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**DECLARATION  
CONCERNING ACCESS AT THE  
ECHO CREEK RANCHES SUBDIVISION**

THIS DECLARATION is made and executed this 15 day of September, 1977, by ECHO CREEK RANCH, a Utah limited partnership (hereinafter referred to as "Developer").

**RECITALS:**

A. On July 28, 1977, the Developer filed a Subdivision Plat in the office of the County Recorder of Summit County, State of Utah for the creation of the Subdivision known as Echo Creek Ranches. The Plat, as so filed, created a total of 208 Lots and, with respect to said Lots, created certain easements and rights including Road Strips or portions thereof on each Lot as nonexclusive rights-of-way for access by vehicular, pedestrian and animal traffic. At the present time, the Developer is the record owner of all of the Lots in the Subdivision.

B. The Developer is negotiating with Union Pacific Railroad Company for a nonexclusive easement or other interest for ingress and egress purposes over the parcel of land located immediately adjacent to the Subdivision between the Subdivision and U.S. Highway 30 South, for the purpose of enabling owners of Lots, the Developer and other persons to have access to the Subdivision from U.S. Highway 30 South.

C. Developer desires to provide for the preservation, maintenance and improvement of the Road Strips and the U.P. Right-of-Way (if and when received by the Developer). To this end and for the benefit of the Subdivision and of the Owners who have or come to have the right to use and enjoy the same, Developer desires to subject both the Property described in Article II of this Declaration and the various Lots to the covenants, restrictions, easements, charges, limitations and liens hereinafter set forth.

D. Developer deems it desirable, for the efficient preservation and maintenance of the Road Strips and U.P. Right-of-Way to create an entity which possesses the power to maintain and administer the Road Strips and U.P. Right-of-Way, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce certain of the provisions of this Declaration. For such purpose Developer has, in conjunction with recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, The Echo Creek Ranches Owners Association.

NOW, THEREFORE, for the foregoing purposes, Developer makes the following declarations respecting the Property described in Article II hereof.

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## I. DEFINITIONS

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

1. Declaration shall mean and refer to this Declaration Concerning Access At The Echo Creek Ranches Subdivision.

2. Property shall mean and refer to the real property and interests therein referred to in Article II hereof.

3. Plat shall mean and refer to the Subdivision Plat of Echo Creek Ranches filed on July 28, 1977 in the office of the Recorder of Summit County, Utah as Entry Number 139278 in Book \_\_\_\_\_ at Page \_\_\_\_\_. The Plat relates to and includes the real property and related interests described in Exhibit "A" attached hereto and by this reference made a part hereof.

4. Lot shall mean and refer to one of the 208 separately numbered and individually described plots of land which is covered by and included in the Plat.

5. Subdivision shall mean and refer to the entire development which is created and covered by the Plat.

6. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Summit County, Utah) of a fee or an undivided fee interest in any Lot or portion thereof. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee under a mortgage or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

7. Road Strips shall, at any point in time, mean, refer to, and consist of the rights-of-way set forth and referred to on the Plat, and any other easements or rights for the purpose of providing access on the Property which have been granted or may be granted by Developer, together with any and all improvements thereon.

8. U.P. Right-of-Way shall, at any point in time, mean, refer to, and consist of the easements or other interests, rights, duties and obligations which may be acquired from Union Pacific Railroad Company with respect to the real property located immediately adjacent to the Subdivision between the Subdivision and U.S. Highway 30 South. However, until such time as the easements or other interests, and related rights in the property described as the U.P. Right-of-Way are acquired, and in any event if such easement or other rights and related interests are not acquired within five (5) years after the date hereof, this Declaration shall not be deemed to include said property and the references herein to the U.P. Right-of-Way shall be of no force and effect.

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9. Owners Association or Association shall mean and refer to THE ECHO CREEK RANCHES OWNERS ASSOCIATION, a Utah nonprofit corporation.

10. Member shall mean and refer to every person who holds membership in the Owners Association.

11. Mortgage shall mean and include both a first mortgage on any Lot and a first deed of trust on any Lot.

12. Mortgagee shall mean and include both a mortgagee under a first mortgage on any Lot and a beneficiary under a first deed of trust on any Lot.

## II. PROPERTY DESCRIPTION

The Property which is and shall be held, transferred, occupied, and otherwise dealt with subject to the provisions of this Declaration consists of the following:

(a) The Subdivision and all of the Lots, which consist of the real property situated in Summit County, State of Utah described in Exhibit "A" attached hereto; and

(b) The U.P. Right-of-Way, if and when granted.

## III. MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner shall be a Member of the Owners Association. Membership in the Owners Association shall be mandatory and shall be appurtenant to the Lot in which the Owner has the necessary interest. Neither membership in the Owners Association nor any of the votes attributable to a membership shall be separated from the Lot to which the same appertains. Neither the issuance nor the holding of shares of stock shall be necessary to evidence membership in the Owners Association.

2. Voting Rights. Each Owner shall, with respect to each Lot in which the interest required for membership is held, be entitled to one (1) vote for such Lot.

3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote or votes relating to such Lot shall be exercised as such Owners may determine among themselves. A vote or votes cast at any Owners Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote or votes attributable to the Lot concerned unless an objection is immediately made by another Owner having an interest in the same Lot. In the event such an objection is made, the vote or votes attributable to such Lot shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

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IV. PROPERTY RIGHTS IN ROAD STRIPS AND  
U.P. RIGHT-OF-WAY

1. Easement of Enjoyment. Each Owner shall have a right and easement of use and enjoyment in and to the Road Strips and U.P. Right-of-Way. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee, invitee, contract purchaser, other person who resides on such Owner's Lot, and such other class or classes of persons (if any) as may from time to time be prescribed by rules or regulations promulgated by the Owners Association.

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

LOT NO. \_\_\_\_\_ contained within ECHO CREEK RANCHES, as said Lot is identified in the Subdivision Plat recorded in Summit County, Utah on July 28, 1977 as Entry No. 139278 in Book \_\_\_\_\_ at Page \_\_\_\_\_ (as said Subdivision Plat may have heretofore been amended or modified of record). TOGETHER WITH AND SUBJECT TO:  
(i) The nonexclusive easements (for public utilities purposes) which are shown on and/or provided for in said Plat; (ii) The nonexclusive rights-of-way (for access) which are shown on and/or provided for in said Plat; and (iii) All of the provisions of, and the benefits, rights, interests, obligations, and liens provided for in or arising out of, that certain "Declaration Concerning Access at the Echo Creek Ranches Subdivision" recorded in Summit County, Utah on \_\_\_\_\_, 1977 as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_.

RESERVING unto Grantor, however: (a) The mineral estate and all minerals of whatever kind or character, including oil and gas; and (b) The right to graze livestock on the above-identified Lot until December 31, 1987.

ALL OF THE FOREGOING BEING SUBJECT TO: The lien of current and future taxes and assessments; and all reservations (including mineral reservations and rights incident thereto), exceptions, exclusions, restrictions, covenants, encumbrances, easements, rights-of-way, and defects which are of record, which are or would be apparent from an inspection, examination, or survey, or which are enforceable or effective at law or in equity (other than mortgages or deeds of trust).

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

3. Transfer of Title. Developer agrees that it shall, as soon as reasonably practicable after its acquisition thereof from the Union Pacific Railroad Company, transfer and assign to the Owners Association all of its right and interest in, to and under the U.P. Right-of-Way. Alternatively, Developer may cause the U.P. Right-of-Way to be granted by the Union Pacific Railroad Company directly to the Owners Association, rather than to the Developer.

4. Limitation on Rights. A Member's right and easement of use of enjoyment concerning the Road Strips and U.P. Right-of-Way shall be subject to the right of the Summit County, and any other governmental or quasi-governmental body having jurisdiction over the Property, to access and rights of ingress and egress for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service.

## V. ASSESSMENTS

1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Owners Association the special assessments described in this Article, together with the hereinafter prescribed interest and costs of collection. The assessments for each Lot shall be equal. All such amounts shall be, constitute, and remain: (i) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (ii) the personal obligation of each person who is an Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Road Strips and U.P. Right-of-Way or by abandonment of his Lot.

2. Purpose of Assessments. Assessments levied by the Owners Association shall be used exclusively for the purpose of paying the costs, expenses and charges incurred in connection with the maintenance, repair, operation and ownership, preservation and retention of the Road Strips and the U.P. Right-of-Way, together with all other costs and charges which may be incurred by the Owners Association in carrying out its duties and responsibilities under this Declaration or its Articles of Incorporation with respect to the Road Strips and the U.P. Right-of-Way.

3. Special Assessments. From and after the date set under Section 4 of this Article, the Owners Association may levy special assessments for the purpose of defraying, in whole or in part, the costs, charges and expenses referred to or provided for in Section 2 of this Article.

4. Assessment Due Dates. The assessments provided for herein may commence as to all Lots (after, but not prior to, such time as legal title to at least 30 Lots has been conveyed away by Developer. At least thirty (30) days prior

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to the effective date of any special assessment the Owners Association shall give each Owner written notice of the amount and due date of the assessment concerned.

5. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot the Owners Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

6. Effect of Nonpayment--Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot to which the assessment is related. Each person who is an Owner having an interest in the Lot at the time the assessment falls due shall be and remain personally liable for payment. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum and the Owners Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Owners Association shall include reasonable attorney's fees, court costs, and each and every other expense incurred by the Owners Association in enforcing its rights.

## VI. OPERATION AND MAINTENANCE

1. Maintenance of Subdivision. The Owners Association shall have no obligation regarding maintenance or care of any Lot except for such portions of a Lot as may lie within the Road Strips.

2. Operation and Maintenance by Owners Association. The Owners Association shall provide for such maintenance, repair, improvement and operation of the Road Strips and U.P. Right-of-Way as may be necessary or desirable to make them appropriately usable by the Owners and to keep them functional and generally in good condition and repair.

3. Liability Insurance. The Owners Association may maintain in force a comprehensive policy of public liability insurance covering the Road Strips and U.P. Right-of-Way. Any such insurance may include a "Severability of Interest" endorsement to preclude the insurer from denying the claim of any Owner because of negligent acts of other Owners in the Owners Association.

## VII. MISCELLANEOUS

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

2. Rules and Regulations. The Owners Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Owners Association in carrying out any of its functions or to insure that the Road Strips and U.P. Right-of-Way are maintained and used in a manner consistent with the interests of the Owners.

3. Amendment. Subject to the provisions of Section 5 of this Article VII, any amendment to this Declaration shall require the affirmative vote of at least two-thirds (2/3) of all votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the Notice requirement set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Owners Association. In such instrument an officer or Trustee of the Owners Association shall certify that the vote required by this Section for amendment has occurred.

4. Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding. The following additional provisions shall govern any application of this Section 4:

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(a) All necessary consents must be obtained prior to the expiration of one hundred eighty (180) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 4 shall be determined as of the date on which the last consent is signed.

(c) Any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured, the consent of none of such Members shall be effective.

5. Mortgagee Protection. From and after the time a Mortgagee makes written request to the Owners Association therefor, the Owners Association shall notify such Mortgagee in writing in the event that the Owner of the Lot encumbered by the Mortgage held by such Mortgagee neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration or under the Owners Association's Articles of Incorporation.

The lien on a Lot for unpaid assessments provided for under Article V shall be subordinate to the Mortgage affecting such Lot, and the Mortgagee thereunder which comes into possession of the Lot shall take the same free of such lien for unpaid assessments, but only to the extent of assessments which accrue prior to foreclosure of the Mortgage, 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 resulting from a pro rata reallocation thereof to all Lots including the Lot in which the Mortgagee is interested). No assessment or lien which is described in the preceding sentence as being subordinate to a Mortgage or as not to burden a Mortgagee which comes into possession shall be collected or enforced by the Owners Association from or against a Mortgagee, a successor in title to a Mortgagee, or the Lot affected or previously affected by the Mortgage concerned.

Unless at least seventy-five percent (75%) of the Mortgagees (based upon one vote for each Mortgage) of the individual Lots have given their prior written approval, the Owners Association shall not be entitled, by act, omission, or otherwise:

(a) To seek to abandon or materially alter the arrangement which is established by this Declaration; or

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(b) To change, waive, abandon, or cease enforcement of the arrangement created under this Declaration concerning maintenance of the Road Strips and U.P. Right-of-Way.

Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Owners Association.

To the extent the same is reasonably possible and practical and is not inconsistent with the significant interests of the Owners Association or of the Owners, the Owners Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs to the Road Strips and U.P. Right-of-Way and shall cause such reserve to be funded by special assessments.

In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Section 5, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits or authority, as the case may be, applicable to the Owners Association with respect to the subject concerned.

No amendment to this Section 5 which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effective unless at least seventy-five percent (75%) of the Mortgagees (based upon one vote for each Mortgagee) of the individual Lots have given their prior written approval to such amendment. In any instrument by which this Section 5 is amended, an officer or Trustee of the Owners Association shall certify that any prior written approval of Mortgagees required by this Section 5 as a condition to amendment has been obtained.

6. Developer's Rights Assignable. All or any portion of the rights of Developer under this Declaration or in any way relating to the Property or to the Road Strips and U.P. Right-of-Way may be assigned.

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

8. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Developer, all parties who hereafter acquire any interest in a Lot, and their

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respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

9. Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Summit County, Utah.

EXECUTED the day and year first above written.

"Developer":

ECHO CREEK RANCH,  
a Utah Limited Partnership

By: VILLA WESTBROOK, INC.,  
a Utah corporation and  
one of the General  
Partners of said  
Limited Partnership

By Jay L. Murphy  
Jay L. Murphy  
Vice President

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

On this 13 day of September, 1977, personally appeared before me JAY L. MURPHY, who being by me duly sworn did say that he is the Vice President of VILLA WESTBROOK, INC., a Utah corporation, that said corporation is a General Partner of ECHO CREEK RANCH, a Utah Limited Partnership, and that the foregoing "Declaration Concerning Access At The Echo Creek Ranches Subdivision" was signed on behalf of said corporation, in its capacity as a General Partner in said Limited Partnership, by authority of its Bylaws or a resolution of its Board of Directors, and said Jay L. Murphy acknowledged to me that said corporation executed the same on behalf of said Limited Partnership.

Frank Gray  
Notary Public  
Residing at Salt Lake City

My Commission Expires:  
6/26/79

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EXHIBIT "A"

TO

DECLARATION CONCERNING ACCESS  
AT THE ECHO CREEK RANCHES SUBDIVISION

(A Utah Nonprofit Corporation)

The real property situated in Summit County, State of Utah, described as follows:

Lots 1 through 208 of the ECHO CREEK RANCHES SUBDIVISION as set forth in the Subdivision Plat of Echo Cree- Ranches filed on July 28, 1977 in the office of the Recorder of Summit County, Utah as entry No. 139278.

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