

WHEN RECORDED RETURN TO:

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Salt Lake City, Utah 84109

00519221 Bk01188 Pg00336-00344
ALAN SPRIGGS, SUMMIT COUNTY RECORDER
1998 OCT 05 11:07 AM FEE \$26.00 BY DMG
REQUEST: JAMES R BLAKESLEY

FIFTH AMENDMENT TO AMENDED DECLARATION
OF CONDOMINIUM
FOR POWDER WOOD AT LANDMARK

This FIFTH AMENDMENT to the AMENDED DECLARATION OF CONDOMINIUM OF POWDER WOOD AT LANDMARK is made and executed this 11th day of September 1998 by the POWDER WOOD CONDOMINIUM HOMEOWNERS ASSOCIATION of 6975 North 2200 West, Park City, Utah 84060 (hereinafter referred to as the "Association").

RECITALS

A. The Declaration of Condominium for Powder Wood at Landmark was recorded in the office of the County Recorder of Summit County, State of Utah on or about August 16, 1983, as Entry No. 209624, in Book 269, at Pages 692-742 of the official records (the "Declaration").

B. The Declaration was amended by a document entitled the "Amended Declaration of Condominium of Powder Wood at Landmark" recorded June 28, 1984, in the office of the County Recorder of Summit county, Utah, as Entry No. 222015, in Book 304, at Page 184 of the official records (the "Amendment").

C. The Declaration was amended by a document entitled the "First Amendment to Amended Declaration of Condominium for Powder Wood at Landmark" recorded September 10, 1984, in the office of the County Recorder of Summit County, Utah as Entry No. 224934, in Book 313, at Page 829 of the official records (the "First Amendment").

D. The Declaration was amended by a document entitled the "Second Amendment to Amended Declaration of Condominium for Powder Wood at Landmark" recorded December 26, 1984, in the office of the County Recorder of Summit County, Utah as Entry No. 228618, in Book 325, at Page 35 of the official records (the "Second Amendment").

E. The Declaration was amended by a document entitled the "Third Amendment to Amended Declaration of Condominium for Powder Wood at Landmark" recorded September 31, 1988, in the office of the County Recorder of Summit County, Utah as Entry No. 297377, in Book 493, at Page 84 of the official records (the "Third Amendment").

F. The Declaration was amended by a document entitled the "Fourth Amendment to Amended Declaration of Condominium for Powder Wood at Landmark" recorded November 9, 1988, in the office of the County Recorder of Summit County, Utah as Entry No. 299845, in Book 500, at Page 72 of the official records (the "Fourth Amendment").

G. The legal description for the land affected by this document is described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference.

H. Management and control of the Project has been transferred by the original declarant or its successors in interest to the Association.

I. Article III, Section 22 of the Declaration, as heretofore amended, entitled "Voting," requires the affirmative vote of at least 51% of the percentage of undivided interest of the unit owners in the common area in order to amend the Declaration.

J. That all of the voting requirements have been satisfied.

NOW, THEREFORE, for the reasons recited above, and for the benefit of the Project and the Unit Owners thereof, the Association hereby executes this FIFTH AMENDMENT to AMENDED DECLARATION OF CONDOMINIUM FOR POWDER WOOD AT LANDMARK for and on behalf of all of the Unit Owners.

1. Article III, Section 19 of the Declaration, as heretofore amended, is deleted in its entirety and following language is substituted in lieu thereof:

19. Insurance.

a. Insurance for Unit Owners and Residents. Each Unit Owner and Resident shall maintain adequate Property and Liability Insurance and, upon request, shall provide the Management Committee with a Certificate of Insurance, naming the Powderwood at Landmark Homeowners Association as an additional insured; provided, however, no Unit Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Unit Owners and their mortgagees, may realize under any insurance policy which the Association may have in force on the Property at any particular time.

b. Insurance for the Common Area and the Association, Its Agents, Representatives, Officers and Employees. The Management Committee shall at all times purchase, maintain in force, and pay the premiums for, if reasonably available, insurance on the Common Areas satisfying at least the following requirements:

1. Property Insurance. Blanket property insurance using the standard "Special" or "All-Risk" building form. Loss adjustment shall be based upon replacement

cost. For purposes of this subsection, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard condominium casualty policy. This additional coverage may be added by the Committee as it deems necessary in its best judgment and in its sole discretion.

2. Flood Insurance. If the property is or comes to be situated in an area having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"), or any successor program, a policy of flood insurance shall be maintained covering the property in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under NFIP for Insurable Property within a designated flood hazard area; or (2) one hundred percent (100%) of current replacement cost of the Insurable Property. Such policy shall be in a form which meets the criteria set forth in the most current Guidelines on the subject issued by the Federal Insurance Administrator.

3. Liability Insurance. Liability insurance with adequate limits of liability for bodily injury and property damage. If possible, the policy should be written on the comprehensive form and shall include not-owned and hired automobile liability protection.

4. Director's and Officer's Insurance. Adequate director's and officer's liability insurance ("D and O" insurance aka "Errors and Omissions" or "E & O" insurance).

5. Fidelity Bond. A separate fidelity bond in a reasonable amount to be determined by the Management Committee to cover all non-compensated officers as well as all employees for theft of Association funds, subject to the following:

a) Agents. Furthermore, where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Committee or the Association.

b) Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Committee's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Committee, the Association, or the management agent, as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units, plus reserve funds.

c) Quality of Coverage. The bonds required shall meet the following additional requirements: (1) they shall name the Committee, the Owners Association, and the Property Manager (if s/he is an employee of the Association and not an

independent contractor) as obligees; (2) if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense; (3) the premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and (4) the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Committee and the Association, to any Insurance Trustee, and to each Eligible Mortgagee.

6. Earthquake Insurance shall not be required unless requested by a least seventy five percent (75%) of the Members of the Association.

7. Miscellaneous Items. The following provisions shall apply to all insurance coverage purchased by the Association:

a) The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "The Powderwood Homeowners Association, for the use and benefit of the individual Unit Owners."

b) Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Unit Owners.

c) Beneficiary. In any policy covering the entire Project, each Unit Owner and his Mortgagee (if any) shall be beneficiaries of the policy in an amount equal to the Unit Owner's percentage of undivided ownership interest in the Common Areas and Facilities.

d) Certificate of Insurance. Evidence of insurance shall be issued to each Unit Owner and Mortgagee upon request.

e) Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

f) Waiver of Subrogation. Each policy shall contain a waiver of the right of a subrogation against the Unit Owners individually;

g) Individual Neglect. Each policy shall contain a provision that the insurance is not prejudiced by any act or neglect of any individual Unit Owner; and

8. Deductible. The deductible on a claim made against the Association's property insurance policy shall be paid by the party who would be liable for the loss, damage, claim or repair in the absence of insurance, and in the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total; provided, however, if the loss is caused by an act of God or nature, or by an element beyond the control of the Association, then the Association shall be deemed to be responsible for and shall pay the deductible.

9. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed promptly and the damages shall be repaired within a reasonable time. Any excess proceeds shall be paid and distributed to the Unit Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Unit Owner whose Unit is the subject of a Mortgage shall be made jointly to such Unit Owner and the interested Mortgagee.

10. Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other similarly situated condominium homeowners associations in Summit County, Utah.

11. Quality of Insurance Carrier. Each insurance policy required hereby shall be written by an insurance carrier licensed to transact business in the State of Utah and who has the highest rating by Best's Key Rating Guide.

12. Restrictions on Policies. No such insurance policy shall be maintained where: (1) Individual Assessments Prohibited. Under the term of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a borrower, a Mortgagee, the Management Committee, the Association, FNMA, or the designee of FNMA; (2) Payments Contingent. By the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or (3) Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Committee, the Association, an Unit Owner, FNMA, or the borrowers) from collecting insurance proceeds.

c. Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Committee or Unit Owners to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

d. Reservation of Right to Collect Damages from Negligent Unit Owner or Resident. Anything to the contrary notwithstanding, the Association reserves its right to collect any losses or damages it may suffer as a result of the negligence of a Unit Owner or Resident, regardless of whether the claim is covered by the Association's insurance policy.

e. Primary Coverage. Anything to the contrary notwithstanding, the insurance coverage of a Unit Owner or resident shall be primary and the insurance of the Association shall be secondary for losses that emanate from within their unit, or from items that are their responsibility to repair and replace. All unit owners shall have a minimum COVERAGE A BUILDING for \$10,000 added to their individual unit owner policies. If unit owner fails to maintain insurance, unit owner will still be responsible for the first \$10,000 on any claim arising from losses which emanate from within their unit or from items that are their responsibility to repair or replace.

f. Management Committee's Right to Adjust Claims of Unit Owners and Residents. The Management Committee shall have the right to adjust claims intended to be filed on the Association's insurance policies by Unit Owners or Residents, particularly if the damage, loss or claim is caused by the negligence of the claimant, or if the claimant failed to purchase adequate individual insurance coverage. The right to adjust claims includes but is not limited to the right to reasonably refuse to submit a Unit Owner or Resident's claim to the Association's insurance carrier.

g. Prompt Repair. Each Unit Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Unit, the Unit Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

2. Article III, Section 13 of the Declaration is amended and the following new subsection is added:

(j) Leases. Within ten (10) days of delivery of a written request, a Unit Owner shall be obligated to inform the Management Committee in writing whether his Unit is leased or owner occupied upon request. If a Unit is leased on a short term basis (i.e., for an initial term of less than thirty (30) days, then the Unit Owner shall, upon request, notify the Management Committee of the name of the leasing agency or manager (if any) assisting the Unit Owner. Unit Owners leasing their Units shall provide the Management Committee with evidence that the utility companies have an "OWNER'S CARD" on file, to prevent the residents from terminating utility service. Any agreement for the leasing, rental, or occupancy of a Unit (hereinafter in this Section referred to as a "lease") shall be in writing and a copy thereof shall be delivered to the Association before the term of the Lease commences. Every lease shall provide that the terms of such lease shall be subject in all respects to the provisions of the Act, Declaration, By-Laws and Administrative Rules and Regulations as they may be adopted or amended from time to time (the "Project Documents"). Said lease shall further provide that any failure by the Resident thereunder to comply with the terms Project Documents shall be a default under the lease. If any lease does not contain the foregoing provisions, it shall be deemed to have included them by this reference. Any Owner who shall lease his Unit shall be responsible for assuring compliance by the Resident with the Project Documents. Failure by an Owner to take legal action to abate a nuisance or evict

a tenant is in violation of the Project Documents within ten (10) days after receipt of written demand so to do from the Management Committee, shall entitle the Association to take any and all such action, including the institution of injunction or eviction proceedings in behalf of such Owner against his tenant. Neither the Association nor any agent retained by the Association to manage the Project shall be liable to the Owner or tenant for any injunction or eviction proceeding commenced pursuant to this Section that is made in good faith. Any expenses incurred by the Association, including attorneys' fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Board to levy an Individual Assessment against such Owner and his Unit for all such expenses incurred by the Association. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or rent his Unit.

3. Article III, Section 17 of the Declaration is hereby amended and the following additional subsection is added:

(i) Individual Assessments. Individual Assessments may be levied by the Management Committee against a Unit and its Owner for attorney's fees, fines, interest, late fees, service charges, costs and expenses: (a) incurred by the Management Committee in enforcing or construing the Project Documents; (b) incurred by the Management Committee or associated with the maintenance, repair or replacement of Common Area or Facilities for which the Unit Owner is responsible; and (c) designated as an Individual Assessment in the Project Documents or by the Management Committee.

The effective date of this Fifth Amendment to the Amended Declaration of Condominium for Powder Wood at Landmark is the date upon which the same is recorded in the Office of the County Recorder of Summit County, Utah.

IN WITNESS WHEREOF, the Association has executed this instrument the day and year first above written.

POWDER WOOD CONDOMINIUM HOMEOWNERS ASSOCIATION

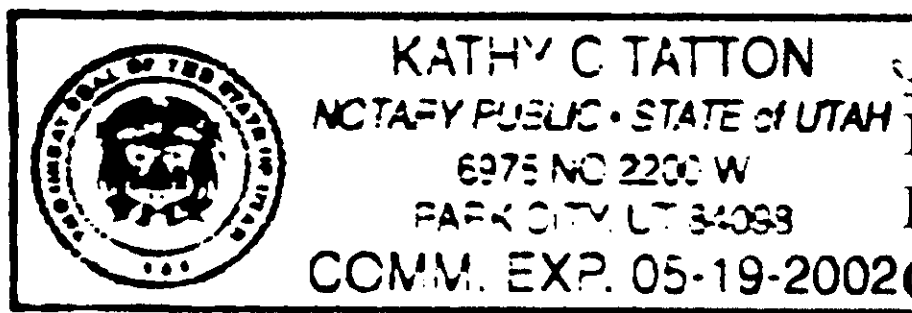
BY: Charles Schell
TITLE: Charles Schell, President

BY: Steve Phillips
TITLE: Steve Phillips, Secretary

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STATE OF UTAH)
)ss:
COUNTY OF SUMMIT)

On the 25th day of September, 1998, personally appeared before me CHARLES SCHELL and STEVE PHILLIPS, who by me being duly sworn, did say that they are the President and Secretary of the POWDER WOOD CONDOMINIUM HOMEOWNERS ASSOCIATION, and that the within and foregoing instrument was signed in behalf of said Association by authority of a resolution of its Board of Trustees, and said CHARLES SCHELL and STEVEN PHILLIPS duly acknowledged to me that said Association executed the same.



Kathy C Tatton
NOTARY PUBLIC
Residing At: *2510 W. Deerbreaker, Park City, Ut 84098*
Commission Expires: *05-19-2002*

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EXHIBIT A

The land referred to in the foregoing notice is situated in Summit County, State of Utah, and is described as follows:

The POWDER WOOD AT LANDMARK, as the same is identified in the Record of Survey Map recorded in Summit County, Utah, as Entry No. 209623, as modified by Ordinance No. 143 dated June 26, 1984, and recorded June 28, 1984 as Entry No. 222012 in Book 304 at Page 177, and by Ordinance 144 dated June 26, 1984, and recorded June 28, 1984 as Entry No. 222013, in Book 304, at Page 179, Summit County Recorder's Office and in the Declaration of Covenants Conditions and Restrictions and By-Laws of the POWDER WOOD AT LANDMARK recorded in Summit County, Utah, on August 16, 1983, as Entry No. 209624, in Book 269, at Page 692, and in the Amended Declaration of Covenants, Conditions, Restrictions and By-Laws of the Powder Wood at Landmark, recorded in Summit County, Utah on June 28, 1984 as Entry No. 222015, in Book 304, at Page 184, and in the First Amendment to Amended Declaration recorded September 10, 1984, as Entry No. 224934, in Book 313, at Page 829, and the Second Amendment to Amended Declaration recorded December 26, 1984, as Entry No. 228618, in Book 325, at Page 35, records of Summit County, Utah.

Commencing at the southeast corner of the East Half of the East Half of Section 13, Township 1 South, Range 3 East, Salt Lake Base and Meridian; thence North $89^{\circ} 40' 42''$ West 1348.31 feet to the southwest corner of said half-half section; thence North $00^{\circ} 20' 38''$ West along the west line of said half-half section 1567.69 feet to the TRUE POINT OF BEGINNING; thence North $00^{\circ} 20' 38''$ west along said west line 1198.72 feet to a point on the southwesterly right-of-way line of the Interstate 80 Frontage Road; thence south $35^{\circ} 42' 22''$ East along said right-of-way line 460.14 feet; thence South $1^{\circ} 00' 00''$ East 332.42 feet to a point on a 215.00 foot radius curve to the left (radius point bears North $89^{\circ} 00' 00''$ East 215.00 feet of which the central angle is $24^{\circ} 10' 00''$); thence southerly along the arc of said curve 90.68 feet; thence South $25^{\circ} 10' 00''$ East 472.47 feet; thence South $64^{\circ} 50' 00''$ West 180.53 feet; thence North $73^{\circ} 00' 00''$ West 339.91 feet to the point of beginning; containing 7.903 acres, more or less.

LOCATED IN SUMMIT COUNTY, UTAH.