

After Recording Return To:
Vial Fotheringham LLP
2225 E. Murray Holladay Rd., Suite 203
Holladay, UT 84117

Ent 873994 Bk 1322 Pg 74
Date 6-Oct-2004 2:51PM Fee \$20.00
Michael Gleed, Rec. - Filed By AM
Cache County, UT
For BLACKHAWK HOME OWNERS ASSOCIATION

**INTERPRETIVE RESOLUTION OF THE
BOARD OF DIRECTORS OF
BLACKHAWK HOME OWNERS' ASSOCIATION
CLARIFYING OWNERSHIP OF UNITS AND COMMON AREAS**

RECITALS

WHEREAS, by judgment and order for declaratory relief and by an action to quiet title (collectively referred to as the "Order") brought before Judge Gordon J. Low on September 15, 1997, in the First Judicial District of Cache County, Utah, the Declaration of Covenants, Conditions and Restrictions of Blackhawk P.U.D. Development Phases 1, 2, & 3, (the "Declaration") recorded as Entry Number 668455, in Book 769, Pages 679-708, et. seq., records of Cache County Utah, was judicially declared and recognized by the court as running with the real property and binding all unit owners of Phases 1, 2 and 3 of Blackhawk P.U.D.

WHEREAS, a supplement to the Declaration of Covenants, Conditions and Restrictions of Blackhawk P.U.D. Development (the "Supplemental Declaration") adding Phase 4 thereto was recorded as entry number 690046, Book 825, Page 610, in July 1998, records of Cache County, Utah;

WHEREAS, based on the (a) definitions of "common area and facilities" and "units," as expressed in the Declaration, (b) the language of the judicial Order and (c) the language contained in the Supplemental Declaration, questions have arisen whether Blackhawk is a condominium or a planned unit development, and the Board deems it necessary to clarify the ownership of units as opposed to common areas and facilities and resolve the related obligations related thereto;

WHEREAS, paragraph 2(c) of the Declaration defines "common areas and facilities" to mean:

- (1) the land at Blackhawk P.U.D.;
- (2) the portion of the property not specifically included in the respective units as defined in the Declaration;
- (3) all foundations, columns, girders, beams, supports, mainwalls, roofs, stairways, exterior walkways, driveways, streets, such recreational areas and facilities as may be provided, yards, fences, service and parking areas and entrances and exists, and in general all other apparatus, installations and other parts of the property necessary or convenient to the existence, maintenance and safety of the common areas and facilities or normally in common use;
- (4) those areas specifically set forth and designated in the plat map as "common areas," and;
- (5) all common areas and facilities whether or not expressly listed herein.

WHEREAS, such a definition of "common areas" is typically a characteristic of the condominium form of ownership, however, there is no express reference in the Declaration subjecting Blackhawk to the condominium form of ownership;

WHEREAS, paragraph 2(q) of the Declaration defines "unit" as follows:

"Unit" shall mean and refer to one of the units designated as a unit on the plat map and hereinafter shall be jointly described as "unit." Mechanical equipment and appurtenances located within any one unit or located without said unit but designated and designed to serve only that unit, such as appliances, electrical apparatus, furnaces, stoves, fixtures and the like, shall be considered part of the unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of, inter alia and as appropriate, wall paper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the unit and serving only the unit, and any structural members other than bearing walls and structural members, or any other property of any kind, including fixtures and appliances within any unit, which are removable without jeopardizing the

soundness, safety or usefulness of the remainder of the building within which the unit is situated shall be considered part of the unit.

WHEREAS, the definition of unit also appears to be consistent with the condominium form of ownership, with no express reference in the Declaration or Bylaws of Blackhawk being a condominium project;

WHEREAS, the plat maps of Blackhawk depict individual lots for each phase of Blackhawk and identifies common areas therein. Said maps are not drafted in accordance with the plat requirements for a Utah condominium project;

WHEREAS, paragraph 8(d) of the Declaration states that the common areas and facilities shall be owned by the Blackhawk Homeowners Association, Inc., and that each unit owner will have membership in the Association;

WHEREAS, the aforementioned Order decrees that the common areas described in the survey maps of Blackhawk, be adjudicated quieted in the name of the Blackhawk Homeowners Association;

WHEREAS, the Supplemental Declaration purports to "adjust the ownership of the unit owners in the common areas" so that the ownership of each of the unit owners in the common areas of all phases of the Blackhawk Development is 1/348th;

WHEREAS, this "adjusted ownership" stated in the Supplemental Declaration is inconsistent with paragraph 8(d) of the Declaration referenced above and the Order in that both paragraph 8(d) and Order state that the common areas are to be owned by the Association (not by the owners in an undivided fractional interest);

WHEREAS, based on the ambiguity set forth above, it is the intent of the Board of Directors to:

A. Clarify the legal form of unit and common area ownership in Blackhawk necessitated by contradictory language in the Declaration; Supplemental Declaration; the Order of the court and the plat maps of the relevant phases.

BE IT RESOLVED THAT the following be understood by all relevant and interested parties:

1. The Blackhawk P.U.D. Development is not a condominium project nor is it subject to Utah's Condominium Act, Utah Code Annotated §57-8-1, et. seq.

2. The Blackhawk Development (Phases I-IV) is a Planned Unit Development, consistent with the plat maps and Order recorded in this matter and is subject to Utah's Community Association Act, §57-8a-1, et. seq., as may be amended from time to time.

3. Owners within the Blackhawk P.U.D Development, Phases I-IV, hold title to their "units" as defined in the governing documents of the Association and as referenced above. Each owner's legal interest in their "unit" shall be as set forth in the Declaration and plat map and as reflected in their deed.

4. The "common areas" and "facilities" are owned by the Blackhawk Homeowners Association and are not owned in common (in the form of an undivided interest) with the owners of the Association.

5. The maintenance responsibilities and obligations for the common areas, facilities, and units shall be as set forth in the Declaration and Bylaws of the Association.

6. Individual unit owner and the Association's insurance obligations for the units and common areas and facilities, respectively, shall be as set forth in the Declaration and Bylaws.

7. The Association recognizes that its ownership of the common areas and facilities, in the manner described above, is a unique ownership scheme for this planned unit development as it is a ownership scheme typically found in a condominium project. Consequently, it has been resolved and deemed necessary to clarify the nature of ownership for the purpose of maintenance and insurance obligations between the owners and Association and to provide this statement of planned unit development for the benefit of insurance underwriters, loan originators and mortgagees.

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IT IS FURTHER RESOLVED THAT this resolution shall be recorded with the Cache County Recorder, as permitted thereby, and that a copy be promptly distributed to each owner within Blackhawk Homeowners Association.

DATED this 17 day of August, 2004.

ATTESTED TO BY:

Darrell Wilcox
President, Board of Directors

Kathleen Rindlisbacher
Secretary

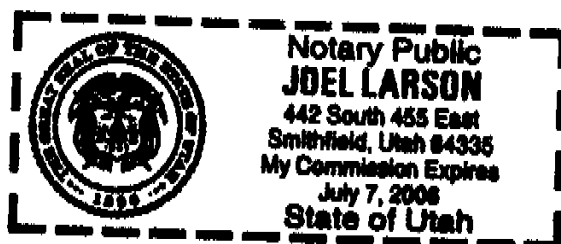
Recorded in the official records of Blackhawk Homeowners Association on this 17 day of August, 2004.

BY:

Kathleen Rindlisbacher
Secretary, Board of Directors

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

The foregoing instrument was acknowledged before me this 17 day of August, 2004, by Kathleen Rindlisbacher, the Secretary of Blackhawk Homeowner's Association Board of Directors on behalf of such organization.

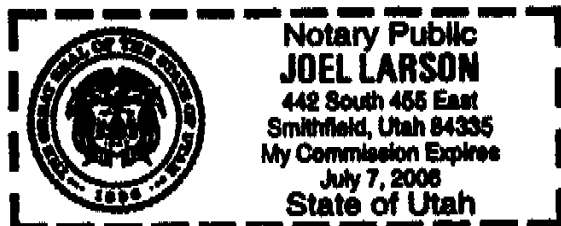


[Signature]
NOTARY PUBLIC
Residing at: 442 S. 455 E. Smithfield

Ent 873994 Bk 1322 Pg 78

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

The foregoing instrument was acknowledged before me this 17 day of August 2004, by Darrell Wilcox, President of Blackhawk Homeowner's Association Board of Directors on behalf of such organization.




NOTARY PUBLIC
Residing at: 442 S. 455 E. Smithfield