

WHEN RECORDED MAIL TO:

Solitude Ski Resort Company  
12000 Big Cottonwood Canyon  
Solitude, Utah 84121  
Attn: Gary L. Deseelhorst

6241679  
12/21/95 3:49 PM 174.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
SOLITUDE SKI RESORT COMPANY  
REC BY: B GRAY ,DEPUTY - WI

6241679

**CONDOMINIUM DECLARATION  
FOR CREEKSIDE AT SOLITUDE**

THIS DECLARATION is made on the date hereinafter set forth by  
SOLITUDE SKI RESORT COMPANY, a Utah joint venture ("DECLARANT").

**ARTICLE I**

**RECITALS**

1.01: Declarant is the owner of certain real property (the  
"Real Property") located in Salt Lake County, Utah, the legal  
description of which is set forth in the attached Exhibit "A",  
incorporated herein by reference.

1.02: Declarant has constructed a condominium project upon  
the Real Property, substantially in accordance with the plans and  
drawings set forth in the Survey Map filed concurrently herewith (a  
reduced copy of which is attached as Exhibit "B", incorporated  
herein by this reference). The condominium project shall be known  
as Creekside at Solitude. Declarant intends to establish said  
condominium project under and pursuant to the provisions of the  
Utah Condominium Ownership Act.

1.03: The condominium project shall contain eighteen (18)  
residential condominium units, and two (2) commercial condominium  
units. The Declarant, by this Declaration, hereby establishes a  
plan for the ownership of real property estates whereby the owner  
of each such unit will receive title to his individual unit, an

BK7295P62370

undivided interest in the Common Elements contained in said condominium project, as the same are defined herein, as the same is defined herein. Each unit shall have appurtenant to it a membership in the association of unit owners known as the "Creekside at Solitude Owners Association" (the "Association"), which shall administer and control the Common Areas and Facilities located on the Real Property.

1.04: Declarant intends by this Declaration to impose upon the Real Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of said condominium units and the owners thereof.

1.05: The two commercial Condominium Units consists of that portion of the building erected upon the Real Property which is dedicated to certain retail purposes, including the restaurant and kitchen area on the first floor, the kitchen support/storage area in the basement/garage level, the employee locker room and laundry room also in the basement/garage level, the three maid service closets, and the other service areas indicated in the reduced copy of the floor plan which is attached as "Exhibit C" (incorporated herein by this reference), all of which comprise the Commercial Units. Notwithstanding anything herein to the contrary to the extent permitted by applicable law each of the owners of the Commercial Units shall be entitled to lease portions of the Commercial Units (such as the maid service closets and storage areas) to third parties on such terms as such owner(s) deem appropriate.

1.06: Declarant hereby declares that said Real Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the provisions and conditions of the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which, pursuant to the provisions of the Utah Condominium Act, shall be enforceable equitable servitudes, where reasonable, and shall run with the land, and shall be binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any portion of said real property.

1.07: Declarant further reserves the right, until such time as declarant shall own less than three (3) of the Condominium Units, to subject the Real Property and the Building to any master declaration establishing a common plan for the ownership of real property estates in the Real Property and adjacent property and/or to include the same in any master homeowners association to jointly administer and control the Common Areas and Facilities along with similar areas and facilities on adjacent property comprising part of the Solitude Village. Declarant further reserves the right, until such time as Declarant shall own less than three (3) of the Condominium Units, to bind the Real Property and the Building to the utilization of the services of any Service Company Service District or Improvement District or any entity or organization acting in a similar capacity, including Declarant, its affiliates, successors and assigns, (hereinafter collectively referred to as a "Service Company") established under any Master Declaration or

otherwise for the purpose of providing utility service or quasi-utility services or similar common services to the Real Property and/or other adjacent or proximate parcels of property, and to include the charges and assessments under such Master Declaration or from such Service Company as a "Common Expense" as that term is defined below. Declarant reserves the right to unilaterally and without notice to or the consent of the Owners or the Association, change the specific location of the Right of Way Easement benefitting the Project and providing legal access over Declarant's adjacent property, upon Declarant recording a Notice of Termination of Right of Way Easement signed by Declarant, provided that such change and termination of the former easement shall not be effective unless Declarant shall have first recorded a permanent replacement Right of Way Easement which shall provide the Project with a permanent right of way providing legal ingress and egress for the benefit of the Project.

## ARTICLE II

### DEFINITIONS

2.01: **INTERPRETATIONS:** Those definitions contained in the Utah Condominium Act, to the extent they are not inconsistent with the foregoing definitions, shall be and are hereby incorporated herein by this reference and shall have the same effect as if expressly set forth herein and made a party hereof.

2.02: **DEFINITIONS:**

(a) The "Act" -- the Utah Condominium Ownership Act, Utah Code Annotated, Sections 57-8-1 through 57-8-36, as the same may be amended from time to time.

(b) "Assessment" -- that portion of the Common Expenses which are charged to each Unit Owner.

(c) "Association of Unit Owners" or "Association" -- shall mean and refer to all the Creekside at Solitude Owners taken as, or acting as, a group or an entity in accordance with this Declaration, and any By-Laws or similar documents from time-to-time adopted by or governing the Association.

(d) "Board" or "Board of Directors" -- the governing body of the Association, created and governed by the provisions and conditions of this Declaration and any By-Laws of the Association from time-to-time in effect. So long as the Declarant owns three Condominium Units or more in the Project, the Board of Directors shall consist of one or more Directors of the Declarant's selection.

(e) "Building" -- any building constructed on the Real Property.

(f) "Common Elements" --

(1) The Real Property;

(2) All structural parts of the Buildings contained in the Project, including, without limitation, foundations, columns, girders, joists, beams, supports, main walls, supporting walls, floors, ceilings and roofs;

(3) All common halls, corridors, lobbies, ski locker areas, and storage areas contained in said Building;

(4) All driveways, parking areas (exclusive of specifically designated parking spaces), yards, gardens,

lawns, shrubs, hot tubs or spas and associated facilities, exterior or common entrance ways and stairways and service areas;

(5) Any utility pipe or line or system servicing more than a single Unit, and all ducts, wires, conduits, and other accessories used therewith;

(6) All elevators, tanks, pumps, motors, fans, compressors, ducts, mechanical areas, garbage area, and in general all apparatus and equipment existing for common use; and

(7) All other parts of the Real Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Elements on the Map and which are not part of any Condominium Unit as defined herein;

All Common Elements shall be "General Common Elements", unless they are Limited Common Elements as herein defined.

(g) "Common Expenses" -- all expenses of administration, maintenance, repair or replacement of the Common Elements; expenses agreed upon as common expenses by the Association; and, expenses declared common expenses by the provisions of the Act, this Declaration, or any By-Laws duly adopted by the Association (including any expenses which the Association agrees to collect and pay under any Master Declaration or Service Company agreement.

(h) "Condominium Unit" or "Unit" -- a single Unit in the Project together with an undivided interest in common with other Unit Owners in the Common Elements.

(i) "Declarant" -- Solitude Ski Resort Company, a Utah joint venture.

(j) "Declaration" -- shall mean and refer to this Condominium Declaration for Creekside.

(k) "Commercial Units" -- that portion of the Building consisting of the two Condominium Units dedicated to retail and commercial purposes, together with certain ancillary facilities, all is more particularly described in Article I, Section 1.05 of this Declaration.

(l) "Limited Common Elements" -- those Common Elements, as designated in the Map, reserved for the exclusive use of a certain Unit or Units to the exclusion of the other Units. Any doorsteps, porches, balconies or patios, permitted shutters, awnings or window boxes, specifically designated parking spaces, or any other apparatus intended to serve a single Unit, but located outside the boundaries of such Unit shall nonetheless constitute Limited Common Elements and appertaining to that Unit exclusively, all notwithstanding anything in this Declaration or the Act to the contrary. Each Unit shall have appurtenant to it as a Limited Common Element the parking space or spaces set forth on Exhibit "C" attached hereto and incorporated hereby.

(m) "Manager" -- the person(s) or entity(s) selected by the Association to manage the affairs of the Condominium Project.

(n) "Map" -- the Survey Map of Creekside at Solitude recorded by Declarant.

(o) "Master Declaration" -- shall mean and refer to any common plan, if any, now existing or hereafter implemented for the administration and maintenance of the Real Property and any adjacent or proximate parcel or parcels of property comprising part of the Solitude Village.

(p) "Mortgage" -- any mortgage, deed of trust or other security instrument by which a Condominium Unit or any part thereof is encumbered.

(q) "Mortgagee" -- any person or entity named as the mortgagee, beneficiary or obligee under any Mortgage, and any successor-in-interest to any such person or entity.

(r) "Owner" or "Unit Owner" -- any person(s) or entity(s) owning a Unit in the Project, including the Declarant. The term Unit Owner or Owner shall exclude Mortgagees and other persons or entities having any interest merely as security for the performance of an obligation.

(s) "Project" -- the entire Real Property, all buildings and other improvements on the Real Property and all articles of personal property intended for use in connection therewith, together with all rights, obligations and organizations established by this Declaration. The Condominium Project shall be known as "Creekside at Solitude".

(t) "Real Property" -- the real property described in the attached Exhibit "A", together with all easements, rights and



appurtenances belonging thereto and all articles of personal property intended for use in connection therewith.

(u) "Service Company" -- any public or private company or district or entity formed for the purpose of providing or engaged in providing utility services or quasi-utility services or quasi-municipal services or similar services in common to the Real Property (including such things as water, sewer, roads within or connecting to any area of master planned development, community parking facilities, community lighting, garbage removal, snow removal, landscaping, maintenance, community recreation facilities, electricity, propane, telephone, security, transmission of television signals from any central antenna, satellite dish or central receiver and other such services and facilities), in conjunction with any adjacent and/or proximate parcel or parcels of property comprising part of the Solitude Village, including any entity formed for such purposes under a Master Declaration. Declarant or its successors, assigns, designees or affiliates may act as a Service Company in providing some or all of the foregoing services.

(v) "Service Company District" -- any district established for the purpose of receiving and sharing services or sharing the cost of services provided by any Service Company.

(w) "Unit" -- each separate physical part of the Property, as shown on the Map, which is intended for independent use. Each Unit shall include the enclosed rooms occupying such Unit's share of the building in which it is located and bounded by the interior

surfaces of the walls, floors, ceilings, windows, doors and built-in fireplaces, if any, along the perimeter boundaries of the air space as said boundaries are shown on the Condominium Map, together with all fixtures and improvements therein contained. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit in so far as they are necessary for the support or full use and enjoyment of another Unit: bearing walls, floors, ceilings and roofs (except the interior surfaces thereof), foundations, space heating equipment and central water heating equipment, if any, tanks, pumps, pipes, vents, ducts, shafts, flues, shoots, 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 such windows or doors are closed.

(x) "Unit Number" -- the letter, number or combination thereof designating the Unit in this Declaration and in the Map.

(y) "Utility services" -- includes, but is not limited to, those services listed in section 2.02(u) above and any other services provided to the Units by any Service Company.

### ARTICLE III

#### APPLICABILITY OF ACT

3.01: It is the intention of Declarant that the provision of the Act shall apply to the Project and that the provisions of this Declaration shall be construed in accordance therewith, unless expressly inconsistent therewith.

## ARTICLE IV

### DESCRIPTION OF THE PROJECT

**4.01 LOCATION:** The Project is located in the Solitude Village area Big Cottonwood Canyon, Salt Lake County, Utah, on the Real Property.

**4.02 DESCRIPTION OF IMPROVEMENTS:** The Building and appurtenant structures and improvements which constitute the Project contain a total of 18 Residential Units and 2 Commercial Units and are of combined (steel, concrete, frame and block) construction. Each Residential Unit contains a living room, dining area, kitchen, and one or more bedrooms and bathrooms. Each Residential Unit has fireplace, dishwasher, stove/microwave, refrigerator and garbage disposal. All Units are totally electric as to heating and appliances. Electricity (including each Unit's own separate heating system) is separately metered to each Unit. Each Unit has its own hot water heater (electric).

**4.03 DESCRIPTION AND LEGAL STATUS OF UNITS:** Each Unit, as described on the Map, shall include that part of the Building containing the Unit which lies within the boundaries of the Unit. Such boundary shall be determined in the following manner: the upper boundary shall be the plane of the lower surface of the ceiling; the lower boundary shall be the plane of the upper surface of the floor; and the vertical boundaries of the Unit shall be (a) the interior surface of the outside walls of the building bounding a Unit; (b) the center line of any non-bearing interior walls bounding a Unit; and (c) the interior surface of any interior

bearing walls bounding a Unit. Each Unit includes the portions of the building so described and those things which are defined as Common Elements.

4.04 NO SEPARATE CONVEYANCE OR UNDIVIDED INTERESTS: Each Condominium Unit's undivided interest in the Common Elements, including Limited Common Elements, shall not be separated from the Unit to which they appertain and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

#### ARTICLE V

##### ALTERATIONS

5.01: For two years following the recordation hereof, Declarant reserves the right to change the interior design and interior arrangement of any Unit and to alter the boundaries between Units, so long as the Declarant owns the Units so altered or obtains and duly records the written authorization of the Owner of any altered Unit not owned by Declarant. Any change of the boundaries between Units or of Common Elements shall be reflected by an amendment of this Declaration and to the Map, which amendments, notwithstanding the provisions of Article XXI herein, may be executed solely by the Declarant and the Owner(s) of any Unit(s) whose boundaries is (are) changed. However, no such change shall increase the number of Units nor alter the boundaries of the Common Elements without amendment of this Declaration and of the Map in the manner described in Article XXI of this Declaration. If

the boundaries between Units are altered, each altered Unit's percentage of ownership in the Common Elements shall be reapportioned on the basis of the change in floor space which results from the boundary alteration, and such reapportionment shall be reflected in the amendment of the Declaration and Map which sets forth such altered boundaries.

#### ARTICLE VI

##### STATEMENT OF PURPOSE AND RESTRICTION ON USE

6.01: **PURPOSE:** The purpose of the Project shall be to provide residential housing space for Residential Unit Owners, their families, guests and lessees and to provide parking for use in connection therewith, and to provide retail and commercial space for the Commercial Unit Owners and parking in connection therewith, all in accordance with the provisions of the Act.

6.02: **RESTRICTIONS ON USE:** In addition to all of the covenants contained herein, the use of the Units and Common Areas and Facilities are subject to the following:

(a) Each of the Residential Units shall be occupied only as a residence and for no other purpose. No business shall be operated in or from any Residential Unit other than the rental of the Unit itself. No Residential Unit shall be used for conducting the business of the rental of other Units. Areas of the Project designated for parking shall be used for the parking of operable motor vehicles, only, and for no other purpose. Except as may be otherwise designated herein with respect to the Commercial Units, no Unit Owner shall use or

cause to be used, at any time, more than one of the parking stalls located in the Common Elements.

(b) Nothing shall be done or kept in any Unit or in the Common Elements which would increase the rate of insurance on the buildings or contents thereof beyond that customarily applicable for residential or ordinary retail and commercial use, or will result in the cancellation of insurance on said buildings, or the contents thereof, including without limitation propane tanks and electrical or other generators without the prior written consent of the Association. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which is in violation of any law or regulation of any governmental authority.

(c) No awning, canopy, deck, antenna, shutter, storm door, screen door or other item or object shall be hung, be displayed, be visible or otherwise be placed on the exterior walls or roof of any Building in the Project or any part thereof, or on the outside of windows, or doors, without the prior written consent of the Association, the Declarant, and if applicable, any association established under a Master Declaration, if any. No sign of any kind shall be displayed on Residential Unit doors or windows or elsewhere to the public view on or from any Residential Unit or the Common Elements except such signs as are approved by the Association.

(d) No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be

done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Unit Owners or occupants. The foregoing shall not limit the operation of the Commercial Units for ordinary and customary retail and commercial purposes.

(e) Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity or structurally change the same or any part thereof except as is otherwise provided herein.

(f) The Common Elements shall be kept free and clear of all rubbish, debris and other unsightly materials.

(g) No animals or birds of any kind shall be raised, bred, or kept in any Unit or on any portion of the Common Elements. This restriction extends to and includes usual and ordinary household pets, but excludes legitimate "assistance animals" used for the purpose of assisting the disabled or challenged, provided that Owners utilizing assistance animals must comply with all governmental requirements or Solitude Village requirements related to such animals including without limitation Salt Lake County Watershed regulations.

(h) Each Unit contains window coverings for each window therein. Each Owner may have a drape or other window covering backing such blinds provided the backing of such covering is medium beige in color.

(i) No admission fees, charges for use, leases or other income-generating arrangement of any type shall be employed or

entered into with respect to any portion of the Common Elements without the prior written consent of the Board of Directors. The foregoing shall not apply to parking spaces assigned to or utilized by the Commercial Units.

(j) Each Unit Owner shall be liable to the Association for all damages to the Common Elements caused by such Unit Owner or any occupant of his Unit or invitee, except for that portion of said damage, if any, that is covered by insurance maintained in effect by the Association. The failure of the Association to continue any insurance in effect shall not be a defense to any such liability.

#### ARTICLE VII

##### OWNERSHIP AND USE

7.01: OWNERSHIP OF A UNIT: Each Unit Owner shall be entitled to the exclusive, fee simple ownership, and possession of their Unit, to the exclusive possession of the Limited Common Elements appurtenant to their Unit and to the fee simple ownership of an undivided interest in the Common Elements in the percentage expressed in Exhibit "C" attached hereto. Units may and shall be owned as any other property rights by persons, corporations, partnerships, limited liability companies, or trusts and in the form of common or joint tenancy. The Unit Owners may lease or rent their Condominium Units subject only to those provisions and conditions chosen solely by the Unit Owner and his lessee; provided that all Unit Owners, their tenants, subtenants and other occupants or users of the Project, shall be subject to the Act, this



Declaration and all rules and regulations of the Association(including but not limited to those contained in the By-Laws).

7.02: SUBDIVISION OR COMBINATION OF UNITS: No Unit Owner may sub-divide or partition their Unit or their undivided share of the Common Elements. Nor may any part of a Condominium Unit be separated from any other part thereof during the period of condominium ownership prescribed herein, and each Unit and the undivided interest in the Common Elements appurtenant to such Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Condominium Unit or any part thereof shall be construed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Condominium Unit, together with all appurtenant rights created by law or by this Declaration. With the written consent of the Association, two or more Units may be utilized by the Owner or Owners thereof as if they were one Unit. To the extent permitted in such written consent, any walls, floors or other structural separations between any two such Units, or any space which would be occupied by such structural separations but for the utilization of the two Units as one Unit, may, for so long as the two Units are utilized as one Unit, be utilized by the Owner or Owners of the adjoining Units as Limited Common Elements, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of

other parts of the Project. At any time, upon the request of the Owner of one of such adjoining Units, any opening between the two Units which, but for joint utilization of the two Units, would have been occupied by a structural separation, shall be closed, at the equal expense of the Owners of each of the two Units and the structural separations between the two Units shall thereupon become General Common Elements.

7.03: OWNERSHIP OF COMMON ELEMENTS: The Common Elements shall be owned by the Unit Owners as tenants in common. The Common Elements shall remain undivided. No Unit Owner or combination thereof or any other person shall bring any action for partition or division of any part thereof.

7.04: USE OF COMMON ELEMENTS: There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from, the Common Elements except upon the prior written consent of the Association.

7.05: PROHIBITION OF DAMAGE AND CERTAIN ACTIVITIES: Nothing shall be done or kept in any Unit or in the Common Elements of any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase the rate of the insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept

in any Unit or in the Common Elements or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Elements or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees; provided, however that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Elements of any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project. The foregoing shall not be deemed to limit the operation of the Commercial Units for retail and commercial purposes, including without limitation a restaurant or bar.

Additionally, except as provided above for assistance animals, no dog, cat or other domesticated animal or pet shall be kept or allowed for any period of time in any Unit or in the Common Elements or any part thereof. In addition, all Owners and their respective guests and invitees shall comply with all rules and regulations of the United States Government, the State of Utah, the County of Salt Lake, Salt Lake City and the Solitude Village, dealing with or regulating or restricting the presence of animals in the Big Cottonwood Canyon watershed area.

## ARTICLE VIII

### MEMBERSHIP-VOTING-MULTIPLE OWNERSHIP

8.01: **MEMBERSHIP:** Every Owner shall be entitled and required to be a member of the Association. If title to a Condominium Unit is held by more than one person, the membership related to that Condominium Unit shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Condominium Unit is held. An Owner shall be entitled to one membership for each Condominium Unit owned by him. Each such membership shall be appurtenant to the Condominium Unit upon which it is based and shall be transferred automatically by conveyance of that Condominium Unit and the Association shall record the transfer on its books upon being presented with evidence of the transfer of the Condominium Unit. No person or entity other than an Owner may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of a Condominium Unit; provided, however, that the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium Unit.

8.02: **VOTING RIGHTS:** The Association shall have two classes of voting membership:

(a) **Class A.** Class A Members shall be all Owners. The total number of Class A votes in the Association shall be one hundred (100), and each Owner shall be entitled to the number of votes equal to the total percentage of ownership in the

Common Elements as applicable to his Unit or Units, as set forth in Exhibit "C."

Class A Members shall include the Declarant and any designated Successor Declarant from and after termination of the Class B membership.

(b) Class B. The Class B Member(s) shall be Declarant (and any successor of Declarant who takes title to all or any part of the Real Property for the purpose of development and sale of the Real Property or such part thereof and who Declarant has designated as Successor Declarant in a recorded instrument executed by Declarant). Any Class B Members shall be entitled to three times the number of votes equal to the total percentage of ownership in the Common Elements as applicable to the Unit or Units owned by the Class B Member, as set forth in Exhibit "C"; provided that, so long as the Class B Member claims voting rights under this Section 8.02(b) with respect to a particular Unit or Units, such Unit or Units shall not also have voting rights under Section 8.02(a). The Class B membership shall terminate on the earlier of the following events:

- (i) December 31, 1998, or
- (ii) the date on which Declarant (and/or any Successor Declarant) ceases to own three or more Condominium Units, or
- (iii) the date on which Declarant voluntarily relinquishes its Class B membership, as evidenced by a notice recorded in the office of the recorder for Salt Lake County, Utah.

8.03: VOTING: The vote of each Condominium Unit shall be cast by the Owner or Owners of such Condominium Unit or their proxies. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised by a majority of such Owners as may be determined among themselves. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever until the matter is resolved to the reasonable satisfaction of the Association. In such case, the Association may, but shall not be required to apportion such Condominium Unit's vote among the Owners thereof.

8.04: TRANSFER: The Association shall maintain records showing the name and address of each Owner, and the Unit which is owned by him. In the event of any transfer of a fee interest in a Unit, either the transferor or the transferee shall furnish the evidence establishing that the transfer has occurred. An Owner who fails to furnish such information shall continue to be liable for assessments of common expenses even after transferring ownership of their Unit, until the Association is advised of the transfer. At its option, the Association may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Salt Lake County, Utah. The

address of an Owner shall be deemed to be the address of the Unit owned by such Owner unless the Association is otherwise advised.

## **ARTICLE IX**

### **MANAGEMENT**

9.01: **INCORPORATION**: The Association may but need not incorporate. Management of any such corporation shall substantially conform to this Article IX.

9.02: **BOARD OF DIRECTORS**: The business, property and affairs of the Association shall be managed, operated and maintained by the Board of Directors and such officers and agents as they may designate to be the agents or representatives of the Association. The Association, acting through the Board of Directors in connection with its exercise of any of the powers delineated in paragraphs (a) through (k) below, shall constitute a legal entity capable of dealing in its own name as the "Creekside at Solitude Owner Association." The Board of Directors shall have, and is hereby granted, the following authority and powers:

(a) Without the vote or consent of the Owners or any other person(s), to grant or create, on such provisions as it deems advisable, utility and similar easements, over, under, across and through the Common Elements;

(b) To execute and record, on behalf of all Owners, any amendment to the Declaration or Map which has been approved by the vote or consent necessary to authorize such amendment;

(c) To bring suit in the name of the Association;

(d) To enter into contracts which in any way concern the Project, so long as any vote or consent of the Owners as necessitated by the subject matter of the agreement has been obtained;

(e) To purchase, otherwise acquire, and accept title to, any interest in real property, and to convey or transfer any interest in real property, so long as such action has been authorized by any vote or consent which is necessary under the circumstances;

(f) To add any interest in real property obtained pursuant to paragraph (e) above to the Project, so long as such action has been authorized by the necessary vote or consent;

(g) To adopt By-Laws of the Association;

(h) To promulgate from time to time such reasonable rules, regulations, and procedures as may be necessary or desirable to aid in carrying out the Association's functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Owners;

(i) The power to maintain, repair, replace, restore, operate and manage the Common Elements and all property that may be acquired by the Association, and to establish an adequate reserve fund for repair, replacement and restoration thereof;

(j) The power and authority to secure fidelity bond coverage and such other policy or policies of insurance as the



Board of Directors deems necessary or desirable in protecting the interests of the Association and the Owners;

(k) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Board of Directors to perform its function.

Any instrument executed by the Board of Directors or officers appointed by it that recites facts which, if true, would establish the Board's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

9.03: COMPOSITION OF BOARD OF DIRECTORS: So long as the Declarant (and/or any Successor Declarant) owns three or more of the Units in the Project, the Board of Directors shall consist of one (1) or more Directors designated by the Declarant. At such time as the Declarant ceases to own at least three of the Units, and thereafter, the Board of Directors shall be composed of not less than three nor more than seven Directors, as determined by the Owners. Beginning in the year 1997, there shall be an annual Owners' meeting, the date and place to be set by the Board of Directors. At each annual Owners' meeting, Directors shall be elected for one year terms, unless the Owners, by majority vote, determine to provide for staggered terms not to exceed three (3) years (all subject to the provisions of the first sentence of this

paragraph). Only Unit Owners, the beneficial owners of Units held in the names of fiduciaries, the spouses of such persons, and officers or agents of any Unit Owner who is not a natural person shall be eligible for directorship. At the annual meeting, the Owner(s) of each Unit shall be entitled to the number of votes determined by multiplying the Unit's percentage of undivided ownership interest in the Common Elements times the number of seats to be filled. Said votes may be voted in favor of as many candidates as there are Director seats to be filled, or may be cumulated and voted in any proportion for a lesser number of candidates. Until two years after the recordation of this Declaration the following persons, as hereby appointed by the Declarant, shall act as the Directors and shall hold office as provided for below:

Gary L. DeSeelhorst	President-Treasurer
David DeSeelhorst	Vice President-Secretary
Scott DeSeelhorst	Vice President
Susan DeSeelhorst	Vice President

If entered into during the period of Declarant control contemplated by this Section 9.03, no management contract, lease of recreational areas or facilities, or any other contract or lease designed to benefit the Declarant which was executed by or on behalf of the Association or the Unit Owners as a group shall be binding for more than eight (8) months beyond the expiration of such period of control unless then renewed or ratified by the consent of the Board of Directors elected following expiration of such period of

control. Notwithstanding anything herein to the contrary, the Owner(s) of the Commercial Units shall have the perpetual right, at their option, to designate and elect one member of the Board of Directors.

9.04: OPERATION OF BOARD OF DIRECTORS: Directors shall serve until their successors have been duly elected and qualified. Any Director who fails on three successive occasions to attend Board of Directors meetings (whether regular or special) shall automatically forfeit his seat. In the event a seat becomes vacant, whether by reason of forfeiture or due to another cause, the remaining Directors shall elect a replacement to sit on the Board of Directors until the expiration of the term for which the member being replaced was elected. Directors shall be reimbursed for all expenses reasonably incurred in connection with Association business, but shall receive no additional compensation for their services as Board members. Meetings of the Board of Directors may be held in person or telephonically, within or without the State of Utah. Regular meetings shall be fixed by the Board. Special meetings shall be convened at the request of the President of the Association, the Manager or upon the request of any two Directors.

9.05: APPROVAL REQUIRED: The Board of Directors shall not, without the prior favorable vote or the written consent of the Owners as provided for in this Declaration, have the authority to purchase or sell any real property or add any property to or remove any property from the Common Elements.

9.06: **ADDITIONAL FACILITIES:** The Association shall have the authority to provide such facilities, in addition to those for which the provision has already been made, as it may deem to be in the best interests of the Unit Owners and to effect the necessary amendment of documents and maps in connection therewith.

9.07: **MANAGER:** The Declarant shall act as Manager of the Project until December 31, 1997. Thereafter, the Association may carry out through a project manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be responsible for managing the Project for the benefit of the Unit Owners, and shall, to the extent permitted by law and the provisions of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association or its Board of Directors. Any agreement for professional management of the Project which may be entered into by the Association shall call for a term not exceeding three (3) years and shall provide that such management agreement may be terminated by the Association for cause upon not in excess of thirty (30) days written notice.

## **ARTICLE X**

### **EASEMENTS**

10.01: **RECORDED EASEMENTS:** The Project shall be subject to all easements as shown on any recorded plat affecting the Project or the Real Property and to any other easements of record or use as the date of recordation of this Declaration.

10.02: REPAIR OF COMMON ELEMENTS: Each Unit shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any Common Elements located within the boundaries of such Unit.

10.03: EASEMENTS FOR CONSTRUCTION FACILITIES: Until the conveyance by Declarant of the last Unit within the Project, or December 31, 2000, whichever first occurs, Declarant reserves for itself and any designated Successor Declarant an easement on, over and across the General Common Elements for the purposes of storing and operating construction trailers, construction yards, construction materials and equipment used in conjunction with the development and construction of the Project.

10.04: EASEMENT FOR THE COMMERCIAL UNITS: In addition to their rights as Unit Owners, the owners and operators of any retail enterprise conducted within the Commercial Units, along with their agents, employees, servants, licensees, invitees, visitors and guests, shall have a continuing easement on, over and across those portions of the General Common Elements as are necessary for ingress and egress to and from the Commercial Units, for the operation of any commercial enterprise conducted thereon and for the use and enjoyment of the Commercial Units.

10.05: EASEMENTS FOR ENCROACHMENTS: If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon an

adjoining Unit or Units, 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 Elements or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Building to be constructed on the Real Property, 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.

**10.06: OWNER'S EASEMENT OF ENJOYMENT AND RIGHT TO INGRESS AND EGRESS AND SUPPORT:** Each Owner shall have the right to ingress and egress over, upon and across the Common Elements necessary for access to his Unit, and to any Limited Common Elements designated for use in connection with his Unit, and shall have the right to the horizontal and lateral support of his Unit, and such rights shall be appurtenant to and pass with the title to each Condominium Unit.

**10.07: ASSOCIATION'S RIGHT TO USE OF COMMON ELEMENTS:** The Association shall have a non-exclusive easement to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the General Common Elements maintenance and storage facilities for use by the Association, and to assign particular storage facilities for use by the Owners of particular Units.

10.08: EXTERIOR OF THE BUILDING: The architectural appearance of the exterior of the building has been designed to conform to a master planned development of the Real Property and certain adjacent and proximate parcels of property. Except as required to conform to safety and health regulations, the exterior of the building and its appurtenances shall not be not be altered or modified in any respect, without the written authorization of Declarant and its successors and assigns, and the Solitude Ski Resort, its successors and assigns. This restriction shall constitute an easement/covenant running with the land and shall be binding upon the Real Property and the owners thereof, notwithstanding that Declarant ceases to be the owner of any other interest in the Real Property.

#### **ARTICLE XI**

#### **ASSESSMENTS**

11.01: ASSESSMENTS: The Declarant, for each Unit within the Condominium Project, hereby covenants, and each Unit Owner by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Annual assessments or charges; and (b) Special assessments for capital improvements as hereafter set forth. Such assessments to be established and collected as hereafter provided. Such assessments may include charges and assessments under a Master Declaration if any, and charges and assessments from any Service Company providing services to the Project and the Solitude Village in common.

11.02: PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be used to acquire, construct, manage, maintain and care for the Common Elements and to perform the responsibilities of the Association as set forth in this Declaration.

11.03: DETERMINING ANNUAL ASSESSMENTS: Within ninety (90) days before the close of each fiscal year of the Association, the Board of Directors shall determine the common expenditure budget for the Association for the next succeeding fiscal year. The common expenditure budget shall include all expenses of the Association, including reasonable adequate reserve funds for contingencies and for maintenance, repairs and replacements of the Common Elements and other property administered by the Association. Such budget may include, among other things, expenses of management; taxes upon Common Elements; premiums for insurance; common lighting and heating; water charges; trash collection; sewer service charges; landscaping charges; common television and satellite charges; repairs and maintenance; wages for Association employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. The Board of Directors shall also have discretion to establish reserves for anticipated future capital repairs and improvements. The amount so determined (less any surplus expected to be on hand from the prior



year's expenditure budget, plus amounts required to fund any reserves that had been established) shall be the Project's total annual assessment. The Board may appoint a Finance Committee to assist in the determination of the expenditure budget. A copy of the common expenditure budget shall be distributed to each Unit Owner not less than sixty (60) days before the beginning of the fiscal year, commencing with the 1997 fiscal year. Written notice of the annual assessment shall be sent to each Unit Owner subject thereto at least thirty (30) days in advance of each annual assessment period.

11.04: APPORTIONMENT OF ANNUAL ASSESSMENTS: Expenses attributable to the Common Elements and to the Project as a whole shall be apportioned ratably among all Owners in proportion to their respective undivided interests in the Common Elements as set forth in Exhibit "C" hereto.

11.05: INITIAL ANNUAL ASSESSMENT: PROCEDURE FOR INCREASING ANNUAL ASSESSMENTS: Within 120 days following substantial completion of the Building (as determined by the state, county, or local government authority issuing the building permit for the construction of the Building), the members of the Association shall meet, shall determine the Association's fiscal year (if not already determined) shall fix the annual assessment for the Association's first full fiscal year and for any interim period between the date of such meeting and the fiscal year date. For each succeeding year of operation of the Project, the maximum annual assessment may be increased by not more than 20% above the annual assessment for the

previous year without the affirmative vote of the Unit Owners. During the first three fiscal years, the amount of the permissible percentage increase in annual assessments shall be calculated without regard to any such costs and expenses initially subsidized by Declarant.

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

11.06: **SPECIAL ASSESSMENTS:** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment or assessments payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense 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 hereof.

Any amounts assessed pursuant hereto shall be assessed ratably among all Owners in proportion to their respective undivided interests in the Common Elements as set forth in Exhibit "C" hereto. Notice in writing of the amount of such special assessments, and the time for payment thereof, shall be given promptly to the Owners, and no payment shall be due fewer than thirty days after such notice shall have been given. Special

assessments must be approved by the affirmative vote of the Unit Owners.

11.07: PAYMENT OF ASSESSMENTS: All assessments (regular and special) shall be due and payable either in an annual installment, payable on July 1st each year, in substantially equal monthly installments payable on the 1st day of each month during the year or otherwise as the Association may determine on notice to each Owner; provided, however, that the first annual assessment shall be for the balance of the fiscal year remaining after the date of filing of this Declaration. Each annual assessment shall bear interest at such rate (which shall be not less than the rate of eight percent (8%) per annum nor more than the rate of eighteen percent (18%) per annum; but in no event more than the maximum rate permitted by law) as may be fixed by the Association, from the date it becomes due and payable if not paid by such date. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Condominium Unit for such assessment, but the date when payment shall become due in such case shall be deferred to a date thirty days after such notice shall have been given.

11.08: LIEN FOR ASSESSMENTS: All sums assessed to any Condominium Unit pursuant to this Article, together with interest thereon as provided herein, shall be secured by a lien on such Condominium Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Condominium Unit, except only for: (a) valid tax and special assessment liens

on the Condominium Unit in favor of any governmental assessing authority; and (b) a lien for all sums unpaid on a first Mortgage, or on any Mortgage to Declarant, duly recorded in the Salt Lake County, Utah real estate records prior to such assessment, including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by the lien thereof in accordance with the terms of such instrument. All other lien holders acquiring liens on any Condominium Unit after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence a lien for sums assessed pursuant to this Article, the Association 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 Unit and a description of the Condominium Unit. Such a notice shall be signed by or on behalf of the Association and may be recorded in the real estate records of Salt Lake County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed. Additionally and alternatively, such delinquent lien may be enforced by power of sale by the Association; provided, - however, that no proceeding or action shall

be instituted to foreclose the lien, either judicially or under the power of sale granted herein, unless a notice stating an intention to proceed to foreclose the lien has been delivered by the Association to all known Owners of the Unit affected by the lien at least thirty (30) days prior to the commencement of any such action or proceeding. Such sale shall be 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 manner permitted by law.

The Association shall have the power to bid at foreclosure or other sale, and to hold, lease, mortgage and convey the same.

In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owners shall also be required to pay to the Association any assessments against the Condominium Unit which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

A release of notice of lien shall be executed by the Association and appropriately recorded, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

Any encumbrancer holding a lien on a Condominium Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

The Association shall report to any encumbrancer of a Condominium Unit any unpaid assessments remaining unpaid for longer than ninety days after the same shall be become due; provided, however, that no such encumbrancer may object to the absence of such report unless they first shall have furnished to the Association written notice of such encumbrance.

11.09: PERSONAL OBLIGATION OF OWNER: The amount of any annual or special assessment against any Condominium Unit shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Elements or by abandonment of his Condominium Unit.

11.10: EFFECT OF CONVEYANCE: In any conveyance, except to a mortgagee as hereinafter set forth, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a

statement from the Association setting forth the amounts of the unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth.

11.11: **CERTIFICATE OF INDEBTEDNESS:** The Association shall, upon written request of any Unit Owner or any encumbrancer or prospective encumbrancer of a Unit, upon payment of a reasonable fee not to exceed Ten Dollars (\$10.00), issue to the person or persons requesting, a written statement setting forth the unpaid assessments with respect to the Unit covered by the request, which statement shall be conclusive upon the remaining Unit Owners and upon the Manager and Board of Directors in favor of all persons who rely thereon in good faith. Unless the request for a certificate of indebtedness shall be complied with within ten (10) days, all unpaid common expenses which become due prior to the date of making of such request shall be subordinate to the lien or interest held by or obtained by the person making the request. Any encumbrancer holding a lien on a Unit may pay any unpaid assessments payable with respect to such Unit and upon such payment that encumbrancer shall have a lien on that Unit of the same priority as the lien of his encumbrance.

11.12: **TENANT RECOVERY:** If a Unit Owner shall at any time let or sublet his Unit and default for a period of one month or more in the payment of any assessments, the Association may, at its option, so long as such default shall continue, demand and receive

from such tenant or subtenant or property manager the rent due or becoming due under such tenancy. The payment of such sum shall, to the extent of such payment, discharge such tenant or subtenant's or property manager's rental obligation to the Unit Owner and shall, to the extent of such payment, discharge said Unit Owner's obligation for unpaid assessment(s) and costs to the Association.

11.13: STATEMENT OF ACCOUNT: Upon payment of a reasonable fee and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Condominium Unit, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Condominium Unit; the amount of the current yearly assessment and the date that such assessment becomes or became due; credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums; and such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty days, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgage which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligation of the purchaser shall be released automatically if the statement is not furnished within the twenty day period provided herein and thereafter an additional written request is made by such purchaser



and is not complied with within ten days, and the purchaser subsequently acquires the Condominium Unit.

11.14: **PERSONAL LIABILITY OF PURCHASER FOR ASSESSMENTS:** A purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

11.15: **ASSESSMENTS FOR MASTER DECLARATION:** In the event the Real Property, the Project or the Building are now or in the future included in any area covered by a Master Declaration or other common plan for the administration and maintenance of the Real Property and adjacent property, or are included in any agreement establishing a Service Company, the assessments proposed under this Declaration shall be in addition to and not in lieu of any assessments under such Master Declaration or Service Company agreement.

### **ARTICLE XII**

#### **TAXES**

12.01: **AD VALOREM TAXATION:** Each Condominium Unit shall be assessed separately for all taxes, assessments and other charges of the State of Utah or any political subdivision or of any special improvement district or of any other taxing or assessing authority. For the purpose of such assessment, the valuation of the Common Elements shall be apportioned among the Units in proportion to the fractional interests in Common Elements appurtenant to such Units,

to the maximum extent permitted by law. The Association shall furnish to the assessor all necessary information with respect to such apportionment. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

#### ARTICLE XIII

##### DESTRUCTION OR DAMAGE

13.01: ~~REPAIR: REBUILD: INSURANCE:~~ In the event of destruction or damage of part or all of the improvements in the Project, the provisions of this Article shall apply:

(a) If proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be promptly carried out.

(b) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Unit Owners shall be subject to a special assessment for any deficiency.

(c) If 75% or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance are not alone sufficient to accomplish restoration,

and if the Unit Owners within 100 days after the destruction or damage by a vote of a 75% majority-in interest of the Unit Owners elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subsection (b) above.

(d) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage and by a vote of a 75% majority-in interest of the Unit Owners, elect to repair or reconstruct the affected improvements, the Association shall promptly record with the Salt Lake County Recorder a notice setting forth such facts. Upon the recording of such notice the provisions of subsections (1) through (4) of Section 57-83-1, of the Act shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

(e) Any reconstruction or repair which is required to be carried out by this Article shall be accomplished at the instance and direction of the Association. Any determination which is required to be made by this Article regarding the extent of damage to or destruction of the Project shall be made as follows: The Association shall select three appraisers; each appraiser shall independently estimate the percentage of Project improvements which have been destroyed or substantially damaged; the percentage which governs the

application of the provisions of this subparagraph shall be the median of three estimates.

(f) The term "reconstruction, as used in this Article, shall mean restoring the damaged building to substantially the same condition in which it existed prior to the fire or other disaster, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before.

(g) The Association or its authorized agent shall notify all of the holders of first Mortgages on Condominiums whenever damage to the Common Elements exceeds \$10,000.00. The Association shall also notify the individual holder(s) of a first Mortgage on a Condominium whenever damage to that Condominium exceeds \$3,000.00.

#### XIV

#### INSURANCE

14.01: TYPES OF INSURANCE: The Association shall obtain and shall maintain and keep in full force and effect at all times, to the extent reasonably available, the following insurance coverage provided by companies duly authorized to do business in Utah. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

(a) Casualty Insurance. The Association shall obtain broad form casualty insurance on the Project in such amounts

as shall provide for full replacement thereof (exclusive of items normally excluded from property policies) in the event of damage or destruction from the casualty against which such insurance is obtained, all in the manner in which a corporation owning similar multiple family residential buildings in the vicinity of the Project would, in the exercise of prudent business judgment, obtain such insurance. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, war risk insurance if available and if deemed appropriate by the Association, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of a blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

(b) Public Liability and Property Damage. The Association shall purchase broad form comprehensive general liability (including libel, slander, false arrest and invasion of privacy) coverage in such amounts and in such forms as it deems available to provide adequate protection. Coverage shall extend to the Association, each member of its Board of Directors, each of its officers and employees, and each Owner, against any liabilities to the public or to Owners or their guests, invitees, tenants, agents, and employees, arising out of or incidental to the ownership or use of any of the Common

Elements. Such comprehensive policy of public liability insurance shall also cover, if applicable, contractual liability, liability for non-owned and hired automobiles and, if applicable, public liability, garage keepers' liability, guest liquor liability, employer's insurance, and such other risks as shall customarily be covered with respect to projects similar to the Project and to activities in connection with the ownership, occupancy, operation, management, maintenance and other use of the Project or its Common Elements. The Association shall also obtain either directly or through its designee, Innkeeper's Liability Insurance for the benefit of the Association, the Declarant, and all Unit Owners whose Units are rented to third parties pursuant to rental management agreements.

(c) Workmen's Compensation and Employer's Liability Insurance. The Association shall purchase workmen's compensation and employer's liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance. The Association shall purchase, in such amounts and in such forms as it shall deem appropriate, coverage against dishonesty of employees, destruction or disappearance of money or securities, and forgery.

(e) Other. The Association may obtain insurance against such other risk, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including any personal property of the Association located thereon.

14.02: PERSONAL PROPERTY CASUALTY INSURANCE: The Association may in its discretion elect to obtain insurance on the personal property and furnishings initially placed in the Units of Owners by Declarant upon completion of construction of the Project in such amounts as shall provide for the full replacement thereof in the event of damage or destruction from casualty against which such insurance is obtained.

14.03: FORM: Casualty insurance shall be carried in a form or forms naming the Association the insured, as trustee for the Owners and for Declarant, whether or not it is an Owner, which policy or policies shall specify the interest of each Condominium Unit Owner (Owner's name, Unit number, the appurtenant undivided interest in the Common Elements), and which policy or policies shall provide a standard, noncontributory mortgagee clause in favor of each first Mortgagee which from time to time shall give notice to the Association of such first Mortgage. Each policy also shall provide that it cannot be canceled by either the insured or the insurance company until after not less than ten days' prior written notice is first given to each Owner, to Declarant and to each first Mortgagee. The Association shall furnish to each Owner a true copy of such policy together with a certificate identifying the interest of the Owner. All policies of insurance shall provide that the

insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence or non-compliance with any provisions of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall provide further that the insurance under any such policy, as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Public liability and property damage insurance shall name the Association the insured, as trustee for the Owners and for Declarant, whether or not it is an Owner, and shall protect each Owner and Declarant against liability for acts of the Association in connection with the ownership, operation, maintenance or other use of the Project.

14.04: OWNER'S RESPONSIBILITY: Insurance coverage on the furnishings initially placed in the Unit by Declarant, except to the extent that the Association pursuant to Section 2 of this Article elects to arrange for casualty insurance, and, regardless of the Association's election, insurance coverage against loss from theft on all personal property, and insurance coverage on items of personal property placed in the Unit by Owner, and casualty and public liability insurance coverage within each individual Unit and



for activities of the Owner, not acting by the Association, with respect to the Common Elements shall be the responsibility of the respective Owners.

14.05: INSURANCE PROCEEDS: The Association shall receive the proceeds of any casualty insurance payment received under policies obtained and maintained pursuant to this Article. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose. To the extent that reconstruction is not required herein and there is a determination that the Project shall be rebuilt, the proceeds shall be distributed in the same manner herein provided in the event of sale of obsolete Units.

14.06: OWNER'S OWN INSURANCE: Notwithstanding the provisions hereof, each Owner may obtain insurance at his own expense providing coverage upon his Condominium Unit, his personal property, including but not limited to any personal property of Owner in the Limited Common Elements for his personal liability, and covering such other risks as he may deem appropriate, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to this Article. All such insurance of the Owner's Condominium Unit shall waive the insurance company's right of subrogation against the Association, the other Owners, and the servants, agents, guests of any of them, if such insurance can be obtained in the normal practice without additional premium charge for the waiver or rights of subrogation.

14.07: DIRECTORS AND OFFICERS LIABILITY: The Association shall obtain and continue in effect, insurance for the protection of the Directors and Officers of the Association from personal liability in the management of the Association's affairs.

#### ARTICLE XV

##### MORTGAGEE PROTECTION

15.01: OWNER DEFAULT: From and after the time a Mortgagee makes a written request to the Association, the Association shall notify such Mortgagee in writing in the event that the Owner of the Condominium encumbered by the mortgage held by such Mortgagee neglects for a period of thirty (30) or more days to cure any failure on their part in the performance of any of their obligations.

15.02: PRIORITY OF MORTGAGE: The lien against a Unit for unpaid assessments or charges by the Association pursuant to this Declaration or the Act shall be subordinate to the first lien Mortgage encumbering such Unit at the time such assessment is levied. A Mortgagee or other party who comes into possession of the Unit pursuant to a foreclosure under its first lien Mortgage, pursuant to an exercise of the power of sale under such Mortgage or a deed or assignment in lieu of foreclosure shall take the same free of such lien or claim for unpaid assessments or charges, but only to the extent of assessments or charges which accrue subsequent to the recordation of such Mortgage and prior to the acquisition of title to such Unit pursuant to such Mortgage foreclosure, exercise of a power of sale available thereunder, or

deed or assignment in lieu of foreclosure (except for claims for a pro rata share of such prior assessments or charges resulting from a pro rata reallocation thereof to the Unit including the Unit in which the Mortgagee or other party is so interested). No assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to said Mortgage or as not a burden to a Mortgagee coming into possession pursuant to said Mortgage or a deed or assignment in lieu of foreclosure shall be collected or enforced by the Association from or against a Mortgagee, a successor in title to a Mortgagee, or the Unit affected or previously affected by the Mortgage concerned (to the extent any such collection or enforcement would prejudice the interests of the Mortgagee or successor in title to the Mortgagee interested in such Unit).

15.03: MORTGAGEE APPROVAL: Unless all of the Mortgagee who possess first lien Mortgages on the individual Units have given their prior written approval, the Association shall not be entitled, by act, omission, or otherwise:

(a) To abandon or terminate the Project, or to abandon or terminate the arrangement which is established by this Declaration and the Map (except as provided in Article XIII hereof in the event of certain destruction or damage);

(b) To abandon, partition, subdivide, encumber, sell or transfer all or any portion of the Common Elements and (except for the granting of easements for facilities and similar purposes consistent with the intended use of the Common

Elements and except as elsewhere provided in Article XIII hereof in the event of certain destruction or damage);

(c) To use hazard insurance proceeds resulting from damage to any part of the Project (whether to Units or to the Common Elements) for purposes other than the repair, replacement or reconstruction of such improvements, except as provided in Article XIII in the event of certain destruction or damage; or

(d) To fail to maintain the insurance coverage described therein.

**15.04: LIMITED MORTGAGEE APPROVAL:** Unless those Mortgagees who possess first lien Mortgages on the specific, affected Units have given their prior written approval, the Association shall not be entitled, by act, omission, or otherwise:

(a) To partition or subdivide any Unit; or

(b) To change the pro rata interests or obligations of any Unit which apply for (1) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (2) determining the pro rata share of ownership of each Unit in the Common Elements.

**15.05: BOOKS AND RECORDS:** Any Mortgagee under a first lien Mortgage encumbering a Unit shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association, or of the Project. From and after the time such Mortgagee makes such written request, the Association

shall furnish to such Mortgagee copies of annual operating reports and other reports or writings summarizing or reflecting the financial position or history of the Project as may be prepared for distribution to the Unit Owners.

15.06: **NOTICE:** From and after the time a Mortgagee under a first lien Mortgage encumbering a Unit makes written request to the Association, the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of: (a) The Unit encumbered by such mortgage; (b) The Common Elements involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand Dollars (\$10,000.00); or (b) any other Unit involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand (\$10,000.00). Said notice shall be given within ten (10) days after the Association learns of such damage, loss, taking or anticipated condemnation.

15.07: **INTERPRETATION:** In the event another provision or condition of this Declaration deals with the same subject matter as is dealt with in any provision or condition of this Article, the provision or condition which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority as the case may be, applicable to the Board of Directors, the Management Committee and the Association with respect to the subject concerned.

15.08: **AMENDMENT:** No amendment to the Declaration which affects the rights, protection or security afforded to Mortgagees

shall be accomplished or effected as to Mortgagees holding Mortgages of record prior to such amendment, unless and until said Mortgagees have given their prior written approval to such amendment.

#### ARTICLE XVI

##### EMINENT DOMAIN

16.01: In the event that eminent domain proceedings are commenced against the Project or any portion thereof, the provisions of Section 57-8-32.5, of the Act shall apply. The Association shall give written notice of such proceedings to all Mortgagees holding first lien Mortgages on Condominiums. No first lien priority of any Mortgagee shall be diminished or otherwise disturbed by virtue of such proceedings. Notwithstanding anything herein to the contrary, those proceeds payable to a Unit Owner because of an eminent domain proceeding relating to all or a portion of the Condominium Project or said Unit Owner's Condominium Unit shall first be applied to the interest of any Mortgagee as required under the mortgage instruments applicable to the Condominium Unit of such Unit Owner.

#### ARTICLE XVII

##### MAINTENANCE

17.01: OWNER'S RESPONSIBILITY: For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum drywall, paneling, wallpaper, paint, wall and floor tile and flooring) making up the

finished surfaces of the perimeter walls, ceilings, and floors within the Unit, including any non-exterior Unit doors and non-exterior windows. The Owner shall not be deemed to own lines, pipes, wires, conduits, or systems (which for brevity are herein and hereafter referred to as utilities) which serve one or more other Units except as tenant in common with the other Owners. Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Association. Such right to repair, alter and remodel is coupled with the obligation to replace any finished or other materials removed with similar or other types or kinds of materials. An Owner shall maintain and keep in repair the interior of his Unit, including the fixtures thereof. All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will or may impair the structural soundness or integrity of the Building, impair any easement or hereditament, nor violate any laws, ordinances, regulations and codes of the United States of America, the State of Utah, the County of Salt Lake, or any other agency or entity which may then have jurisdiction over said Unit; without the written consent of the Association after first proving to the satisfaction of the Association that compliance with this section's requirements will be maintained during and after any such act or work shall be done or performed. Any expense to the Association for investigation under this Article shall be borne by the relevant Owner. However, nothing herein

contained shall be construed to permit structural modification and any decision relating thereto shall be in the absolute discretion of the Board of Directors, including, but not limited to the engaging of a structural engineer at the Owner's expense for the purpose of obtaining his opinion. An Owner shall also keep the Limited Common Elements appurtenant to his Unit in a well-repaired, maintained, clean and sanitary condition; and free and clear of snow, ice, dirt, debris, and any accumulation of water, at his own expense. An Owner shall be obligated to reimburse the Association promptly upon receipt of its statement of any expenditures incurred by it in repairing or replacing any Unit elements or Limited Common Element for which the Owner is responsible, or for the repairs of another's Unit or any General Common Element damaged by any act or failure to act of the Unit Owner, his tenants, guests, invitees or agents.

17.02: ASSOCIATION'S RESPONSIBILITY: The Association shall have the duty of maintaining and repairing all of the General Common Elements within the Project and the cost of said maintenance and repair shall be a Common Expense of all of the Owners. The Association shall not need the prior approval of its members to cause such maintenance or repairs to be accomplished, notwithstanding the cost thereof; subject, however, to Article XIII hereof.

The Association shall, on its own or through its Manager, provide to the Owners the following services which shall be paid for out of the Common Expense Assessment, to-wit:



(1) maintaining the General Common Elements; including without limitation the parking areas (and including the specifically designated parking spaces which are otherwise Limited Common Elements), the landscaping, and sidewalks;

(2) administering and managing the Condominium Project;

(3) providing common utilities;

(4) setting aside reserves for future maintenance, repairs and replacements;

(5) providing site maintenance, including snow and trash removal;

(6) providing fire, life and safety monitoring;

(7) obtaining the insurance required in Article XIV hereof;

(8) acting as attorney-in-fact in the event of damage or destruction as provided for in Article XIII hereof; and

(9) performing all other acts required by this Declaration, or the Articles of Incorporation and By-Laws of the Association.

The Association reserves the right to hire one or more persons or entities including a manager, contractors, and employees to perform such services provided, however, that any such hiring shall be subject to the provisions set forth herein.

#### **XVIII**

##### **ADMINISTRATIVE RULES AND REGULATIONS**

The Association, by its Board of Directors, shall have the power to adopt and establish by resolution, such Project management

and operational rules as it may deem necessary and proper for the maintenance, operation, management and control of the Project. The Association may, from time to time by resolution, alter, amend and repeal such rules. Unit Owners shall at all times obey such rules and see that they are faithfully observed by their respective tenants, subtenants and any other occupant or user of their Unit.

#### **ARTICLE XIX**

##### **OBLIGATION TO COMPLY HEREWITH**

Each Unit Owner, tenant, subtenant or other occupant or user of a Unit shall comply strictly with the provisions of the Act, this Declaration, the By-Laws of the Association from time to time in effect, the rules and regulations promulgated by the Association or its Board of Directors from time to time and all agreements and determinations lawfully made and (or) entered into by the Association. Any failure to comply with the foregoing shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association in its own name and/or on behalf of the Unit Owners, or in a proper case, by an aggrieved Unit Owner.

#### **ARTICLE XX**

##### **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Each member of the Board of Directors and all officers and agents of the Association shall be indemnified and held harmless by the Association against all costs, expenses and liabilities whatsoever, including, without limitation, attorney's fees, reasonably incurred by him in connection with any proceeding in

which he may become involved by reason of his being or having been such Director or officer, all to the maximum extent permitted by law; provided, however, the foregoing indemnification shall not apply if the loss, expense or liability involved resulted from the willful misconduct of such individual.

#### **ARTICLE XXI**

##### **AMENDMENT**

Subject only to the restrictions on amendment elsewhere contained herein, this Declaration and (or) the Map may be amended upon the affirmative vote or approval and consent of a three-quarters (3/4) majority of the Unit Owners, with the votes of the Class B Member(s) being given the weight afforded them in Section 8.02 of this Declaration. Any amendment so authorized shall be accomplished by recordation of an instrument executed by the appropriate officers at the Association. In said instrument the Committee shall certify that the vote or consent required by this Article XXI has occurred. In addition to the amendment procedure set forth above, for a period of one year after the date of recording of this Declaration, Declarant may make and record such minor amendments as it deems necessary to clarify or amend this Declaration, without the necessity of any vote or approval by any party other than Declarant, provided that such right of amendment in Declarant shall not be exercised in any manner which would adversely affect the substantive right of any Unit Owner or Mortgagee.

## **ARTICLE XXII**

### **PERSON TO RECEIVE SERVICE OF PROCESS**

The initial person to receive service of process in the cases provided herein or in the Act is David DeSeelhorst, whose address is Solitude Ski Resort, 12000, Big Cottonwood Canyon, Solitude, Utah 84121. Said person may be changed by the filing by the Association with the State of Utah of an appropriate instrument.

## **XXIII**

### **MARKETING BY DECLARANT**

Until such time as the Declarant ceases to be a Residential Unit Owner or the expiration of four (4) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, whichever first occurs (hereinafter referred to as the "Occurrence"), Declarant, or its designee, successors or assigns shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of Units owned by Declarant.

(a) Declarant shall have the right to maintain a sales office and (or) model Units on or about the Project.

(b) Declarant shall have the right to maintain a reasonable number of promotional, advertising, and (or) directional signs, banners or similar devices at any place or places on or about the Project, but any such device shall be of a size and in a location as is reasonable and customary.

(c) Declarant shall have the right to use the Common Elements of the Project to entertain prospective purchasers or

to otherwise facilitate Condominium sales, provided said use is reasonable as to both time and manner.

Declarant shall have the right from time to time to locate or relocate its sales office, model units, and (or) signs, banner or similar devices, but in connection with each such location or relocation Declarant shall observe the limitations imposed by the preceding portion of this Article. Within a reasonable period of time after the happening of the Occurrence, Declarant shall have the right to remove from the Project any signs, banners or similar devices.

#### **XXIV**

##### **LIMITATION ON IMPROVEMENTS BY ASSOCIATION**

Until the Occurrence described in Article XXIII, the Association shall not, without the written consent of Declarant, make any improvement to or alteration in any of the Common Elements, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Elements as the same existed at the time this Declaration was recorded.

#### **ARTICLE XXV**

##### **SEPARABILITY**

The invalidity of any one or more phrases, sentences, subparagraphs, paragraphs, sections or articles hereof shall not affect the remaining portions of this instrument nor any part thereof, and in the event that any portion or portions of this instrument should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such

invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, section or sections, or article or articles had not been inserted.

#### **ARTICLE XXVI**

##### **DECLARANT'S RIGHTS ASSIGNABLE**

All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a recorded voluntary conveyance, transfer or assignment. Any Mortgage covering Condominiums in which title is vested in the Declarant, shall, at any given point in time and whether or not such Mortgage does so by its provisions, automatically cover, encumber, and include all of the then-unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant thereunder.

#### **ARTICLE XXVII**

##### **WAIVERS**

No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

#### **ARTICLE XXVIII**

##### **TOPICAL HEADINGS**

The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

#### **XXIX**

##### **EFFECTIVE DATE**

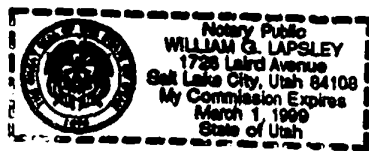
This Declaration shall take effect upon recordation.

STATE OF UTAH

County of Salt Lake


ss:

On this 18<sup>th</sup> day of December, 1995, personally appeared before me Gary L. DeSeelhorst, who, being by me first duly sworn, did declare that he is the President of SOLITUDE SKI CORPORATION, a Utah corporation, in its capacity as managing joint venturer of Solitude Ski Resort Company, and that he signed the foregoing document on behalf of and by authority of said Utah joint venture, and said joint venture thereby executed the same.



My Commission Expires:

March 1, 1999

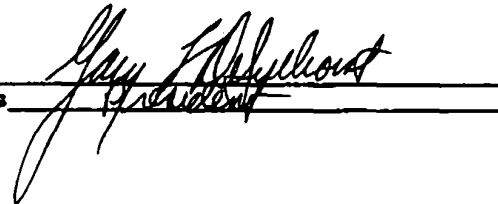
  
Notary Public  
Resides: Soli Lake City, Utah

146163.02/gm

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed on its behalf this 18<sup>th</sup> day of December, 1995.

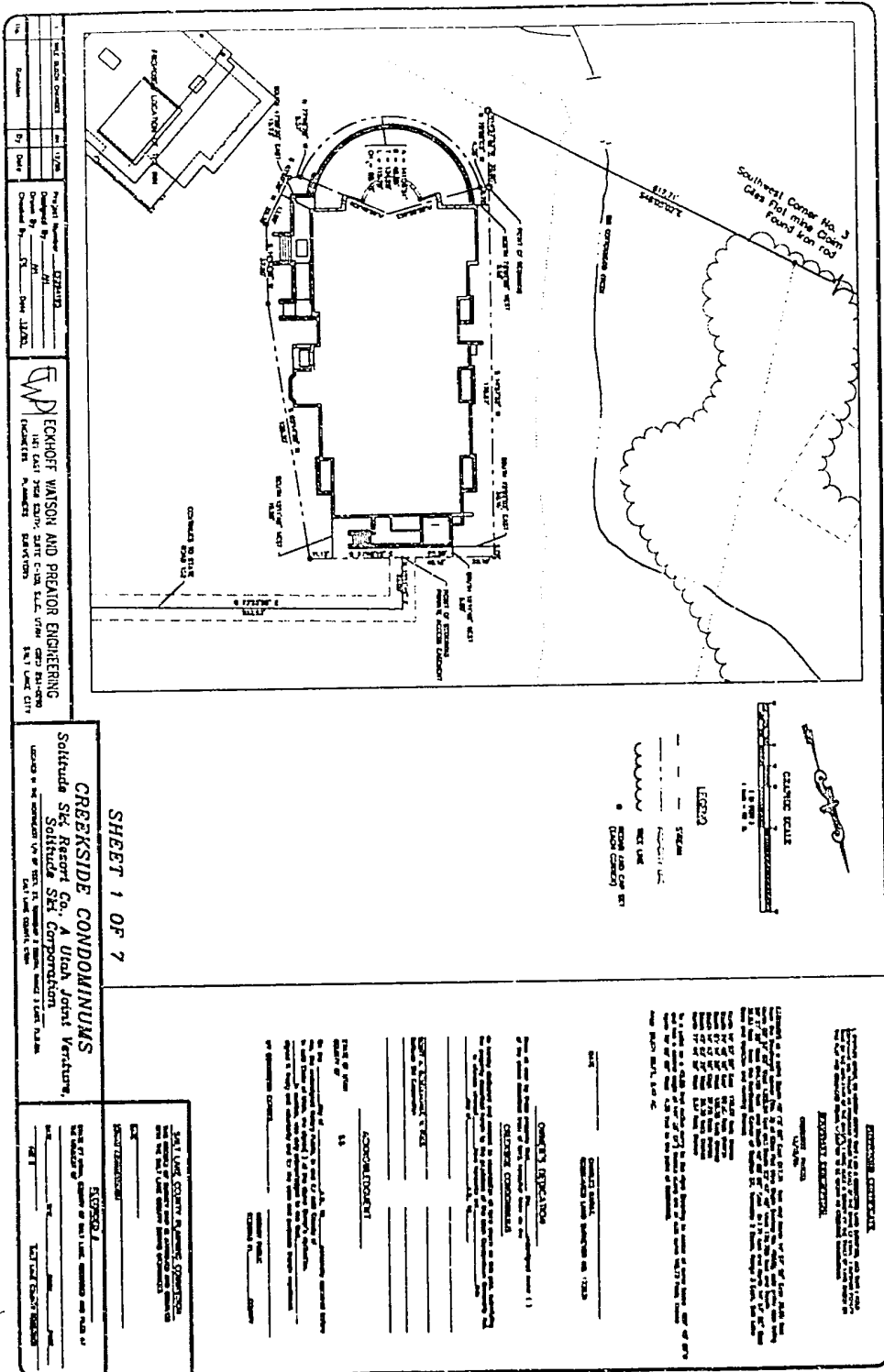
SOLITUDE SKI RESORT COMPANY, a  
Utah venture, by its managing  
venturer, Solitude Ski Corporation,  
a Utah corporation

By  
Its

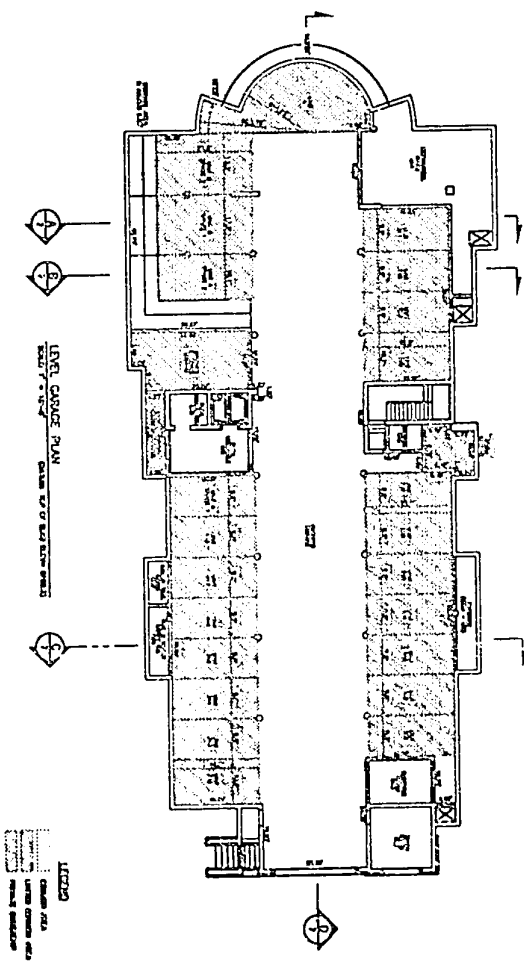




BK7295P62434

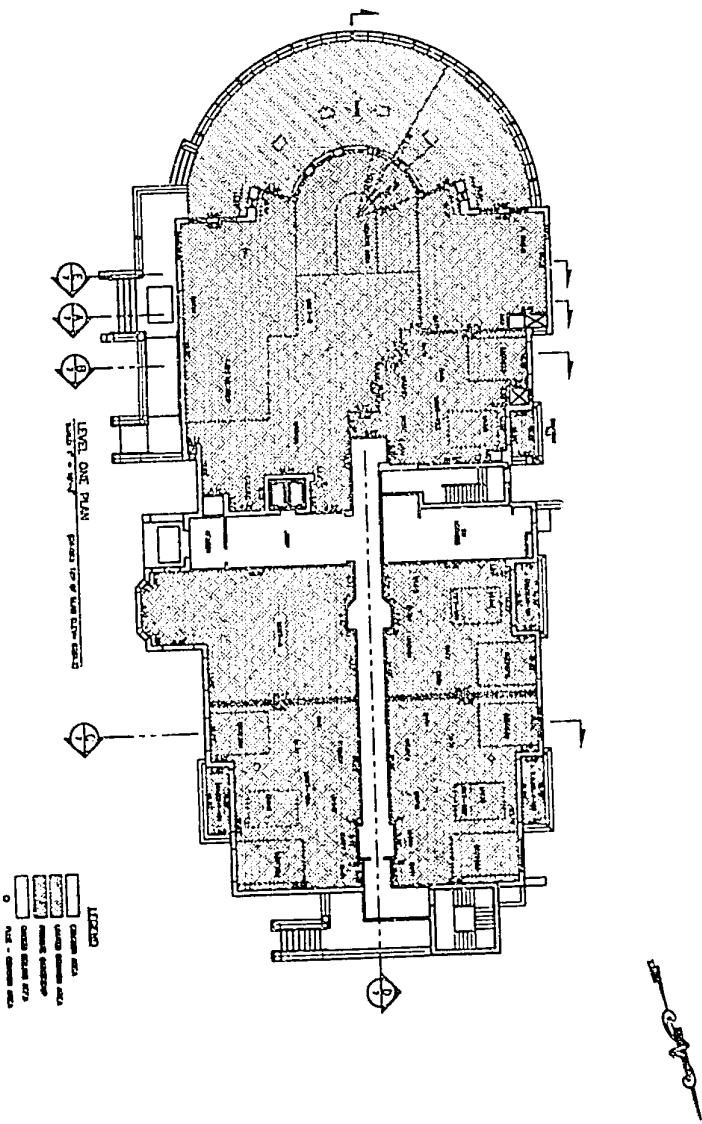


BK7295PG2435

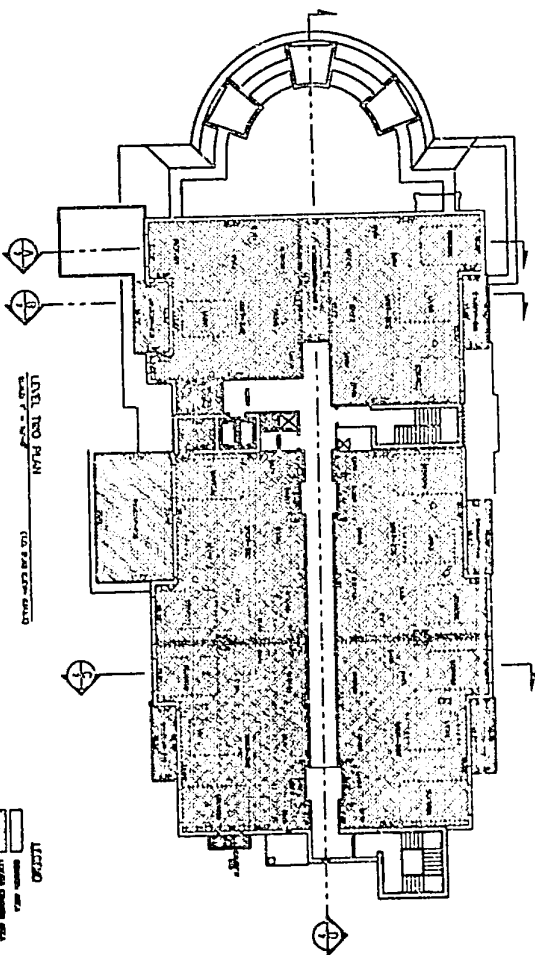


2/7

BK 7295 PG 24 36

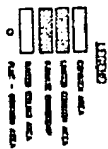


BK7295PG2437

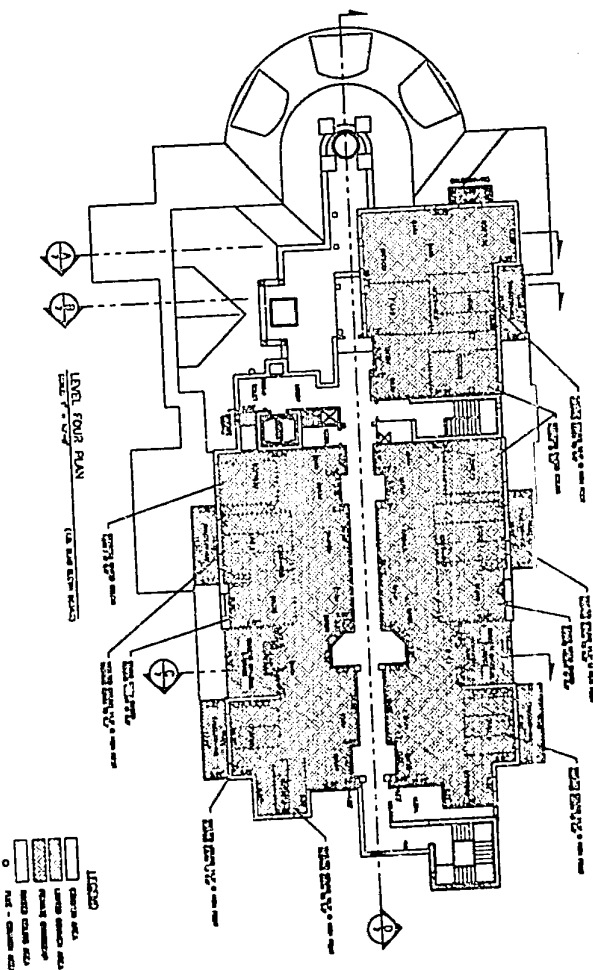


- LEGEND
- COMMON AREA
  - ELEVATOR SHAFT
  - ELEVATOR
  - ELEVATOR LOBBY
  - ELEVATOR LOBBY
  - ELEVATOR LOBBY

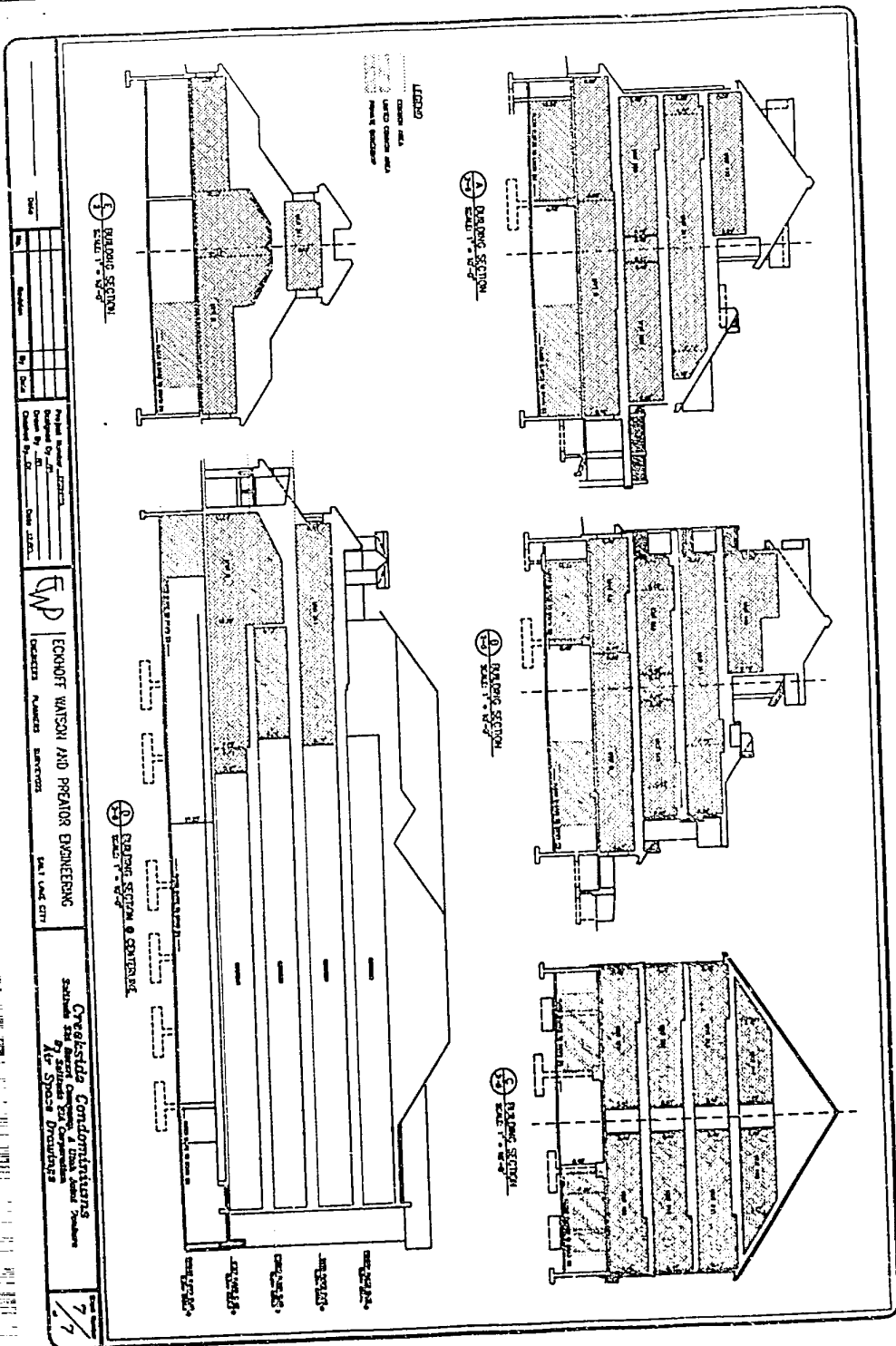
Project Name: <b>CRICKSIDE CONDOMINIUMS</b>		Sheet No: <b>4/7</b>	
Owner: <b>CRICKSIDE CONDOMINIUMS</b>		Date: <b>10/1/00</b>	
Architect: <b>CRICKSIDE CONDOMINIUMS</b>		Scale: <b>1/8" = 1'-0"</b>	
Engineer: <b>CRICKSIDE CONDOMINIUMS</b>		Title: <b>LEVEL TWO PLAN</b>	
City: <b>SALT LAKE CITY</b>		State: <b>UT</b>	

 $\frac{5}{7}$

BK7295PG2439



BK7295P62440



**EXHIBIT "B"**

**PRIVATE ACCESS EASEMENT  
12/18/95**

An Easement for road and utility purposes, being 25 feet in width, the centerline of which is 125.00 feet on either side of the following described line:

BEGINNING at a point South 48° 05' 02" East 617.71 feet and North 14° 57' 52" East 215.53 feet and South 74° 48' 15" East 45.18 feet from the Southwest corner (No. 3) of Giles Flat Mine Claim (survey No. 4960), said point also being North 89° 57' 00" West 1308.94 feet and South 23° 47' 49" West 178.786 feet and South 29° 21' 25" West 614.151 feet and South 48° 05' 02" East 617.71 feet and North 14° 57' 52" East 215.53 feet and South 74° 48' 15" East 45.18 feet from the Northeast Corner of Section 27, Township 2 South, Range 3 East, Salt Lake Base and Meridian and running thence;

North 15° 11' 45" East 25.00 feet; thence

South 73° 50' 59" East 282.95 feet; thence

North 19° 34' 37" East 291.19 feet; thence

North 04° 07' 32" East 114.72 feet; thence

North 24° 43' 03" West 246.97 feet; thence

North 33° 06' 59" West 222.05 feet, more or less to a point on State Road 152 and a  
Point of TERMINUS.

07295162441



**CREEKSIDE AT SOLITUDE OWNERSHIP**  
Exhibit "C"

UNIT	INTERIOR SQ. FOOTAGE	PERCENTAGE OF OWNERSHIP	PARKING ASSIGNMENTS
101	893.72	3.0572	101
102	1,218.31	4.1676	102
103	841.92	2.8800	103
104	1,232.39	4.2157	104
Comm. A	1,180.07	4.0367	B-1, B-2
Comm. B	3,825.13	13.0849	A-1, A-2
205	1,222.38	4.1815	205
206	1,220.16	4.1739	206
207	1,218.96	4.1698	207
208	1,066.53	3.6484	208
209	1,267.34	4.3353	209
210	1,225.04	4.1906	210
311	2,878.16	9.8455	311
312	1,213.54	4.1512	312
313	1,220.08	4.1736	313
314	1,215.94	4.1594	314
315	1,225.19	4.1911	315
416	1,229.77	4.2068	416
417	1,909.75	6.5328	417
418	1,928.82	6.5980	418
	<hr/> 29,233.20	100.0000	

BK7295P62442

35  
04/01/99 7310180 35.00  
4:43 PM  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
FIRST AMERICAN TITLE  
REC BY: R JORDAN , DEPUTY - WT

**WHEN RECORDED RETURN TO:**

Gary L. DeSeelhorst  
Creekside at Solitude Owners Association, Inc.  
c/o Solitude Ski Corporation  
12000 Big Cottonwood Canyon  
Salt Lake City, Utah 84121

7310180  
THIRD AMENDMENT TO CONDOMINIUM DECLARATION  
FOR CREEKSIDE AT SOLITUDE

This Third Amendment to Condominium Declaration is made effective as of the  
7<sup>th</sup> day of November, 1998, by Solitude Ski Corporation, a Delaware corporation and  
successor to Solitude Ski Resort Company, a Utah joint venture ("Declarant").

**RECITALS:**

- A.** Declarant caused the Condominium Declaration For Creekside at Solitude (the  
"Declaration") to be recorded on December 21, 1995, as Entry No. 6241679 in Book  
7295 at Page(s) 2370 *et seq.* of the Official Records of the Salt Lake County, Utah  
Recorder. Declarant recorded a First Amendment to the Declaration on January 22,  
1996, as Entry No. 6261962 in Book 7313 as Page(s) 1973 *et seq.* of said Official  
Records, and a Second Amendment to the Declaration on November 17, 1997, as entry  
No. 6791534 in Book 7807 at Page(s) 2686 *et seq.* of said Official Records.
- B.** Declarant together with other "Members" as defined in the Declaration, currently owing  
sufficient Units subject to the Declaration to cast the 75% of Unit Owner votes necessary  
to amend the Declaration pursuant to Article XXI of the Declaration, and having received

BOOK 6254 PAGE 6532

written notice and having duly voted at a regularly scheduled meeting of the Unit Owners attended by a quorum, have duly approved the Amendment to the Declaration set forth below.

- C. Declarant and such Members have voted to amend Section 11.05 of the Declaration as set forth herein.

NOW, THEREFORE, pursuant to Article XXI of the Declaration, the Declaration is hereby amended as follows:

1. Section 11.05 of the Declaration is hereby amended and restated in its entirety as follows:

**11.05: INITIAL ANNUAL ASSESSMENT: PROCEDURE FOR INCREASING ANNUAL ASSESSMENTS:** Within 120 days following substantial completion of the Building (as determined by the state, county, or local government authority issuing the building permit for the construction of the Building), the members of the Association shall meet, shall determine the Association's fiscal year (if not already determined), shall fix the annual assessment for the Association's first full fiscal year and for any interim period between the date of such meeting and the fiscal year date. For each succeeding year of operation of the Project, the maximum annual assessment may be increased by not more than \$100,000 above the annual assessment for the previous year, without the affirmative vote of the Unit Owners. During the first three fiscal years, the amount of the permissible percentage increase in annual assessments shall be calculated without regard to any such costs and expenses initially subsidized by Declarant.

2. The Board of Directors has executed this Third Amendment pursuant to Section 9.02(b) of the Declaration to acknowledge that the necessary number of Unit Owners approved this Third Amendment.
3. Except as amended herein, the Declaration as previously amended remains in full force and effect.

PM 0264 PM 0593

IN WITNESS WHEREOF, the undersigned have caused this Third Amendment To  
Condominium Declaration to be executed on their behalf this 7<sup>th</sup> day of November, 1998.

Solitude Ski Corporation, a Delaware  
Corporation, successor in interest to Solitude Ski  
Resort Company, a Utah joint venture, in its  
capacity as Declarant

By: [Signature]  
Its: President

Creekside at Solitude Owners Association, a  
Utah nonprofit corporation, by its Board of  
Directors

By: [Signature]  
Its: Attest

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

February, 1999  
On this 22nd day of November, 1998, personally appeared before me Gary L.  
DeSeelhorst, who, being by me first duly sworn, did declare that he is the President of  
SOLITUDE SKI CORPORATION, a Delaware corporation, and that he signed the foregoing  
instrument on behalf of and by authority of said corporation, and said corporation thereby


My Commission Expires  
March 1, 1999

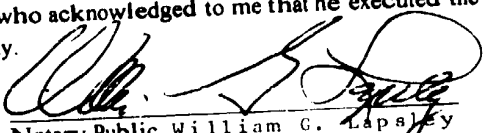
[Signature]  
Notary Public William G. Lapsley  
Residing at: Salt Lake City, Utah

BOOK 8254 PAGE 8594

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

On this 22nd day of ~~November, 1998~~ <sup>February, 1999</sup> personally appeared before me Gary L. DeSeelhorst, the President of the Board of Directors of Creekside at Solitude Owners Association, a Utah nonprofit corporation, who acknowledged to me that he executed the foregoing instrument as the ~~owner~~ of said entity.

 WILLIAM G. LAPSLEY  
1725 Laird Avenue  
Salt Lake City, Utah 84103  
My Commission Expires  
March 1, 1999  
State of Utah  
My Commission Expires:  
March 1, 1999

  
Notary Public William G. Lapsley  
Residing at: Salt Lake City, Utah

GLD:mvs

9000 6254 1101 6595