

Recording Requested By And  
When Recorded Return To:

Keetley Station Townhouse Homes  
Homeowners Association, Inc.  
132 South 600 East  
Salt Lake City, Utah 84102  
Attention: Peter S. Cooke

00024327 BK 00462 Pg 00763-00806  
WASATCH CO RECORDER-ELIZABETH M PARCELL  
2000 MAY 22 15:41 PM FEE \$164.00 BY MMC  
REQUEST: TAGGART PAUL S & JANE

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
KEETLEY STATION TOWNHOUSE HOMES,  
AN EXPANDABLE PLANNED UNIT DEVELOPMENT

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
KEETLEY STATION TOWNHOUSE HOMES, A PLANNED UNIT DEVELOPMENT, is  
executed as of the 11 day of May, 2000, by Keetley Station at Deer Mountain, L.C.,  
Declarant, as owner of the Property described herein.

RECITALS

A. Capitalized terms in this Declaration are defined in Article I.

B. The Declarant holds legal title to a certain tract of real property located in Wasatch County, State of Utah, and more particularly described in Article II of this Amended and Restated Declaration. It is intended that the various Lots described in this Declaration will be conveyed to Owners in fee simple.

C. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property and the Interests therein conveyed and to establish thereon a Planned Unit Development in accordance with the terms hereof.

NOW, THEREFORE, it is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding upon and be for the benefit of the Declarant, its successors and assigns and all owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

## **ARTICLE I** **DEFINITIONS**

When used in this Declaration (including that portion hereof headed "Recitals") the following terms shall have the meanings indicated below. To the extent that those terms are also defined in the Act, the definitions in the Act shall be incorporated herein.

**1.1.** **"Act"** shall mean the Condominium Ownership Act of the State of Utah set forth at Utah Code Ann. Sections 57-8-1 et. seq. seq., as amended from time to time.

**1.2.** **"Architectural Committee"** shall mean the committee created pursuant to the Article of this Declaration entitled "Architectural Committee".

**1.3.** **"Articles" or "Articles of Incorporation"** shall mean and refer to the Articles of Incorporation of the Association, filed with the Utah State Department of Commerce, Division of Corporations and Commercial Code.

**1.4.** **"Association"** shall mean and refer to **HOMES AT KEETLEY STATION HOMEOWNERS ASSOCIATION, INC.**, a Utah nonprofit corporation.

**1.5.** **"Board or Board of Trustees"** shall mean and refer to the governing board of the Association which shall be appointed or elected in accordance with this Declaration the Articles of Incorporation and Bylaws of the Association.

**1.6.** **"Bylaws"** shall mean the Bylaws of the Association attached to this Declaration and recorded in the official records of the County concurrently with this Declaration and all modifications and amendments thereto.

**1.7.** **"County"** shall mean and refer to the County of Wasatch in the State.

**1.8.** **"Common Areas"** shall mean and refer to that part of the Property which is not included within the Lots, including all roadways, walkways and utility lines within the Project and all improvements other than utility lines not owned by the Association now or hereafter constructed or located thereon together with easements and rights-of-way appurtenant thereto. The Common Areas are further shown on the Plat.

**1.9.** **"Common Expense Fund"** shall mean and refer to the fund created or to be created pursuant to the provisions of Article V of this Declaration and into which all monies of the Association shall be deposited. Two separate and distinct funds shall be created and maintained hereunder, one for operational expenses and one for capital expenses which together shall constitute the Common Expense Fund.

**1.10.** **"Common Expenses"** shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of the Project and Association as described in Article V hereof and which determine the assessments made to Owners.

**1.11.** **"Building"** shall mean and refer to a structure containing two (2) or more Lots, constituting a portion of the Project.

**1.12.** **"Declarant"** shall mean and refer to Keetley Station at Deer Mountain, L.C., and/or any successor thereof, which, either by operation of law or through a voluntary conveyance, transfer, or

assignment, comes to stand in the same relation to the Property (or a portion thereof) as did its predecessor.

1.13. **Declaration** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Keetley Station Townhouse Homes, A Planned Unit Development, as the same may be hereafter modified, amended and supplemented.

1.14. **Eligible Mortgagee** shall mean and refer to a First Mortgagee which has requested notice of certain matters from the Association in accordance with Section 12.1 of this Declaration.

1.15. **FNMA** shall mean and refer to the Federal National Mortgage Association.

1.16. **First Mortgage** shall mean any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.17. **First Mortgagee** shall mean any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.18. **Hot Tubs** Hot Tubs placed on outside patios must comply with specifications approved by the Architectural Committee. All electrical, gas and water connections must be completed In accordance with the uniform building code.

1.19. **Improvement** shall mean any structure or appurtenance thereto of every type and kind, including but not limited to buildings, walkways, gutters, curbs, pipes, sprinkler pipes, conduit, garages, room additions, patio covers, spas, recreational facilities, roads, driveways, parking areas, fences, walls, screening walls, retaining walls, stairs, decks, patios, porches, balconies, chimneys, antennas, edges, windbreaks, poles, signs, exterior air conditioning and water softening fixtures or equipment, plantings, planted trees, shrubs, flowers, plants and other vegetation, landscaping of every kind, nature, or description, whether temporary or permanent, excepting personal property or equipment within, or usually within, a structure.

1.20. **Limited Common Areas** shall mean any Common Area designated as reserved for use by the Owner of a certain Lot or Lots to the exclusion of the other Owners in the Project. Any parking areas and storage facilities which are identified on the Plat as Limited Common Areas are permanently assigned to specific Lots, as an appurtenance to such Lots, for the exclusive use of such Lots. The Plat permanently designates the Lot or Lots to which each of the Limited Common Areas is reserved and appurtenant.

1.21. **Manager** shall mean and refer to the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and Project.

1.22. **Member** shall mean and refer to every person who holds membership in the Association.

1.23. **Mortgage** shall mean any mortgage, deed of trust, or other document pledging any portion of a Lot or interest therein as security for the payment of a debt or obligation.

1.24. **Mortgagee** shall mean a beneficiary of a Mortgage as named Mortgagee.

1.25. **Owner** shall mean the person or persons, including the Declarant, owning in fee simple a Lot in the Project, as such ownership is shown on the official records of the County.

The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Lot pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Lot under contract (until such contract is fully performed and legal title conveyed of record.)

**1.26.** **Plat** shall mean and refer to the Record of Survey Plat Maps, An Expandable Planned Unit Development, recorded in the official records of the County, for Keetley Station Townhouse Homes, a Planned Unit Development, recorded in the official records of the County, and all amendments and supplements thereto.

**1.27.** **Project** shall mean and refer to the Property and the plan of development and ownership of the Property created and governed by this Declaration, the Articles and the Bylaws.

**1.28.** **Property** shall mean and refer to the entire tract of real property now or hereafter covered by the Plat. A description of the real property covered by the Plat on the effective date of this Declaration is set forth in Article II hereof.

**1.29.** **State** shall mean the State of Utah in the United States of America.

**1.30.** **Lot** shall mean and refer to any of the separately numbered and individually described Lots having been constructed and having received a Certificate of Occupancy issued by the County or hereafter shown on the Plat which is designed and intended for use and occupancy as a single family residence.

## **ARTICLE II** **PROPERTY DESCRIPTION**

The Property initially associated with the Project which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the real property situated in the County and State as further described on **Exhibit "A"** attached hereto and incorporated herein.

**2.1. Senior Encumbrances.**

None.

## **ARTICLE III** **THE ASSOCIATION**

**3.1. Membership.**

Each Owner shall be entitled and required to be a Member of the Association. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one person, the membership appurtenant to the Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. An Owner shall be entitled to one membership for each Lot owned. Each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from membership in the Association appurtenant thereto and any devise, encumbrance, conveyance or other disposition of the Owner's membership in the Association and rights appurtenant thereto.

No person or entity other than an Owner may be a Member of the Association and membership in the Association cannot be transferred except in connection with the transfer of a Lot. The Association shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First

Mortgage on any Lot, current copies of the Declaration, Articles Bylaws and other rules governing the Project and other books, records and financial statements of the Association. The term "available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

**3.2. Board of Trustees.**

Until such time as the responsibility for electing the Board of Trustees of the Association is turned over to the Owners, the Declarant shall have the exclusive right to appoint and remove all such Trustees. This exclusive right of the Declarant to appoint the Trustees shall terminate after the first to occur of the following:

3.2.1 Five (5) years from the date on which the first Lot in the Project is conveyed;

3.2.2. One hundred twenty (120) days after seventy-five percent (75%) of the Lots have been conveyed by Declarant; or

3.2.3 Unilateral election by Declarant in its sole discretion.

Except as otherwise expressly set forth in this Declaration, all decisions by the Board of Trustees shall be effected by a majority vote of all the Trustees.

**3.3. Votes.**

The Owner of each Lot shall be entitled to one (1) vote for each Lot owned. The number of votes appurtenant to each Lot shall be permanent and shall not change. In the event that there is more than one Owner of a particular Lot, the votes relating to such Lot shall be exercised as such Owners may determine among themselves. No Lot shall have more than one (1) vote, regardless of the number of persons having an ownership interest in the Lot. The votes cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the votes attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the votes involved shall not be counted for any purpose whatsoever other than to determine the existence of a quorum. The Declarant shall have full voting rights with respect to each Lot which it owns.

Except as otherwise expressly set forth in this Declaration, all decisions by the Owners shall be effected by a majority vote of all the Owners.

**3.4. Maintenance of Building Exteriors.**

The Association shall maintain the exteriors of all Buildings as follows: paint, repair, replacement and care of roofs, gutters, downspouts, foundations, window wells, sump pumps, fences, exterior building surfaces, exterior door and other exterior improvements, (including originally constructed decks), as well as all trees, shrubs, grass, walks and steps located on or around a Lot. Such exterior maintenance shall not include glass surfaces and window screens or patios included on any Lot. The Association shall have the right of entry to any Lot to perform emergency repairs or do other work necessarily required to perform the maintenance obligations hereunder.

In the event the need for maintenance or repair of the exterior of a Building is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants or invitees of an Owner, the costs of such exterior maintenance shall be added to and become a part of the assessment to which such Owner and that Owner's Lot are subject.

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**3.5. Professional Management.**

The Association may carry out through the Manager, those of its functions which are properly the subject of delegation as determined by the Association. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association and shall be responsible for management of the Project for the benefit of the Association and the Owners and shall, to the extent permitted by law and by the terms of the management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

**3.6. Amplification.**

The provisions of this Section may be amplified by the Articles and the Bylaws; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

**3.7. Initial Agent for Service.**

The initial agent for service of process for the Association and on behalf of the Project shall be:

Mark B. Cohen  
Homes at Keetley Station Homeowners Association, Inc.  
132 South 600 East  
Salt Lake City, Utah 84102

The agent may be changed at any time by the Association. Upon changing the agent for service, the Association shall file a notice of that change with the Division of Corporations and Commercial Code for the State, and with the County Recorder, without the need to amend this Declaration.

**ARTICLE IV**  
**PROPERTY RIGHTS IN COMMON AREAS AND LOTS**

**4.1. Description of Improvements.**

The Improvements contained in the Project are now or will be located upon the Property. The major Improvements contained in the Project include twenty-seven (27) separate two (2) level buildings (with basements) each of which will have three (3) Lots. These buildings will have exterior walls consisting primarily of wood, stucco and stone. The buildings will have wood-frame interiors with interior wall finish of sheet rock according to applicable building codes. The project is further described on the Plat.

**4.2. Description and Legal Status of Lots.**

The Plat shows each Lot number, its location, dimensions from which its size may be determined, the Common Areas to which it has immediate access and the Limited Common Areas, reserved for each Lot. The interest in the Common Areas appurtenant to a Lot may not be partitioned from the balance of the Common Areas or Lots for any reason.

**4.3. Estate of an Owner.**

The Project is hereby divided into Lots, each consisting of a fee simple interest in a Lot. Each Owner shall have the right to horizontal and lateral support of that Owner's Lot and such rights shall be appurtenant to and pass with the title to each Lot.

**4.4. Title.**

Title to a Lot may be held or owned by any person or more than one person and in any manner in which title to any other real property may be held or owned in the State, including, without limitation, joint tenants or tenancy in common.

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**4.5. Inseparability.**

No part of a Lot or the legal rights comprising ownership of a Lot may be separated from any other part thereof during the period of ownership prescribed herein, so that each Lot shall always be conveyed, devised, encumbered or otherwise affected only as a complete Lot. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Lot shall be presumed to be a gift, devise bequest, transfer, encumbrance or conveyance, respectively, of the entire Lot and associated Percentage Interest, together with all appurtenant rights created by law or by this Declaration. The Common Areas shall be owned in common by all the Owners as members of the Homeowners Association and no Owner may bring any action for partition thereof.

**4.6. Owner's Rights Respecting Interiors.**

Each Owner shall have the exclusive right at its sole cost to maintain, repair, paint, repaint, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings and floors forming the boundaries of that Owner's Lot so long as such actions do not have an adverse impact on the structural components or exterior of the Lot or anything outside the Lot.

**4.8. Separate Mortgages.**

Each Owner shall have the right separately to mortgage or otherwise encumber that Owner's Lot. No Owner shall have the right to mortgage or otherwise encumber the Common Areas. Any Mortgage or other encumbrance of any Lot shall be subordinate to all of the provisions of this Declaration and in the event of foreclosure, this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

**4.9. Taxation.**

Each Lot shall be deemed to be a parcel and shall upon conveyance of any Lot by Declarant be assessed separately for all taxes, assessments and other charges of any political subdivision or any special improvement district or of any other taxing or assessing authority. The valuation of the Common Areas and Limited Common Areas shall be apportioned among the Lots proportionately. All such taxes, assessments and other charges of each respective Lot shall be separately levied against that Lot and the Owner thereof. No forfeiture or sale of any Lot for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Lot.

**4.10. Liens.**

In the event that any judgment, claim, encumbrance or lien of any type attaches to any particular Lot, with or without the consent of the Owner or that Lot, that judgment, claim, encumbrance or lien shall not attach to or encumber any other Lot.

**4.11. Easements for Parking.**

Temporary guest parking or recreational parking shall be permitted within the Common Areas only within spaces and areas clearly marked for such purpose, excepting spaces and areas as shall be specifically reserved and marked as such. Spaces shall be shown by signs or markings on the paved area. The Association, through its officers, committees and agents, is hereby empowered to establish "parking" and "no parking" areas within the Common Areas, as well as to enforce those parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle by those so empowered.

**4.12. Easements for Marketing.**

In addition to the other easements over the Common Areas, Declarant reserves to itself and its employees and agents easements over the Common Areas and any Lots owned by Declarant to the extent necessary to market and sell the Lots in the Project. Declarant may maintain sales offices, trailers or model Lots in the Project in the number, size, location and time-periods reasonably determined by Declarant.

**4.13. Easements for Utilities.**

**4.13.1 General.**

Declarant and the Association desire to have utilities for water, sewer, electricity, fuel, power, cable television and all other utility services (collectively, the "Utilities"), provided to the Project and located in the Common Areas and areas noted on the Plat (collectively the "Easement Areas"). The providers of all such utilities to the Project and their respective successors, assigns, agents and affiliates are hereinafter collectively called the "Utility Providers".

**4.13.2 Grant.**

Declarant and the Association do hereby grant to the Utility Providers a non-exclusive easement (the "Utility Easement") to, from, across, over, upon and under all the Easement Areas to construct, maintain, operate, repair, inspect, protect, remove and replace all lines, pipes, valves, meters, equipment, facilities and other improvements reasonably and customarily necessary to provide and maintain all the Utilities to the Project and perform the Utility Providers' obligations under this Utility Easement (collectively, the "Utility Improvements"). This grant of Utility Easement is intended for the benefit of all individuals and entities comprising the Utility Providers. This Utility Easement shall include a right of ingress and egress to and from the Easement Areas. During temporary periods, the Utility Providers may use such portions of the Project along and adjacent to the Easement Areas as may be reasonably necessary in connection with the Utility Providers' obligations under this Utility Easement.

**4.13.3 Utility Providers' Rights and Obligations.**

The Utility Providers shall take all actions and pay all costs necessary to construct, maintain in good condition, operate, repair, inspect, protect, remove and replace all their respective Utility Improvements. The Utility Providers shall exercise all their rights and obligations under this Utility Easement in a reasonable and customary manner so as to minimize disruption and damage to the Project, the Declarant, the Association, the Owners and the residents, guests and invitees associated with the Project.

**4.13.4 Declarant's and Association's Rights and Obligations.**

Declarant and the Association shall have the right to use the surface of the Easement Areas except for the purposes for which this Utility Easement is granted provided such use does not interfere with the Utility Improvements, Utilities or any other rights granted to the Utility Providers hereunder. The Association shall not build or construct, nor permit to be built or constructed, any building or other structure on, over or across the Easement Areas, nor change the contour thereof.

**4.13.5 Easement for Specific Lots.**

A Utility Easement for the installation and maintenance of the Utilities is also reserved within each Lot. It is contemplated that the Utilities may originate in one Lot and terminate in another Lot. A right of access to all Lots is reserved to the Declarant, the Association and the Utility Providers for all matters pertaining to the Utilities.

**4.13.6 Term.**

This Utility Easement shall commence as of the date that this Declaration is recorded in the official records of County and shall continue in perpetuity until terminated by the Association upon written notice to the other Utility Providers hereto. The termination of this Utility Easement with respect to one or more of the Utility Providers shall not terminate this Utility Easement with respect to any other Utility Provider unless written notice of that termination has been sent to that Utility Provider.

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**4.13.7 Transfer.**

This Utility Easement shall run with, and be appurtenant to, the land associated with the Project and shall be transferred, assigned, sold, encumbered or otherwise conveyed with all or any portion of the Project without the consent of any other person or entity.

**4.13.8 Miscellaneous.**

The Utility Providers shall perform their respective obligations under this Utility Easement in compliance with all applicable laws, permits and agreements affecting the Project. Nothing in this Utility Easement shall be construed to create any partnership, joint venture or fiduciary relationship among the Declarant, the Association and/or any of the Utility Providers.

**4.14. Easements for Vehicular Traffic.**

In addition to the general easements for use of the Common Area reserved herein, there shall be, and Declarant hereby covenants for itself, its successors and assigns, and all future Owners within the Project, that each and every Owner shall have a non-exclusive easement appurtenant for vehicular traffic over all private streets within the Project, subject to the parking provisions set forth in Section 4.11 of Article IV hereof. Declarant reserves the right to grant similar easements to owners of property within adjacent subdivisions or subdivisions annexed hereto, if any, pursuant to Article IV.

**4.15. Easements for County Use.**

In addition to the foregoing easements over the Common Areas, there shall be, and Declarant hereby reserves and covenants for itself and all future Owners, easements for city, county and federal public services, including but not limited to, the right of the police to enter upon any part of the Common Areas for the purpose of enforcing the laws and permanent easements in favor of the County pursuant to the ordinances of the County to guarantee that the open spaces remain perpetually in the uses for which intended.

**4.16. Creation of Easements.**

Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Lots superior to all other encumbrances applied against or in favor of any portion of the Project. In furtherance of the easements provided for in this Declaration, the individual grant deeds to Lots may, but shall not be required to, set forth said easements.

**4.17. Entry Onto Lots.**

The Association and its representatives shall have the right to enter upon any Lot within the Project, without being liable to any Owner, to the extent such entry is necessary in connection with the enforcement of the provisions of this Declaration or with the performance by the Association of its duties and responsibilities under this Declaration, including, without limitation, the construction, maintenance or effectuation of emergency repairs for the benefit of the Lots, the Common Areas, or for any of the Owners within the Project. Reasonable advance notice shall be given to any Owner of a Lot before such entry thereupon, except in the case of emergencies.

**4.18. Power to Grant Easements.**

The Association shall have the power to grant and convey in the name of all the Owners as their attorney in fact (or in the name of the Association as to any property to which the Association holds title) to any Owner or other party, easements and rights-of-way in, on, over or under the Common Areas for the purpose of constructing and maintaining utility services and infrastructure improvements. Each Owner hereby appoints the Association its attorney in fact for the purposes set forth in this Section.

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**4.19. Easement of Enjoyment.**

Each Owner shall have a right and easement of use and enjoyment in and to the Common Areas. Each Owner shall have an unrestricted right of ingress or egress to and from his or her Lot over and across such Common Areas. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides in such Member's Lot.

**4.20. Easements for Encroachments.**

If any portion of the Common Areas encroaches on any portion of a Lot, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Lots and Common Areas are made subject to such easements.

There is also hereby created an easement for any encroachment by any roof overhang upon an adjoining Lot or any part of the Common Areas to the extent that such roof overhang was constructed by Declarant.

Each Lot and Owner is granted an easement over all adjoining Lots and Common Areas for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of structures, or any other cause as long as the encroachment remains. However, in no event shall a valid easement for encroachment exist in favor of an Owner if the encroachment occurred due to the willful misconduct of the Owner.

In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owner of such Lot agrees that minor encroachments over adjoining Lots and the Common Areas shall be permitted and there shall be valid easements for the maintenance of the encroachments as long as they shall exist.

In no event shall a valid easement for encroachment exist in favor of an Owner if the encroachment occurred due to the willful misconduct of the Owner.

Each Lot and its Owner shall have and is hereby granted an easement appurtenant to such Lot over each adjoining Lot or the Common Areas, for overhanging roofs and eaves, and other structural components as originally constructed or, if partially or totally destroyed, as subsequently rebuilt or repaired in accordance with the original plans and specifications.

**4.21. Limitation on Easement.**

An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

**4.21.1.** The right of the Association to suspend an Owner's voting right in the Association and an Owner's right to the use of any recreational facilities included in the Common Areas for any period during which:

**4.21.1.A** An assessment on such Owner's Lot remains unpaid;

**4.21.1.B** For a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Association; and

**4.21.1.C.** For successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period;

**4.21.2.** The right of the Association to impose reasonable limitations on the number of guests of each Owner who at any given time are permitted to use the Common Areas;

**4.21.3.** The right of the County or any other governmental or quasi-governmental body having jurisdiction over the Property to have rights of access, ingress and egress over and across any street, parking area, walkway or open area contained within the Property for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal service.

**4.22. Party Walls.**

Each wall or ceiling-floor physical boundary which is built as part of the original construction (or reconstruction) of the Lots and placed on the dividing line (whether horizontal or vertical) between the Lots shall constitute a "Party Wall" and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to all Party Walls within the Project. The cost of reasonable repair and maintenance shall apply to all Party Walls within the Project. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners who make use of such Party Wall. Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes a Party Wall to be damaged shall bear the entire cost of furnishing repairs to the Party Wall. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the Lot and shall pass to such Owner's successors in title.

**4.23. Conveyance.**

Any deed, lease, mortgage, deed of trust, sales contract or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_, Plat Two, Deer Mountain Resort Subdivision, recorded in the official records of Wasatch County, State of Utah, as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ and Page \_\_\_\_\_ and in the Declaration of Covenants, Conditions and Restrictions of Keetley Station Townhouse Homes, an Expandable Planned Unit Development, recorded in the official records of Wasatch County, State of Utah, as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ and Page \_\_\_\_\_ (of official records of Wasatch County, State of Utah);

This description shall be construed to describe the Lot, and to incorporate all the rights incident to ownership of a Lot and all the limitations on that ownership as described in the Declaration.

**4.24. Transfer of Title in Common Areas.**

The Declarant agrees to cause the conveyance to the Association of the Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities).

**ARTICLE V  
ASSESSMENTS**

**5.1. Agreement to Pay Assessments.**

The Declarant for each Lot owned by it within the Project and each Owner of any Lot by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article V. In any event, all Lots shall be allocated the then applicable assessments upon conveyance of the first Lot.

5.1.1. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be set and such assessment may then be increased each year by up to fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership regarding such increases.

5.1.2. From and after January 1 of the second year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above fifteen percent (15%) only by a vote of a majority of the votes of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

**5.2. Annual Assessments.**

Annual assessments shall be computed and assessed against all Lots in the Project as follows:

**5.2.1. Common Expense.**

Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas, the Building and Lot exteriors and furnishings common utility service and other common items to the Lots. Such estimated expenses may include, without limitation, the following: expenses of management, real property taxes and special assessments on the Common Areas (and the Lots until the Lots are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance of the Common Areas and Building and Lot exteriors; landscaping; wages of Association employees, including fees for a Manager; repairs and replacements of window well sump pumps; utility charges, including charges for utility services to the Lots to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of and adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs and replacement of those Common Areas and Buildings and Lot exteriors that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

The aggregate of all such items shall constitute the Common Expenses and all funds received from assessments under this Section 5.2.1 shall be part of the Common Expense Fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

**5.2.2. Apportionment.**

Common Expenses shall be apportioned among and assessed to all Lots and their Owners in accordance with the assessment percentages allocated to each Lot, as set forth on **Exhibit "B"**, which is attached hereto and incorporated herein by this reference. The Declarant shall be liable for the amount of any assessments against Lots owned by Declarant.

**5.2.3. Annual Budget.**

Annual assessments shall be determined on the basis of a fiscal year beginning January 1, and ending December 31, next following, provided the first fiscal year shall begin on the date of conveyance of the first Lot by Declarant. On or before December 1, of each year thereafter, the Board of Trustees shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessment for

the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

**5.2.4. Notice and Payment.**

Except with respect to the first fiscal year, the Board of Trustees shall notify each Owner in writing as to the amount of the annual assessment against his or her Lot on or before December 1, each year for the fiscal year beginning on January 1, next following. Except as otherwise provided by the Board, each annual assessment shall be payable in twelve (12) equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year shall be based upon such portion of the first fiscal year.

All unpaid installments of any annual assessment shall bear interest at the rate established by the Board of Trustees, not to exceed eighteen percent (18%) per annum from fifteen (15) days after the date each such installment becomes due, until paid. The Board of Trustees shall also have the right to assess a late fee of up to five percent (5%) of any assessment installment not paid within fifteen (15) days following the due date thereof. In addition, in the event that any installment of the annual assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days' prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the annual assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the annual assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate established by the Board not to exceed eighteen percent (18%) per annum from such date until paid in full.

The failure of the Board of Trustees to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment.

**5.2.5. Inadequate Funds.**

In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board of Trustees may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Section 5.3 below.

**5.3. Emergency Assessment.**

The Board may increase assessments necessary for emergency situations. For purposes of this Section, an emergency situation is any of the following: (i) an extraordinary expense required by an order of the court; (ii) an extraordinary expense necessary to repair or maintain the property or any part of it for which the Association is responsible where a threat to personal safety on the Project is discovered; or (iii) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board. However, prior to the imposition or collection of such an emergency assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and such resolution shall be distributed to the Members with the notice of assessment.

**5.4. Reimbursement Assessment.**

The term "Reimbursement Assessment" as used herein shall mean a charge against each Owner and that Owner's Lot for the purpose of reimbursing the Association for any costs incurred by the Association on behalf of an individual Owner. A Reimbursement Assessment may also be levied by the Association for purposes of collecting any monetary penalties which may be imposed by the Association

against an Owner who fails to comply with provisions of this Declaration, the determinations of the Board or the Architectural Committee, or any rule or regulation adopted by the Association. The Association shall levy a Reimbursement Assessment against any Owner who fails to comply with the provisions of this Declaration, the determinations of the Architectural Committee or the Board, the Association's Articles or Bylaws, or any rule or regulation adopted by the Association, if such failure results in the expenditure of moneys by the Association in carrying out its functions hereunder or for purposes of collecting any fines which may be levied by the Association. Except for collection of fines, such assessment shall be for the purpose of reimbursing the Association, shall be limited to the amount so expended, and shall be due and payable to the Association when levied.

**5.5. Special Assessments.**

In addition to the annual assessments authorized by this Article V, the Board of Trustees may, on behalf of the Association, levy at any time, and from time to time, upon the affirmative vote of at least sixty-seven percent (67%) of the voting power of the Association in person or by proxy at a meeting called for such purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses).

This Section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other sections or articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in accordance with the percentages allocated to each Lot, as set forth in **Exhibit "B"**. Notice in writing of the amount of each such special assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund. In connection with any such special assessment, if the Declarant is only obligated to pay twenty-five percent (25%) of the annual assessment attributable to Lots it owns pursuant to Section 5.6 below, it shall only be required to pay twenty-five (25%) of the special assessment otherwise attributable to each such Lot. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of annual assessments for the aforesaid purposes.

**5.6. Uniform Rate of Assessment.**

The amount of any annual or special assessment against each Lot shall be fixed at a uniform rate based on the assessment percentages allocated to each Lot, as set forth on **Exhibit "B"**, except that Declarant shall pay only twenty five-percent (25%) of the annual assessment attributable to each Lot which it owns until the conveyance by Declarant of such Lot to a third-party purchaser. If the Declarant ceases to qualify for the reduced twenty-five percent (25%) rate during the period to which an annual assessment is attributable, the assessment attributable to the membership shall be prorated between the applicable rate on the basis of the number of days in the period that the Owner qualified for each rate.

Annual assessments may be collected on a monthly basis and special assessments may be collected as specified by the Board unless otherwise determined by a resolution of the Members of the Association approving the special assessment.

So long as the Declarant pays the reduced assessment rate with respect to the Lots which it owns, if the assessments of the Association shall fail to equal or exceed the actual expenses incurred by the Association because of the Declarant's right to pay reduced assessments, then the Declarant shall pay to the Association a sufficient amount, up to the amount of the full assessment for each Lot owned by Declarant to meet any such deficit, so long as a written notice of such deficit is given by the Association to the Declarant.

**5.7. Notice and Quorum for Any Action Authorized Under Section 5.1.**

Written notice of any meeting called for the purpose of taking any action authorized under Section 5.1 shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all votes (exclusive of suspended voting rights) of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**5.8. Lien for Assessments.**

All sums assessed to Owners of any Lot within the Project pursuant to the provisions of this Article V, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Article V, the Board of Trustees may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the official records of the County. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages with the attorney for the Association being here designated as the trustee with power of sale, or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorney's fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessment against the Lot which shall become due during the period of foreclosure and all such assessments shall be secured by the lien being foreclosed. The Board of Trustees shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Lot in the name of the Association.

**5.9. Personal Obligation of Owner.**

The amount of any assessment against any Lot shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Lot or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment or unpaid assessment hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorney's fees.

A transferee of a Lot shall be jointly and severally liable with the transferor for all unpaid assessments against the Lot up to the time of the transfer, without prejudice to the transferee's right to recover from the transferor of the amount paid by the transferee for such assessments.

**5.10. Personal Liability of Grantee.**

Except as expressly otherwise set forth herein, in a conveyance of a Lot, the grantee of that Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the Lot, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Association setting forth the amounts of the unpaid assessments against the grantor and the grantee shall not be liable for, nor shall the Lot conveyed by subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth in that statement except to the extent that additional penalties and interest accrue on the amount set

forth in that statement. Notwithstanding the foregoing, foreclosure of a lien by a First Mortgagee shall extinguish any liens for assessments payable prior to the foreclosure sale.

**5.11. Reserves and Working Capital.**

In addition to its day-to-day operating funds, the Association shall establish the following funds:

**5.11.1. Reserve Fund.**

The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and Building and Lot exteriors the Association is obligated to maintain, repair or replace. The reserve fund shall be maintained out of regular assessments for Common Expenses.

**5.11.2. Working Capital Fund.**

The Declarant shall have the right but not the obligation, to establish and maintain for the Project, a working capital fund equal to at least two monthly installments of the annual assessment of each Lot. Each Lot's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Lot. Notwithstanding the foregoing, the contribution to the working capital fund for each unsold Lot shall be paid by the Declarant to the Association within sixty (60) days after the date of conveyance of the first Lot in the Project. With respect to each Lot for which the Declarant pays the contribution to the working capital fund, Declarant shall be reimbursed for such contribution either by the purchaser of such Lot at the time of the closing of the sale to such purchaser or by the Association upon termination of the Declarant's control of the Association as described in Section 5.11.2 of this Article V, whichever is earlier. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the working capital fund are not to be considered advance payments of any annual or special assessment. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Owners. The Declarant shall not use the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

**5.12. Evidence of Payment of Annual and Special Assessments.**

Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or other person a written certificate stating:

**5.12.1.** That all annual and special assessments (including interest, costs and attorneys' fees, if any, as provided in Section 5.12 above) have been paid with respect to any specified Lot as of the date of such certificate, or

**5.12.2.** That certain annual and/or special assessments have not been paid, and the amount of such annual and special assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may impose a reasonable charge for the issuance of such certificates, not to exceed the maximum amount established by law, which charge must be paid at the time the request for any such certificate is issued. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Lot in question.

All sums assessed on Owner within the Project pursuant to the provisions hereof, together with the interest thereon as provided in this Declaration, shall be secured by a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Section, the Association shall prepare

a written notice of lien setting forth the amount of the assessment, the due date, the amount remaining unpaid, the name of the Owner and description of the Lot. Such notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the official records of the County.

The Association and each Owner hereby covenants and agrees with County that in the event the subsurface drainage system is not maintained and assessments therefor paid as indicated above, the County shall have the right to assume responsibility for the maintenance thereof and assess each Owner's prorata share of the costs of such maintenance on an annual basis and shall have the right to secure such assessments with a lien with interest thereon and to provide notice thereof in the manner above described.

## **ARTICLE VI** **OPERATION AND MAINTENANCE**

### **6.1. Maintenance of Lots by Owners.**

The Owner of each Lot shall take all actions and pay all costs necessary to maintain the interior of that Lot in good and clean condition and repair and so as not to adversely impact the appearance, value or use of any portion of the Project. The interior of a Lot shall include all interior surfaces of walls, doors, floors and ceilings as well as plumbing, electrical, heating, air conditioning, water, sewer lines, ducts and other such utilities and appliances that do not extend beyond the interior of the Lot.

If the interior of any Lot or any Limited Common Area associated with that Lot shall develop an unclean or unsanitary condition or fall into a state of disrepair, and the Owner of that Lot fails to correct that condition or disrepair promptly following delivery of written notice to that Owner, the Association shall have the right, but not the obligation, at the expense of the Owner and without liability by the Owner for trespass or otherwise, to enter that Lot as well as any Limited Common Area associated therewith and correct or eliminate the unsanitary or unclean condition or state of disrepair. The Association shall have the irrevocable right to access and inspect each Lot at reasonable times following reasonable notice to ensure that the Owner is in compliance with this Section and all other covenants under this Declaration.

### **6.2. Operation and Maintenance by Association.**

The Association shall have no obligation regarding maintenance or care of any Lots and their associated Limited Common Areas, except as set forth in this Section 6.2 or elsewhere in this Declaration. The Association shall provide for such maintenance, landscaping (including area within County's monument sign easement), roadway drainage system sustentation, snow removal and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive and generally in good condition and repair. The Association shall also provide for the maintenance of all Building Exteriors. The expenses incurred by the Association for such purposes shall be paid for with funds from the Common Expense Fund.

### **6.3 Maintenance of Limited Common Areas.**

Each Owner shall keep the Limited Common Areas designated for use in connection with that Owner's Lot, if any, in a good, clean, sanitary and attractive condition; provided, however, the Association shall keep the same in a good state of repair, including without limitation the exterior of all garage doors.

### **6.4. Utilities.**

The Owner shall pay for all utility services furnished to each Lot except utility services which are not separately billed or metered to individual Lots by the utility or other party furnishing such service. The Association shall pay such bills which are not separately metered and charge an appropriate share to each Lot and Owner as part of the Common Expenses.

Wherever utility connections, including, without limitation, sanitary sewer house connections, water hose connections, drainage facilities, and electricity, gas, telephone and cable television lines are installed within the Project, which connections, lines or facilities, or any portion thereof, lie in or upon areas of the Project owned by persons other than the Owner of a Lot served by said connections, the Owner of any Lot served by said connections, lines or facilities shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon, or to have utility companies enter upon, the areas within the Project in or upon which said connection, lines or facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

Wherever utility connections are installed within the Project, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service that Owner's Lot.

In the event of a dispute between Owners with respect to the repair or rebuilding of any utility connections or with respect to the sharing of the cost thereof, then upon the written request of one of those Owners addressed to the Association, the matter shall be submitted to the Board and the Board shall decide and make an assessment against any or all of the Owners involved, which assessment shall be final and collected and enforced in the manner provided by this Declaration.

#### **6.5. Damage to Common Area by Owners.**

The foregoing maintenance, repairs or replacements within the Common Area arising out of or caused by the willful or negligent act of the Owner, the Owner's family, guests or invitees, shall be done at said Owner's expense or a special assessment therefor shall be made against said Owner's Lot; provided, however, that the liability of an individual Owner for such damage to the Common Area shall not be absolute, but shall only be that for which the Owner is legally responsible under applicable law.

### **ARTICLE VII** **INSURANCE**

The Association shall at all times maintain in force insurance meeting the following requirements:

#### **7.1. Hazard Insurance.**

A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Project, including: Common Areas; the Building and Lot exteriors; common fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or owned by the Association and which are of a class typically encumbered by Mortgages held by FNMA or other similar institutional Mortgage investors; but excluding land, foundations, excavations and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement and by all other perils which are customarily covered with respect to projects similar to the Project, location and use, including (without limitation) all perils normally covered by the standard "all-risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage:

**7.1.1. A Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy included a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance).**

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7.1.2. A Replacement Cost Endorsement (under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives requirement for co-insurance). The maximum deductible amount for such policy covering the Common Areas shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount. However, for losses related to individual Lots that are covered by such a policy, the deductible related to each individual Lot shall be One Thousand Dollars (\$1,000). Funds to cover these deductible amounts shall be included in the Association's operating reserve account.

**7.2. Flood Insurance.**

If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a "master" or "blanket" policy of flood insurance shall be maintained covering the Building and Lot exteriors, any machinery and equipment that are not part of a Building and Lot exteriors and all Common Areas within the Project (hereinafter "**Insurable Property**") in an amount deemed appropriate, but not less than the lesser of:

7.2.1. The maximum limit of coverage available under the National Flood Insurance Administration Program for the Building and Insurable Property within any portion of the Project located within a designated flood hazard area.

7.2.2. One hundred percent (100%) of the insurable value of all such facilities. The maximum deductible amount for any such policy shall be the lesser of Five Thousand Dollars (\$5,000) or one percent (1%) of the policy face amount.

7.2.3. The name of the insured under each policy required under Article VII, shall be designated by name, if required. Each such policy may be issued in the name of 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 Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

7.2.4. Each policy required to be maintained under Article VII, shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Project is located. If FNMA is a holder of one or more Mortgages on Lots within the Project, such mortgage clause shall name FNMA or FNMA's servicer of such Mortgages as Mortgagee. If FNMA's servicer named as Mortgagee in such mortgage clause, such servicer's name shall be followed therein by the phrase "its successors and assigns". In addition, such mortgage clause or other appropriate provision of each such policy 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 which is listed as a scheduled holder of a Mortgage in the policy.

7.2.5. Each policy required to be maintained under Article VII, shall provide, if available, for the following: recognition of any insurance trust agreement, a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and the policy is primary in the event the Owner has other insurance covering the same loss.

7.2.6. Each policy required to be maintained under Article VII, shall also contain or provide the following: (1) "Inflation Guard Endorsement", if available; (2) "Building Ordinance or Law

Endorsement", if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and, (3) "Steam Boiler and Machinery coverage Endorsement", if the Project has central heating or cooling, which shall provide that the insurer's minimum liability per accident at least equals the lesser of Two Million Dollars (\$2,000,000) or the insurable value of the Building containing the boiler or machinery. In lieu of obtaining this as an endorsement to the commercial package property, the Association may purchase separate stand-alone boiler and machinery coverage.

#### **7.3. Fidelity Bonds.**

The Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Manager shall provide "blanket" fidelity bonds, with coverage identical to such bonds required of the Association for the Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

The total amount of fidelity bond coverage required shall be based upon the Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association, or the Manager, as the case may be, at any given time during the term of each bond. A lesser amount of fidelity insurance coverage is acceptable for the Project so long as the Association and the Manager adhere to the following financial controls: (1) the Association or the Manager maintains separate bank accounts for the working account and the reserve account, each with appropriate access controls and the bank in which the funds are deposited sends copies of the monthly bank statements directly to the Association; (2) the Manager maintains separate records and bank accounts for each Association that uses its services and the Manager does not have authority to draw checks on or transfer funds from the Association's reserve account; or (3) two members of the Board must sign any checks written on the reserve account. Nevertheless, in no event may the amount of such bonds be less than the sum equal to three (3) months' aggregate assessments in all Lots.

The bonds required shall meet the following additional requirements: (1) the fidelity bonds shall name the Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar term or expressions; (3) the premium on all bonds required herein for the Association, (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Association as a 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 (10) days prior written notice to the Association, to any Insurance Trustee and to each servicer of loans on behalf of FNMA.

#### **7.4. Liability Insurance.**

The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas, Building and Lot exteriors, public ways in the Project, including any dedicated trail system(s), all other areas of the Project under the Association's supervision and commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. Coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for similar projects, location and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insured for property damage, bodily

injury and death of persons in connection with the operation, maintenance or use of the Common areas, and/or Building and Lot exteriors and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverage under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project, location and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in the terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least ten (10) days prior written notice to the Association and each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

**7.5. Insurance Trustees and General Requirements Concerning Insurance.**

Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "**Insurance Trustee**"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance.

Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear. Each insurance policy maintained pursuant to Article VII, shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a "B" general policyholder's rating or a financial performance index of "6" or better in the Best's Key Rating Guide or an "A" or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Board, the Association, FNMA, or the designee of FNMA; (2) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Association, an Owner, or FNMA) from collecting insurance proceeds.

The provisions of Article VII shall not be construed to limit the power of authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

**7.6. Annual Review of Policies.**

All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repair or replacement of the Project which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

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**7.7. Insurance Rates.**

Nothing shall be done or kept in the Project which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in the Project which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any governing laws.

## **ARTICLE VIII** **DAMAGE OR DESTRUCTION**

### **8.1. Association as Attorney in Fact.**

All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by said grantee of the Association as his or her attorney in fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

### **8.2. Definition of Repair and Reconstruction.**

Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage and destruction, with each Lot and the Common Areas having substantially the same vertical and horizontal boundaries as before.

### **8.3. Procedure.**

In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows:

#### **8.3.1. Notice to First Mortgagees.**

The Association shall give timely written notice to any holder of any First Mortgage on a Lot who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or a Lot subject to such First Mortgage.

#### **8.3.2. Estimate of Costs.**

As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.

00224327 Bk 00462 Pg 00784

**8.3.3. Sufficient Insurance.**

If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed portion of the Project, such repair and reconstruction shall be carried out.

**8.3.4. Insufficient Insurance, Less than Seventy-Five Percent (75%) Destruction.**

If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a special assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such special assessment shall be allocated and collected as provided in Article V hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected, together with the proceeds of insurance are insufficient to pay all actual costs of such repair and reconstruction.

**8.3.5. Insufficient Insurance, Seventy-Five Percent (75%) or More Destruction.**

If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction and Owners entitled to vote at least seventy five-percent (75%) of the votes of the Members to carry out such repair and reconstruction. If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the votes of the Members to carry out such repair and reconstruction but rather elect to terminate the Project and if Eligible Mortgagees who represent fifty-one percent (51%) of the votes of the Lots subject to Mortgages held by Eligible Mortgagees approve such termination, the Association shall record in the official records of the County, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

**8.3.5.A** The Project shall be deemed to be owned in common by the Owners;

**8.3.5.B** Each Owner shall own an undivided interest in the Project equal to such Owner's Percentage Interest as set forth on **Exhibit "B"**;

**8.3.5.C** Any liens affecting any of the Lots shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and

**8.3.5.D** The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner. The division of funds shall be based on the fair market values of the Lots immediately prior to the damage or destruction and the Owners shall divide said funds based upon the relative value of the Lots prior to the damage or destruction.

**8.3.6. Priority.**

In no event shall an Owner of a Lot or any other party have priority over the holder of any First Mortgage on such Lot with respect to the distribution to such Lot of any insurance proceeds.

**8.4. Repair or Reconstruction.**

If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction as attorney in fact for the Owners and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein.

The Project shall be restored or repaired in substantially the same condition in which it existed prior to the damage or destruction, with Lot, Buildings and Commons Areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with this Declaration and the original architectural plans and specifications.

**8.5. Disbursement of Funds for Repair and Reconstruction.**

If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to this Article VIII, shall constitute a fund for the payment of costs of repair after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all such repair reconstruction, such balance shall be distributed to the Owners equally.

**8.6. Amendment of Article.**

This Article VIII shall not be amended unless Owners entitled to vote at least seventy-five percent (75%) of the votes of the Members consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Board of Trustees of the Association and recorded in accordance with the provisions of this Declaration.

**ARTICLE IX**  
**CONDEMNATION**

**9.1. Condemnation.**

If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article IX shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Lot or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Trustees shall give prompt, written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee who has requested in writing notice thereof.

The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements or agreements with the condemning authority for acquisition of the Common Areas, or any part thereof and each Owner hereby appoints the Association as such Owner's attorney in fact for the purposes of such representation.

**9.2. Proceeds.**

All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "**Condemnation Award**") shall be made payable to the Association and shall be distributed by the Board of Trustees, on behalf of the Association as herein provided.

00224327 Bk 00462 Pg 00786

**9.3. Complete Taking.**

In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners and the Owners shall divide the Condemnation Award based upon the relative values of the Lots and/or Buildings immediately prior to the condemnation. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

**9.4. Partial Taking.**

**9.4.1. Partial Taking.**

In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

**9.4.1.A** The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Lots have been taken).

**9.4.1.B** The total amount apportioned to severance damages shall be allocated and distributed equally to the Owners of those Lots which have not been taken.

**9.4.1.C** The respective amounts apportioned to the taking of or injury to a particular Lot shall be allocated and distributed to the Owner of such Lot.

**9.4.1.D** The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

**9.4.1.E** If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable.

**9.4.1.F** Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

**9.4.1.G** No provision of this Article IX or any other provision of this Declaration, the Articles or the Bylaws shall entitle the Owner of a Lot or other party to priority over any First Mortgagee holding such Lot with respect to the distribution to such Lot of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

**9.4.2. Continuation and Reorganization.**

If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event, the Project shall be reorganized as follows:

**9.4.2.A** If any partial taking results in the taking of an entire Lot, then the Owner thereof shall cease to be a member of the Association and all voting rights shall terminate;

**9.4.2.B** If any partial taking results in the taking of a portion of a Lot, the voting rights appertaining to such Lot shall continue.

**9.4.2.C** If any partial taking results in the taking of a portion of a Lot and if there is a determination made by the Board of Trustees, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining

portion of such Lot, then all voting rights terminate and the remaining portion of such Lot shall thenceforth be part of the Common Areas;

**9.4.2.D** The Board of Trustees, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Article IX; provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board of Trustees shall defer thereto and proceed in accordance therewith.

**9.5. Repair and Reconstruction.**

Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article VIII hereof for cases of Damage or Destruction; provided, however, that the provisions of said article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

**ARTICLE X**  
**TERMINATION**

**10.1. Required Vote.**

This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect until terminated as provided herein.

Except as otherwise provided in Articles VIII and IX, the Project may be terminated only by agreement of Owners entitled to vote at least seventy-five percent (75%) of the votes attributable to all Lots.

**10.2. Termination Agreement.**

An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by the Eligible Mortgagees who represent Lots subject to First Mortgages held by Eligible Mortgagees. Such approval (and any other approval related to an amendment to this Declaration) shall be deemed given when an Eligible Mortgagee fails to submit a response within thirty (30) days after receipt of proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the official records of the County, and is effective only upon recordation.

**10.3. Sale of Project.**

A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

**10.4. Association Duties.**

The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to this Article X. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale.

000477 Bk 00462 Pg 00788

Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interest may appear, based on the relative value of each Lot and/or Building. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Lot in accordance with the terms of this Declaration.

During the period of that occupancy right, each Owner and their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.

**10.5. Proceeds of Sale.**

Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, Mortgagees holding Mortgages on the Lots which were recorded before termination may enforce those liens in the same manner as any lienholder.

**ARTICLE XI**  
**GENERAL USE RESTRICTIONS**

**11.1. Rules and Regulations.**

The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interest of the Owners.

**11.2. Use of Common Areas.**

The Common Areas shall be used only in a manner consistent with their commLoty nature and with the rules, regulations and use restrictions applicable to Lots and Buildings. No admission fees, charges for use, leases, or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas except for guest or special event charges that may be established by the Board from time to time. Provided, however, vending machines and similar devices approved by the Board may be made available within the Common Areas.

**11.3. Use of Lots.**

Each Lot shall be used only as a single-family residence or may be rented for residential purposes only. No Lot or Building shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Lot, so as to create a nuisance or interfere with the rights of any Owners, or in any way which would result in an increase in the cost of any insurance covering the Lots, Buildings or Common Areas.

**11.4. Exception for Declarant.**

Notwithstanding the restrictions contained in this Article XI, for the five (5) year period following the date on which this Declaration is filed for record in the official records of the County, Declarant shall have the right to use any Lot owned by it and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any activities designed to accomplish or facilitate improvement and sale of all Lots owned by Declarant. Declarant shall have the right to maintain one or more sales offices and model Lots. Such offices and model Lots may be located in any Lot owned or leased by Declarant, or in one or more separate structures or facilities placed upon the Property for the purpose of aiding Declarant's sales efforts, or any combination of the foregoing. Declarant shall also have the right to maintain a reasonable number of promotional, advertising, or directional signs, banners,

0027421 Bk 00462 Pg 00789

or similar devices at any place or places on the Property. Declarant shall have the right from time to time to locate or relocate any of its sales offices, model Lots, signs, banners or similar devices.

**11.5. Leases.**

Any lease agreement between an Owner and a lessee respecting a Lot shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws and any failure by lessee to comply with the terms of such documents shall be a default under the lease. All such lease agreements shall be in writing and shall have a term of at least six (6) months. Other than the foregoing, there is no restriction on the right of any Owner to lease a Lot. An Owner shall be responsible and liable for any damage to the Project caused by its tenant.

**11.6. Nuisances.**

No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render any part of the Property unsanitary or unsightly or which would be offensive or detrimental to any other part of the Property or to the occupants thereof. No noise or other nuisance shall be permitted to exist or operate upon any part of the Property so as to be offensive or detrimental to any other part of the Property, or to the occupants thereof. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on the Property without the prior written approval of the Board.

**11.7. Animal Restrictions.**

No insects, reptiles, poultry or animals of any kind shall be raised, bred or kept on or within any Lot, Building, Limited Common Areas, Common Areas, or otherwise within the Project, except usual and ordinary dogs, cats, fish, birds and other household pets (excluding without limitation, equine, bovine, sheep, swine, goats and other such animals) may be kept in Lots, subject to rules and regulations adopted by the Association, and provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household, provided, however, that the Association (or the Architectural Committee or other such person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less.

The Association acting through the Board of Trustees, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Project must be either kept within an enclosure, or on a leash being held by a person capable of controlling said animals. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Architectural Committee. Should any animal belonging to an Owner be found unattended, out of the enclosure, and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant or a person designated by the Declarant to do so (for so long as Declarant owns any interest in the Project), to a shelter under the jurisdiction of the local municipality in which the Project is situated and subject to the laws and rules governing such shelter, or to a comparable animal shelter.

Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept within the Project by an Owner or by members of his family, his tenants or guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Common Areas or any other area within the Project.

00224327 Bk 00462 P3 00790

**11.8. Trash.**

No rubbish, trash or garbage or other waste material shall be kept or permitted on or within any Lot, Building, Limited Common Areas, Common Areas or otherwise within the Project, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Project, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such containers shall be exposed to the view of neighboring Lots only when set out for a reasonable period of time (not to exceed twenty-four (24) hours before and after scheduled trash collection hours).

There shall be no exterior fires whatsoever except barbecue fires contained within appropriate receptacles therefor.

**11.9. Temporary and Other Structures.**

No structures of a temporary nature, trailer, house, tent, shack, shed, garage, barn or other outbuildings shall be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on the Property at any time. All Lots erected and maintained within the Property shall be of good construction, of good quality, workmanship and material.

**11.10. Unsightly Articles.**

No unsightly articles shall be permitted to remain on or near a Lot so as to be visible from any other Lot or the Common Areas. Without limiting the generality of the foregoing, trailers, mobile homes, trucks other than pickups, boats, tractors, vehicles other than automobiles, campers not on a truck, snowmobiles, snow removal equipment and garden or maintenance equipment shall be kept at all times, except when in actual use, in an enclosed structure or screened from view. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Lot except within an enclosed structure or when appropriately screened from view.

**11.11. No Further Subdividing.**

No Lot or Common Areas may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Association; provided, however, that nothing herein shall be deemed to prevent or require the approval of the Association for the transfer or sale of any Lot, to more than one person to be held by them as tenants in common, joint tenants, or otherwise.

**11.12. Signs.**

No sign of any kind shall be displayed to the public view without approval of the Association, except such signs as may be used by Declarant in connection with the development of the Project and the sale of Lots and except such signs of customary and reasonable dimensions as may be displayed on a Lot advertising a Lot for sale or lease. Display of any "for sale" or "for lease" sign more than three (3) feet by two (2) feet shall require the prior written approval of the Association. A residential identification sign is permitted but should not exceed one (1) square foot in surface area. Numbers on residences shall be located in a position clearly legible. Any existing street sign identifying the Project may not be changed without prior approval by the Association.

**11.13. No Hazardous Activities.**

No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires nor

incinerators shall be lighted or permitted on the Property except in a contained barbecue Lot while attended and in use for cooking purposes.

**11.14. Repair of Buildings.**

No improvement upon the Property shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof or the Association as applicable.

**11.15. Improvements and Alterations.**

There shall be no excavation, construction or alteration which in any way alters the exterior appearance or structure of any Improvement within the Project, no alteration of any structural component of any Lot, no plumbing or electrical work outside the Lot, no removal of any Lot or other Improvement within the Project (other than repairs or rebuilding) without the prior written approval of the Architectural Committee.

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made unless and until the plans and specifications showing the color, nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Architectural Committee.

All Improvements and alterations shall be performed in compliance with all applicable laws. No Owner shall perform any work or make any alterations or changes which would jeopardize the soundness or safety of any portion of the Project, reduce its value or impair any easement or hereditament, without in every such case the unanimous written consent of all the other Owners being first obtained.

**11.16. Outside Installations.**

No television, ham radio, citizens band or radio antenna, satellite receiving or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any Lot or elsewhere if exposed to view from any other Lot. Such antennas, if used, must be of the type that are installed within the natural building structure. In no case will any such receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of any neighboring Lot Owner's premises or home entertainment facilities or equipment. Provided, however, Declarant and the Association reserve the right and option to install cable service lines and antennas as needed throughout the Project in connection with its development.

**11.17 Spas.**

Spas or whirlpools shall only be permitted in those Lots containing main floor patios. Owners of these Lots may be entitled to install spas or whirlpools if first approved in writing by the Architectural Control Committee.

**11.18 Window Coverings.**

No blinds, draperies or other window coverings or treatments shall be permitted with respect to Lot windows which face any road, whether public or private, except those which are conservative in style and neutral (white or off-white) in color or otherwise approved in writing by the Architectural Control Committee.

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**11.19 Automatic Garage Door Openers.**

Installation or replacement of automatic garage door openers shall be restricted to automatic openers which are comparable to the Lift Master Formula I Whisper Drive model to include the following features: heavy duty one-half horsepower motor, automatic dual lighting, steel reinforced polyurethane drive belt, one piece, solid steel T-rail with automatic belt trolley tensioner, safety alert

system, multi-function control panel, light switch / lock security switch, remote control with computer programmed security code.

**11.20. General Obligations.**

Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. The Declarant shall enjoy the same rights and assume the same duties with respect to each unsold Lot.

**ARTICLE XII**  
**MORTGAGEE PROTECTION**

**12.1. Notice of Action.**

Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and number or address of the Lot, any such First Mortgage, insurer or governmental guarantor shall be entitled to timely written notice of:

**12.1.1.** Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;

**12.1.2.** Any delinquency in the payment of assessments or charges owed by an Owner, whose Lot is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

**12.1.3.** Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

**12.1.4.** Any proposed action which would require the consent of Eligible Mortgagees as specified in Section 12.2 below or elsewhere herein.

**12.2. Matters Requiring Prior Eligible Mortgagee Approval.**

Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Lots in the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on sixty-seven percent (67%) of Lots held by Eligible Mortgagees shall be required to:

**12.2.1.** Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs.

**12.2.2.** To partition or subdivide any Lot;

**12.2.3.** To abandon, partition, subdivide, encumber, sell or transfer all or any part of the Common Areas (except for the granting of easement for utilities and similar purposes consistent with the intended use of the Common Areas);

**12.2.4.** To use hazard insurance proceeds resulting from damage to any part of the Project (except within a Lot) for purposes other than the repair, replacement or reconstruction of such improvements, except as otherwise provided in this Declaration;

**12.2.5.** To materially change the Percentage Interests or obligations of any Lot.

Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

**12.3. Availability of Project Documents and Financial Statements.**

The Association shall maintain and have current copies of the Declaration, Articles, Bylaws and other rules concerning the Project as well as its own books, records and financial statements available for inspection by the Owners or by holders, insurers and guarantors of First Mortgages that are secured by Lots in the Project. Generally, these documents shall be available during normal business hours. The Association shall make a financial statement for the preceding fiscal year (if the Project has been established for a full fiscal year) available to the holder, insurer, or guarantor of any First Mortgage on submission of a written request for it. The financial statement shall be made available within 120 days of the Association's fiscal year-end.

**12.4. Subordination of Lien.**

The lien or claim against a Lot for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Lot if the First Mortgage was recorded before the delinquent assessment was due and the First Mortgagee thereunder which comes into possession of or which obtains title to the Lot shall take the same free of such lien or claim for unpaid assessment of charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession of a purchaser from such mortgagee which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Lot affected or previously affected by the First Mortgage concerned.

**12.5. Payment of Taxes.**

In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in Section 7.1 of Article VII lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

**12.6. Priority.**

No provision of this Declaration or the articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots or the Common Areas.

**12.7. Implied Approval.**

In the event that the approval of an Eligible Mortgagee is required under this Declaration, that Mortgagee's approval shall be deemed given if the party requesting that approval does not receive any written disapproval from the Mortgagee within thirty (30) days after delivering to that Mortgagee a written request for the same.

00224327 Bk 00462 Pg 00794

ARTICLE XIII  
ARCHITECTURAL COMMITTEE

**13.1. Members of Committee.**

The Architectural Committee shall consist of not less than three (3) members but not more than five (5) members as shall be determined by the Board. The Declarant shall appoint all of the original members of the Architectural Committee and all replacements until one (1) year following the date of issuance of the Final Plat for the Project. Declarant shall have the right and power to appoint and remove a majority of the members of the Architectural Committee or to fill any vacancy of such majority until the "turnover date" which shall be the date on which either, (i) ninety percent (90%) of the Lots subject to this Declaration have been sold and the deeds recorded with the County recorder, or (ii) five (5) years following the date of issuance of the final Plat for the Project, whichever occurs earlier. Commencing one (1) year from the date of close of escrow for the sale of the first Lot in the Project to a purchaser from Declarant, the Board shall have the power to appoint one (1) member to the Architectural Committee, until the turnover date. Thereafter, the Board shall have the power to appoint and remove all of the members of the Architectural Committee. Persons appointed to the Architectural Committee by the Board shall be Members of the Association, but persons appointed to the Architectural Committee by Declarant need not be Members of the Association. The Architectural Committee shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed plans conform harmoniously to the exterior design and existing materials of the buildings in the Project. The Architectural Committee may designate and appoint a representative who is a licensed architect and a majority of the members of said Architectural Committee may, from time to time, remove or replace such representative. The designated representative of the Architectural Committee may be, but need not be, a Member of the Architectural Committee.

**13.2. Review of Plans and Specifications.**

The Architectural Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Architectural Committee. No construction, alteration, addition, modification, decoration, redecoration or reconstruction of an Improvement in the Project shall be commenced maintained, painted, erected or otherwise altered until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to and approved in writing by the Architectural Committee. The address for submission of such plans and specifications shall be the address of the principal place of business of the Association. The Architectural Committee shall approve plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the surrounding area of Project as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Areas or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association. The Architectural Committee may condition its approval of proposals or plans and specifications for any Improvement on such changes therein as the Architectural Committee deems appropriate, upon the agreement by the Person (referred to in this Section as "Applicant") submitting the same to grant appropriate easements to the Association for the maintenance of the Improvement, or upon the agreement of the applicant to reimburse the Association for the cost of such maintenance, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Architectural Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, require a fee payable to the Association to accompany each application for approval, or require any additional factors which it will take into consideration in reviewing submissions. The Architectural Committee may provide that the amount of such fee shall be uniform or that it be determined in any other reasonable manner, such as by the

reasonable cost of the construction, alterations or additions contemplated. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings or descriptions or samples of exterior material and colors. Decisions of the Architectural Committee and the reasons therefor shall be transmitted by the Architectural Committee to the applicant at the address set forth in the application for approval within thirty (30) days after receipt by the Architectural Committee of all materials required by the Architectural Committee. Any application submitted pursuant to this Section shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Committee shall have been transmitted to the applicant within thirty (30) days after the date of receipt by the Architectural Committee of such application or additional information.

**13.3. Meetings of the Architectural Committee.**

The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may, from time to time, by resolution unanimously adopted in writing, designate an Architectural Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of variances pursuant to this Article. In the absence of such designation, the vote of a majority of the members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.

**13.4. Decisions.**

All decisions by the Architectural Committee shall require a majority vote of all the members of that Committee.

**13.5. No Waiver of Future Approvals.**

The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

**13.6. Compensation of Members.**

The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

**13.7. Inspection of Work.**

Inspection of work and correction of defects therein shall proceed as follows:

**13.7.1.** Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the Architectural Committee.

**13.7.2.** Within sixty (60) days thereafter, the Architectural Committee or its duly authorized representative may inspect such Improvement. If the Architectural Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within such sixty (60) day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

**13.7.3.** If, upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the Architectural Committee shall notify the Board in writing of such failure. After affording such Owner notice and hearing, the Board shall determine whether there is noncompliance and, if so, the nature thereof and the estimated cost of correcting or

removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may record a notice of noncompliance in the Office of the County recorder and may remove the noncomplying Improvement or otherwise remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses, including legal fees, incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a special Reimbursement Assessment against such Owner for reimbursement.

**13.7.4.** If for any reason the Architectural Committee fails to notify the Owner of any noncompliance within sixty (60) days after delivery of said written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved plans.

**13.8. Non-liability of Architectural Committee Members.**

Neither Declarant, the Architectural Committee nor any Member of the Architectural Committee, the Board nor their duly authorized representatives, shall be liable to the Association, or to any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Project generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The Architectural Committee's approval or disapproval shall be based solely on the considerations set forth in this Article, and the Architectural Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or designs from the standpoint of structural safety or conformance with building or other codes.

**13.9. Variance.**

The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including without limitation, restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Architectural Committee, and shall become effective upon recordation in the official records of the County. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting that Owner.

**13.10. Appeal.**

In the event plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request for appeal must be received by the Board not more than thirty (30) days following the final decision of the Architectural Committee. Within forty-five (45) days following the receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant.

## ARTICLE XIV DEFUALTS AND REMEDIES

### **14.1. Default.**

An "Event of Default" shall occur under this Declaration if any party governed hereby fails to perform its obligations under this Declaration where those obligations are due and that party has not performed the delinquent obligations within thirty (30) days following delivery to that party of written notice of such delinquency (the "Notice of Default"). These provisions shall not supersede more restrictive requirements set forth elsewhere in this Declaration.

### **14.2. Remedies.**

#### **14.2.1. General.**

Upon the occurrence of an Event of Default, the Association shall have the right to exercise all rights and remedies available in this Declaration, at law and in equity, including injunctive relief and specific performance. The Owners acknowledge that their obligations under this Declaration are unique and defaults may not be compensated by purely monetary damages. Those rights and remedies shall be cumulative. Under no circumstances, even an Event of Default, shall any Owner have the right to terminate this Declaration or take any action that would damage, injure, impair, prohibit or revoke approvals, licenses, permits, uses or other rights associated with the other Owners or their respective portions of the Project that are not in default under this Declaration.

#### **14.2.2. Cure.**

Furthermore, the Association shall have the right to cure the default and seek reimbursement from the defaulting Owner for the costs incurred in effecting such cure. Notwithstanding any provision herein to the contrary, the Owner shall reimburse the Association for such costs of curing a default within fifteen (15) days following delivery to the defaulting Owner of a written notice of such costs along with reasonable support documentation.

#### **14.2.3. Additional Remedies.**

In addition to any other enforcement rights and remedies described in this Declaration, the Association may take any of the following actions against any Owner whose act or failure to act violates or threatens to violate any provision of this Declaration: impose monetary penalties, including late charges and interest; suspend voting rights in the Association; suspend use privileges for the Common Area; and/or remove the defaulting Owner from the Board and/or the Architectural Committee.

#### **14.2.4. No Cross-Defaults.**

If any Owner shall create an Event of Default hereunder, only the defaulting Owner shall be subject to remedies and none of the other Owners governed by this Declaration shall be deemed to be in default or be penalized in any manner. For example, if an Owner shall cause an Event of Default, the Association may exercise its rights and remedies against the defaulting Owner, but shall not take any action that would damage, injure, impair, prohibit or revoke approvals, licenses, permits, uses or other rights associated with the other Owners that are not in default under this Declaration.

#### **14.2.5. Jurisdiction.**

Any judicial or arbitration action associated with this Declaration shall be taken in the courts within the jurisdiction where the Project is located.

#### **14.2.6. Enforcement by County.**

The County shall have the right, but not the obligation, to exercise all rights and enforce all provisions in this Declaration. The County shall have no obligations or liabilities under this Declaration except to the extent that the County seeks to exercise rights or remedies under this Declaration in breach thereof or in violation of any applicable laws.

**14.2.7. Enforcement by Declarant and Owners.**

In addition to the Association, Declarant and any Owner or the successor-in-interest of an Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations, and the right to recover damages or other sums for such violation; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure by the Association, Declarant or by any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**14.2.8. Non-liability of Officials.**

To the fullest extent permitted by law, the Declarant, the Board, the Architectural Committee, the County any other committees of the Association or any Member of such Board or committee shall not be liable to any Owner or Member for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

**ARTICLE XV**  
**MISCELLANEOUS**

**15.1. Act.**

This Declaration and the Project are intended to be governed by the Act and all other applicable laws. In the event of any conflict between the Act and this Declaration, the Act shall govern.

**15.2. Single-Family Residence.**

Each Lot shall be used as a residence for a single-family residence and for no other purpose.

**15.3. Business or Commercial Activity.**

No part of the Project or a Lot shall be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other such non-residential purposes; except Declarant, its successors or assigns, may use any portion or portions of the Project for model homes sites and display and sales offices during the construction and sales period and to accomplish any of Declarant's other rights and obligations hereunder. The provisions of this Section shall not preclude professional and administrative occupations in a Lot without external evidence thereof, for so long as such occupations are in conformance with County ordinances, all other applicable governing laws and ordinances, and are merely incidental to the use of the Lot as a residential home.

**15.4. Toxic Materials.**

No Owner shall store, use, manufacture, process, distribute, treat, transport, handle, emit, dispose of, discharge or release any Toxic Materials in violation of environmental laws governing the Project. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against any liabilities, claims and/or expenses (including attorneys' fees) arising in connection with that Owner violation of this Section.

The term "Toxic Materials" as used herein shall mean any flammable explosives, asbestos, industrial substances, pollutants, contaminants, chemicals, wastes, discharges, emissions, radioactive materials and other hazardous substances, whether injurious by themselves or in combination with other materials, including, but not limited to, substances defined as "hazardous substances," "hazardous

materials," "hazardous wastes," or "toxic substances" described in the environmental laws governing the Project.

**15.5. Parking and Vehicular Restrictions.**

No Owner shall park, store or keep any vehicle, except wholly within the parking area designated therefor, and any inoperable vehicle shall be stored only in enclosed garages. No Owner shall park, store or keep on any property or street (public or private) within the Project any large commercial-type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck), any recreational vehicle (including, but not limited to, any camper Lot or motor home), any bus, trailer, trailer coach, camp trailer, boat, aircraft, mobile home, inoperable vehicle or any other similar vehicle or any vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board, upon any unenclosed parking space, so as to be visible from anywhere in the Project. The above excludes camper trucks and similar vehicles up to and including one (1) ton when used for everyday-type transportation. Any vehicle owned or controlled by an Owner, to be parked within the Project is subject to approval by the Board. No Owner shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Lot or upon the Common Areas, except wholly within the Owner's garage, and then only when the garage door is closed; provided, however, that such activity shall at no time be permitted if it is determined by the Board to be a nuisance. Garage doors shall remain closed except for reasonable periods while the garages are being used. Recreational vehicles may temporarily be parked, from time to time, for periods not to exceed four (4) hours for purposes of loading, unloading and cleaning.

**15.6. Laundry and Storage.**

No clothing or fabrics shall be hung, dried or aired in such a way in the Project as to be visible to other property, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Project except, within an enclosed structure or appropriately screened from view.

**15.7. No Overloading.**

No Owner shall bring or store any item or substance, or permit any action, in any Lot that will cause damage to a Building. No Owner shall overload a floor on that Owner's Lot.

**15.8. Declarant Exemption.**

Notwithstanding anything in this Declaration to the contrary, no provision of this Declaration shall be construed as to prevent or limit Declarant's rights to perform Declarant's rights and obligations hereunder, to complete development of the Project and construction of Improvements therein, nor Declarant's rights to maintain model Lots or homes, construction, sales or leasing offices or similar facilities on any property in the Project owned by Declarant or the Association, nor Declarant's right to promote and market the Project or to post signs incidental to construction, sales, or leasing.

In order that said work may be completed and the Project established as a fully occupied residential commLoty as rapidly as possible, no Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be construed to:

**15.8.1.** Prevent Declarant, its successors or assigns, or their contractors or subcontractors, from doing, on any Lot owned by them, whatever they determine to be necessary or advisable in connection with the completion of said work, including, without limitation, subdividing, grading, constructing, or making Improvements to Lots, Common Areas, or other facilities and Improvements in the Project.

**15.8.2.** Prevent Declarant, its successors or assigns, or their contractors or subcontractors, from altering construction plans and designs, or from effectuating such alterations, as Declarant deems

advisable and as are acceptable to the Architectural Committee, for any part of the Project throughout the course of development.

**15.8.3.** Limit the right of Declarant, its assigns, contractors, subcontractors or representatives, to, on any Lot or portion thereof, or portion of the Common Areas or Project, make, construct, install and maintain such reasonable structures or Improvements as Declarant deems necessary, for the establishing the Project as a residential community and disposing of the same in Lots by sale, lease or otherwise; including, without limitation, signs, models, displays, booths, decorations, sales and promotion centers, directional signs, and any other structure associated with marketing and the disposition of Lots.

**15.8.4.** Prevent Declarant, its assigns, contractors, subcontractors or representatives, on any Lot or portion thereof, or portion of the Common Areas or Project, to establish or allow on that area additional temporary uses, for any purpose in connection with or incidental to the construction, development, sale, lease or other transfer of property within or adjacent to the Project, (including, without limitation, licenses, reservations, rights-of-way, easements, parking, rights of access, or any other reasonable alternative use as may be reasonably necessary to the proper development and disposal of the Project), and to grant such uses to others (including, without limitation, Declarant's agents, employees, utility companies, representatives, contractors, subcontractors, and prospective purchasers), provided, however, that the exercise of such right and easement shall not unreasonably interfere with the reasonable use and enjoyment of the Common Areas by the Members.

**15.9. Conveyance and Release.**

All of Declarant's rights and obligations under this Declaration may be assigned, transferred and conveyed voluntarily or by operation of law without the consent of any Owner or Eligible Mortgagee. Upon Declarant's conveyance of any or all of its obligations in connection with the Project, the Association and/or this Declaration, Declarant shall be entirely released and exonerated from those Obligations.

**15.10. Limitation on Liability.**

The Owners and the Association shall indemnify and hold Declarant harmless from and against any and all liabilities, claims and expenses (including attorneys' fees) incurred directly or indirectly by Declarant in connection with the Project, the Association or this Declaration except to the extent caused by the gross negligence or intentional misconduct of Declarant. None of Declarant's owners, employees, agents or contractors shall have any personal, recourse or deficiency liability in connection with the Project, the Association or this Declaration.

**15.11. No Representations.**

Each person that acquires a Lot is responsible to reasonably investigate that Lot and the Project. Declarant conveys each Lot in "as is" condition without any representation or warranty as to that Lot or the Project.

**15.12. Conflicts.**

In case of any conflict between this Declaration and the Articles or Bylaws, this Declaration shall control.

**15.13. Attorneys' Fees.**

In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing party shall be entitled, in addition to all expenses, costs and damages, to reasonable attorneys' fees to be reimbursed by the non-prevailing party.

00224327 Bk 00462 Pg 00801

**15.14. No Waiver.**

Any party's failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by another party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

**15.15. Force Majeure.**

Any prevention, delay or stoppage of the performance of any obligation under this Declaration which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature; governmental restrictions, regulations or controls; wars; civil commotions; fires; other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay, or stoppage.

**15.16. Request for Notice.**

The Association hereby requests that a copy of any notice of default and a copy of a notice of sale under any mortgages, deeds of trust or other liens or encumbrances filed for record against any Lots or the Project be mailed to the Association as follows: Homes at Keetley Station Homeowners Association, Inc., 132 South 600 East, Salt Lake City, Utah 84102, Attention: Peter S. Cooke, pursuant to Utah Code Annotated Section 57-1-26, as amended.

**15.17. Notices.**

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

**15.18. Amendment.**

Except as provided elsewhere in this Declaration, any amendment to this Declaration shall require the affirmative vote or written approval of at least sixty-seven percent (67%) of the total votes of the Owners. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the official records of the County of an instrument executed by the Association. In such instrument an officer or Trustee of the Association shall certify that the vote required by this Section for amendment has occurred. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of the Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lots or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an amendment duly signed by or on behalf of the authorized officers of Declarant with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control. Within ten (10) years from the date of recording this Declaration, and so long as the Declarant is the Owner of any Lot in the Project, this Declaration may be amended or terminated only with the written approval of the

Declarant. The Declarant alone may amend or terminate this Declaration prior to the closing of sale of any Lot.

**15.19. Rights of Action.**

The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of this Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association.

**15.20. Declarant's Rights Assignable.**

The rights of Declarant under this Declaration or in any way relating to the Property may be assigned whereupon the assignee of Declarant shall have all the rights of Declarant hereunder.

**15.21. Interpretation.**

The captions which precede the Articles and Sections of this Declaration are for convenience only and 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 genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof; this Declaration shall be liberally construed to effect all of its purposes.

**15.22. Covenants to Run With Land.**

This Declaration and all of 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 Declarant, all parties who hereafter acquire any interest in a Lot or in the Common Areas and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner, user or occupant of a Lot shall comply with, and all interests in all Lots or in the Common Areas 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 or in the Common Areas, the party acquiring such interest consents to and agrees to be bound by, each and every provision of this Declaration.

**15.23. Lists of Owners and Eligible Mortgagees.**

The Board shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Lot which is owned by him or her; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Lot which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an insurer or governmental guarantor, the address of such person or entity and the Lot which is encumbered by the Mortgagee insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the official records of the County. The Board may for all purposes act and rely on the information concerning Owners and Lot ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Lot or Lots which is obtained from the office of the County Recorder. The address of an Owner shall be deemed to be the address of the Lot owned by such person unless the Board is otherwise advised.

**15.24. Effective Date.**

This Declaration and any amendment or supplement hereto shall take effect upon its being filed for record in the official records of the County.

00224327 Bk 00462 Pg 00003

**ARTICLE XVI.**  
**EXPANDABLE PLANNED UNIT DEVELOPMENT**

**16.1 Expansion Option.**

In accordance with the Act, the Declarant herewith expressly reserves the unconditional and exclusive right and option, without obligation, to expand the Project (the "**Expansion Option**") by developing and adding all or any portion of the following to the Project (collectively the "**Additional Project**"), the "**Additional Land**", the "**Additional Improvement**" and the "**Additional Common Areas**", (all as defined below). Declarant reserves the right to not exercise all or any portion of the Expansion Option or to develop all or any portion of the Additional Project.

**16.1.1 Unrestricted Option.**

The Declarant shall have the right to exercise all or any portion of the Expansion Option with respect to all or any portion of the Additional Project at any time, under or in any order, size, amount, configuration, boundary, location, style, manner, or condition without limitations or restrictions of any type and without the approval of the existing or future Association, Members, Owners, Board, Architectural Committee and/or any other committee associated with the existing Project or the Additional Project (collectively, the "**Related Parties**"). Notwithstanding the foregoing, the Declarant shall exercise the Expansion Option in accordance with the requirements of the Article XVI and all governmental entities, applicable laws, codes, ordinances, statutes and regulations governing the Project and/or the Additional Project (collectively, the "**Governing Laws**").

**16.1.2 Termination.**

The Expansion Option shall expire seven (7) years from the date of recording of this Declaration in the official records of the County (exclusive of any amendments or supplements thereto.)

The exercise of the Expansion Option with respect to a portion of the Additional Land shall not terminate the Expansion Option as to the remaining portions of the Additional Land. Declarant may add portions of the Additional Land to the Project at different times and configurations and there are no limitations upon the order in which portions of the Additional Land may be added to the Project.

**16.2 Amendment of This Article.**

This Article shall not be directly or indirectly, entirely or in part, amended without the prior written consent of the Declarant which may be given or withheld in the Declarant's sole discretion.

00224327 Bk 00462 Pg 00804

**DECLARANT:**

**KEETLEY STATION AT DEER MOUNTAIN, L.C.,**  
a Utah limited liability company

By: KC3, L.C.,  
a Utah limited liability company, Managing Member

By: PSC DEVELOPMENT COMPANY,  
a Utah corporation, Manager

By:   
Peter S. Cooke, President

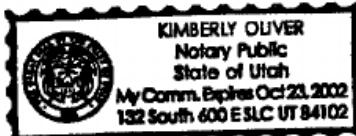
STATE OF UTAH )  
:ss )  
COUNTY OF SALT LAKE )

On this 17 day of May, 2000, personally appeared before me, **Peter S. Cooke**, the signer of the above instrument, who duly acknowledged to me that he is the President of PSC Development Company, a Utah corporation, which corporation is the Manager of PCH Investments, L.C., a Utah limited liability company, which company is the Managing Member of Keetley Station at Deer Mountain, L.C., a Utah limited liability company, and that he executed the same as duly authorized in the capacity indicated.

NOTARY PUBLIC  
Residing at: 305.600 E SLC UT 84102

My Commission Expires:

10/23/02



00224327 Bk 00462 Pg 00805

**EXHIBIT "A"**  
**Description of Property**

**LEGAL DESCRIPTION**  
**KEETLEY STATION TOWNHOUSE HOMES,**  
**An Expandable Planned Unit Development**

Lot numbers T-1 through T-66 Keetley Station Townhouse Homes within Plat Two Deer Mountain Resort Subdivision, according to the official Plat recorded in the Wasatch County Recorders office.

00224327 Blk 00462 Pg 00806