

Suite 2000, Benford Life Tower  
36 So State  
Salt Lake 24111

3329032

BROCKWOOD

(A Planned Unit Development)

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

REC'D OF  
REF  
Katie L. Dixon  
SALT LAKE COUNTY  
UTAH

AUG 28 4 07 PM '79

KATIE L. DIXON  
RECORDER  
SALT LAKE COUNTY  
UTAH

THIS DECLARATION, made on the date hereinafter set forth by Walter J. Plumb III, Peggy Plumb, Roger Brockbank and Leda Brockbank, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the County of Salt Lake, State of Utah, which is more particularly described as:

Beginning at a point on the East R/W Line of 1300 East Street (Said R/W Line being 40.00 feet East of and parallel to the center line of the Street), said point being West 308.47 feet and North 1211.43 feet from the West 1/4 Corner of Section 9, T.2S., R.1E., S.L.B. & M.; Thence N.0°56'30"E. 282.88 feet; Thence S83°10'40"E. 484.33 feet; Thence S0°50'00"W. 128.05 feet; Thence S0°11'00"E. 109.10 feet; Thence N88°36'00"W. 484.18 feet to the Point of Beginning. Containing 2.88 acres.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. Association. Association shall mean and refer to Brockwood Homeowners' Association, Inc., a Utah non-profit corporation, its successors and assigns.

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Section 2. Common Area. Common Area shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners including the Roadways. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

Beginning at a point on the East R/W Line of 1300 East Street (Said R/W Line being 40.00 feet East of and parallel to the center line of the Street), said point being West 308.47 feet and North 1211.43 feet from the West 1/4 Corner of Section 9, T.2S., R.1E., S.L.B.&M.; Thence N.0°56'30"E. 282.88 feet; Thence S83°10'40"E. 484.33 feet; Thence S0°50'00"W. 128.05 feet; Thence S0°11'00"E. 109.10 feet; Thence N88°36'00"W. 484.18 feet to the Point of Beginning. Containing 2.88 acres.

excepting therefrom all of Lots 1 through 24 as designated on the Plat.

Section 3. Declarant. Declarant shall mean and refer to Walter J. Plumb III, Peggy Plumb, Roger Brockbank and Leda Brockbank, their successors and assigns.

Section 4. Lot. Lot shall mean and refer to any plot of land and structure thereon within the exterior boundaries of the Property which plot and structure are intended to be used and occupied by a single family as such Lots are shown upon any recorded subdivision plat of the Property and individually numbered with the exception of the Common Area.

Section 5. Mortgage. Mortgage shall mean a Deed of Trust as well as a Mortgage.

Section 6. Mortgagee. Mortgagee shall mean any person or entity named as a beneficiary under or a holder of a deed of trust as well as a mortgage and any successor to the interest of such person or entity.

Section 7. Owner(s). Owner(s) shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, or a contract vender, but excluding those having an interest merely as security for the performance of an obligation.

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Section 8. Parking Spaces. Parking Spaces shall mean those separate physical spaces which are located within the Common Area and which may be assigned, pursuant to this Declaration, to specific Lots or designated for Visitor Parking.

Section 9. Plat. Plat shall mean that certain subdivision plat entitled Brockwood, a Planned Unit Development and recorded in the Office of the County Recorder for Salt Lake County, State of Utah.

Section 10. Property. Property shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 11. Roadways. Roadway shall mean that portion of Common Area consisting of the streets within the exterior boundaries of the Property for the use and benefit of the Owners.

## ARTICLE II

### PROPERTY RIGHTS AND ASSOCIATION POWERS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment then due against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners and subject to the Mortgagee rights provided for hereinafter. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of Owners has been recorded.

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Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and any recreational facilities to the members of his family and his tenants and shall be deemed to have delegated said rights to contract purchasers who reside on the Property.

Section 3. Parking Rights. The Association shall have power and authority to adopt reasonable rules and regulations pertaining to the use of Parking Spaces and to assign specific Parking Spaces to particular Lots on an equitable basis. The use and occupancy of all Parking Spaces shall be for the parking of automobiles, motorcycles, trailers, and other wheeled conveyances. The Association may by rule or regulation allow other uses of the Parking Units not inconsistent with this Declaration.

### ARTICLE III

#### ROADWAYS

Section 1. Limited Uses. Subject to the limitations herein set forth, the Roadways shall be and remain for the use and benefit of Owners as roadways for access, ingress, and egress to and from Lots and other improvements on the Property, unless the Owners unanimously agree to change such use. No change of use of the Roadways shall be effective unless and until there shall be recorded in the Office of the County Recorder for Salt Lake County, State of Utah, a written instrument duly executed and acknowledged by all Owners agreeing to such change of use.

Section 2. Easements and Rights. Every Owner shall have a nonexclusive right and easement to use and enjoy the Roadways for access, ingress, and egress to and from the Lots and Parking Spaces and other improvements on the Property which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

(a) The right of the Association to levy and collect annual and special assessments, as hereinafter provided.

(b) The right of the Association pursuant to Section 5 hereof.

(c) The right of the Association, subject to Mortgagee rights hereinafter set forth, to dedicate or convey all or any part of the Roadways to any public agency, authority, or utility, for such purposes and subject to such conditions as may be agreed to by the Owners of not less than two-thirds

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(2/3) of each class of Lot Owners. No such dedication or conveyance shall be effective unless and until there shall be recorded in the Office of the County Recorder for Salt Lake County, State of Utah, a written instrument duly executed and acknowledged by the Owners of not less than two-thirds (2/3) of each class of Lot Owners.

Section 3. Delegation and Assignment of Use. Any Owner may delegate to the members of his family and to his guests, in accordance with reasonable rules and regulations promulgated by the Association, such Owner's right to use and enjoy the Roadways. Any Owner may also assign or delegate to his tenants and shall be deemed to have assigned to contract purchasers (who reside on the Lots), in accordance with reasonable rules and regulations promulgated by the Association, such Owner's right and easement to use and enjoy the Roadways.

Section 4. Management of Roadways. The Association, subject to the rights and duties of Owners as set forth in this Declaration, shall be responsible for the management, control, operation, care, maintenance, repair, replacement, and upkeep of the Roadways, unless and until such responsibility is transferred to and accepted by a public agency, authority, or utility and such transfer is agreed to by the Owners as provided herein.

Section 5. Rules and Regulations. The Association shall have the power and authority to adopt, promulgate, rescind, amend, and enforce reasonable rules and regulations governing use of the Common Areas and Roadways; provided, however, that such rules and regulations shall be consistent with the rights and obligations established by this Declaration. The Association shall furnish to each Owner copies of all such rules and regulations promulgated by the Association, copies of all amendments thereto and rescissions thereof, and copies of all decisions and resolutions of the Association adopted pursuant thereto. Such rules and regulations shall take effect fifteen (15) days after adoption by the Association.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

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Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. In no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) three (3) years after date of recording this Declaration.

#### ARTICLE V

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The monthly and special assessments, and after any default, interest, costs and reasonable attorney's fees, shall be a charge on the Lot and except as otherwise provided shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments assumed by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Common Area and of the Lots.

Section 3. Maximum Monthly Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be Twenty Dollars (\$20.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased each year not more than ten percent (10%) above the maximum monthly assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Association may fix the monthly assessment at an amount not in excess of the maximum permitted by this section.

Section 4. Assessments for Capital Improvements. The Association shall maintain an adequate reserve fund for maintenance, repairs and replacements of those elements of the Common Area that must be replaced on a periodic basis. This fund shall be accumulated by setting aside such portion of the monthly assessments authorized above, as shall be fixed by the Association.

In addition to such monthly assessments, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Owners who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Owners not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called,

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the presence of Owners or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership 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 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots and collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments: Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The Association shall fix the amount of the monthly assessment against each Lot at least thirty (30) days in advance of each calendar year. Written notice of the monthly assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Association. The Association shall, upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser, and for a reasonable charge not to exceed Twenty Five Dollars (\$25.00), furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of The Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of one and one half percent (1-1/2%) per month. The Association may bring an action against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. Provided, however, that prior to the initiation of any foreclosure action, a first Mortgagee, upon request, is entitled to written notification from the Association of any default in the performance by the individual Owner of any obligation levied pursuant to this Article V, which is not cured within thirty (30) days. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate

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to the lien of any first Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to any payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE VI

### EXTERIOR MAINTENANCE AND ARCHITECTURAL CONTROL

Section 1. Architectural Control. No exterior addition to or change (including painting) or alteration of a Lot shall be made until the plans and specifications showing the nature, kind, shape, height, colors, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Association or by an architectural committee composed of three (3) or more representatives appointed by the Association. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Exterior Maintenance. Each Owner shall be responsible for the exterior maintenance of his Lot as follows:

Paint, repair, replacement and care of roofs, gutters, drainspouts, exterior building surfaces and other exterior improvements to the Lots. In the event the Owner, in the sole opinion of the Association, fails to so maintain his Lot, the Association shall have the right to perform or cause to be performed the exterior maintenance work required, the cost of which shall be added to and become part of the assessment to which such Lot is subject.

## ARTICLE VII

### MORTGAGEE PROTECTION

Section 1. Mortgagee Protection. Notwithstanding anything to the contrary contained in the Declaration.

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(a) No provision of this Declaration shall give a Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage or otherwise in the case of a distribution to such Lot Owner, of insurance proceeds or condemnation awards for losses to or a taking of Lots and/or Common Area.

(b) Any "right of first refusal" that may hereafter be added to this Declaration shall not impair the rights of a first Mortgagee to:

- (1) Foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage, or
- (2) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or
- (3) To sell or lease a lot so acquired by the Mortgagee.

(c) Any agreement for professional management of Brockwood, or any other contract providing for services of the Declarant, developer or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

(d) With the exception of a lender in possession of a Lot following a default in a first Mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Lot Owner shall be permitted to lease his Lot for transient or hotel purposes. No Lot Owner may lease less than the entire Lot. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and that any failure by the lessee to comply with the terms of such Declaration shall be a default under the lease. All leases shall be in writing.

(e) Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or through foreclosure or deed in lieu of foreclosure of the Mortgage will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to such Lot by the Mortgagee.

(f) A first Mortgagee, upon request, will be entitled to written notification from the Association of any default in the performance by the mortgagor-Lot Owner of any obligation under this Declaration or other related document which is not cured within sixty (60) days.

(g) Unless at least two-thirds (2/3) of the first Mortgagees (based upon one vote for each first Mortgage owned) or the Owners (other than Declarant) of the individual Lots have given their prior written approval, the Association shall not be entitled to:

- (1) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned, directly or indirectly, by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause);
- (2) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;
- (3) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of the Common Area party walks or common fences and driveways, or the upkeep of lawns and plantings in the Property;
- (4) fail to maintain fire and extended coverage on insurable Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);
- (5) use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such Common Area property.

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(h) Common Areas and all amenities (such as parking, recreation and service areas) shall be part of Brockwood and shall be fully installed, completed, and in operation for use by the Lot Owners prior to the sale or conveyance of the last Lot.

(i) A Mortgagee who has acquired title to a Lot in Brockwood pursuant to any remedy under the Mortgage or any proceeding or procedure in lieu thereof, shall thereby become a member of the Brockwood Homeowners Association, Inc.

(j) No Lot Owner, or any other party shall have priority over any rights of a first Mortgagee of a Lot pursuant to its Mortgage or otherwise in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or taking of Lots and/or Common Areas. All first Mortgagees shall be entitled to receive such insurance proceeds and awards for losses to or a taking of Lots and/or Common Areas on a first priority basis, as provided in the Mortgage instruments.

(k) No provision of this Article VII shall be amended without the consent of all first Mortgagees.

(l) The holders of first Mortgages shall have the right to examine the books and records of the Property.

(m) First Mortgagees of Lots may, jointly or singly, pay taxes and/or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of all first Mortgagees of Lots duly executed by the Association.

## ARTICLE VIII

### TAXES

Section 1. Taxes and Assessments. The Association shall pay all taxes, assessments, charges, and impositions of every kind and nature which are lawfully assessed or imposed by any governmental or public authority with respect to the Roadways and other Common Areas.

Section 2. Operating Expense. All taxes, assessments, charges, and impositions paid by the Association with respect to the Roadways and Common Areas shall be deemed to be a cost of operating the Roadways and Common Areas and shall be assessed to the Lots as part of annual assessments in accordance with the provisions of Article V.

#### ARTICLE IX

##### TRASH COLLECTION

Section 1. Trash Collection Services and Expenses. During any period of time when the Lots shall be ineligible, by reason of the private nature of the Roadways or for any other reason, to receive trash collection services from the governmental authority which is then responsible for providing public services in the area of the Property, the Association shall provide such trash collection services to the Lots as the Association may deem to be necessary or appropriate. All costs and expenses of providing such trash collection services under this Article IX shall be deemed to be a cost of operating the Roadways and Common Areas and shall be assessed to the Lots as part of the Annual Assessments in accordance with the provisions of Article V above.

#### ARTICLE X

##### INSURANCE

Section 1. Obligation to Provide Insurance. The Association and the Owners shall obtain and maintain at all times insurance coverage as provided for immediately hereinbelow.

Section 2. Association Insurance. The Association shall obtain and maintain at all times insurance coverage as follows:

(a) Fire and extended coverage insurance for no less than 100% of replacement cost of insurable Common Area property. Such insurance shall name as the insured the Association for the benefit of the Owners.

(b) Fidelity coverage against dishonest acts on the part of the Association, its trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the Owners. The fidelity bond or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half (1-1/2) times the

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Association's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(c) A comprehensive policy of public liability insurance covering all of the Common Area. Such insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage shall include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use. Coverage shall be for at least One Million Dollars (\$1,000,000) per occurrence for personal injury and/or property damage.

Section 3. Owner Insurance. Each Owner shall maintain a multiple peril type policy covering his Lot providing as a minimum fire and extended coverage in an amount equal to 100% of the replacement cost of the Lot. Said insurance shall contain a provision or endorsement to the effect that the insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of the Owner or because of a failure to pay the premium, without prior notice in writing to the Association. After receipt of said notice, the Association shall have fifteen (15) days to pay any delinquent premium or cause any condition to be corrected which would otherwise result in the cancellation or suspension of the insurance.

Section 4. Carriers. All hazard insurance policies shall be written by a hazard insurance carrier which has a financial rating by Bests Insurance Reports of class VI or better. Such hazard insurance carrier shall be specifically licensed or authorized by law to transact business within the State of Utah.

Section 5. Insurance Policies. The Association shall make every effort to secure insurance policies that will provide for the following:

(a) The insurer or insurers shall waive subrogation as to any claims against the Association, Owners, the Declarant, and their respective agents, employees, and guests.

(b) The policy or policies cannot be cancelled, invalidated, or suspended on account of the conduct of any one or more individual Owners.

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(c) Any "no other insurance" clause in the policy or policies shall exclude from consideration the policies of any individual Owners.

(d) The policy or policies cannot be cancelled, invalidated, or suspended on account of the conduct of any director, trustee, officer, or employee of the Association, without a prior written demand that the Association cure the defect.

Section 6. Additional Insurance. In addition to the insurance coverage required by this Declaration, the Association shall have the power and authority to obtain and maintain other similar and dissimilar insurance coverage in relation to the Roadways, Common Areas and the Association's duties and responsibilities hereunder, which additional insurance coverage may be in such amounts and in such forms as the Association from time to time deems appropriate.

Section 7. Insurance Premiums. Insurance premiums allocable to insurance coverage obtained and maintained by the Association under this Article X shall be deemed to be a cost of operating the Roadways and Common Areas and shall be assessed to the Lots as part of annual assessments in accordance with the provisions of Article V.

## ARTICLE XI

### EMINENT DOMAIN

Section 1. Lots. If a Lot is acquired by eminent domain, or if part of a Lot is acquired by eminent domain leaving the Lot owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, that Lot's votes in the Association and common expense liability are automatically terminated. Any remnant of a Lot remaining after part of a Lot is taken under this section is thereafter Common Area property.

Section 2. Common Area Property. If part of the Common Area property is acquired by eminent domain, except as otherwise provided in this Declarant, the award must be paid to the Association.

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## ARTICLE XII

### DAMAGE OR DESTRUCTION

Section 1. Damage or Destruction of Lot. In the event that the Lot is damaged or destroyed by fire or other casualty, the Owner thereof shall cause such Lot to be promptly repaired, restored or reconstructed to the extent required to restore the Lot to substantially the same condition in which it existed prior to the occurrence of the damage or destruction. In addition, if any Common Area is damaged or destroyed in connection with the restoration or reconstruction of a Lot, the cost of repair or replacement to said Common Area shall be paid by the Owner.

Section 2. Damage or Destruction of Common Area. In the event that the Common Area and/or other improvements thereon are damaged or destroyed by fire or other casualty or disaster, such Common Area and/or other improvements shall be promptly repaired, restored or reconstructed to the extent required to restore then to substantially the same condition in which they existed prior to the occurrence of the damage or destruction. Such repairs, restoration or reconstruction shall be paid for out of any insurance proceeds received on account of the damage or destruction; provided, however, that if the insurance proceeds are not sufficient for such purpose, the deficiency shall be assessed as a common expense.

## ARTICLE XIII

### NUISANCES AND RELATED MATTERS

Section 1. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be an annoyance or nuisance to the other Lot Owners.

Section 2. Pets. No pigs, cows, sheep, goats, horses, poultry, or any other livestock, shall be kept, maintained or permitted on any Lot excepting only a reasonable number of common household pets. Pets shall at all times be under proper control and supervision of their owners. Owners of dogs shall keep dogs on their premises at all times unless the dog is on a leash.

Section 3. Drilling and Mining. There shall be no oil drilling, mining, quarrying or related operations of any kind permitted upon any Lot.

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Section 4. Rubbish. No rubbish shall be stored or allowed to accumulate anywhere on a Lot, except in sanitary containers.

Section 5. Transmitting and Receiving Equipment. No external radio, citizen's band or ham radio, shall be placed upon any structure or Lot.

#### ARTICLE XIV

##### UTILITIES EASEMENT

A public utilities easement shall exist over and across the Property for the purpose of the installation, repair, alteration and maintenance of utilities, including but not limited to water, sewer, power and telephone. Insofar as possible, said utilities shall be located on the Common Area. However, where necessary said utilities may be located on or across Lots so long as such utilities not disturb the quiet enjoyment of any Lot by its Owner and so long as any public utility company restores to its original condition any Lot which is altered as a result of the installation, repair and maintenance of any utilities. The written consent of the Board of Trustees on behalf of the Association shall be required prior to the location of any such utilities.

#### ARTICLE XV

##### ENCROACHMENTS

None of the rights and obligations of the Owners of Lots created herein, or by the deeds conveying the Lots shall be altered in any way by encroachments due to settlement or shifting of structures for any other cause. There shall be valid easements for the maintenance of said encroachments so long as they exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of said Owner.

#### ARTICLE XVI

##### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which has been built as a part of the original construction of the residences upon the Lots and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general

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rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## ARTICLE XVII

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Registration of Mailing Address. Each Owner shall register with the Association from time to time his current mailing address. All notices and demands intended to be given to or served upon any Owner may be sent by first class U.S. mail, postage prepaid, and addressed to the Owner at his registered mailing address or, if no address has been registered, to the Owner at the address of his Lot. All notices and demands intended to be given to or served upon the Association may be sent by first class U.S. mail, postage prepaid, and addressed to the Association at 4661 South 2300 East, Salt Lake City, Utah 84117, or to the Association at such other address as the Association may from time to time designate by written notice to the Owners. Any notice or demand referred to in this Declaration or in rules and regulations promulgated hereunder by the Association shall be deemed to have been given or served when deposited in the U.S. mail, first class postage thereon prepaid, and addressed as provided in this Section.

Section 4. Obligations of Owners. All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting, or selling under contract his Lot. The Owner of a Lot shall have no obligation for assessments hereunder or other obligations hereunder (except interest and costs of collection with respect to prior obligations) accruing after he conveys such Lot.

Section 5. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Except as otherwise provided, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, provided that Article VII, may not be amended without the written approval of at least two-thirds (2/3) of the first mortgagees or Owners (other than Declarant). All such amendments must be recorded.

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