of loans on behalf of FNMA.

C. Liability Insurance. The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Area, public ways in the Project, including all other areas of the Project that are under the Association's supervision. The coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Area, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to (where economically feasible and if available). If such policy does not include "severability of interest" in the terms, the policy

shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least twenty (20) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

D. Insurance Trustees and General Requirements Concerning Insurance. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "**Insurance Trustee**"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

Each insurance policy maintained pursuant to the foregoing Sections, shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Board, the Association, FNMA, or the designee of FNMA; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Association, an Owner, or FNMA) from collecting insurance proceeds. The provisions of this Section E and of the foregoing sections A, B, C and D shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

F. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project which may have

been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

ARTICLE VII. DAMAGE OR DESTRUCTION

1. Association as Attorney-in-Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Common Area of the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

2. Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the Common Area of the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Twinhome and the Common Area having substantially the same vertical and horizontal boundaries as before.

3. Procedure. In the event all or any part of the Common Area of the Project is damaged or destroyed, the Association shall proceed as follows:

A. Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Common Area of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Common Area of the Project damaged or destroyed.

B. Sufficient Insurance. If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

C. Insufficient Insurance--Less than Seventy-Five Percent (75%) Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Common Area of the Project and if less than seventy-five percent (75%) of the Common Area of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a special assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such special assessment shall be allocated and collected as provided in Article V Section 3 hereof, except that the vote therein specified shall be unnecessary.

Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

D. Insufficient Insurance--Seventy-Five Percent (75%) or More Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Common Area of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Owners entitled to vote at least seventy-five percent (75%) of the votes of the Members vote to carry out such repair and reconstruction. If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the votes of the Members to carry out such repair and reconstruction but rather elect to terminate the Project and if Eligible Mortgagees who represent at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by Eligible Mortgagees approve such termination, the Association shall record in the office of the County Recorder of Salt Lake County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

(i) the Common Area of the Project shall be deemed to be owned in common by the Owners;

(ii) Each Owner shall own an undivided interest in the Common Area of the Project equal to such Owner's Common Expense allocation percentage as set forth on **Exhibit "A"**;

4. Amendment of Article. This Article VII shall not be amended unless Owners entitled to vote at least seventy-five percent (75%) of the votes of the Members consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Board of Trustees of the Association and recorded in accordance with the provisions of this Declaration.

ARTICLE VIII. CONDEMNATION

1. Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Lot or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Trustees shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee who has requested in writing notice thereof. The Association shall represent the Owners in any condemnation

proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

2. Proceeds. All compensation, damages and other proceeds from any taking of the Common Area of the Project by power of eminent domain (hereinafter "**Condemnation Award**") shall be made payable to the Association and shall be distributed by the Board of Trustees, on behalf of the Association as herein provided.

3. Complete Taking. In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners and the Owners shall divide the Condemnation Award based upon the relative values of the Lots and Twinhomes immediately prior to the condemnation. Such distribution shall be made by check payable joint to the respective Owners and their respective Mortgagees, as appropriate.

4. Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

A. Allocation of Award. As soon as practicable, the Board of Trustees shall, on behalf of the Association, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages or other proceeds and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Area shall be allocated among and distributed to all Owners (including Owners whose entire Lots have been taken).

(ii) The total amount apportioned to severance damages shall be allocated among and distributed equally to the Owners of those Lots that have not been taken.

(iii) The respective amounts apportioned to the taking of or injury to a particular Lot shall be allocated and distributed to the Owner of such Lot.

(iv) The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

(vii) No provision of this Article VIII or any other provision of this Declaration, the Articles or the Bylaws shall entitle the Owner of a Lot or other party to priority over any First Mortgagee holding such Lot with respect to the distribution to such Lot of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

B. Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows:

(i) If any partial taking results in the taking of an entire Lot, then the Owner thereof shall cease to be a member of the Association and all voting rights shall terminate;

(ii) If any partial taking results in the taking of a portion of a Lot, the voting rights appertaining to such Lot shall continue.

(iii) If any partial taking results in the taking of a portion of a Lot and if there is a determination made by the Board of Trustees, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Lot, then all voting rights terminate and the remaining portion of such Lot shall thenceforth be part of the Common Area;

(iv) The Board of Trustees, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section VIII. 4.B; provided, however, that if any such determination shall have been or such action take by judicial decree, the Board of Trustees shall defer thereto and proceed in accordance therewith.

C. Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article VII hereof for cases of Damage or Destruction; provided, however, that the provisions of said article dealing with sufficiency or insufficiency or insurance proceeds shall not be applicable.

ARTICLE IX. TERMINATION

1. Required Vote. Except as otherwise provided in Article VII and Article VIII, the Project may be terminated only by agreement of Owners entitled to vote at least sixty-seven percent (67%) of the votes attributable to all Lots.
2. Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by Eligible Mortgagees who represent at least sixty-seven percent (67%) of the votes of Lots subject to First Mortgages held by Eligible Mortgagees. Such approval (and any other approval related to an amendment to this Declaration) shall be deemed given when an Eligible Mortgagee fails to submit a response within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in Salt Lake County, Utah and is effective only on recordation.
3. Sale of Project. A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
4. Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 1 and 2. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees, based on the assessment percentages set forth on **Exhibit "A"**. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Lot in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.
5. Proceeds of Sale. Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, Mortgagees holding Mortgages on the Lots which were recorded before termination may enforce those liens in the same manner as any lienholder.

ARTICLE X. GENERAL USE RESTRICTIONS

1. Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interest of the Owners.
2. Use of Common Area. The Common Area shall be used only in a manner consistent with their community nature and with the rules, regulations and use restrictions applicable to Lots and Twinhomes. No admission fees, charges for use, leases, or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Area.
3. Use of Lots and Twinhomes. All Lots are improved with Twinhomes and are restricted to such use. Each Twinhome shall be used only as a single-family residence. No Lot or Twinhome shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Lot, so as to create a nuisance or interfere with the rights of any Owners, or in any way which would result in an increase in the cost of any insurance covering the Common Area or Twinhomes.
4. Exception for Declarant. Notwithstanding the restrictions contained in this Article X, for the five (5) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Declarant shall have the right to use any Lot or Twinhome owned by it, and any part of the Common Area reasonably necessary or appropriate, in furtherance of any activities designed to accomplish or facilitate improvement and sale of all Lots owned by Declarant. Declarant shall have the right to maintain one or more sales offices and model Twinhomes. Such offices and model Twinhomes may be located in any Twinhome owned or leased by Declarant, or in one or more separate structures or facilities placed upon the Property for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. Declarant shall also have the right to maintain a reasonable number of promotional, advertising, or directional signs, banners, or similar devices at any place or places on the Property. Declarant shall have the right from time to time to locate or relocate any of its sales offices, model Twinhomes, signs, banners or similar devices.
5. Leases. Any lease agreement between an Owner and a lessee respecting a Lot or Twinhome shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such lease agreements shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his Lot or Twinhome. An Owner shall be responsible and liable for any damage to the Project caused by its tenant.
6. Easements. Easements for installation and maintenance of utilities are reserved as shown on the Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of

utilities. Easements for the installation and maintenance of utilities are also reserved within each Twinhome. It is contemplated that telephone, gas, electricity and other utilities may originate in one Twinhome and terminate in another Twinhome. A right of access to all such utilities is reserved to the Association and to all utility suppliers.

7. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render any part of the Property unsanitary or unsightly or which would be offensive or detrimental to any other part of the Property or to the occupants thereof. No noise or other nuisance shall be permitted to exist or operate upon any part of the Property so as to be offensive or detrimental to any other part of the Property, or to the occupants thereof. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on the Property without the prior written approval of the Board. Household pets shall be permitted in the Project so long as their keeping complies with all applicable zoning, nuisance and health ordinances. Pets shall, at all times, be kept on the Property of their respective owners and shall not be permitted to roam upon the property of other Owners or to be upon the Common Areas unless leashed. Any pet which, upon a vote of a majority of the Owners, is found to be a nuisance or danger, shall be removed from the Property by its owner within 14 days of receipt of Notice by the Owners Association.

8. Temporary and Other Structures. No structures of a temporary nature, trailer, basement house, tent, shack, shed, garage, barn or other outbuildings shall be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on the Property at any time. No old or secondhand structures shall be moved onto any Lot, it being the intention hereof that all Twinhomes erected and maintained on Lots or within the Property shall be new construction of good quality, workmanship and material.

9. Unsightly Articles. No unsightly articles shall be permitted to remain on or near a Lot so as to be visible from any other Lot or the Common Area. Without limiting the generality of the foregoing, trailers, mobile homes, trucks other than pickups, boats, tractors, vehicles other than automobiles, campers not on a truck, snowmobiles, snow removal equipment and garden or maintenance equipment shall be kept at all times, except when in actual use, in an enclosed structure or screened from view. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Lot except within an enclosed structure or when appropriately screened from view.

10. No Further Subdividing. No Lot or Common Area may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Association; provided, however, that nothing herein shall

be deemed to prevent or require the approval of the Association for the transfer or sale of any Lot or Twinhome to more than one person to be held by them as tenants in common, joint tenants, or otherwise.

11. Signs. No sign of any kind shall be displayed to the public view without the approval of the Association, except such signs as may be used by Declarant in connection with the development of the Project and the sale of Twinhomes and/or Lots and except such signs of customary and reasonable dimensions as may be displayed on a Lot advertising a Lot or Twinhome for sale or lease. Display of any "for sale" or "for lease" sign more than three (3) feet by two (2) feet shall require the prior written approval of the Association. A residential identification sign is permitted but should not exceed one (1) square foot in surface area. Numbers on residences shall be located in a position clearly legible from the street.

12. No Hazardous Activities. No activities shall be conducted on the Property and no improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires nor incinerators shall be lighted or permitted on the Property except in a contained barbecue Lot while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

13. Repair of Buildings. No improvement upon the Property shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof or the Association as applicable.

14. Improvements and Alterations. There shall be no excavation, construction or alteration which in any way alters the exterior appearance of any improvement within the Property nor removal of any Twinhome or other improvement within the Property (other than repairs or rebuilding) without the prior written approval of the Association.

15. Rooftop Antennas. No television, ham radio, citizens band or radio antenna, satellite receiving or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any Lot or elsewhere if exposed to view from any other Lot. Such antennas, if used, must be of the type that are installed within the natural building structure an 18" or mini satellite dish may be installed on a twinhome or Lot subject to prior approval of the Association with respect to its location and placement. In no case will any such receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of any neighboring Lot Owner's premises or home entertainment facilities or equipment. Provided, however, Declarant and the Association reserve the right and option to install cable service lines and antennas as needed throughout the Project in connection with its development.

16. Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made unless and until the plans and specifications showing the color, nature,

kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Board.

17. General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Lots, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Lot.

ARTICLE XI. MORTGAGEE PROTECTION

1. Notice of Action. Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and Lot number or address of the Twinhome, any such First Mortgage, insurer or governmental guarantor shall be entitled to timely written notice of:

A. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;

B. Any delinquency in the payment of assessments or charges owed by an Owner, whose Lot is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

D. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 2 below or elsewhere herein.

2. Matters Requiring Prior Eligible Mortgagee Approval. Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Lots in the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on Lots having at least fifty-one percent (51%) of the votes of the Lots subject to First Mortgages held by Eligible Mortgagees shall be required to:

A. Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs.

B. Add or amend any material provision of the Declaration, Articles, Bylaws or Plat, which establishes, provides for, governs or regulates any of the following (an addition

or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

- (i) voting rights;
- (ii) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (iii) reductions in reserves for maintenance, repair, and replacement of Common Area;
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interests in the Common Area, or rights to their use;
- (vi) redefinition of any Lot boundaries;
- (vii) convertibility of Lots into Common Area or vice versa;
- (viii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;
- (ix) hazard or fidelity insurance requirements;
- (x) imposition of any restrictions on the leasing of Lots and Twinhomes;
- (xi) imposition of any restrictions on Owner's right to sell or transfer his or her Lot or Twinhome;
- (xii) a decision by the Association to establish self-management if professional management had been required previously by the Declaration or by an Eligible Mortgagee.
- (xiii) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or
- (xiv) any provisions that expressly benefit Mortgagees, insurers, or guarantors.

Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have

approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

3. Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Lots in the Project. Generally, these documents shall be available during normal business hours.

The Association shall make an audited financial statement for the preceding fiscal year (if the Project has been established for a full fiscal year) available to the holder, insurer, or guarantor of any First Mortgage on submission of a written request for it. The audited financial statement shall be made available within 120 days of the Association's fiscal year-end.

4. Subordination of Lien. The lien or claim against a Lot for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Lot if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Lot shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Lot affected or previously affected by the First Mortgage concerned.

5. Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Area are not timely paid, or in the event the required hazard insurance described in paragraph A of Section 4 of Article VI lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

6. Priority. No provision of this Declaration or the articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots or the Common Area.

ARTICLE XII. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as an Owner, at the latest address for such person, appearing in the records of the Association at the time of mailing.

2. Term. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of forty (40) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by seventy-five percent (75%) of the votes of the Members cast at an election held for such purpose or otherwise approved in writing by such Members within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.

3. Amendment. Except as provided in Article XII and elsewhere in this Declaration, any amendment to this Declaration shall require the affirmative vote or written approval of at least sixty-seven percent (67%) of the total votes of the Association. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the office of the Salt Lake County Recorder of an instrument executed by the Association. In such instrument an officer or Trustee of the Association shall certify that the vote required by this Section for amendment has occurred. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of the Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an amendment duly signed by or on behalf of the authorized officers of Declarant with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control. Within ten (10) years from the date of recording the Declaration, and so long as the Declarant is the Owner of any Lot in the Project, this Declaration may be amended or terminated only with the written approval of the Declarant.

4. Rights of Action. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association.

5. Declarant's Rights Assignable. The rights of Declarant under this Declaration or in any way relating to the Property may be assigned, whereupon the assignee of Declarant shall have all the rights of Declarant hereunder.

6. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof. This Declaration shall be liberally construed to effect all of its purposes.

7. Covenants to Run With Land. This Declaration and all of the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Lot or in the Common Area, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Lot or Twinhome shall comply with, and all interests in all Lots or in the Common Area shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments and determinations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Area, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

8. Lists of Owners and Eligible Mortgagees. The Board shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Lot which is owned by him; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Lot which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an insurer or governmental guarantor, the address of such person or entity, and the Lot which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Board may for all purposes act and rely on the information concerning Owners and Lot ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Lot or Lots which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an Owner shall be deemed to be the address of the Lot owned by such person unless the Board is otherwise advised.

9. Effective Date. This Declaration and any amendment or supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

K.N.B. HOLDINGS, L.L.C.

By: Kirk Blossch
Its: Manager

Barbara E. Tew
Barbara E. Tew

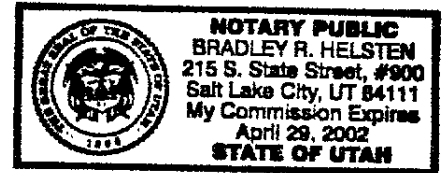
Nellie J. Morgan
Nellie J. Morgan

STATE OF UTAH)
:SS.
COUNTY OF SALT LAKE)

On this 30 day of October, 1998, personally appeared before me, Kirk Blossch, the signer of the above instrument, who duly acknowledged to me that he executed the same in the capacity indicated.

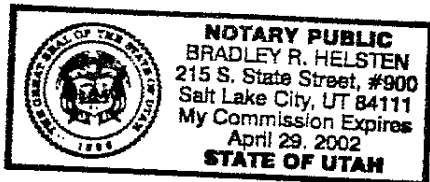
Bradley R. Helsten
NOTARY PUBLIC

STATE OF UTAH)
:SS.
COUNTY OF SALT LAKE)



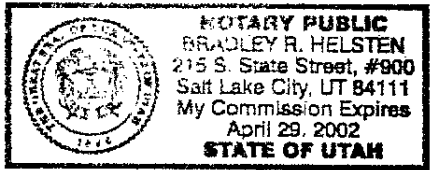
On this 30 day of October, 1998, personally appeared before me, Barbara E. Tew, the signer of the above instrument, who duly acknowledged to me that she executed the same in the capacity indicated.


Bradley R. Helsten
NOTARY PUBLIC



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

On this 20 day of October, 1998, personally appeared before me, Nellie J. Morgan, the signer of the above instrument, who duly acknowledged to me that she executed the same in the capacity indicated.





NOTARY PUBLIC

EXHIBIT "A"

List of Lots, Votes and Assessment Percentages

<u>Lot</u>	<u>Votes</u>	<u>Assessment Percentages</u>
1	1	.91
2	1	.91
3	1	.91
4	1	.91
5	1	.91
6	1	.91
7	1	.91
8	1	.91
9	1	.91
10	1	.91
11	1	.91

EXHIBIT "B"

List of Lots, Votes and Assessment Percentages

<u>Lot</u>	<u>Votes</u>	<u>Assessment Percentages</u>
1	1	10%
2	1	10%
3	1	10%
4	1	10%
5	1	10%
6	1	10%
7	1	10%
8	1	10%
10	1	10%
11	1	10%

**BYLAWS OF
EMPIRE COVE OWNERS ASSOCIATION, INC.**

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**BYLAWS OF
EMPIRE COVE OWNERS ASSOCIATION, INC.**

ARTICLE ONE

Name and Location

The name of the corporation is Empire Cove Owners Association, Inc., ("**Association**"). The principal office of the Association shall be located at 2081 South Lakeline Drive, Salt Lake City, Utah 84109, but the meetings of Members and Trustees may be held at such places in Salt Lake County, State of Utah, as may be designated by the Board of Trustees.

ARTICLE TWO

Application of Bylaws

All present and future owners, mortgagees, lessees and occupants of any Lot or twin home and any other persons who may use the facilities or the Project in any manner are subject to these Bylaws, the Declaration of Covenants, Conditions and Restrictions of Empire Cove @ Millcreek, a Planned Unit Development and Subdivision ("**Declaration**") and all rules made pursuant hereto and any amendments hereof. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Lot or twin home shall constitute an agreement that the provisions of the Declaration and these Bylaws and any rules and regulations made pursuant hereto, as they may be amended from time to time, are accepted, ratified and will be complied with. Certain capitalized terms in these Bylaws shall be defined in accordance with the definition for such terms set forth in the Declaration.

ARTICLE THREE

Meetings of Members

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular meeting of the Members shall be held on the second Tuesday of each January, at the hour of 7:00 o'clock p.m. at the Project or some reasonable location in Salt Lake County, Utah or on such other annual date and time fixed by the Board of Trustees. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Trustees, or upon written request of the Members who are entitled to vote twenty-five percent (25%) of all of the votes of the membership.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary of the Association or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, sixty percent (60%) or more of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If, however, such a quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Voting. At all meetings of Members, each Member may vote in person or by proxy.

Section 6. Action Taken Without a Meeting. Any action that may be taken at any regular or special meeting of the Association may be taken without a meeting if the following requirements are met:

6.1 A written ballot is distributed to every Member entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal and providing a reasonable time for the Member to return the ballot to the Association.

6.2 The number of votes cast by ballot within the specified time under Subparagraph 6.1 equals or exceeds the quorum required to be present at a meeting authorizing the action.

6.3 The number of approvals of the action equals or exceeds the number of votes required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot.

6.4 The written ballot distributed to Members affords an opportunity for the Member to specify a choice between approval and disapproval of each order of business proposed to be acted upon by the Association and further provides that the vote of the Members shall be cast in accordance with the choice specified.

Section 7. Proxies. At each meeting of the Members, each Member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member

himself or by his attorney thereunto duly authorized in writing. The instrument authorizing the proxy to act shall meet the requirements set forth in Subparagraph 6.4 above and shall indicate the name of the secretary of the Association, or such other officer or person or who may be acting as the secretary at the meeting to whom the proxy is to be given for the purpose of casting the vote to reflect the absent Member's vote as specified in the form of proxy. If a Lot is jointly held, the instrument authorizing a proxy to act must have been executed by all Owners of such Lot or their attorneys thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

ARTICLE FOUR

Board of Trustees, Selection, Term of Office

Section 1. Number. The affairs of this Association shall be managed by a Board of at least three (3) but no more than seven (7) trustees, who need not be Members of the Association.

Section 2. Term of Office. At the first annual meeting the Members shall elect at least one trustee for a term of one (1) year, at least one trustee for a term of two (2) years, and at each annual meeting thereafter the Members shall elect replacement trustees for a term of two (2) years.

Section 3. Removal. Any trustee may be removed from the Board of Trustees, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a trustee, his successor shall be selected by the remaining Members of the Board of Trustees and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No trustee shall receive compensation for any service he may render to the Association. However, any trustee may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The trustees shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the trustees. Any action so approved shall have the same effect as though taken at a meeting of the trustees.

ARTICLE FIVE

Nomination and Election of Trustees

Section 1. Nomination. Nomination for election to the Board of Trustees shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting. The nominating committee shall consist of a Chairman, who shall be a member of the Board of Trustees,

and two (2) or more Members of the Association. The nominating committee shall be appointed by the Board of Trustees prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the Board of Trustees as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.

Section 2. Election. Election to the Board of Trustees shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE SIX

Meeting of Trustees

Section 1. Regular Meetings. The Board of Trustees shall hold a regular meeting at least quarterly, without notice, at such place and hour as may be fixed from time to time by resolution of the Board of Trustees. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Trustees shall be held when called by the President of the Association, or by any two (2) trustees, after not less than three (3) days notice to each trustee.

Section 3. Quorum. A majority of the number of trustees shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the trustees present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Trustees.

ARTICLE SEVEN

Powers and Duties of the Board of Trustees

Section 1. Powers. The Board of Trustees shall have power to:

1.1 Adopt and publish rules and regulations governing the use of the Common Areas, and the personal conduct of the Members and their guests thereon, and to establish penalties of the infraction thereof;

1.2 Suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association.

Such rights may also be suspended after notice and an opportunity for hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

1.3 Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles, or the Declaration;

1.4 Declare the office of a member of the Board of Trustees to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Trustees; and

1.5 Employ a Manager, an independent contractor, and such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Trustees to:

2.1 Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote;

2.2 Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

2.3 As more fully provided in the Declaration, to:

2.3.1 Fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

2.3.2 Send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

2.3.3 Foreclose at its discretion the lien against any Lot for which assessments are not timely paid and/or to bring an action at law against the Owner personally obligated to pay the same.

2.4 Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Trustees for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

2.5 Procure and maintain adequate liability and hazard insurance on property owned by the association, and adequate officers and trustees indemnity insurance, and all other insurance required by the Declaration;

2.6 Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

2.7 Cause the Common Areas and the common elements to be maintained;

2.8 Permit First Mortgagees of Lots in the Project to pay taxes or other charges which are in default and which may or have become a charge against the Common Areas of the Association, and such First Mortgagees may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such property, and such First Mortgagees, upon making such payments, shall be owed immediate reimbursement therefor from the Association;

2.9 Assess and collect all assessments referred to or authorized in the Declaration.

ARTICLE EIGHT

Officers and Their Duties

Section 1. Enumeration of Officers. The officers of this Association shall be a President and Vice President, who shall at all times be Members of the Board of Trustees, a Secretary, and a Treasurer, and such other officers as the Board of Trustees may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Trustees following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board of Trustees and each shall hold office for one (1) year or until his or her successor is elected and has qualified, unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board of Trustees may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the board of Trustees may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Trustees. Any officer may resign at any time by giving written notice to the Board of Trustees, the President or the Secretary. Such resignation shall take effect on the

date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Trustees. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President:

The President shall preside at all meetings of the Board of Trustees; shall see that orders and resolutions of the Board of Trustees are carried out; shall sign all leases, mortgages, promissory notes, checks, deeds and other written instruments.

Vice President:

The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary:

The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board.

Treasurer:

The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Trustees; shall, together with the President, sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit or review of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and statement of income and expenditures, and deliver a copy of each to the Members.

ARTICLE NINE

Indemnification of Officers and Trustees

The Association shall provide any indemnification required or permitted by the laws of Utah and shall indemnify trustees, officers, agents and employees as follows:

Section 1. Third Party Litigation. The Association shall indemnify any trustee or officer of the Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceedings, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was such trustee or officer or an employee or agent of the Association, or is or was serving at the request of the Association as a trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. Association Litigation. The Association shall indemnify any trustee or officer of the Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was such a trustee or officer of an employee or agent of the Association, or is or was serving at the request of the Association as trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought, or any other court having jurisdiction in the premises, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which such court shall deem proper.

Section 3. Expenses. To the extent that a trustee or officer of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or 2 of this Article Nine, or in defense of any claim, issue, or matter therein, he shall be

indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith, without the necessity for the determination as to the standard of conduct as provided in Section 4 of this Article Nine.

Section 4. Determination of Right to Indemnity. Any indemnification under Section 1 or 2 of this Article Nine (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the trustee or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1 or 2 of this Article Nine. Such determination shall be made (i) by the Board of Trustees of the Association by a majority vote of a quorum consisting of trustees who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable, and such a quorum of disinterested trustees so directs, by independent legal counsel (who may be regular counsel for the Association) in a written opinion; and any determination so made shall be conclusive.

Section 5. Advance of Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized in the particular case, upon receipt of an undertaking by or on behalf of the trustee or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article Nine.

Section 6. Other Indemnification Rights. Agents and employees of the Association who are not trustees or officers of the Association may be indemnified under the same standards and procedures set forth above, in the discretion of the Board of Trustees of the Association.

Section 7. Benefitted Parties. Any indemnification pursuant to this Article Nine shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a person who has ceased to be a trustee or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person,

ARTICLE TEN

Committees

The Association shall appoint a nominating committee, as provided in these Bylaws. In addition, the Board of Trustees shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE ELEVEN

Books and Records

Section 1. Accounting.

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

1.2 At the close of each fiscal year, the books and records of the Association shall be reviewed by an independent public accountant approved by the Association, and financial statements shall be audited by said accountant and distributed to all Owners.

Section 2. Inspection of Records. The membership register, books of account and minutes of meetings of the Association, of the Board of Trustees and of committees of the Board of Trustees and all other records of the Project maintained by the association or Manager shall be made available for inspection and copying by any member of the Association or his duly appointed representative at any reasonable time and for a non-commercial purpose reasonably related to his interest as a Member, at the office where the records are maintained. Upon receipt of an authenticated written request from a Member along with the fee prescribed by the board of Trustees to defray the costs of reproduction, the Manager or other custodian of records of the Association shall prepare and transmit to the Member a copy of any and all records requested. The Board of Trustees shall establish reasonable rules with respect to:

2.1 Notice to be given to the custodian of the records by the Member desiring to make the inspection;

2.2 Hours and days of the week when such an inspection may be made; and

2.3 Payment of the cost of reproducing copies of documents requested by a Member.

Every member of the Board of Trustees, subject to the conditions set forth above, shall have the absolute right at any reasonable time to inspect and make copies of all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association.

ARTICLE TWELVE

Assessments

All assessments shall be made in accordance with the general provisions of Article V of the Declaration. The Treasurer shall keep detailed records of all receipts and expenditures, including

expenditures affecting the Project, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred. Such records shall be available for examination by the Owners during regular business hours. In accordance with the actions of the Board of Trustees in assessing Common Expenses against the Lots and Owners, the Treasurer shall keep an accurate record of such assessments and of the payments thereof by each Owner.

ARTICLE THIRTEEN

Corporate Seal

The Association may, but shall not be obligated to, have a seal in circular form having within its circumference the words: "Empire Cove Owners Association, Inc.", or in lieu thereof the word "SEAL" may be placed adjacent to the signature of an authorized officer of the Association.


ARTICLE FOURTEEN


Amendments

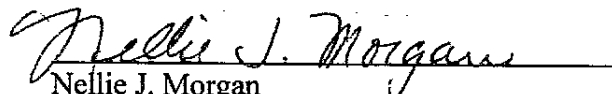
Section 1. Amendment Procedure. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of the Members present in person or by proxy.

Section 2. Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

IN WITNESS WHEREOF, we, being all of the originals trustees of Empire Cove Owners Association, Inc., have hereunto set our hands this 30 day of OCTOBER, 1998.


Kirk Blusch


Barbara Tew


Nellie J. Morgan

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Empire Cove Owners Association, Inc., a Utah non-profit corporation; and

That the foregoing Bylaws constitute a true and correct copy of the original Bylaws of said Association, as duly adopted at a meeting of the Board of Trustees thereof, held on the 30 day of October, 1998.

IN WITNESS WHEREOF, I have hereunto subscribed my name of the Association this 30 day of October, 1998.

EMPIRE COVE OWNERS
ASSOCIATION, INC.

By: *Kurt Blosser*
Its: Secretary