

DECLARATION OF CONDOMINIUM

OF THE

NEWPORT HEIGHTS CONDOMINIUM

A UTAH CONDOMINIUM PROJECT

*Newport Heights Condo Plat  
Units 1-8 incl  
01-155-1st #13*

This Declaration of Condominium, hereinafter referred to as the "Declaration," is made and executed this 25th day of June, 1986, by Leon Peterson and Karen F. Peterson, and FPSA INVESTMENT, LTD. hereinafter referred to jointly as the "Declarant."

RECITALS

A. Description of Land. The Declarant is the owner of the following described parcel of land, hereinafter referred to as the "Land," which is located in the County of Davis, State of Utah.

(See Schedule 1 attached hereto and incorporated by this reference.)

B. Building and Improvements. The Land contains certain buildings and other improvements as shown on the Map referred to below.

C. Intent and Purpose. The Declarant intends by recording this Declaration and the Map to submit the land, the buildings and all other improvements situated in or upon the land to the provisions of the Utah Condominium Ownership Act. Utah Code Ann., Section 57-8-1, et. seq. (hereinafter referred to as the "Condominium Act") as a fee simple Condominium project and to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of all Condominiums within said project and the Owners thereof. As more fully set forth in Article II hereof, Declarant reserves the right to submit an additional parcel of land and the improvements thereon to the provisions of the Act and the restrictions and rights granted by this Declaration at a later date.

NOW WHEREFORE, the Declarant does hereby make the following declaration:

ARTICLE I

DEFINITION

1.01. Definition of Terms. Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.

1.02. "Association" shall mean Newport Heights Condominium Owners Association, a Utah nonprofit corporation, organized to be the Association referred to herein.

**RETURNED**

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1.03. "Board of Trustees" shall mean the governing board of management committee of the Association, appointed or elected in accordance with the Declaration and in accordance with the Articles of Incorporation and Bylaws of Newport Heights Condominium Owners Association, attached hereto as Exhibit "C" and Exhibit "D" respectively, and incorporated by this reference.

1.04. "Building" shall mean one of the buildings in the project containing one or more Units as shown on the Map.

1.05. "Common Areas" shall mean all physical portions of the project, except all Units but including all Limited Common Areas and shall include all portions of the project not expressly reserved by the provisions of this declaration to the exclusive use of less than all the Owners and shall include:

(a) the real property and interest in real property which this Declaration submits to the terms of the Act, including the entirety of the tract of land but excluding individual Units;

(b) all Common Areas and Facilities designated as such in the Map.

(c) all foundations, roofs, and lobbies constituting a portion of or included in the Project and any halls, corridors, stairs, stairways, entrances, and exits which are designed for the use of more than one unit.

(d) all equipment existing for common use, outdoor lighting, fences, landscaping, sidewalks, open parking spaces and roads.

(e) all other parts of the Project not specifically included within the individual Units.

1.06. "Common Expense Fund" shall mean the fund created or to be created pursuant to the provisions of Article IX of this Declaration and into which all monies of the Association shall be deposited.

1.07. "Common Facilities" shall mean all furniture, furnishings, equipment, facilities, and other property (real, personal, or mixed) and interests therein at any time leased, acquired, owned, or held by the Association for the use and benefit of the Owners and all other property hereafter purchased in accordance to this Declaration with monies from the Common Expense Fund. Common Facilities shall be deemed to be part of the Common Areas, except to the extent otherwise expressly provided in this Declaration.

1.08. "Condominium" shall mean a Unit and the undivided interest (expressed as a percent of the entire Ownership interest) in Common Areas appurtenant to such Unit, as set forth in Exhibit "A" attached hereto and by this reference made a part hereof.

1.09. "First Mortgagee" shall mean a mortgagee which is a bank, savings and loan association, mortgage company, or other entity which has a first mortgage lien on any Condominium in the Project.

1.10. "FHLMC" shall mean the Federal Home Loan Mortgage Corporation.

1.11. "FNMA" shall mean the Federal National Mortgage Association.

1.12. "Limited Common Areas" shall mean any Common Areas designated as reserved for use of a certain Unit or Units to the exclusion of the other Units in the Project. Structural separations between Units of the space which would be occupied by such structural separations may become Limited Common Areas for the exclusive use of the Owner or Owners of the Units on either side thereof as provided in Section 4.03 hereof. Any balconies, porches, parking stalls, or storage facilities that are identified on the Map with the same number or other designation by which a Unit is identified shall be Limited Common Areas for the exclusive use of the Owner of the Unit bearing the same number or designation.

1.13. "Manager" shall mean the person, firm or company, if any, designated from time to time by the Association to manage the affairs of the Association and the Project.

1.14. "Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

1.15. "Mortgagee" shall mean (i) any persons or entities named as the beneficiary under any mortgage or deed of trust by which the interest of any Owner is encumbered, (ii) any successor to the interest of such person or entity, or (iii) any insurer or guarantor of such person or entity under such mortgage or deed of trust.

1.16. "Mortgage Servicer" shall mean a Mortgagee who services any mortgage or deed of trust on any individual Condominium in the Project on behalf of FHLMC and/or FNMA.

1.17. "Owner" shall mean the person or persons, including the Declarants, owning in fee simple a Condominium in the Project, as such ownership is shown by the records of the County Recorder of Davis County, State of Utah. The term "Owner" shall not refer to any Mortgagee or to any person or persons purchasing a Condominium under contract until such contract is fully performed and legal title conveyed of record.

1.18. "Phase II" AND/OR "PHASE III" shall mean the real property located in Davis County, State of Utah, and more particularly described in Schedule 2, attached hereto and by this reference made a part hereof. Legal descriptions of the respective real property in "Phase II" and/or "Phase III" are set forth in the Declaration solely for purposes of identification. This Declaration is not intended as and should not be deemed to constitute a lien, encumbrance, restriction or limitation upon any

portion of "Phase II" and/or "Phase III" unless and until such portion is submitted to the Project in accordance with law and the provisions hereof, specifically Paragraphs 2.02 through 2.05 hereof.

1.19. "Project" shall mean the Land, the buildings, and the improvements submitted by this Declarant according to the provisions of the Condominium Act including any land, buildings and improvements which may hereafter be submitted by Declarant pursuant to the provisions of Paragraphs 2.02 through 2.05 hereof.

1.20. "Unit" shall mean an individual air space unit, consisting of enclosed rooms occupying part of a building and bounded by the unfinished interior surfaces of the walls, floors, ceilings, windows, and doors along the perimeter boundaries of the air space, as said boundaries are shown on the Map, together with all fixtures and improvements therein contained. Paint and other wall, ceiling, or floor coverings on interior surfaces shall be deemed to be part of the Unit. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or for the use and enjoyment of another Unit: Bearing walls, floors, ceilings, and roof (except the interior surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires, and other utility installations, except the outlets thereof when located within the Unit. The interior surfaces of a window or door means the points at which such surfaces are located when the window or door is closed.

## ARTICLE II

### SUBMISSIONS AND DIVISION OF PROJECT

2.01. Submission to Condominium Act. The Declarant hereby submits the Land, the Buildings, and all other improvements now or hereafter made in or upon the Land described in schedule 1 to the provisions of the Condominium Act. All of said property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used and improved as a fee simple Condominium Project to be known as Newport Heights Condominium, a Utah Condominium Project. All of said property is and shall be subject to the covenants, conditions, restrictions, uses, limitations, and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of said property and division thereof into Condominiums; further, each and all of the provisions hereof shall be deemed to run with the Land and shall be a burden and a benefit on the Land and shall be binding upon the Declarant, its successors and assigns, and to any person acquiring, leasing, or owning an interest in the real property and improvements comprising the project, and to their respective persons, representatives, heirs, successors, and assigns.

2.02. Division into Condominiums. The Project is hereby divided into Condominiums, each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Areas as set forth in Exhibit

A attached hereto (which undivided interest may be reduced by amendment at any time pursuant to the provisions of paragraphs 2.02 through 2.05 hereof.

2.03. Submission of Phase II and/or Phase III. Declarant hereby reserves the absolute right and option to expand the Project at any time by adding to the project the lands described as Phase II and/or Phase III, any portion or portions thereof in any order or sequence. Notwithstanding any provision of the Act or this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Owner, Mortgagee, Eligible Mortgagee or Eligible Insurer or Guarantor). Any such portion of land shall be deemed added to the Project at such time as a supplement to this Declaration and to the Survey Map containing the information required by the Act has been recorded with respect to the portion of the additional land concerned.

2.04. Rights and Statements Respecting Phase II and/or Phase III. No assurances are made as to the location of improvements or the creation of limited common areas in the additional Phases. Assuming the entirety of Phase II and/or Phase III, are added to the Project, the maximum number of Units for the entire Project shall be 28 Units (8 maximum for Phase II and 12 maximum for Phase III). Each Unit created on any portion of Phase II and/or Phase III, shall be subject to each and every requirement set forth in this Declaration respecting Units initially covered by this Declaration and shall be compatible with existing structures including quality of construction. All land, buildings, improvements and equipment which are submitted with Phase II and/or Phase III as shown on the Survey Map shall be subject to the provisions of this agreement respecting Common Areas.

2.05. Procedure for Expansion. The supplements to this Declaration and to the Survey Map by which additions to the Project of the Phase II and/or Phase III lands shall be accomplished shall be executed by the Declarant, shall be in recordable form, must be filed for record in the office of the Davis County Recorder, State of Utah, on or before five (5) years from the date this Declaration is recorded, and when taken together shall contain the following information for the Phase II and/or Phase III:

- (a) data sufficient to identify this Declaration and the Record of Survey Map;
- (b) the legal description of the portions of Phase II and/or Phase III being added;
- (c) a description of the buildings located on the land and of all other significant improvements;
- (d) the unit number of each Unit being created;
- (e) a description of any Limited Common Areas being created within Phase II and/or Phase III;
- (f) an amended Exhibit "A" to this Declaration setting forth the percentage of undivided ownership interest which, after the addition of Phase II and/or Phase III, shall appertain to each Unit in the Project, computed as set forth in paragraph 4.04 below.

Upon the recordation of the supplements contemplated above, the revised schedule of the undivided interest contained therein shall automatically become effective for all purposes and shall completely supersede any similar schedule. At any point in time, the Declaration and Survey Map for the Project shall consist of this Declaration and the Survey Map initially effective hereunder as amended and expanded by all supplements theretofore recorded pursuant to the terms hereof.

### ARTICLE III

#### BUILDINGS AND IMPROVEMENTS

3.01. Buildings and Improvements. The Buildings and other improvements constructed on the land are described on the Map. The following information regarding the Buildings is also contained on the Map: (i) the number of floors and basements in a Building; and (ii) the number of units on each floor of a Building.

3.02. Description of Units. The Map contains the Unit number, location, and dimensions of each Unit in the Project and all other information necessary to identify each such Unit. Each Unit shall have at least one parking space reserved for its exclusive use as Limited Common Area which shall not be severed from the Unit.

3.03. Description of Common Area. The Map contains a description of the Common Areas of the Project.

3.04. Description of Limited Common Areas. The Map contains a description of the Limited Common Areas of the Project. The Map also designates the Unit or Units to which each of the Limited Common Areas is reserved.

3.05. Principal Materials Used in Construction. The Buildings are wood veneer structures resting on concrete foundations. Each building is covered with an asphalt shingle roof. The interior walls are constructed of two-by-fours covered with gypsum sheetrock. The floors are covered with carpeting and vinyl floor coverings.

### ARTICLE IV

#### NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

4.01. Interiors of Units. Each owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet, or otherwise decorate the interior surfaces of the walls, ceilings, floors, and doors forming the boundaries of his Unit and the surfaces of all walls, ceilings, floors, and doors within such boundaries. Each Owner shall also have the right to construct partition walls, fixtures and improvements within the boundaries of his Unit; provided, however, that such partition walls, fixtures and improvements (i) shall comply with all applicable laws, ordinances, and building codes, (ii) shall not interfere with facilities necessary for the support, use, or enjoyment of any other part of the Project, (iii) shall not impair the structural soundness or integrity of the Building in which it is located, and (iv) shall not encroach upon the Common Areas or any

part thereof, unless the Board of Trustees shall consent in writing to such encroachment.

4.02. Maintenance of Units. Each owner shall keep the interior of his Unit, including without limitation, interior walls, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. In the event that any such Unit shall develop an unsanitary, unclean or unsafe condition or fall into a state of disrepair, and in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Board of Trustees, the Board of Trustees in behalf of the Association shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair.

4.03. Title. Title to a Condominium within the Project may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to all other real property may be held or owned in the State of Utah, including without limitation, joint tenancy or tenancy in common.

4.04. Ownership of Common Areas. The undivided interest in the Common Areas appurtenant to each Unit in the Project shall be one full equal share for each Unit as shown in exhibit "A". The percentages appurtenant to each Unit as shown in said Exhibit shall have permanent character and shall not be altered (i) except with the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded, (ii) except upon the addition of Phase II and/or Phase III Units pursuant to paragraphs 2.03 through 2.05 hereof, or (iii) except as otherwise permitted by the Condominium Act. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Areas in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules and regulations promulgated by the Association. Except as otherwise provided in this Declaration, any Owner shall have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner.

4.05. Inseparability. Title to no part of a Condominium within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Areas appurtenant to each Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete condominium. Every devise, encumbrance, conveyance, or other disposition of a Condominium or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Condominium, together with all appurtenant rights created by law or by this Declaration, including appurtenant Membership in the Association as hereinafter set forth.

4.06. No Partition. The Common Areas shall be owned in common by all of the Owners, and no Owner may bring any action for partition there-

of.

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4.07. Separate Mortgages by Owners. Each owner shall have the right separately to mortgage or otherwise encumber his Condominium. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the undivided interest therein appurtenant to his Condominium. Any mortgage or other encumbrance on any Condominium within the project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

4.08. Separate Taxation. Each Condominium within the Project, including each Unit and appurtenant undivided interest in the Common Areas, shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision or of any special improvement or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in proportion to the undivided interests in Common Areas appurtenant to such Units. All such taxes, assessments, and other charges on each respective Condominium shall be separately levied against the Owner thereof. No forfeiture or sale of any Condominium for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominium.

4.09. Mechanics Lien. No Labor performed or material furnished for use in connection with any Unit with the consent or at the request of an Owner or his agent or subcontractor shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Areas, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials furnished.

4.10. Description of Condominium. Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium within the Project may describe a Unit by its identifying number or symbol as indicated in this Declaration or as shown on the Map. Such description will be construed to describe the Unit, together with its appurtenant undivided interest in the Common Areas, and to incorporate all of the rights incident to ownership of a Condominium within the Project and all of the limitations on such ownership.

## ARTICLE V

## EASEMENTS

5.01. Easements for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If



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any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building or any improvements constructed or to be constructed within the Project, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration.

5.02. Easements for Maintenance, Cleaning and Repair. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any Common Areas or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas or to any Unit. In addition, agents of the Association may enter any Unit when necessary in connection with any cleaning, maintenance repair, replacement, landscaping, construction, or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

5.03. Right to Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas as necessary for access to such Owner's Unit and to any Limited Common Areas appurtenant to such Unit, and shall have the right to horizontal, vertical, and lateral support of each Unit, and such rights shall be appurtenant to and pass with title to each Condominium.

5.04. Association's Right to Use Common Areas. The Association shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform pursuant to this Declaration, including without limitation the right to construct and maintain in the Common Areas facilities for use by Owners generally or by the Association and its agents exclusively.

5.05. Easements Deemed Created. All conveyances of Condominiums within the project hereafter made, whether by the Declarant or otherwise, shall be considered to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

## ARTICLE VI

### RESTRICTIONS ON USE

6.01. Primary Residential Use. All Units within the Project shall

be used exclusively for single family dwelling and for no other purpose.

6.02. Noxious or Offensive Activity. No noxious or offensive activity shall be carried on, in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or which may cause disturbance or annoyance to Owners. No activity shall be conducted nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

6.03. Restrictions on Signs. No signs, flags, or advertising devices of any nature, including without limitation commercial, political, informational, or directional signs or devices, shall be erected or maintained on any part of the Project, without the prior written approval of the Board of Trustees, except as such may be necessary temporarily to caution or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Association. Notwithstanding any provision of this paragraph, any sign or similar device and any separate structure or facility for assisting Declarants' sales efforts must comply with applicable zoning ordinances.

6.04. Pets and Animals. No animals, livestock, or other poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas except that household pets may be kept or housed in Units when expressly permitted in writing by the Board of Trustees. Each owner who desires to keep a pet in his Unit shall apply in writing to the Board of Trustees for permission to keep such pet. In no event shall any pet be permitted in any portions of the Common Areas unless carried or on a leash. Each Owner who keeps a pet in a Unit shall indemnify and hold all other Owners harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such pet in the project.

6.05. No Alterations. No Owner shall, without the prior written consent of the Board of Trustees in each specific instance, make or cause to be made any alteration, addition, removal, improvement in or to the Common Areas or any part thereof.

6.06. No Obstructions. No Owner shall obstruct the Common Areas or part thereof. No Owner shall store or cause to be stored in the Common Areas any property whatsoever, unless the Board of Trustees shall consent thereto in writing.

6.07. No Overloading. No Owners shall bring anything into this Unit or permit anything to be done in his Unit that will cause damage to the building. No owner shall overload the floor of his Unit. No Owner shall permit the use or operation in his Unit of any equipment, machinery, or other apparatus that will in any manner injure, vibrate, or shake the building or any portions thereof.

6.08. Prohibition of Damage and Certain Activities. Except with the prior written consent of the Board of Trustees nothing shall be done

or kept in any Unit, in the Common Areas, or in any other part of the Project that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Project or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest of any Owner and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste.

6.09. No Commercial Business. No commercial business shall be permitted within the Project.

6.10. No Lease for Transient or Hotel Purposes. No owner shall be permitted to lease his Condominium for transient or hotel purposes. The phrase "transient or hotel purposes", as used herein, shall include any lease or rental of less than 30 days. No Owner shall lease less than the entire Condominium. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles, and the By-Laws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing.

6.11. Rules and Regulations. Each Owner shall comply strictly with all rules and regulations adopted by the Association for the governance of the Units, the Common Areas, and the Project, as such rules and regulations may be modified, amended, and construed by the Association in the sole discretion of its Board of Trustees.

## ARTICLE VII

### THE ASSOCIATION

7.01. Membership. Each Owner shall be entitled and required to be a member of the Association; membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Condominium is held by more than one person, the membership appurtenant to that Condominium shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Condominium is held and Owner shall be entitled to one membership for each Condominium owned by him. Each membership shall be appurtenant to the Condominium to which it relates and shall be transferred automatically by conveyance of that Condominium. Ownership of a Condominium within the Project cannot be separated from membership in the Association.

7.02. Board of Trustees. Until such time as the responsibility for electing the Trustees of the Association is turned over to the Owners in accordance with Utah law, the Declarant shall have the exclusive right to

appoint and to remove all such Trustees. This exclusive right shall terminate after the first of the following to occur:

- (i) Three years from the date on which this declaration is recorded, or
- (ii) After four Units have been conveyed.

7.03. Votes. The number of votes appurtenant to each respective Condominium shall be one (1) which shall not be altered except by the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration.

#### ARTICLE VIII

##### CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION AND BOARD OF TRUSTEES

8.01. The Common Areas. The Board of Trustees, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including the Common Facilities), and shall keep the same in good, clean, attractive, safe, and sanitary condition, and repair; provided, however, that unless otherwise stated herein, each Owner shall keep the Limited Common Areas designated for use in connection with his Unit, if any, in a clean, sanitary, and attractive condition. The Association shall be responsible for the maintenance and repair of the exterior of the buildings, other improvements and grounds, providing, without limitation thereof, repair and replacement of exterior trim, roofs and fences, and maintenance of landscaping, walkways, driveways and parking areas. The Board of Trustees shall also be responsible for maintenance, repair and replacement of Common Areas within the buildings, including, without limitation, Utility line, Common Facilities, and all improvements and other items located within or used in connection with the Common Areas. All goods and services procured by the Board of Trustees in performing its responsibilities under this section shall be paid for with funds from the Common Expense Fund.

8.02. Miscellaneous Goods and Services. The Board of Trustees may, in behalf of the Association obtain and pay for the services of such personnel as the Board of Trustees shall determine to be necessary or desirable for the proper operation of the Project whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Board of Trustees may in behalf of the Association obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the project or the enforcement of this Declaration. In addition to the foregoing, the Board of Trustees may in behalf of the Association, acquire and pay for out of the Common Expense Fund, water, sewer, garbage collection, electrical, gas, and other necessary or desirable utility services for the Common Areas (and for the Units to the extent of separately metered or billed), insurance, bonds, and other goods and services common to the

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units.

8.03 Limitation of Contract. Any contract for professional management or any contract providing for the services of the Owner, Developer, Sponsor or Builder of the Condominiums, shall have a term of no more than three years and shall be terminable by the Association at any time upon 90 days written notice. Any such contract shall be terminable by the Association without cause and without penalty.

8.04. Real and Personal Property. Board of Trustees may acquire on behalf of the Association real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise; provided that any acquisition or disposition of any real, personal or mixed property by the Board of Trustees wherein the value of such property exceeds \$5,000 must be approved by vote of at least 51% of the total votes of the Association at a meeting duly called for that purpose. All such property, including common facilities, shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such fund.

8.05. Rules and Regulations. Board of Trustees may make reasonable rules and regulations governing the use of the Units, the Common Areas, the Limited Common Areas, and all parts of the Project, which rules and regulations shall be consistent with the rights and duties established with this Declaration. The Board of Trustees, in behalf of the Association, may take judicial action against any owner to enforce compliance with such rules and regulations or other obligations of such Owner arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys fees, from the offending owner.

8.06. Implied Rights. The Association may exercise any right, power, or privilege given to it expressly by this declaration or by law, and every other right and privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## ARTICLE IX

### ASSESSMENTS

9.01. Agreement to Pay Assessments. The Declarant for each Condominium owned by it within the Project, and for and as the owner of the Project and every part thereof, hereby covenants and each Owner of any Condominium by the acceptance of instruments of conveyance and transfer, 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 commence upon the conveyance of the first Unit and shall be fixed, established, and collected from time to time as provided in this Article IX.

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9.02. Annual Assessment. Annual assessments shall be computed and assessed against all Condominiums in the Project as follows:

(a) Annual Assessment. 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 Areas and/or furnishing utility services and other common items to the Units. Such estimated expenses may include, without limitation, the following: Expenses of management, real property taxes and special assessments unless the Condominiums are separately assessed; premiums for all insurance that the Association is required or permitted to maintain; repairs and maintenance; wages for Association employees; utility charges, including charges for utility service to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, and/or sinking fund; creation of an adequate reserve fund for maintenance, repairs, and replacement of the Common Areas and Facilities that must be replaced on a periodic basis, and such reserve shall be funded by monthly payments rather than extraordinary special assessments; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under this Declaration. All funds received from assessments under this Section shall be part of the Common Expense Fund.

(b) Apportionment. Expenses attributable to the Common Expense or to the Project as a whole shall be apportioned among and assessed to all Owners in proportion to their respective undivided interest in Common Areas. The Declarant shall be liable for the amount of any assessments against Condominiums owned by it.

(c) Annual Budget. The Board of Trustees shall prepare and furnish 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, and any deficit or surplus from prior operating periods. The budget shall serve as the supporting document for the annual Assessment and as the major guideline under which the Project shall be operated. Such budget shall be unnecessary for assessments relative to any operating period ending before January 1, 1986.

(d) Notice and Payments. Except with respect to the first fiscal year, the Board of Trustees shall notify each Owner as to the amount of the Annual Assessment against his Condominium on or before December 15 each year. Each Annual Assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each month; provided however the Annual Assessment for the first fiscal year shall be based upon such portion of the first year and shall be payable in such installments and at such times as the Association, in the sole direction of its Board of Trustees, may determine. All unpaid installments shall bear interest at the rate of 18% per annum until paid. In addition, in the event that any installment of any Annual Assessment is not paid within ten days of the date such installment is due, it shall be

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subject to a penalty for late payment of one dollar per day from the date each such installment became due until paid. The failure of the Board of Trustees to give timely notice of any Annual Assessment as provided herein shall be not 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, but the date the payment shall become due in such case shall be deferred to a date fifteen days after notice of such assessment shall have been given. A default or arrears in payment shall not be a basis for accelerating the payment of the yearly assessment.

(e) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, the Board of Trustees may on behalf of the Association levy additional assessments in accordance with the procedure set forth in Section 9.03 below, except that the vote therein specified shall be unnecessary.

9.03. 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 affirmative vote of at least fifty-one percent (51%) of the total votes of the Association, Special Assessments, payable over such periods as the Board of Trustees may determine, for the purpose of defraying, whole or in part, the cost of any construction, unexpected repair or replacement of the Project or any part thereof, or for other expenses incurred or to be incurred as provided in this Declaration. 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 proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of each Special Assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of 18% per annum from the date such portions become due until paid. In addition, in the event that any Special Assessment is not paid within ten days of the date such Special Assessment becomes due, it shall be subject to a penalty for late payment of one dollar per day from the date each such Special Assessment became due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

9.04. Lien for Assessments. All sums assessed to Owners of any Condominium within the Project pursuant to the provisions of this Article IX, together with penalties and interest as provided herein, shall be secured by a lien on such Condominium in favor of the Association. To evidence a lien for sums assessed pursuant to this Article, 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 Condominium, and a description of the Condominium. Such notice may be recorded in the office of the County Recorder of Davis County, State of Utah. No notice of lien shall be recorded until there is

a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law, in the same manner in which mortgages on real property may be foreclosed under the laws of the State of Utah. 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 shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium 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 Condominium in the name of the Association.

9.05. Personal Obligation of Owner. The amount of any Annual or Special assessment against any Condominium shall be the personal obligation of the Owner of such Condominium to the Association. Suit to recover a money judgement 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 Areas or by abandonment of his Condominium or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the Owner shall pay the costs and expenses incurred by the Association including reasonable attorneys' fees. The assessment referred to herein shall not be the obligation of any First Mortgagee who complies with the requirements of Section 14.01, below.

9.06. Statement of Account. Upon payment of a reasonable fee not to exceed \$10.00 and upon written request of any Owner, Mortgagee, or prospective purchaser of a Condominium, the Board of Trustees shall issue a written statement setting forth the following: The amount of the unpaid assessments, if any, with respect to such Condominium; the amount of the current annual assessment and the date or dates upon which installments thereof become due; credit for advanced payments or prepaid items, including without limitation the Owners' share of prepaid insurance premiums. Such statements shall be conclusive upon the Association in favor of persons who rely thereon in good faith. In the event that the Board of Trustees fails upon written request to issue such a written statement, any unpaid assessments with respect to such Condominium which became due prior to receipt of such request by the Board of Trustees shall become subordinate to a lien held by the person or entity requesting such statement. The fee called for in this paragraph shall not be required of any mortgagee who has requested notice in accordance with the provisions of paragraph 14.01 of this Declaration.

9.07. Personal Liability of Purchaser. Unless the purchaser of a Condominium expressly agrees to assume the obligation to pay the assessments which are the personal liability of the current owner, such assessments shall not become the personal obligation of the purchaser.



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9.08. Amendment of Article. This Article IX shall not be amended unless the owners of all condominiums in the Project unanimously consent to such amendment in a duly recorded instrument.

## ARTICLE X

## INSURANCE

10.01. Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah.

(a) Hazard Insurance. The Association shall obtain, maintain and pay for as a Common Expense a "master" or "blanket" multi-peril policy of property Insurance covering the entire Project, including, without limitation, fixtures and Building service equipment to the extent that they are part of the Common Areas, common personal property and supplies belonging to the Association, and any fixtures, equipment or other property within the Units which are encumbered by a Mortgage purchased by FNMA or FHLMC. Such master policy of hazard insurance shall provide as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use (including all perils normally covered by the standard "all risk" endorsement, where such is available) on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value of the Project exclusive of the Lane foundations and other items normally excluded from coverage (based upon current replacement costs). Such master policy of hazard insurance shall include the following endorsement, if available and required by FNMA or FHLMC: An Agreed amount and inflation guard endorsement; and Construction Code Endorsements (e.g., A demolition Cost Endorsement, a contingent Liability Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement) if the Project should hereafter become subject to a construction code provision which would require the Association to incur a significant expense in order to effect code required changes in the undamaged portions of the Project in the event of partial destruction of the Project.

(b) Public Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Areas and Common Facilities, commercial spaces and public ways (if any) in the project, whether or not they are leased to a third party. Such insurance policy shall contain a severability of Interest Endorsement or equivalent coverage which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner. The scope of coverage and the liability limits under such insurance policy shall be in the kinds and amounts commonly required by private institutional mortgage investors for Projects similar to the Project in construction, location and use. In no event shall the scope of coverage fail to include protection against the legal liability of persons in connection with the operation, maintenance or use of the Common Areas, legal liability arising out of lawsuits related to employment contracts entered into by the Association, and, if

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applicable, contractual and all-written contract insurance, employers' liability insurance and comprehensive automobile liability insurance. In no event shall the liability limits of such insurance policy be less than \$1,000,000 per occurrence for personal injury or death, and/or property damage.

(c) Workman's Compensation Insurance. The Association shall obtain and maintain workman's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms required by law.

(d) Fidelity Insurance or Bond. The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Board of Trustees, employees, volunteers and all others who are responsible for the handling of funds belonging to or administered by the Association. Such fidelity bonds or insurance shall meet the following requirements:

(i) all shall name the Association as an obligee and the named insured;

(ii) all shall be written in an amount equal to at least one and one-half times the estimated annual operating expenses and reserves of the Association, unless a greater amount is required by FNMA;

(iii) all shall contain waivers by the insurers of the bond or policy of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, or shall contain an appropriate endorsement to the policy to cover any persons who serve without compensation;

(iv) all shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premiums) without at least ten days prior written notice to any Insurance Trustee and each Mortgage Servicer on behalf of FNMA or FHLMC;

(v) where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, all shall provide coverage for the officers, employees and agents of the Manager who handles the funds of the Association; and

(vi) the premiums shall all be paid by the Association as a common expense, except for premiums on fidelity bonds of insurance maintained by a management agent for its officers, employees and agents.

(e) Flood Insurance. The Project is not located in an area identified by the Secretary of Housing and Urban Development or the Federal Emergency Management Agency as an area having special flood hazards for which flood insurance is not available because the community in which the Project is located is ineligible for participation in the National Flood Insurance Program.

(f) Government Requirements. Notwithstanding any other provisions contained herein to the contrary, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium development projects established by FNMA and Government National Mortgage Association, so long as either is a mortgagee or Owner of a Condominium within the Project, except to the extent such coverage is not available or has been waived in writing by FNMA or Government National Mortgage Association.

10.02. Property Insurance Policy Requirements. The hazard, public liability and flood insurance policies obtained by the Association pursuant to Section 10.01 (a), (b), and (c) shall be subject to the following:

(a) The named insured under any such policies shall be set forth therein substantially as follows: Newport Heights Condominium Owners Association for the use and benefit of the individual Owners (designated by name if required by law). The policies may also be issued in the name of the authorized representation of the Association, including any insurance trustee with whom the Association, including any insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Owners. Each Owner and each such Owner's Mortgagee shall be beneficiaries of the policy according to the undivided interest in the Common Areas appurtenant to each Owner's respective Condominium in the percentage of common ownership. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(b) Insurance coverage obtained and maintained pursuant to the requirements of Section 10.01 shall not be brought into contribution with insurance purchased by the Owners or their Mortgagees.

(c) Insurance coverage must not be prejudiced by (i) an act or neglect of the Owners when such act or neglect is not within the control of the Association or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control.

(d) Coverage may not be cancelled or substantially reduced or modified (including cancellation for nonpayment of premium) without at least ten days prior written notice to any and all insured parties, including any Mortgage Servicer on behalf of FNMA or FRIMC, and any First Mortgagee.

(e) All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Owner of any condominium unit and/or their respective agents, employees or tenants, and of any defenses based on co-insurance or on invalidity arising from the acts of the Insured.

(f) Each hazard insurance policy shall be written by a hazard insurance carrier which has a current financial rating by Best's Insurance Reports of Class B/VI or better.

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(g) Policies shall be deemed unacceptable where (i) under the terms of the carrier's charter, bylaws or policy, contributions of assessments may be made against the Association, an Owner, FNMA, FHLMC, or any designee of FNMA, FHLMC, or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent an Owner from collecting insurance proceeds;

(h) All policies shall contain or have attached the standard mortgagee clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area in which the Project is located and which appropriately names FHLMC or FNMA's Mortgage Servicer in the policy if such corporations are holders of one or more first mortgages on Units within the Project. If Mortgage Servicer is named as Mortgagee in the mortgage clause, Mortgage Servicer's name shall be followed by the phrase "its successors and assigns." The mortgage clause in each policy shall provide that the insurance carrier shall notify the association, the Mortgage Servicer at the Mortgage Servicer's address, and any First Mortgagee at least ten days in advance of the effective date of any reduction in or substantial modification or cancellation of the policy. The standard mortgagee clause in each policy must be endorsed to provide that any proceeds shall be paid to the Newport Heights Condominiums Owners Association for the use and benefit of Mortgagees as their interests may appear, or must be otherwise endorsed to fully protect FNMA's or FHLMC's interest.

(i) Policy contracts shall provide that no assessment may be made against FNMA, FHLMC, or their designees, and that any assessment made against others may not become a lien on the Mortgagee's Premises superior to the first mortgage.

(j) Policies shall be in compliance with and consistent with applicable local and state insurance law. Each insurer and any reinsurer must be specifically licensed or authorized by law to transact business within the State of Utah.

10.03. Custody of Insurance Policies. The Board of Trustees shall provide the Mortgage Servicer with a copy of the "master" or "blanket" policy of multi-peril property insurance, including copies of endorsements to such policy as required by FHLMC or FNMA, and where applicable, a copy of any flood insurance policy, a copy of the comprehensive policy of public liability insurance, an appropriate certificate or memorandum of insurance as to each Condominium in the Project which is the subject of a mortgage being serviced for FHLMC or FNMA and all other insurance drafts, policies, notices, invoices and other similar documents.

10.04. Notice of Loss. The Association shall notify the Mortgage Servicer at Servicer's address whenever (a) damage to a Unit covered by a mortgage owned by FNMA or FHLMC exceeds \$1000, and/or (b) damage to common areas and related facilities exceeds \$10,000.

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10.05. Additional Coverage. The provisions of this Declaration shall not be construed to limit the power of authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration.

10.06. Owner's Own Insurance. Each Owner, at his own expense, may procure and maintain at all times fire and extended coverage insurance covering personal property of the Owner and additional fixtures and improvements added by such owner against loss by fire and other casualties. All policies regarding such casualty insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article. If obtainable under industry practice without an unreasonable additional charge all such insurance shall contain a waiver of the insurance company's right of subrogation against the Association, the Declarant, the Manager, other Owners, and their respective servants, agents and guests.

10.07. Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or by such other qualified appraisers as the Association may select.

10.08. Insurance Trustee, Power of Attorney. Each Owner appoints the Association, or the Insurance Trustee, or substitute Insurance trustee as 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 purposes. The Association or any Insurance Trustee must hold or otherwise dispose of any proceeds of insurance in trust for the Owners and their first mortgage holders, as their interest may appear.

## ARTICLE XI

### DAMAGE OR DESTRUCTION

11.01. 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 Project upon its damage or destruction as hereinafter provided. Acceptance by a grantee of a deed from the Declarant or from an Owner shall constitute an appointment by said grantee of the Association as his 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.

11.02. Definition of Repair and Reconstruction. Repair and recon-

struction of the improvements assessed herein, restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

11.03. Procedures. In the event all or any part of the Project is damaged or destroyed and subject to the provisions of Article XIV below, the Association shall proceed as follows:

(a) Notice to First Mortgagees. The Association shall give timely written notice to any institutional holder of any first mortgage on a Unit in the event of substantial damage to or destruction of any Unit or any part of the Common Areas.

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

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

(d) Insufficient Insurance--Less than 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 Project and if less than seventy-five (75%) 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 Section 9.03 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected are insufficient to pay all actual costs of repair and reconstruction.

(e) Insufficient Insurance--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 Project and if seventy-five (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed only if fewer than 51% of all the First Mortgagees approve the termination of the Project, or if within one hundred days following the damage or destruction, the Owners shall elect by a vote of at least 75% of the total votes of the Association to carry out such repair and reconstruction. If, however, the Owners shall not, within one hundred days after such damage or destruction, elect to carry out such repair and reconstruction, the Association shall record in the office of the Davis County Recorder, Davis County, State of Utah, a notice setting forth such fact. Upon the recording of such notice, the following shall occur:

(i) The Project shall be deemed to be owned in common by the Owners;

(ii) The undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of the undivided interest previously owned by such Owner in the Common Areas;

(iii) Any liens affecting any of the Condominiums shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and

(iv) The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the project, if any, shall be considered as one fund and shall be divided among all Owners in a percentage equal to the percentage of undivided interest owned by each respective Owner in the Common Areas, as set forth in Exhibit A, after first paying out of the respective share of each Owner all liens on the undivided interest in the Project owned by such Owner.

(f) In no event shall an Owner of a Unit or any other party have priority over the insitutional holder of any first mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

11.04. Repair or Reconstruction. If the damage or destruction is to be repaired and reconstructed as provided above, the Association shall, diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with the declaration and the original architectural plans and specifications, unless other action is first approved in writing by at least fifty-one (51%) percent of all First Mortgagees.

11.05. Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost or repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in

proportion to their respective percentages of Ownership of the Common Areas.

11.06. Amendment of Article. This Article XI shall not be amended unless the Owners of all Condominiums in the Project unanimously consent in a duly executed and recorded document.

## ARTICLE XII

### CONDEMNATION

12.01. Condemnation. If at any time, 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 thereof, shall be deemed to be a taking of power of eminent domain. If any Unit or portion thereof is made the subject 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 and to any First Mortgagee.

12.02. Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "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.

12.03. Complete Taking. In the event the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall terminate and the condemnation award shall be allocated among and distributed to the Owners in proportion to their respective undivided interest in the Common Areas. Such distribution shall be made by check payable to the Mortgagees to the extent of their interest and the balance to the Owner.

12.04. Partial Taking. In the event less than the entire Project is taken, 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 Areas shall be allocated among and distributed to all Owners, including Owners whose entire Units have been taken, in proportion to their respective undivided interests in the common areas;

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Condominiums that have not been taken, in proportion to their respective



undivided interests in the Common Areas;

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

(iv) The total amount apportioned to consequential damages and any other takings 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;

(vi) Distribution of allocated proceeds shall be made by check payable first to the mortgagees to the extent of their interest and the balance to the Owner; and

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

(b) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, condominium 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 any entire Unit, then the Owner thereof shall cease to be a Member of the Association and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Areas.

(ii) If any partial taking results in the taking of a portion of a Unit and if no determination is made by the Board of Trustees that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then the fair market value of such remaining portion of the Unit shall be determined by the Board of Trustees and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reduced in proportion to the diminution in fair market value of such Unit resulting from the taking. The voting rights and undivided interest in the Common Areas so divested from such Unit shall be reallocated to, and shall appertain to, such Units and the other Units in proportion to their respective undivided interest in the Common Areas; provided, however, that such Unit shall participate in such reallocation on the basis of the undivided interest reduced in accordance with the preceding sentence.

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(iii) If any partial taking results in the taking of a portion of a Unit and (if there is a determination by the Board of Trustees that such taking makes it impractical to use the remaining portion of such Units for any lawful purpose permitted by this Declaration, then all voting rights and the entire undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to the remaining Units in proportion to their respective undivided interests in the Common Areas, and the remaining portion of such Unit shall thenceforth be part of the Common Areas.

(iv) The Board of Trustees 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; provided, however, that if any such determination shall have been made or such action taken 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 its provisions specified in Article XI hereof governing cases of damage or destruction, provided, however, that the provisions of said Article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

#### ARTICLE XIII

#### OBSOLESCENCE

13.01. Adoption of Plan. Subject to the provisions of Section XIV hereof, Owners holding seventy-five (75%) or more of the total votes of the Association may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction of the Project. Written notice of adoption of such a plan shall be given all to Owners and First Mortgagees.

13.02. Payments for Renewal and Reconstruction. The Association shall levy a Special Assessment sufficient to provide funds to pay the estimated expenses of renewal or reconstruction. Such special Assessment shall be allocated and collected as provided in Section 9.03 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected proves insufficient to pay the actual expenses of such renewal or reconstruction. In the event amounts collected pursuant hereto are in excess of the amounts required for renewal or reconstruction, such excess shall be distributed to the Owners in proportion to their respective percentages of ownership in the Common Areas.

13.03. Sale of Project. Subject to the provisions of Section XIV hereof, the Owners may at any time by an affirmative vote of at least seventy-five percent (75%) of the total votes of the Association, at a special meeting of the Members of the Association duly called for such purpose, elect to sell or otherwise dispose of the Project. In such

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event, the Board of Trustees shall forthwith record in the office of the County Recorder of Davis County, State of Utah, a notice setting forth such facts, and upon the recording of such notice by the Board of Trustees, the project shall be sold or otherwise disposed of by the Board of Trustees as attorney in fact for all of the Owners. Such action shall be binding upon all Owners and each Owner shall have the duty to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary or appropriate to effect such sale or other disposition of the Project. The proceeds of such sale or disposition shall be apportioned among the Owners in proportion to their respective undivided interest in the Common Areas, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium. Each such account shall remain in the name of the Association, and shall be further identified by the Condominium designation and the name of the Owner. The Board of Trustees, as attorney in fact, shall use and disburse the total amount of each such account, without contribution from one account to another, first to the payment of valid tax and special assessment liens on the Condominium in favor of any governmental assessing authority, second to the payment of any First Mortgagee holding a first mortgage lien on the condominium, third to the payment of assessments made pursuant to this Declaration, fourth to the payment of other holders of liens or encumbrances of the Condominium in the order of priority of their liens, and the balance remaining, if any, to the respective Owner.

13.04. Amendment of Article. This Article XIII shall not be amended unless the Owners of seventy-five (75%) percent of the Condominiums in the Project and at least seventy-five (75%) percent of the First Mortgagees, based upon one vote for each mortgage, consent and agree to such amendment by duly executed and recorded instrument.

#### ARTICLE XIV

#### MORTGAGE PROTECTION

14.01. Notice of Action to First Mortgagee. The term "Eligible Holder" shall mean any First Mortgagee who has requested notice as set forth herein and "Eligible Insurer or Guarantor" shall mean any insurer or governmental guarantor who has requested such notice. Upon written request made to the Association by a First Mortgagee, specifying the name and address of the First Mortgagee and the Unit number or address of the Unit, any such First Mortgagee 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 Unit on which there is a first mortgage held, insured, or guaranteed by such First Mortgagee;

(b) Any delinquency in the payment of assessments or charges owed by the Owner of a Condominium that is subject to a first mortgage held, insured, or guaranteed by such First Mortgagee, which remains uncured for a period of 60 days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of First Mortgagees as specified in section 14.02;

(e) Any proposed amendment of the Declaration effecting a change in:

(i) the boundaries of any Unit or the exclusive easement right appertaining thereto;

(ii) the interest in the Common Areas or Limited Common Areas appertaining to any Unit or the Liability for common expenses appertaining thereto;

(iii) the number of votes in the Association appertaining to any Unit; or

(iv) the purposes to which any Unit or the Common Areas are restricted;

(v) Any proposed termination of the condominium regime.

14.02. Matters Requiring Prior First Mortgagee Approval. The prior written consent of Owners entitled to vote at least seventy-five percent (75%) of the total votes in the Association, and at least seventy-five percent (75%) of all First Mortgagees shall be required to:

(a) Abandon or terminate the legal status of the Project (whether by act or omission), provided that any election to terminate the legal status of the Project following the destruction of a substantial taking of the Project through condemnation shall only require the prior written consent of at least fifty-one percent (51%) of all First Mortgagees;

(b) Establish self-management of the Project by the Association when professional management has been previously required by any First Mortgagee;

(c) Add or amend any material provision of the Declaration, Articles, Bylaws or Map, which establishes or governs 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;

(ii) assessments, assessment liens or subordination of such liens;

(iii) reserves for maintenance, repair and replacement

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of the Common Areas;

- (iv) fidelity bonds;
- (v) rights to use Common Areas;
- (vi) responsibility for Maintenance and repair of the several portions of the Project;
- (vii) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (viii) boundaries of any Unit;
- (ix) the undivided ownership interests in the Common Areas or Limited Common Areas;
- (x) convertibility of Units into Common Areas or of Common Areas into Units;
- (xi) leasing of Units;
- (xii) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Condominium; and
- (xiii) any provisions which are for the express benefit of First Mortgagees.

(Any First Mortgagee 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 30 days shall be deemed to have approved such request).

(d) Change the pro rata interest or obligation of the individual Condominium for the purpose of:

(i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or

(ii) determining the pro rata ownership of each Condominium in the Common Areas;

(e) Partition or subdivide any Condominium;

(f) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas. (The granting of easements by the Association for public utilities or for other public purposes consistent with the intended use of the Common Areas by the Owners shall not be deemed a transfer within the meaning of this clause);

(g) Use hazard insurance proceeds for losses to any portion of the Project for other than the repair, replacement or reconstruction of

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the Project. In addition, the prior written approval of at least fifty-one percent (51%) of all First Mortgagees shall be required to affect any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, which will not be substantially in accordance with the Declaration and the original architectural plans and specifications.

14.03. Prior Liens Relate Only to Individual Condominiums. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Condominiums and not to the Project as a whole.

14.04. Subordination of Common Expense Lien. Any lien which the Association may have on any Condominium in the Project for the payment of common expense assessments attributable to such Condominium and any fees, late charges, taxes or interest levied by the Association in connection therewith shall be subordinate to the lien or equivalent security interest of any first mortgage on the condominium recorded prior to the date on which any such common expense assessments became due.

14.05. Information Made Available to First Mortgagee Upon Request. Any First Mortgagee shall, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours; and (b) receive an annual audited financial statement of the Association within 90 days following the end of any fiscal year of the Project, and (c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

14.06. First Mortgagee Rights in Event of Foreclosure. Each holder of a first mortgage lien on a Unit who obtains title to the Unit pursuant to the remedies provided in the Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments and charges against the Unit which accrue prior to the acquisition of title to such Unit by the Mortgagee, except for claims for a pro rata reallocation of such assessments or charges to all Units in the Project including the mortgaged Unit.

#### ARTICLE XV

##### COMPLIANCE WITH DECLARATION AND BYLAWS

15.01. Compliance. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Association or, in a proper case, by an aggrieved Owner.

#### ARTICLE XVI

## GENERAL PROVISIONS

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16.01. Intent and Purpose. The provisions of this Declaration, and any supplemental or amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision, restriction, covenant, or condition contained in this Declaration shall not operate as a waiver of any such provision, restriction, covenant, or condition of any other provisions, restrictions, covenants or conditions.

16.02. Construction. The provisions of this Declaration shall be in addition and supplemental to the provisions of the Condominium Act and all other provisions of law. Whenever used herein, unless the context shall otherwise require, the single shall include the plural, the plural shall include the single, the whole shall include any part thereof, and any gender shall include both genders. The Article and Section Headings set forth herein are for convenience and reference only and are not intended to expand, limit, or otherwise affect the meaning or interpretation of this Declaration or any provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion shall not affect the validity or enforceability of any other provision.

16.03. Notice and Registration of Mailing Address. Each Owner shall register from time to time with the Association his current mailing address. All notices, demands, and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. Mail, postage prepaid, addressed to the Owner at his registered mailing address or, if no address has been registered, to the Unit of such Owner. All notices, demands, and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. Mail, postage prepaid, addressed to the Association at its offices at 505 South Main, Bountiful, Utah 84010, or to such other address as the Association may hereafter specify to the Owners in writing. Any notice, demand, or other communication shall be deemed to have been given and received when personally served or when deposited in the U.S. Mail, postage prepaid, and in the form provided in this section.

16.04. Audit. Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, at the expense of the common expense fund, shall obtain an audit, by a certified public accountant of all books and records pertaining to the Project at no greater than annual intervals, and copies of the audit shall be furnished to the Owners.

16.05. Effective Date. This Declaration shall become effective upon recording.

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16.06. Amendment. Except as otherwise provided herein, this Declaration may be amended if Owners holding at least two-thirds of the total votes in the Association consent and agree to such amendment by instrument duly recorded in the office of the Davis County Recorder, State of Utah.

16.07. Agent for Service. The name and address of the person to receive service of process in all cases provided by the Condominium Act shall be the registered agent and address of the Association as shown on the official corporate records maintained in the office of the Secretary of State of the State of Utah. The initial registered agent and address for the Association is Mark S. Sandberg, 505 South Main, Bountiful, Utah 84010.

16.08. Limitation on Association's Liability. The Association shall not be liable for any failure of water services or other utility service to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in or upon the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any part of the Buildings or its drain pipes, conduits, appliances, or equipment, or from any other place, unless caused by the gross negligence or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

16.09. Owner's Obligations. All obligations of an Owner, under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting, or selling under contract his condominium. The Owner of a Condominium with the Project shall have no obligation for expenses or other obligations accruing after he conveys such Condominium.

16.10. Model Units, Sales Offices and Advertising Signs. Declarant and Declarant's agents shall have the right to establish and maintain model Units and sales offices on the land within the project, and the right to use such model Units and sales offices during the period that Condominiums in the Project remain unsold. Declarant reserves the right to maintain advertising signs on the Project during the period that Units in the Project remain unsold.

16.11. Termination. The prior written approval of seventy-five percent (75%) of (a) all First Mortgagees which hold first mortgage liens on condominiums in the Project, based on one vote for each first mortgage owned, and (b) the total votes of the Association shall be required before the Project may be abandoned or terminated, except as provided by law in the case of substantial destruction or in the case of taking by condemnation or eminent domain.



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IN WITNESS WHEREOF, the undersigned Declarants have executed this Declaration the day and year first written above.

Declarants:

*Leon Peterson*  
LEON PETERSON

*Karen F. Peterson*  
KAREN F. PETERSON

BY: *Leon Peterson*  
LEON PETERSON  
FPSA INVESTMENT, LTD.

STATE OF UTAH )  
                  )ss  
County of Davis )

On the 25<sup>TH</sup> day of JUNE, 1986, personally appeared before me, Leon Peterson and Karen F. Peterson, and FPSA INVESTMENT, LTD. the signers of the above instrument, who duly acknowledged to me that they executed the same.

*A. M. Val*  
Notary Public  
RESIDING AT: BOUNTIFUL, UTAH

My commission expires:

DECEMBER 1986

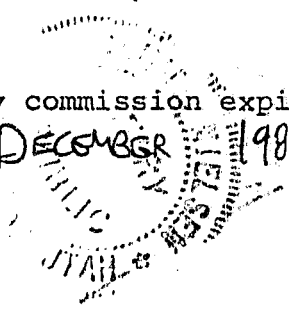


EXHIBIT "A"

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TO  
DECLARATION OF CONDOMINIUM  
OF THE  
NEWPORT HEIGHTS CONDOMINIUM  
(SUBJECT TO AMENDMENT)

UNIT NO.

OWNERSHIP PERCENTAGE

1	12.5
2	12.5
3	12.5
4	12.5
5	12.5
6	12.5
7	12.5
8	12.5

## SCHEDULE 1

BOUNDARY DESCRIPTION

Beginning at the Southeast corner of Lot 68 of North Point Cove Subdivision Plat "C", said point being N.  $0^{\circ} 08' 42''$  W. 23.67 feet along the Section line and West 837.83 feet from the East quarter corner of Section 6, Township 1 North, Range 1 East, Salt Lake Base and Meridian, said point also being on the Westerly Right-of-Way line of 400 East Street; and running thence along said Westerly Right-of-Way line the following three courses: S.  $4^{\circ} 00' 00''$  E. 220.51 feet to a point on a 1000.00 foot radius curve to the left (radius point bears N.  $86^{\circ} 00' 00''$  E), Southerly along the arc of said curve 218.17 feet, and S.  $16^{\circ} 30' 00''$  E. 32.68 feet; thence N.  $89^{\circ} 59' 20''$  W. 150.00 feet; thence N.  $23^{\circ} 46' 42''$  W. 234.99 feet; thence N.  $24^{\circ} 11' 43''$  E. 51.48 feet; thence N.  $7^{\circ} 27' 39''$  W. 192.21 feet to the Southwest Corner of said Lot 68; thence N.  $86^{\circ} 00' 00''$  E. 185.65 feet along the Southerly line of said Lot 68 to the point of Beginning.

Containing 1.861 Acres

## BY-LAWS

OF

## NEWPORT HEIGHTS CONDOMINIUM OWNERS ASSOCIATION

A Utah Nonprofit Corporation

## I. NAME AND LOCATION

1.01. Name. The name of the corporation is Newport Heights Condominium Owners Association.

1.02. Principle Office. The initial principal office of the Association shall be at 505 South Main, Bountiful, Utah 84010, but meetings of the Members and Trustees may be held at such times and places within the State of Utah as the Board of Trustees may designate.

## II. DEFINITIONS

When used in these By-laws the following terms shall have the meaning indicated:

2.01. Articles shall mean and refer to the Articles of Incorporation of Newport Heights Condominium Owners Association.

2.02. Association shall mean the Newport Heights Condominium Owners Association, a Utah Nonprofit Corporation.

2.03. Member shall mean every person or entity who holds membership in the Association.

2.04. Property shall mean the tract of real property situated in Davis County, State of Utah, located at 3750 South 400 East Bountiful, Utah, and which is more particularly described in the Exhibit Attached to the Declaration referred to below.

2.05. Declaration shall mean the Declaration of Condominium of the Newport Heights Condominium, a Utah Condominium Project, executed and acknowledged by the Declarant on the 25th day of June, 1986, and filed for record with the Davis County Recorder, Davis County, Utah.

2.06. Common Areas shall mean all physical portions of the Project except all Units.

2.07. Owner shall mean the person or persons owning in fee simple a Condominium in the Project, as such ownership is shown by the records of the Davis County Recorder, State of Utah.

2.08. Project shall mean the land, the buildings, and improvements of the Newport Heights Condominium as described in the Declaration.

2.09. Unit shall mean an individual air space unit, consisting of enclosed rooms occupying part of a building and bounded by the unfinished interior surfaces of the walls, floors, ceilings, windows, and doors along the perimeter boundaries of the air space, as said boundaries are shown in the Declaration and the exhibits attached thereto.

### III. MEETING OF MEMBERS

3.01. Annual Meeting. The regular annual meetings of the Members shall be held on the 15th day of January of each year unless such date shall fall on a Saturday, Sunday, or legal holiday, in which case the regular annual meeting of the Members shall be held on the first regular business day following said date. The time of the meeting shall be 7:30 o'clock p.m. The purpose of the meeting will be the election of Trustees to become members of the Board of Trustees of the corporation.

3.02. Special Meetings. A special meeting of the Members may be called by the Board of Trustees or upon the written request of any three Members.

3.03. Place of Meeting. The Board of Trustees may designate any place within the State of Utah as the place for holding any regular or special meeting of the Members.

3.04. Notice of Meetings. Written notice stating the place, date, and hour of each meeting, and in the case of a special meeting, the purpose of the meeting shall be given to all Members and such other persons or entities as required by the Declaration at least ten but not more than thirty days prior to the date of the meeting. Notice shall be deemed to have been given upon personal service or upon mailing, first class postage prepaid to the address for such person or entity appearing in the records of the Association at the time of mailing.

3.05. Quorum. Except as otherwise provided in the Declaration or by laws, those Members present in person or by proxy shall constitute a quorum at any meeting of the Members.

3.06. Proxies. At any meeting of the Members, a Member may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. All proxies shall be filed with the Secretary of the Association before or at the time of the meeting. Unless otherwise provided therein, no proxy shall be valid after eleven months from the date of execution.

3.07. Votes. The number of votes appurtenant to each respective Condominium shall be as set forth in Exhibit A attached to the Declaration. The number of votes appurtenant to each Condominium shall not be altered without the unanimous written consent of all Owners expressed in an amendment to the Declaration, duly recorded.

3.08. Necessary Vote. Except as otherwise provided in the Declaration or by Law, the affirmative vote of a majority of those Members

present in person or by proxy and entitled to cast a vote at the meeting shall be sufficient for the adoption of any matter voted on by the Members.

#### IV. BOARD OF TRUSTEES

4.01. Number, Tenure and Qualifications. The affairs of the Association shall be managed by a Board of Trustees composed of three persons elected by the vote of the Members at a regular meeting of Members or at a meeting of Members called for that purpose. Each member of the Board of Trustees shall serve for a period of one year or until a successor is elected and qualified.

4.02. Compensation. The Board of Trustees may provide by resolution that Trustees may be paid their expenses, if any, of the attendance of each meeting of the Board. Trustees shall not be paid any salary or other compensation for their services as Trustees and shall not receive directly or indirectly any other profit or pecuniary advantage by virtue of their status as a Trustee.

4.03. Action Taken Without a Meeting. The Board of Trustees shall have the right to take any action which they might otherwise take without first holding a meeting. Any action so taken shall be approved or ratified in writing signed by all of the Trustees. Any action so taken shall have the same effect as though taken at a meeting of the Board of Trustees.

#### V. POWERS AND DUTIES OF THE BOARD OF TRUSTEES

5.01. Powers. The Board of Trustees shall have power to:

(a) Adopt and publish rules and regulations governing the use of the Common Areas, and personal conduct of the Members and their agents and guests thereon, and establish penalties for the infractions thereof;

(b) Exercise each and every power granted in the Declaration or by law to levy, assess, collect and enforce the regular and special assessments of the Association.

(c) Exercise for the benefit of the Association and its Members all of the powers granted by the Declaration or otherwise granted to the Association by law and not reserved to the Members by the Articles or the Declaration.

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

(a) 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 such other times as requested in writing in accordance with the provisions of the Declaration or the law;

(b) Supervise all officers, agents, and employees of the

Association;

(c) Fix the amount of the regular and special assessments against the Units and Owners and send written notice of such assessments to the Owners and others in accordance with the provisions of the Declaration;

(d) Foreclose the liens of the Association against Units as provided in the Declaration;

(e) Cause the Common Areas to be properly maintained;

(f) Prepare and issue all reports, notices, and certificates called for by the Declaration;

(g) Procure and maintain adequate liability and hazard insurance on the Condominiums and Common Areas as required by the Declaration.

(h) Obtain such fidelity bonds for employees and officers as required by the Declaration and as may be appropriate.

(i) Do each thing required of the Board of Trustees by the Declaration and otherwise manage the affairs of the Association for the benefit of its Members.

#### VI. MEETINGS OF THE TRUSTEES

6.01. Regular Meetings. Regular meetings of the Board of Trustees may be held without notice at the times and places, within the State of Utah, that the Board establishes for such regular meetings by resolution.

6.02. Special Meetings. Special meetings of the Board of Trustees may be called by any member of the Board.

6.03. Notice. Written notice of the place, date and time of any special meeting shall be given at least three days prior to the meeting. Such notice will be deemed to have been furnished if mailed first class postage prepaid at least six days prior to the meeting to each Trustee at the address for such Trustee on record with the Association as of the date of mailing. Attendance of any Trustee at a meeting shall constitute a waiver of notice of such meeting unless the Trustee attends for the express purpose of objecting to the meeting as not having been properly convened. Neither the business to be transacted nor the purpose of any meeting need be specified in the notice thereof.

6.04. Quorum. Two Trustees shall constitute a quorum for the transaction of any business of the Association. The act of a majority of the Trustees shall constitute the act of the Board of Trustees unless a greater number is required by law.

6.05. Vacancies. Any vacancy on the Board may be filled by the

unanimous vote of the remaining Trustees. A Trustee so selected shall serve for the unexpired term of his predecessor.

#### VII. OFFICERS

7.01. Number and Qualification. Trustees may select such officers of the Association as they shall determine but at least a President and Secretary shall be elected. Officers need not be members of the Association.

7.02. Tenure. Officers of the Association shall be elected by the Board of Trustees. Each officer shall hold office until his successor has been duly elected and qualified. Any officer may be removed by the Board whenever, in the judgment of the Board, the best interests of the Association would be served thereby.

7.03. President. The President shall be the chief executive officer of the Association subject to the control of the Board of Trustees.

7.04. Secretary. The Secretary shall perform such services as may be assigned to him by the Board of Trustees, including but not limited to the keeping of all books, records and reports of the Association.

7.05. Compensation. Officers may receive a reasonable compensation for their services to the corporation upon such terms and at such rates as shall be determined by the Board of Trustees.

#### VIII. MISCELLANEOUS

8.01. Construction. These By-Laws are to be construed together with the provisions of the Utah Condominium Ownership Act, Utah Code Ann. Section 57-8-1, et. seq., the Utah Nonprofit Corporation and Co-operative Association Act, Utah Code Ann. Section 16-6-18 et. seq. and the Declaration. Any conflict between these By-Laws and the said Laws or Declaration shall be resolved in favor of the Laws and/or the Declaration. Any powers granted or duties assigned to the Association, its officers or Board of Trustees by said Laws or Declaration which are not mentioned herein shall be construed to have been given or assigned to the Association, its officers or Board of Trustees.

8.02. Amendment. These By-Laws may be amended by the majority vote of the Board of Trustees at a meeting called for that purpose.



DATED this 25th day of June, 1986.

BOARD OF TRUSTEES

*Leon Peterson*  
Leon Peterson

*Karen F. Peterson*  
Karen F. Peterson

*Clark H. Jenkins*  
Clark H. Jenkins

*Mark S. Sandberg*  
Mark S. Sandberg

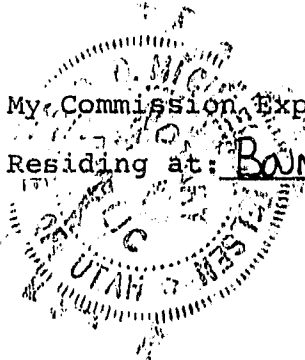
STATE OF UTAH )  
                  )ss  
COUNTY OF DAVIS )

On the 25<sup>th</sup> day of JUNE, 1986, personally appeared before me, Leon Peterson, Karen F. Peterson, Clark H. Jenkins, and Mark S. Sandberg, the signers of the above instrument, who duly acknowledged to me that they executed the same.

*[Signature]*  
Notary Public

My Commission Expires: DECEMBER 1986

Residing at: BOUNTIFUL, UTAH



ARTICLES OF INCORPORATION  
OF  
NEWPORT HEIGHTS CONDOMINIUM OWNERS ASSOCIATION  
A Utah Nonprofit Corporation

THE UNDERSIGNED natural person of the age of twenty-one (21) years or more, acting as incorporator of a non-profit corporation in accordance with the provisions of the Utah Nonprofit Corporation and Co-operative Association Act, Utah Code Ann. Section 16-6-18 Et. Seq., adopts the following Article of Incorporation for such corporation:

ARTICLE I - NAME

The name of the corporation is NEWPORT HEIGHTS CONDOMINIUM OWNERS ASSOCIATION.

ARTICLE II - DURATION

The duration of the corporation is perpetual.

ARTICLE III - PURPOSE

The purposes for which this corporation is organized are as follows:

A. To establish a Nonprofit Association of the Owners of the Newport Heights Condominium, a Condominium Project established in accordance with the Utah Condominium Ownership Act, Utah Code Ann. Section 57-8-1 Et. Seq., and pursuant to the Declaration of Condominium of the Newport Heights Condominium duly executed and recorded with the office of the Davis County Recorder, Davis County, State of Utah;

B. To conduct any and all business useful or necessary for the management of the affairs of the Condominium in accordance with Utah Law, the said Declaration, and the Bylaws of this Corporation; and,

C. To act solely as a non-profit corporation in accordance with the provisions of the Utah Nonprofit Corporation and Co-operative Association Act in whatsoever matters it undertakes.

#### ARTICLE IV - MEMBERSHIP

The corporation shall have as its members the Owners of Condominiums in the Newport Heights Condominium, a Utah Condominium Project, as the term "Owner" is defined in the Declaration of said Condominium Project, which Declaration is recorded with the office of the Davis County Recorder, Davis County, State of Utah. No shares of stock shall be issued evidencing membership in the corporation or entities who may become members.

#### ARTICLES V - TRUSTEES

The number of trustees constituting the initial governing board shall be three and their names and addresses are as follows:

1. Leon Peterson, 220 South 200 East, Salt Lake City, Utah 84111
2. Clark H. Jenkins, 505 South Main, Bountiful, Utah 84010
3. Mark S. Sandberg, 505 South Main, Bountiful, Utah 84010

ARTICLE VI - INCORPORATOR

The name and address of the incorporator is Leon Peterson, 220 South 200 East, Salt Lake City, Utah 84111.

ARTICLE VII - INITIAL REGISTERED AGENT

The location and street address of the initial principal office and registered agent of the corporation is:

D. Michael Nielsen, Esq.  
505 South Main  
Bountiful, Utah 84010  
801-292-1818

IN WITNESS WHEREOF, I have hereunto set my hand this 25<sup>th</sup> day of JUNE, 1986.

*Leon Peterson*

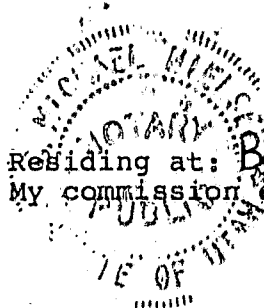
\_\_\_\_\_  
, Incorporator

State of Utah )  
                  : ss.  
County of Davis )

I, D. MICHAEL NIELSEN, a Notary Public, hereby certify that LEON PETERSON personally appeared before me, and being first duly sworn, declared that he is the person who signed the foregoing document as Incorporator, and that the statements contained therein are true to the best of his knowledge and belief.

*D. Michael Nielsen*

\_\_\_\_\_  
Notary Public



Residing at: BOUNTIFUL, UTAH  
My commission expires: DECEMBER, 1986

## SCHEDULE 1

BOUNDARY DESCRIPTION

Beginning at the Southeast corner of Lot 68 of North Point Cove Subdivision Plat "C", said point being N.  $0^{\circ} 08' 42''$  W. 23.67 feet along the Section line and West 837.83 feet from the East quarter corner of Section 6, Township 1 North, Range 1 East, Salt Lake Base and Meridian, said point also being on the Westerly Right-of-Way line of 400 East Street; and running thence along said Westerly Right-of-Way line the following three courses: S.  $4^{\circ} 00' 00''$  E. 220.51 feet to a point on a 1000.00 foot radius curve to the left (radius point bears N.  $86^{\circ} 00' 00''$  E), Southerly along the arc of said curve 218.17 feet, and S.  $16^{\circ} 30' 00''$  E. 32.68 feet; thence N.  $89^{\circ} 59' 20''$  W. 150.00 feet; thence N.  $23^{\circ} 46' 42''$  W. 234.99 feet; thence N.  $24^{\circ} 11' 43''$  E. 51.48 feet; thence N.  $7^{\circ} 27' 39''$  W. 192.21 feet to the Southwest Corner of said Lot 68; thence N.  $86^{\circ} 00' 00''$  E. 185.65 feet along the Southerly line of said Lot 68 to the point of Beginning.

Containing 1.861 Acres