

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND
RESERVATION OF EASEMENTS FOR THE

SWISS ALPINHOF PLANNED UNIT DEVELOPMENT

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WASATCH CO RECORDER-ELIZABETH N PARCELL
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REQUEST: ALPENHOF VILLAGE LLC

PREAMBLE

Conditions, covenants, restrictions and easements affecting the property of SWISS ALPINHOF PLANNED UNIT DEVELOPMENT, owned and being developed by ALPINHOF VILLAGE AT MIDWAY, L.L.C., hereinafter called the "Declarant".

WITNESSETH:

This Declaration is made this 31st day of January, 2000, by the Declarant as follows:

WHEREAS, Declarant is the owner of the real property described in those certain Plat Maps entitled SWISS ALPINHOF PLANNED UNIT DEVELOPMENT PLAT "B" and PLAT "C", recorded in the official records of the Wasatch County Recorder as Entry No. _____ on _____ (hereinafter "Plat Map") and are desirous of subjecting all of said real property or any subdivision thereof to all of the covenants, conditions, restrictions, reservations of easements, liens, and charges hereinafter set forth, each and all of which is and are for the benefit of and shall pass with said real property, and each and every parcel or lot thereof, and shall apply to and bind the successors in interest, and any owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the value in said real property described above (hereinafter "Properties") and in any additional properties which may be annexed thereto pursuant to the provisions of this Declaration to create a non-profit corporation under the Utah Non-Profit Corporation and Cooperative Association Act to which should be delegated and assigned the powers of owning, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created (hereinafter "Association"); and

WHEREAS, Declarant shall cause such Association, the members of which shall be respective Owners of the Properties, and Owners of real property annexed pursuant to this Declaration, to be formed for the purpose of exercising the functions aforesaid; and

WHEREAS, Declarant shall develop and convey all of the Properties (as hereinafter defined), as set forth in the Plat Map and pursuant to the specifications set forth therein, including all utilities and the installation and maintenance of landscaping and other improvements described by the Plat Map in the common area (as described as a duty of the Association in this declaration), for all of the Properties and subject to certain protective covenants, conditions, restrictions, reservation of

easements, equitable servitudes, liens and charges, all running with the Properties as hereinafter set forth.

NOW THEREFORE, it is hereby declared that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, improvement and sale of the Properties, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successors in interest and each Owner and his respective successors in interest; and may be enforced by any Owner, his successors in interest, and by the Association. The term "Owner" and "Association" as used herein shall be hereinafter defined. Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Declarant's right to complete development of the Properties and construction of improvements thereon, nor Declarant's right to maintain model homes, constructions, sales offices and similar facilities on any Properties owned by Declarant or Declarant's right to post signs incidental to construction and/or sales.

NOW THEREFORE, Declarant shall consummate the incorporation of the Association at such time as 75% of the Properties are sold.

NOW THEREFORE, until such time as the Association is incorporated, the Declarant shall be empowered to enforce all the covenants, conditions, restrictions and all other provisions described herein the Declaration, and every person who owns, occupies or acquires any right, title, estate or interest in or to any Property or other portion of the Project does and shall hereby conclusively acknowledge such empowerment and agree to be bound thereby.

NOW THEREFORE, at such time as the Association is incorporated, the governing body shall become a Board of Trustees as described in the Association's Articles of Incorporation.

ARTICLE I. DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

SECTION 1. "ASSOCIATION" shall mean the Swiss Alpinhof Property Owners Association, a corporation formed under the Utah Non-Profit Corporation, and Co-operative Association Act, and its successors and assigns.

SECTION 2. "ARTICLES" shall mean the Articles of incorporation of the Swiss Alpinhof Property Owners Association.

SECTION 3. "BOARD OF TRUSTEES" shall mean the governing body of the Association from the time of the Association's incorporation.

SECTION 4. "COMMON ASSESSMENT" shall mean the charge against each Owner and his Property, representing a portion of the total costs of the Association of maintaining, improving, repairing, replacing, managing and operating the utilities originally installed by the developer, along with the maintenance of common areas as described herein, including landscaping and snow removal from the walkways of the common area (exclusive of private drives), which are to be paid uniformly and equally by each Owner to the Association, as provided herein.

SECTION 5. "SPECIAL ASSESSMENTS" shall mean a charge against a particular Owner and his property, directly attributable to the Owner, equal to the costs incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

SECTION 6. "RECONSTRUCTION ASSESSMENTS" shall mean a charge against each Owner and his property, representing a portion of the costs of the Association for reconstruction of any portion or portions of the utility improvements or landscaping originally installed by the developer pursuant to the provisions of the Declaration.

SECTION 7. "BENEFICIARY" shall mean a mortgage under a mortgage of beneficiary or holder under a deed of trust, as the case may be, and the assignees of such mortgage, beneficiary or holder.

SECTION 8. "PLAT MAP" shall mean and refer to those plat maps entitled SWISS Alpinhof PLANNED UNIT DEVELOPMENT PLAT "B" and PLAT "C", recorded in the official records of the Wasatch County Recorder as Entry No. — on —.

SECTION 9. "COMMON EXPENSES" shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the utility improvements and common area improvements originally installed by the developer (including unpaid special assessments and reconstruction assessments), including any costs not paid by the Owner responsible for the payments; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, and other employees or contractors; the costs of all utilities, gardening, landscaping, lawn care, snow removal and other services; the costs of bonding the members of the management body; any taxes paid by the Association; the costs of any item or items designated by, or in accordance with other expenses incurred by, the Association for any reason whatsoever in connection with the Properties, for the benefit of all of the Owners.

SECTION 10. "DECLARATION" shall mean this instrument as it may be amended from time to time.

SECTION 11. "DEED OF TRUST" shall mean and refer to a mortgage or deed of trust, as the case may be.

SECTION 12. "PROPERTY" shall mean and refer to the actual dwelling units depicted on the Plat Map, from the inside walls in, exclusive of common area, including garages.

SECTION 13. "FAMILY" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than three persons not also related, inclusive of their domestic servants, who maintain a common household and a residence in a Property.

SECTION 14. "IMPROVEMENT" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, walkways, sprinkler pipes, carpets, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting strips, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures of equipment.

SECTION 15. "MEMBER" shall mean any person or entity holding a membership in the Association as provided herein.

SECTION 17. "MORTGAGE"; "MORTGAGEE" shall mean any mortgage or deed of trust or other conveyance of a Property to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. the term "deed of trust" or "trust deed" when used herein shall be synonymous with the term "mortgage." The term "mortgagee" shall mean a person or entity to whom a mortgage is made and shall include the beneficiary of a deed of trust; "mortgagor" shall mean a personal entity who mortgages his or its property to another, i.e., the maker of a mortgage, and shall include the trustor of a deed of trust. The term "trustor" shall be synonymous with the term "mortgagor," and the term "beneficiary" shall be synonymous with the term "mortgagee." The term "first mortgagee" shall include any mortgagee or the beneficiary under any deed of trust, hold a first and prior lien upon any Property to that of any other mortgagee.

SECTION 18. "OWNER" shall mean and refer to the person or persons or other legal entity or entities, including Declarant, holding fee simple of record to any Property which is a part of the Properties, including sellers under executory contracts of sale, but excluding those having such interests merely as security for the performance of an obligation.

SECTION 19. "PERSON" shall mean a natural individual or any other entity with the legal right to hold title to real property.

SECTION 20. "COMMON AREA" shall mean all areas exclusive of the garage and living area of each dwelling unit, which common area commences from the inside walls out of each dwelling unit.

ARTICLE II. DURATION AND EFFECT OF DECLARATION

A. DURATION OF COVENANTS: The covenants and restrictions of this Declaration shall run with and bind the Properties and shall inure to the benefit of and be enforceable by the

Association or any Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns. thereafter, the Owners possessing at least seventy-five percent (75%) of the voting rights in the Association may sign and have recorded an instrument in writing agreeing to change such covenants in whole or in part to eliminate the same. Nothing herein shall limit the amendment provisions as hereinafter provided. Any person or entity entitled to enforce these covenants, conditions, and restrictions shall in fact do so through proceedings at law or in equity against any person or persons violating or attempting to violate any of these covenants, conditions, or restrictions shall be entitled to recover attorneys fees, costs of court and other damages incurred as a result of the enforcement.

B. SEVERABILITY: Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect to the extent permitted by law.

ARTICLE III. MEMBERSHIP IN THE ASSOCIATION

A. MEMBERSHIP: Every Owner of a Property shall be a member of the Association, and no property shall have more than one membership in the Association. Memberships in the Association shall not be assignable, except to the successor in interest of the Owner and to the Owner's Property, and every membership in the Association shall be appurtenant to and may not be separated from the fee Ownership of such Property. Ownership of a Property shall be the sole qualification for membership in the Association.

B. TRANSFER OF MEMBERSHIP: The Association membership held by an owner of a Property shall not be transferred, pledged, or alienated in any way, except upon the sale for encumbrance of the Property giving rise to such membership and then only to the purchaser or mortgagee of such Property. Any attempt to make a prohibited transfer is void, and shall not be reflected upon the books and records of the Association. In the event an Owner of a Property shall fail or refuse to transfer the membership registered in his name to the purchaser of his Property upon transfer of fee title thereto, the Board of Trustees of the Associations shall have the right to record the transfer upon the books of the Association. The Board of Trustees of the Association shall have the right to charge a reasonable special assessment against any Owner, and his Property, equal to the cost to the Association of effectuating any such transfer of his membership upon the books of the Association.

C. EASEMENTS FOR CITY AND COUNTY PUBLIC SERVICE USE: There shall be reserved in favor of Declarant and all future Owners within the Swiss Alpinhof Planned Unit Development, easements for city, county and federal public services including, but not limited to, the right for police to enter upon any part of the Properties for the purpose of enforcing the law. Any county or governmental easements over the Swiss Alpinhof project as shown on said Plat Map are hereby recognized.

D. NO EXEMPTION FROM LIABILITY. No Owner may exempt himself from personal liability for assessments to be levied by the Association, nor release the Property or other property

owned by him from the liens and charges hereof, by abandonment of his Property or any other property in the Properties.

E. EXERCISE OF VOTING RIGHTS, ETC. BY PURCHASERS OF PROPERTIES ON EXECUTORY CONTRACTS: It is understood that from time to time a Property may be sold on contract with the purchaser under such contract having the right to the possession of such Property but not the right to transfer of title to the Property membership in the Association until all of the sums under the contract are fully paid by the purchaser. In such event, transfer of membership in the Association to the prospective Owner of the Property shall not be transferred upon the books of the Association until such time as legal title to a Property is transferred to the purchaser upon completion of the contract. However, a notation shall be made on the books of the Association that the Property is being purchased under contract and that the prospective purchaser shall have the right to exercise the voting and other rights of such membership to the exclusion of the contract seller so long as the purchaser is not in default under the contract.

F. VOTING RIGHTS: With respect to exercising any and all voting rights in the affairs of the Association or as provided in this Declaration, an Owner of each Property shall have one (1) vote for each full Property he owns as reflected upon the records of the Wasatch County Recorder. In the event a Property is owned jointly by more than one person, all of such joint owners shall be considered as a single Owner, for voting purposes, with no Property experiencing increased voting rights as a result of multiple ownership. There shall be no split voting as to the voting rights attending any Property all votes attributable to a Property must be cast unanimously or not at all. Any co-owners or co-owner present at a meeting of the Association shall be entitled to cast the vote attendant to their or his Property, regardless of the absence of their or his co-owner or co-owners; provided, however, that if unanimity cannot be reached by all of the co-owners of a Property in attendance at such a meeting as to how the Property's vote should be cast, no vote shall be cast with respect to such a Property.

ARTICLE IV. ANNUAL AND SPECIAL MEETINGS OF THE ASSOCIATION

The annual meetings of the members of this Association shall be held at a time and place designated by the Board of Trustees with the annual meeting being held on the third Tuesday of January of each year, provided that the Board of Trustees shall give at least ten (10) days notice in advance to each member by mail of the time and place of said annual meeting. On similar notice, special meetings of the members may be called by the Chairman of the Board, the President, or by a majority of the Trustees.

ARTICLE V. DUTIES AND POWER OF THE ASSOCIATION

The association, acting through the Board of Trustees, shall have the power and duty to:

(a) Install and maintain landscaping and/or lawn in all common areas of the Swiss Alpinhof Plats B and C, and effect snow removal from all walkways within said common areas.

(b) Maintain any and all private utilities, or other improvements, and maintain the physical facilities of the buildings in the subdivision from the interior walls out (exclusive of damage directly attributable the negligent, reckless or willful act of a Property owner).

(c) Maintain such policy or policies of liability and fire insurance in furthering the purpose of and protecting the interests of the Association and Members and as directed by this Declaration and/or the Articles of Incorporation or Bylaws of the Association.

(d) The Association may, but shall not be obliged to, employ or contract with a professional manager to perform all or any part of the duties and responsibilities of the Association, and shall have the power to delegate its powers to committees, officers and employees. Any such agreement shall be for a term not in excess of three (3) years, subject to cancellation by either party without cause or payment of a termination fee upon ninety (90) days or less written notice.

(e) After fifteen (15) days written notice, without being liable to any Owner, enter upon any Property, for the purpose of enforcing by peaceful means the provisions of this declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by this Declaration, institute any and all proceedings necessary to enforce this Declaration.

(f) Levy and collect all assessments as provided herein in sufficient quantity to enable the Association to adequately perform its duties hereunder.

(g) Invoke such additional powers as shall be reasonable and necessary for the Association to accomplish the purposes of its creation as set forth in its Articles of Incorporation and this Declaration.

ARTICLE VI. COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. ASSESSMENTS: Declarant, for each Property owned by it within the Properties, hereby covenants and each Owner of any Property, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) Annual Common Assessments for Common Expenses, (2) Special Assessments, and (3) Reconstruction Assessments, such assessments to be established and collected as hereinafter provided. Such assessments, together with interests, applicable costs, and reasonable attorneys fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Property against which said assessment is made. Each such assessment, together with interest, applicable costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Subject to the provisions of this Declaration protecting First Mortgagees, the personal obligation for delinquent assessments shall pass to the successors in interest of such Owner. The Association shall be obligated to assess sufficient assessments to adequately fulfill its repair, maintenance, and replacement obligations as provided in this Declaration.

SECTION 2. PURPOSE OF COMMON ASSESSMENTS: The common Assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Owners and for the maintenance of the original utility improvements installed by the developer situated upon the Propertys and the Properties as provided herein, and also for the improvement and maintenance of the common areas. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Properties. Nothing contained herein shall limit, preclude or impair the establishment of additional Swiss Alpinhof maintenance funds by the Association, so long as the amounts deposited into any such fund are earmarked for specific purposes authorized by this Declaration.

SECTION 3. BASIS OF COMMON ASSESSMENTS: Common assessments shall be levied annually on the first day of January of each year. Written notice shall be given each Property Owner of the annual Common Assessment on or before the first day of January of each year. Such notice shall be deemed effective when deposited in the United States mail, postage fully prepaid, addressed to the last known address of each Owner.

Common Assessments may be increased at any time during a given year should the Association deem it necessary to adequately accumulate funds to fulfill the purposes of the Common Assessment.

The Common Assessments shall be equally apportioned among the Property Owners by dividing the total amount by the number of Properties in the Swiss Alpinhof PUD, including any Properties hereafter annexed to the project. Should a new Property be added to the project during a given year, the assessments of the previously existing Propertys shall not be reduced, although the new Property shall be required to pay an assessment identical to the previously existing Properties, but prorated to pay only so much of the assessment as is attributable to the remainder of the year in which the assessment is made.

The initial Common Assessment for each Property shall begin in 2000 and shall be \$_____ per Property per year, commencing with respect to Property Owners other than Declarant on the date such Property was sold by Declarant, either by contract or otherwise.

SECTION 4. RECONSTRUCTION ASSESSMENTS: In addition to the Common Assessments authorized above, the Board of Trustees of the Association may levy, in any assessment year, a Reconstruction Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any reconstruction or replacement of any portion of any utility improvement originally installed by the developer.

SECTION 5. SPECIAL ASSESSMENTS: The Association may levy Special Assessments against selected Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guests or agents.

SECTION 6. NOTICE OF CHANGE IN THE AMOUNT OF COMMON ASSESSMENTS, OR RECONSTRUCTION ASSESSMENTS: Notice of any change in the amount of any

Common Assessment or Reconstruction Assessment shall be sent to every Owner subject thereto at least thirty (30) days prior to the effective date of such change. The due date shall be established by the Board of Trustees.

SECTION 7. CERTIFICATE OF ASSESSMENT: The Association shall, upon demand and for reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Property have been paid. A properly executed certificate of the Association as to the status of assessments against a Property is binding upon the Association as of the date of its issuance.

SECTION 8. ALLOCATION OF ASSESSMENT PAYMENTS: The respective assessments may be paid by an Owner to the Association in one check or payment or in separate checks or payments attributable to the various assessment funds. In the event a check or payment is not designated to be paid to a particular fund, or in the event a check or payment is designated to be paid to several funds but the amount is insufficient to pay all of the assessments with respect to such funds, the check or payment shall be allocated first to Common Assessments and second to any Reconstruction Assessment.

ARTICLE VII. EFFECT OF NON-PAYMENT OF ASSESSMENTS AND REMEDIES OF THE ASSOCIATION

SECTION 1. EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any Common Assessment, Special Assessment or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such assessment at the rate of eighteen percent (18%) per annum. If any assessment is not paid within thirty (30) days after it is due, the Owner responsible therefor may be required further by the Board of Trustees to pay a late charge of Five Dollars (\$5.00) or five percent (5%) of the amount of the delinquent assessment, whichever is greater. The Association may bring an action at law against the Owner personally obligated to pay the same, record a lien against the Property, and/or foreclose the lien against the Property. The Association shall charge a fee of Fifty Dollars (\$50.00), to cover the cost of preparing and recording the lien. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Property. If any assessment is not paid within thirty (30) days after its due date, the board shall mail a notice to the Owner and to each First Mortgagee of a Property which has requested a copy of the notice. The notice shall specify (1) the fact that the assessment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured; and/or, at the election of the board of Trustees, a suit may be instituted on behalf of the Association by the Board of Trustees to foreclose a lien upon the real property of the defaulting member of the Association, which foreclosure proceedings shall be in the same manner as is provided for the foreclosure of a Trust deed or mortgage upon real property by the laws of the State of Utah at the date of commencement of such foreclosure action. In any action to foreclose any such lien, the Association shall be entitled to costs, including reasonable attorney's fees, and such penalties for delinquent charges and assessments that shall have been established by the Association. The notice shall further inform the Owner of his right to cure the default and/or to bring a court action to assert the non-existence of a default or any other defense of the Owner

to action of foreclosure. If the delinquent assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the annual assessment to be immediately due and payable without further demand and may enforce the collection of the full assessment and all charges thereon in any manner authorized by law and this Declaration.

SECTION 2. NOTICE OF ASSESSMENT: No action shall be brought to enforce any assessment line herein, unless at thirty (30) days has expired following the date a Notice of Assessment is deposited in the United States mail, postage, prepaid, to the Owner of the Property, and a copy thereof has been recorded by the Association in the office of the County Recorder in which the Properties are located; said Notice of Assessment must recite a good and sufficient legal description of any such Property, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at eighteen percent (18) per annum, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant. Such Notice of Assessment shall be signed and acknowledged by an officer of the Association. The lien shall continue until fully paid or otherwise satisfied.

SECTION 3. FORECLOSURE SALE: Any such sale provided for above may be conducted by the Board of Trustees, its attorneys or other persons authorized by the board in accordance with the provisions of the Utah Code Annotated, 1953 as Amended, applicable to the exercises of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Property at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

SECTION 4. CURING OF DEFAULT: Upon the timely curing of any default for which a Notice of Assessment was filed by the Association, the officers hereof shall record an appropriate Release of Lien. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Property created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon on good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed Ten Dollars (\$10.00).

SECTION 5. CUMULATIVE REMEDIES: The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided, from the Property Owner(s) individually.

SECTION 6. SUBORDINATION OF THE LIEN TO MORTGAGES: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (meaning any recorded mortgage with first priority or seniority over other mortgages) made in good faith and for value and recorded prior to the date on which the assessment came due. Sale or transfer of any Property shall not affect the assessment lien. However, the sale or transfer of any Property pursuant to mortgage foreclosure or deed in lieu thereof, shall extinguish the line of such

assessments which became due prior to such sale or transfer, but not the liability of such assessment to any former Property Owner(s) individually. However, no sale or transfer shall relieve such Property from liability for any assessments thereafter becoming due.

ARTICLE VIII. MAINTENANCE AND REPAIR OBLIGATIONS

SECTION 1. MAINTENANCE OBLIGATIONS OF OWNERS. Subject to the duty of the Association to provide for maintenance as provided in this declaration, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Committee approval, to maintain, repair, replace and restore areas subject to his exclusive control, safely in a neat, sanitary and attractive condition. If all or any portion of any Property or residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Property or residence to rebuild, repair or reconstruct said residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

SECTION 2. TIME LIMITATION. Subject to the provisions of this Declaration regarding Committee approval, the Owner or Owners of any damaged residence shall be obligated to proceed with all due diligence hereunder, and the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after commencement of construction, unless prevented by causes beyond his reasonable control.

ARTICLE IX. USE RESTRICTIONS

All real property within the Properties shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant in Article III hereof:

SECTION 1. SINGLE FAMILY RESIDENCE. Subject to the right of Declarant to use its Properties for the sale and promotion of the Properties, each Property shall be used as a residence for a single family and for no other purpose; provided, however, that a portion of a Living Unit can be used to conduct a business or profession of: (1) such use as is approved by all appropriate governmental and quasi-governmental bodies having jurisdiction over such matters; (2) such use as is approved by the Committee; (3) such use as is approved by the Declarant; and (4) such use as is of a type traditionally conducted in a single-family residence. No Property or Living Unit shall be used, occupied, or altered in violation of law so as to detract from the appearance or value of any other Property, or Living Unit, or other structure. Nothing in this Section 1 shall be construed to preclude the use and maintenance of a reasonably discreet and circumspect fine arts studio by any Property Owner upon his Property, provided that the same is not violative of any governmental zoning ordinance or other rule, law, or regulation, or of any of the remaining covenants and restrictions hereunder.

SECTION 2. BUILDINGS. The only structure to be erected in the Swiss Alpinhof PUD is a single family dwelling as described in the Plat Map.

SECTION 4. NUISANCES. No noxious, illegal, or seriously offensive activities shall be carried on in any Property, or in any part of the PUD, nor shall anything be done in or on it that may be or may become a serious annoyance or a nuisance to or that may in any way interfere with the quiet enjoyment of each of the owners of his or her or their respective unit, or that shall in any way increase the rate of insurance for the project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or that will impair the structural integrity of any building.

SECTION 5. VEHICLE RESTRICTIONS. No trailer, camper, mobile home, motorhome, house car, commercial vehicle, truck (other than standard size pickup truck or standard size van), boat, inoperable automobile, or similar equipment shall be permitted to remain on any area within the property, other than temporarily, unless placed or maintained within an enclosed garage or carport. Commercial vehicles shall not include sedans or standard size vans and pickup trucks that are used both for business and personal use, provided that any signs or markings of a commercial nature on the vehicles shall be unobtrusive and inoffensive as determined by the board of directors. No noisy or smokey vehicles shall be operated on the property. No unlicensed motor vehicles shall be operated on the property. Garages shall be used to park permitted vehicles, and not for storage. Seventy-two hours notice has been personally delivered to the owner or owners by an agent of the association or placed on the wind shield of a vehicle or 72 hours after notice has been mailed to the address of the registered owner or owners of a vehicle parked, stored, or maintained on the premises, in violation of the provisions of this Property declaration, the owner or owners shall be deemed to have consented to the removal of the vehicle from the project, and the association or its agents or employees shall have authority to tow away and store any such vehicle, whether the vehicle shall belong to a Property owner, his or her tenant, a member of his or her family, a guest, or an invitee. Charges for such towing and storage shall be paid by the Property owner or owners responsible for the presence of the vehicle.

SECTION 6. RADIO AND TELEVISION ANTENNAE. No alteration to or modification of a central radio and/or television antenna or cable television system, whichever is applicable, as developed by Declarant or a cable television franchisee and as maintained by the association or such franchisee, shall be permitted, and no owner may be permitted to construct and/or use and operate his or her own external radio and/or television antenna without the consent of the board of directors. All fees for the use of any cable television system shall be borne by the respective Property owners or owners, and not by the association. This paragraph shall not prohibit the deployment of a satellite dish not to exceed 36".

SECTION 7. PROPERTY MAINTENANCE AND APPEARANCE. Each owner shall be required to reasonably, necessarily, and adequately maintain his property to keep it in a reasonable state of appearance and preservation.

No open storage of junk, unlicensed cars or other unsightly items shall ever be maintained or stored in or around any Properties, or in the common area. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container, and any such container, subject to applicable city ordinances.

SECTION 9. RIGHT TO LEASE. An owner shall be permitted to lease his or her Property. Any lease agreement shall be required to provide that the term of the lease shall be subject in all

respects to the provisions of this Property declaration and the bylaws and to all house rules and regulations adopted by the board of directors and that any failure of the lessee to comply with the terms of those documents shall be a default under the lease. All owners leasing or renting their Properties shall promptly notify the secretary of the association in writing of the names of all tenants and members of the tenant's family occupying the Property and of the address and telephone number where the owner can be reached. All such leases shall be in writing.

SECTION 10. ARCHITECTURAL CONTROLS.

A. No building, fence, wall, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, improvement, or structure of any kind shall be commenced, installed, erected, painted, repainted, or maintained on the property, nor shall any alteration or improvement of any kind be made to the property until the same has been approved in writing by the board of directors, or by an architectural control committee appointed by the board of directors.

B. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such improvements, alterations, and the like shall be submitted to the board of directors or to the architectural control committee for approval as to quality and design and harmony of external design with existing structures, and as to location to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with Property declarant's original color scheme, or to rebuild in accordance with declarant's original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the board of directors or an architectural control committee, or to rebuild in accordance with plans and specifications previously approved by the board of directors or by the architectural control committee appointed by the board of directors. Nothing contained in this declaration shall be construed to limit the right of an owner to paint the interior of his or her Property any color desired.

C. The architectural control committee shall consist of threemembers. Declarant may appoint all of the original members of the committee and all replacements until the first anniversary of the sale of the last unit sold by the Declarant. Declarant reserves to itself the power to appoint a majority of the members to the committee until the second anniversary of the sale of the last unit sold by the Declarant. After one year from the date of the sale of the last unit sold by the Declarant, the board of directors shall have the power to appoint one member of the architectural control committee until the second anniversary of the sale of the last unit sold by the Declarant. Thereafter, the board of directors shall have the power to appoint all of the members of the architectural control committee. Members appointed to the architectural control committee by the Property declarant need not be members of the association. A majority of the architectural control committee may designate a representative to act for it. In the event of the death or resignation of any member of the committee, the successor shall be appointed by the person, entity, or group that appointed the member until Declarant no longer has the right to appoint any members to the committee, and thereafter the board of directors shall appoint such a successor. Neither the members of the committee nor its designated representatives shall be entitled to any compensation for services performed on behalf of the committee. In the event the committee fails to approve or disapprove plans and specifications within 60 days after the plans and specifications have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

SECTION 11. POWER EQUIPMENT AND CAR MAINTENANCE. No power equipment, hobby shops, or car maintenance (other than emergency work) shall be permitted in the PUD except with the prior written approval of the board of directors. Approval shall not be withheld unreasonably; in deciding whether to grant approval, the board of directors shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

SECTION 12. PUBLIC UTILITIES. Public utilities, including gas, sewer, water, telephone and electric shall be provided by the Declarant to each property. Owner shall be responsible for payment of public utility charges for service, along with initial hook-up fees. Hook-up arrangements must be made with the respective utility providers.

SECTION 13. LIABILITY OF OWNERS FOR DAMAGE TO COMMON AREA. The owner or owners of each Property shall be liable to the association for all damage to the common area or improvements in or on the common area caused by the owner or owners or any occupant of his or her or their Property or guest or by his or her or their pet(s), except for that portion of such damage, if any, fully covered by insurance. Liability of an owner shall be established only after notice to the owner and a hearing before the board of directors. In the event an owner disagrees with the decision of the board of directors on the question of liability, the owner may submit the matter to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrators shall be final and conclusive on the parties.

SECTION 14. PROPERTY ILLUMINATION. Yard or porch lights shall be limited to those provided by Declarant, and may not be modified so as to increase their brightness in a way that illumination in the common area or adjacent properties is increased.

SECTION 15. DOMESTIC ANIMALS AND PETS. Domestic animals may be maintained by the Property Owners under the following conditions:

(a) Commercial raising of animals and/or pets shall not be permitted.
 (b) Typical domestic pets may be maintained by Property Owners within reason and subject to the nuisance provisions describe below, provided, however, that an owner may maintain no more than one dog and/or two cats.

(c) Wild, caged pets are not permitted unless permission is granted in writing by the Board of Trustees.

(d) If animals (such as dogs) maintained by a Property Owner kill or maim animals owned by other Property Owners, the owner of the animal or animals killed or maimed shall be reimbursed at fair market value for their loss by the owner of the animal that did the deed. The Committee is authorized to order the removal of any animal or animals deemed by the Committee to be an undue nuisance or menace to other Property Owners. Each Property Owner maintaining domestic animals and pets shall provide adequate sanitation so as to minimize noxious or offensive odors.

(e) Notwithstanding the above provisions, no pet(s) may be kept on the property that is or are obnoxious or annoying to other Property owners. No pet(s) shall be allowed in the common area except as may be permitted by rules of the board of directors. No dog shall enter the common

area except while on a leash which is held by a person capable of controlling it, and no animal dog shall be permitted to defecate in the common area. The directors may impose a fee of \$50 for each violation of provisions regarding defecation of animals. No fee may be imposed, however, if the animal owner removes feces within one hour of demand made by a property owner or representative of the association.

(f) After making a reasonable attempt to notify the owner or owners, the association or any owner may cause any unleashed dog found within the common area to be removed by the association (or any owner) to a pound or animal shelter under the jurisdiction of Midway City or Wasatch County, by calling on the appropriate authorities, at which time the owner or owners of the dog may, on payment of all expenses connected therewith, repossess the dog.

SECTION 16. SIGNS. No sign shall be erected without the prior written consent of the Committee.

ARTICLE X. INSURANCE

SECTION 1. INSURANCE OBLIGATIONS OF OWNERS. Each Owner shall insure his entire residence against loss or damage by fire or by any other casualty, in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement cost), under the standard form of extended endorsement and broad form now in use in the State of Utah or under such other insurance as may be required by any Mortgagee of the residence.

SECTION 2. WAIVER OF SUBORDINATION. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Manager, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

SECTION 3. LIABILITY INSURANCE. The Association shall obtain comprehensive public liability insurance, including medical payments, liquor liability insurance and malicious mischief, in the amount of \$500,000.00 per occurrence for personal injury and/or property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a Property Owner because of negligent acts of the Association or other Property Owners.

SECTION 4. OTHER INSURANCE AND GENERAL. The Association may also obtain, through the Board, Workmen's Compensation Insurance and other liability insurance as it may deem desirable, insuring each Property Owner and the Association, Board of Trustees and Manager, from liability; the premiums for which are common expenses included in the Common Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of a Property Owner because of the negligent acts of the Association or other Property Owners.

All policies shall be reviewed at least annually by the Board of Trustees and the limits increased at its discretion.

ARTICLE XI. MORTGAGE PROTECTION CLAUSE

Notwithstanding any and all provisions of this Declaration to the contrary, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

(a) Each First Mortgagee of a Mortgage encumbering any Property, at his written request, is entitled to written notification from the Association of any default by the Mortgagor of such Property in the performance of such Mortgagor's obligation under this Declaration, the Articles of Incorporation of the Association or the Bylaws of the Association, which default is not cured within thirty (30) days after the Association learns of such default.

(b) Each First Mortgagee of a Mortgage encumbering any Property which obtains title to such Property pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage, shall take title to such Property free and clear of any claims of unpaid assessments or charges against such Property which accrued prior to the acquisition of title to such Property by the Mortgagee.

(c) Unless at least seventy-five percent (75%) of first Mortgagees (based upon one vote for each Mortgage owned), or Members holding seventy-five percent (75%) of the voting rights in the Association have given their prior written approval, neither the Association nor the Owners shall:

(1) By act or omission seek to abandon, partition, alienate, subdivide, release, hypothecate, encumber, sell or transfer, directly or indirectly, the improvements, utility or otherwise, which are owned by the Association and/or public or private utility companies.

(2) Change the method of determining the obligation, assessments, dues or other charges which may be levied against a Property Owner.

(3) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Property improvements (including residences), the exterior maintenance of said improvements.

(d) First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

(e) All First Mortgagees who have requested the same shall be given:

(1) thirty (30) days written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association and prior to the effective date of any termination of an agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties.

Neither this Declaration nor the Articles nor the Bylaws of the Association will be amended in such a manner that the rights of any first Mortgagee will be adversely affected.

ARTICLE XII. ANNEXATION OF ADDITIONAL PROPERTY.

SECTION 1. ADDITIONS BY DEVELOPER. If Declarant, its successors or assigns, shall develop, or cause to be developed, other real property located in the County of Wasatch, State of Utah, Declarant or its successors or assigns shall have the right from time to time to add such Property as an Annex to the Subdivision, or any portion or portions thereof to the Subdivision and to bring such Annexed Property within the general scheme of this Declaration without the approval of the Association, its Board of Trustees, or Members; provided that such a right of Declarant and its successors and assign shall terminate five (5) years from date of recording this Declaration, and provided all governmental authorities having jurisdiction over the Association and the Annexed Property approve such annexation.

SECTION 2. ANNEXED PROPERTY TO BE A PART OF THE ASSOCIATION. Any Annexed Property shall become and constitute a part of the Association, become subject to this Declaration and encompassed within the scheme of covenants, conditions, restrictions, reservation of easements and equitable servitude contained hereon and become subject to the functions, powers and jurisdiction of the Association; and the Owners of Propertys in said Annexed Property shall automatically become Members of the Association. No addition of territory shall substantially increase assessments.

ARTICLE XIII. GENERAL PROVISIONS.

SECTION 1. ENFORCEMENT. This Declaration, the Articles of Incorporation and the Bylaws may be enforced by the Association as follows:

(a) Breach of any of the covenants contained in the Declaration, the Articles or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by an Owner, by the Association or the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The result of every act of omission whereby any of the covenants contained in the Declaration, the Articles or the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public

or private shall be applicable against every such result and may be exercised by any owner, by the Association or its successors-in-interest.

(c) The remedies herein provided for breach of the covenants contained in the Declaration, the Articles or the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the covenants contained in the Declaration, the Articles or the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the covenants, conditions or restrictions contained in the Declaration, the Articles or the Bylaws shall not affect or impair the lien or charge of any bona fide First Mortgage or Deed of Trust made in good faith and for value on any residential Property or the improvements thereon, provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

(f) **Penalty for Non-Compliance.** After fifteen (15) days' written notice of a violation of the Protective Covenants, a \$50.00 penalty shall be automatically assessed any property owner who has not remedied the violation. (Note: The Declaration Article V(e) also states that after 15 days' notice the Association may "enter upon any Property, for the purpose of enforcing by peaceful means the provisions of this declaration, or for the purpose of maintaining or repairing any such area" and institute any and all proceedings necessary to enforce this Declaration.)

SECTION 2. INTERPRETATION. The provision of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving question of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

SECTION 3. AMENDMENTS. This Declaration may be amended by the affirmative vote or written consent of the Owners holding not less than seventy-five percent (75%) of the voting power of the Association; provided, however, that the prior written approval of one hundred percent (100%) of all First Mortgagees must be obtained also before Article XI may be amended.

SECTION 4. NO PUBLIC RIGHT OR DEDICATION. Nothing contained in this Declaration shall be deemed to be a gift of dedication of all or any part of the Properties to the public, or for any public use.

SECTION 5. CONSTRUCTIVE NOTICE AND ACCEPTANCE. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Property or other portion of the Properties does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any

reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

SECTION 6. NOTICES. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered at the time a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

SECTION 7. SEPARATION OF EASEMENT PROPERTY FROM PROPERTIES. No Property Owner shall separate easement property from his Property.

SECTION 8. FORECLOSURE TO INCLUDE TRUSTEE'S SALE. When the term "foreclosure" is used in this Declaration, it shall include, but not be limited to, the institution of formal court foreclosure proceedings with respect to a mortgage or deed of trust or the sale of property under a Trustee's sale under any deed of trust.

SECTION 9. CITY APPROVAL AND COMPLIANCE WITH STATE AND LOCAL LAWS. It is understood that nothing in this Declaration shall be construed to exempt any person or entity from fully complying with all state and local laws and ordinances annexing any property to the Properties, or engaging in any activity whatsoever; in addition, all Owners shall fully comply with all the state and local laws and ordinances in the use and management of their Properties, including construction.

SECTION 10. ARTICLES OF INCORPORATION TO INCLUDE AMENDMENTS. When the Articles are referred to in this Declaration, the term shall include such Articles as amended from time to time, including, but not limited to the Articles of Incorporation of the Swiss Alpinhof PUD Property Owners Association; any reference to "Bylaws" of the Association shall not necessarily require that such formal bylaws be adopted, and this Declaration shall be valid and binding notwithstanding the absence of such bylaws.

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ARTICLE XIV. FAILURE TO ENFORCE ARCHITECTURAL CONTROLS NO WAIVER.
The failure of the Association to enforce any of the covenants contained in the Declaration, the Articles or the Bylaws, including architectural controls, shall not constitute a waiver of the right to enforce the same thereafter.

IN WITNESS WHEREOF the undersigned have executed this Declaration this 31st day of ~~November, 1999.~~ January, 2000.

ALPINHOF VILLAGE AT MIDWAY, L.L.C.

David Mitton
David Mitton, Managing Member

STATE OF UTAH)
) ss.
COUNTY OF WASATCH)

SUBSCRIBED AND SWORN to before me this 31st day
of January, 2000.

Gay S. Motley
NOTARY PUBLIC

MY COMMISSION EXPIRES: March 1, 2002

