

WHEN RECORDED RETURN TO:

MJM2 L.C.  
1351 Moray Court  
Park City, UT 84060

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR BLACKHAWK STATION SUBDIVISION PHASE 1  
SUMMIT COUNTY, UTAH**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made and executed this 1<sup>st</sup> day of Sept, 1998, by MJM2 L.C., a Utah Limited Liability Company, hereinafter referred to as "Declarant."

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**WITNESSETH:**

ALAN SPRIGGS, SUMMIT COUNTY RECORDER  
1998 SEP 03 16:28 PM FEE \$86.00 BY MAT  
REQUEST: COALITION TITLE

WHEREAS, Declarant shall be, at the time of recordation of this Declaration, the owner of certain real property ("Property") situated in Summit County, Utah, and more particularly described as:

Lots 1 through 80 and the associated open spaces, of the Blackhawk Station Subdivision Phase 1 as depicted on the official plat thereof recorded in the office of the County Recorder of Summit County, Utah.

WHEREAS, Declarant shall be the owner of certain residential units and certain other improvements heretofore constructed or hereafter to be constructed upon the Property; and

WHEREAS, Declarant desires and intends to develop the Property into a residential subdivision and to sell and convey to various purchasers individual units or lots together with undivided ownership interests in the common areas and facilities subject to the covenants, conditions and restrictions herein reserved to be kept and observed; and

WHEREAS, Declarant has prepared under the supervision of John Demkowicz, Certificate No. 163931, a registered Utah land surveyor, a record of survey map, dated 8/19/98, 1998 of the Blackhawk Station Subdivision Phase 1 (hereinafter the "Plat"), concurrently herewith; and

WHEREAS, Declarant plans to record the Plat with the Summit County Recorder after the Plat has been approved for recording; and

WHEREAS, Declarant desires to impose a general plan for the improvement and development of the Property and adopt, establish and impose covenants, conditions and restrictions upon the Property and each and every lot and portion thereof and upon the use,

occupancy, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property; and

WHEREAS, Declarant desires for the efficient preservation of the value, desirability and attractiveness of the Property and any additional real property which may be annexed thereto pursuant to the provisions of this Declaration, to create a nonprofit corporation under the laws of the State of Utah having the powers, among others, of maintaining and administering the Association Owned Ground, defined below, and administering and enforcing the covenants, conditions, and restrictions of this Declaration and collecting and disbursing funds pursuant to the assessments and charges established and referenced below; and

WHEREAS, The Blackhawk Station Homeowners' Association, a nonprofit corporation, is incorporated under the laws of the State of Utah for the purpose of exercising the powers and functions, among others, set forth above; and

WHEREAS, Declarant desires and intends by recording this Declaration and the Plat to submit the Property and the buildings and other improvements constructed thereon together with all appurtenances thereto, to mutually beneficial covenants, conditions and restrictions under a general plan of improvement for the benefit of all of the Property and the eventual owners thereof.

NOW, THEREFORE, Declarant hereby publishes, declares, covenants, and agrees that all of the Property and each of the lots thereon and such additions thereto as may hereafter be made pursuant to Article 11 hereof shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations, obligations and easements all of which are hereby declared and agreed (i) to be for the benefit of the whole tract and all of the Property and the owners thereof, their successors and assigns, (ii) to be in furtherance of a general plan for the improvement of the Property and the division thereof into a residential subdivision, (iii) to run with the Property, (iv) to be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, (v) to inure to the benefit of each owner thereof; and (vi) to be imposed upon the Property and every part thereof as a servitude in favor of each and every parcel thereof as the dominant tenement or tenements.

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**ARTICLE I  
DEFINITIONS**

All of the terms used in this Declaration (including the Recitals and Exhibits thereof) shall have the meanings defined herein and therein. The terms defined below and used in this Declaration shall apply herein and also to any Supplementary Declaration recorded pursuant to Article II hereof.

1.1 "Architectural Committee" means a three (3) person committee that reviews and approves proposals as set forth in Article VII hereof.

1.2 "Association" means The Blackhawk Station Homeowners' Association, a nonprofit corporation, incorporated under the laws of the State of Utah, and its successors and assigns.

1.3 "Association Owned Ground" means all real property owned by the Association for the use and enjoyment of the Members of the Association. Initially, the Association Owned Ground shall be comprised of Parcels A through G depicted on the Plat.

1.4 "Board of Trustees" means the three (3) to seven (7) Members who are elected by the Association to manage the Association. The initial Board of Trustees shall be:

James A. Doilney, 1351 Moray Court, Park City, UT 84060  
Michael Doilney, PO Box 1657, Park City, UT 84060  
Michael Barnes, 5200 West, Snyderville, UT 84098

These individuals will serve as the Board of Trustees, until they are replaced by the Declarant or until the first meeting of the Association, whichever occurs first.

1.5 "Building" means the building improvements on any Lot and comprising a part of the Property.

1.6 "Building Pad" means the area defined by "build to lines" and setback notes on the Subdivision Plat where the Owner of a Lot may construct a Home, including garages, decks and storage structures.

1.7 "Conveyance" means a conveyance of a fee simple title to any Lot in the Subdivision.

1.8 "Declarant" means MJM2 L.C., a Utah limited liability company and its successors and assigns.

1.9 "Deed of Trust" means any mortgage installment land purchase contract, deed of trust or any other security instrument encumbering any Lot or other portion of the Property to secure the performance of an obligation.

1.10 "Home" means each detached single family residence.

1.11 "Lot" means any of the parcels of property depicted as one of several lots numbered 1 through 80 on the recorded Plat of the Subdivision and used for the sole purpose of constructing one single family home in accordance with this Declaration.

1.12 "Member" means every person or entity who holds membership in the Association.

1.13 "Owner" means 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, including contract sellers and buyers but excluding those having such interest merely as security for the performances of an obligation.

1.14 "Property" means that certain real property described above in the Recitals and such additions thereto as hereafter may be made subject to this Declaration, and excluding any real property that hereafter may be withdrawn from this Subdivision pursuant to this Declaration.

1.15 "Record" means to file or record an instrument with the office of the County Recorder of Summit County, Utah.

1.16 "Subdivision" means the "Blackhawk Station Subdivision Plat Phase 1" according to the official Plat thereof recorded in the recorder's office of Summit County, Utah, and any subdivision hereafter added pursuant to the terms of this Declaration.

## ARTICLE II ANNEXATIONS, MERGERS AND CONSOLIDATIONS

Any real property may be annexed to and become subject to this Declaration by any of the methods set forth below.

2.1 Annexation Without Approval. Any real property may be annexed to and become subject to this Declaration and subject to the jurisdiction and a part of the Association without the approval, assent or vote of the Association or its Members, providing each of the following conditions are satisfied: (a) Prior to the conveyance of title to any improved lots within the real property to be annexed ("Annexed Property") to individual purchasers thereof, fee simple title or right-of-way to the Association Owned Ground within the Annexed Property shall be conveyed to the Association, free and clear of any and all encumbrances and liens, except current real property taxes, which taxes shall be prorated to the date of transfer, and easements, covenants, conditions and restrictions then of record, including those set forth in this Declaration, and (b)

Declarant or its successors and assigns shall execute and record a Supplementary Declaration of Covenants, Conditions and Restrictions ("Supplementary Declaration"), described in Section 2.3 below, containing a legal description of the Annexed Property.

**2.2 Annexation With Approval.** Any owner of communal property, multiple family units, single family residential property or property for the general use of owners of such residential property (collectively "Annexed Property") who desire to add and subject the Annexed Property to this Declaration and to the jurisdiction of the Association, may record a Supplementary Declaration, described in Section 2.3 below, after receiving written approval from the Association pursuant to a two-thirds majority vote of those present at a meeting for this purpose that has been duly called of Members including proxies who are entitled to vote. Written notice of such meeting shall be sent to each Member not less than ten (10) days but not more than thirty (30) days prior to the meeting.

**2.3 Supplementary Declarations.** Annexing property to this Declaration as set forth in Sections 2.1 and 2.2 hereof shall be completed by recording a Supplementary Declaration or similar instrument, that provides a legal description of the Annexed Property subjects the Annexed Property to this Declaration. A Supplementary Declaration may contain such complementary additions and modifications to the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexed Property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any Supplementary Declaration revoke, modify or add to the covenants, conditions and restrictions imposed by this Declaration on the existing Subdivision Property, except as provided in this Declaration. The recording of a Supplementary Declaration shall constitute and effectuate the annexation of the Annexed Property described therein and shall subject the Annexed Property to this Declaration and to the functions, powers and jurisdiction of the Association, and thereafter all of the owners of lots in the Annexed Property shall automatically be Members of the Association.

**2.4 Mergers or Consolidations.** Upon a merger or consolidation of the Association with another association, as provided in the Association's Articles of Incorporation, the Association's properties, powers, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to any merger or consolidation. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the existing Subdivision Property, together with the covenants and restrictions established upon any other property, as one plan. No merger or consolidation shall revoke, modify or add to this Declaration, except as provided in this Declaration.

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**ARTICLE III  
MEMBERSHIP**

3.1 Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to assessment by the Association, shall be a Member of the Association. The terms and provisions set forth in this Declaration, which are binding upon all Owners of all Lots and all Members in the Association, are not exclusive. Each Member shall, in addition, be subject to the terms and provisions of the Articles of Incorporation and the Bylaws of the Association. The foregoing is not intended to apply to persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership for each Lot owned. Membership shall be appurtenant to, and may not be separate from, the ownership of any Lot which is subject to assessment by the Association. Ownership of any Lot shall be the sole qualification for membership.

3.2 Transfer. The membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser or deed of trust holder of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of such Lot, the Association shall have the right to record the transfer upon the books of the Association.

3.3 Voting Rights. The Association shall have two (2) classes of voting membership designated as Class A and Class B:

Class A. Class A Members shall be all Owners but shall not include the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required to be considered an Owner. When more than one person holds such interest in any Lot, all such persons shall be the Member and Owner of that Lot. The vote for such Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast for any one Lot.

Class B. The Class B Member shall be the Declarant. The Class B member shall be entitled to nine (9) votes for each Lot in which the Declarant holds the interest required to be considered an Owner. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles of Incorporation and Bylaws of the Association.

**ARTICLE IV  
ASSOCIATION OWNED GROUND**

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4.1 Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Association Owned Ground, if any, and such easement shall be appurtenant to and shall pass with the title to every assessed Lot subject to the following terms and conditions:

(a) The Association shall have the right to establish uniform rules and regulations pertaining to the use of the Association Owned Ground, including but not limited to, private streets and the recreational facilities thereof.

(b) The Association shall have the right, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Association Owned Ground and facilities and to add thereof, to encumber the Association Owned Ground, provided that the rights of any mortgagee or security interest holder shall be subordinate to the rights of the Members.

(c) The Association shall have the right to dedicate or transfer all or any part of the Association Owned Ground to any public agency, authority or utility, or to any association or master association of homeowners in the vicinity of the Subdivision, for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless a written instrument approving such dedication or transfer is recorded and is approved by a two-thirds majority vote of those present at a meeting. The meeting shall have been duly called of Members including proxies who are entitled to vote. Written notice of the meeting shall have been sent to every member not less than ten (10) days but no more than thirty (30) days in advance of the meeting. However, the Declarant reserves the right to grant easements over any part of the Association Owned Ground or any other designated utility easement areas for utility purposes.

(d) The Declarant (and its sales agents and representatives) shall have the right to the non-exclusive use of the Association Owned Ground and the facilities thereof, for display and exhibit purposes in connection with the sale of any real property, which right Declarant hereby reserves. No such use by Declarant or its sales agents or representatives shall otherwise restrict the Members in their use and enjoyment of the Association Owned Ground or facilities thereof.

4.2 Delegation of Use. Any Member may delegate, in accordance with the Association's Bylaws, the Member's right of enjoyment to the Association Owned Ground and facilities to the members of the Member's family, tenants or contract purchasers who reside on the Property.

4.3 Waiver of Use. No Member may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot owned by the Member from the

liens and charges hereof, by waiver of the use and enjoyment of the Association Owned Ground and the facilities thereon or by abandonment of the Member's Lot, other than by sale thereof.

4.4 Title to Association Owned Ground. The Declarant hereby covenants for itself its successors and assigns, that in the event it designates any portion of the Property as a Association Owned Ground, that it will convey to the Association fee simple title or rights-of-way to such Association Owned Ground in the existing property, free and clear of all encumbrances and liens, except current real property taxes, which taxes shall be prorated to the date of transfer, and easements, conditions and reservations then on record, including those set forth in this Declaration.

4.5 No Obligation to Designate. Nothing in this Declaration shall be construed to obligate Declarant to designate or provide any part of the Property as Association Owned Ground.

#### ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

5.1 Creation of Lien. Each Member, by acceptance of a real estate contract or deed for a Lot covenants and agrees to pay to the Association: (a) regular assessments or charges and (b) special assessments for capital improvements, and other Association purposes, such assessments to be fixed, established and collected from time to time as hereinafter provided, and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment together with any interest, costs and reasonable attorney fees, also shall be the personal obligation of the Owner of such Lot at the time when the assessment fell due. In any Conveyance, except to a mortgagee holding a first lien on the subject Lot, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter up to the time of the Conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee. Any such grantee, however, shall be entitled to a statement ("Statement") from the Board of Trustees setting forth the amounts of the unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth in the Statement. No membership may be transferred to a subsequent purchaser until all assessments, interest, penalties and other charges that are due have been paid in full to the Association.

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5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Members of the Association and, among other things, (a) for the improvement and maintenance of the Property, services, and facilities devoted to this purpose and related to the use and enjoyment of the Association Owned Ground, and Association maintained Landscape Easement Area, defined in Section 10.6 hereof, (b) for the purpose of periodic restraining of Landscape Easement Area fencing, replacing plantings, and replacing fence posts and rails, (c) for

enforcement of this Declaration, and (d) for the costs of any joint use obligations related to Lot 7 of the Spring Creek Plaza Commercial Subdivision Plat.

5.3 Regular Assessments. The amount and time of payment of regular assessments shall be determined by the Board of Trustees of the Association after giving due consideration to the current maintenance costs, reserve requirements for periodic maintenance and capital expense, and future needs of the Association. Written notice of the amount of an assessment, regular or special, shall be sent to every Owner, and the due date for the payment of the same shall be set forth in such notice.

5.4 Special Assessments. In addition to the regular assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Association Owned Ground, including without limitation fixtures and personal property related thereto, or costs incurred for any other Association purpose, provided that any such assessment shall have the assent of a majority of the Members entitled to vote at a meeting duly called for this purpose. Written notice of such meeting shall be sent to all Members not less than ten (10) calendar days nor more than thirty (30) calendar days in advance of the meeting.

5.5 Uniform Rate of Assessment. Both regular and special assessments shall be fixed at an identical rate for all Lots owned by Members and may be collected monthly or at such other times as the Board of Trustees may determine. If an assessment for improvements costs is more or less beneficial to one or more type of Lots (single family residential, multiple dwelling condominium, commercial) such assessments may be levied at a rate reflecting such difference in benefits.

5.6 Commencement and Fixing of Regular Assessments. The regular assessments provided for herein shall commence as to all Lots on the first day of the month following the purchase of each Lot to an individual owner. Monthly or annual assessments will be payable at times designated by the Board of Trustees.

5.7 Certificate of Payment. Upon the written request of any Lot owner or any encumbrancer or prospective encumbrancer of a Lot, and upon payment of a reasonable fee not to exceed \$10, the Association shall issue to each requesting person a written statement of indebtedness ("Statement") setting forth the unpaid assessments due for the Lot covered by the request. The Statement shall not be subject to any challenge by any Owner, if the person requesting the Statement relies thereon in good faith to that person's detriment. Unless the Association complies with the request for a Statement within ten (10) days, all unpaid assessments which became due prior to the date of such request are subordinate to the lien held by the person requesting the Statement. Any encumbrancer holding a lien encumbering any Lot, shall have a lien on such Lot for the amounts paid of the same rank as the released lien after payment of the delinquent assessment.

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5.8 **Exempt Property.** All property, if any, dedicated to and accepted by a local government or public authority and the Association Owned Ground shall be exempt and not be subject to any assessment contemplated in this Declaration.

#### **ARTICLE VI NONPAYMENT OF ASSESSMENTS**

6.1 **Delinquency.** Any assessment provided for in this Declaration, which is not paid when due, shall be delinquent. If any assessment is not paid within fifteen (15) days after its due date, the Association may, at its election, require the Owner to pay a "late charge" in the sum to be determined by the Association, but not to exceed \$10 per each delinquent assessment. If any assessment is not paid within thirty (30) days after the due date, (a) the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, (b) the Association may, at its option, bring an action at law against any person obligated to pay the delinquent assessment, (c) after providing notice pursuant to Section 6.2 hereof, the Association may, at its option, foreclose the lien encumbering the Lot and established pursuant to Section 5.1 hereof, and (d) there shall be added to the amount of such assessment any late charges, interest and all costs of collecting the same, including a reasonable attorney fee, whether incurred by filing suit or not. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or in equity or lien foreclosure against all proper parties for the collection of any delinquent assessments.

6.2. **Notice of Lien.** No action shall be brought to foreclose any assessment lien established pursuant to Section 5.1 hereof or to proceed under the power of sale as set forth herein less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, to the Owner of the affected Lot.

6.3 **Foreclosure Sale.** Any foreclosure and subsequent sale provided for above is to be conducted in accordance with the laws of the State of Utah relating to liens, mortgages, and deeds of trust. The Association, through its duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the Lot.

6.4 **Curing Default.** Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the Board of Trustees is hereby authorized to record an appropriate release of lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed \$25.00, to cover the costs of preparing and recording such release of lien, together with payment of such other costs, interest or fees.

6.5 **Cumulative Remedies.** The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution to all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as provided herein.



6.6 Subordination of Assessment Liens. If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a deed of trust: (a) the foreclosure of any lien created under this Declaration shall not operate to affect or impair the lien of such deed of trust; and (b) the foreclosure of the lien of deed of trust or the acceptance of a deed in lieu of foreclosure of the deed of trust shall not operate to affect or impair the lien created hereunder; provided however, that the lien created hereunder for any delinquent assessments accruing to the foreclosure sale date or the date of acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the deed of trust. The purchaser at any foreclosure sale or grantee of a deed in lieu of foreclosure shall thereafter take title free of the lien hereof for all such delinquent assessments that have accrued up to the time of the foreclosure or deed given in lieu of foreclosure, but subject to the lien created hereunder for all such delinquent assessments that shall accrue subsequent to the foreclosure sale date or the date of acceptance of a deed in lieu of foreclosure.

6.7 Mortgage Protection. Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any Lot shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first deed of trust (meaning a deed of trust with first priority over other deeds of trust) upon such interest made in good faith and for value, provided that after the foreclosure of any such deed of trust there may be a lien created pursuant to the provisions hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

(b) The Association shall give a written notification to a holder of a recorded first deed of trust on any Lot, of any default by the trustor of such Lot in the performance of the trustor's obligations created under this Declaration and the Plat in connection herewith, which default is not cured within thirty (30) days.

(c) Unless all holders of first deed of trust liens on individual Lots have given their prior written approval, the Owners or the Board of Trustees of the Association shall not be entitled to change the pro rata interest or obligations of any Lot for purposes of levying assessments.

(d) No amendment to this Section shall affect the rights of the holder of any such deed of trust recorded prior to recordation of such amendment who does not join in the execution thereof.

(e) By subordination agreement executed by the Association, the benefits of subsections (a), (b), (c) and (d), above may be extended to deeds of trust not otherwise entitled thereto.

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**ARTICLE VII  
ARCHITECTURAL CONTROL**

Declarant intends to build all of the Homes on the Lots within the Subdivision. Homes built by the Declarant, whether part of the Association or part of a larger Association expanded to incorporate additional lots, shall be required to comply with the architectural intent of this Section but shall not be required to complete the filings specified herein.

7.1 Approval by Architectural Committee. Other than the originally approved homes, together with originally approved landscaping, and fencing, no building, fence, wall, or any other structure shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made, nor shall any excavating, alteration of any stream, waterway, pond, or clearing, removal of shrubs or trees or landscaping or fencing on any Lot within the Property be done (hereinafter "Activity") unless a written application (hereinafter "Application") is submitted for approval of each Activity to the Architectural Committee. In connection with filing the Application, the applicant shall submit two complete sets of plans and specifications for the proposed Activity, together with a reasonable processing fee as determined by the Architectural Committee. For buildings, the Application submitted also shall include:

- (a) An overall view of the proposed Activity.
- (b) The location of the Lot and the Building Pad, if any, on which the Activity will take place and the location of the proposed Activity relative to other improvements on the affected Lot.
- (c) Floor plans of each floor level.
- (d) The basic structural system of the Activity and the materials to be used.
- (e) Elevations.
- (f) Provision for temporary and permanent parking of vehicles.
- (g) Design and layout of proposed sewage lines in any sewer system.
- (h) Proposed time schedule to complete the Activity.
- (i) A survey acceptable to the Architectural Committee depicting Lot corners, Building Pad corners, and any proposed building position.
- (j) Any additional demands or requirements for culinary or irrigation water.

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(k) Specifications for water consenting plumbing fixtures in compliance with governmental agencies.

(l) A list of all Plat notes affecting the Lot, together with a written statement explaining how each Plat note has been satisfied.

7.2 Consent. The Architectural Committee shall not give its consent to any proposed Activity unless, in the opinion of the Architectural Committee, the proposed Activity is properly located relative to the Building Pad, setbacks, and other considerations, and properly designed relative to architecture, contour, materials, shapes, and colors. The general character of any improvement associated with the proposed Activity shall be in harmony with existing structures and improvements on the affected Lot and on neighboring Lots and with the surrounding landscape and Landscape Easement Area, defined in Section 10.6 hereof. Any improvement shall be designed and located upon the Lot so as to satisfy all applicable Plat notes.

7.3 Final Decision. The Architectural Committee shall have the right to disapprove any Application if (i) the Application and the plans and specifications submitted therewith are not of sufficient detail or are not in accordance with the provisions hereof, (ii) the design or construction of any proposed activity is not in harmony with neighboring improvements and the general surroundings, or (iii) the design and the plans for construction do not include sufficient safeguards for preservation of the environment. The decision of the Architectural committee shall be final, binding and conclusive on all parties affected. At no time will the Architectural Committee unreasonably restrict or refuse any proposed Activity.

7.4 Modification to Lots and Building Pads. Declarant reserves and shall have the right to change at any time the bounds or area of any Lot or Building Pad owned by Declarant; provided however, such change does not adversely affect the access to any Lot sold to a third party and complies with county, state, and federal requirements that apply to the Subdivision.

7.5 Non-Waiver. The approval of the Architectural Committee of any Application for any Activity completed or proposed, or in connection with any other matter, requiring the approval of the Architectural Committee under the restrictions hereof, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whenever subsequently or additionally submitted for approval. Upon approval or disapproval of the Application by the Architectural Committee, one set of plans shall be returned to the Lot owner and one set shall be retained by the Architectural Committee. If the Architectural Committee fails to approve or disapprove an Application within thirty (30) days after the same has been submitted, approval will be deemed to have been granted and this Article will be deemed to have been fully satisfied; provided however, approval shall not be deemed granted if the applicant fails to provide the details and information requested by the Architectural Committee.

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7.6 Professional Assistance. If at any time the Architectural Committee shall determine that it would be in the best interest of the Members and Owners to employ professional assistance to design any improvement involved in the proposed Activity, the Architectural Committee shall inform such Owner in writing of its determination, whereupon all plans and specifications shall be prepared by such qualified professionals as the Architectural Committee shall determine in its sole discretion.

7.7 Landscaping Control. Each Member shall maintain the Member's Lot in an attractive and safe manner so as not to detract from the community of the Subdivision.

7.8 Architectural Committee Rules. The Architectural Committee may, from time to time in its sole discretion adopt, amend, and repeal by unanimous vote, rules and regulations to be known as "Architectural Rules" which, among other things, interpret or implement the provisions of Section 7.1 hereof and apply to any Activity occurring or commencing after such adoption, amendment, or repeal of the Architectural Rules. A copy of the Architectural Rules as they may from time to time be adopted, or repealed, certified by any member of the Architectural Committee, shall be available from the Architectural Committee.

7.9 Building and Landscaping Time Restrictions. The exterior construction of all structures shall be completed within one (1) year following commencement of construction. The front yard (the portion not fenced) of each Lot shall be landscaped within a period of one (1) year following completion or occupancy of each structure. Rear and side yards shall be landscaped within a period of one (1) year following completion or occupancy of each structure. All Members of the Association possessing or owning vacant Lots shall be responsible for keeping such Lots clean in appearance and free from all refuse and potential fire hazards. No vacant Lot shall be used for storage of any kind except during the construction period.

7.10 Appointment of Architectural Committee. The Declarant shall appoint the Architectural Committee, consisting of not less than three (3) members for a term not to exceed three (3) years. In the event of the death or resignation of any member of the Committee, the Board of Trustees, with the approval of the Declarant, shall appoint successor members.

7.11 Liability. Neither the Architectural Committee nor any member thereof shall be liable to any Owner or third persons for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work or Activity, whether or not pursuant to approved plans, drawings and specifications, or (c) the development or manner of development of any property or Lot within the Subdivision.

7.12 General Provisions. The powers and duties of the Architectural Committee shall be in force for a period of forty (40) years from the date of recording of this Declaration. Such powers and duties shall continue following the forty-year period until a written instrument has been executed and duly recorded by the then record Owners of a majority of the Lots appointing

a representative or representatives who shall thereafter exercise the same powers previously exercised by the Architectural Committee. Representatives may be the members of the Board of Trustees of the Association.

7.13 Variances. A petition may be filed for a variance by any Owner. The Architectural Committee may, in its sole discretion, by a unanimous affirmative vote of the members of the Architectural Committee, allow reasonable variances as to any of the covenants and restrictions, except for Plat notes, contained in this Declaration, on such terms and conditions as the Architectural Committee shall require. A Plat note variance also must be approved in writing by the Summit County Planning Department.

#### **ARTICLE VIII DUTIES AND POWERS OF THE ASSOCIATION**

8.1 Duties and Powers. In addition to the duties and powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limitation, the Association shall have power and authority to:

- (a) Own or maintain and otherwise manage all of the Association Owned Ground, Landscape Easement Area, and all facilities, improvements and landscaping thereon, including but not limited to the private streets and street fixtures, any underground drain system, and all other property acquired by the Association.
- (b) Pay any real and personal property taxes and other charges assessed against the Association Owned Ground.
- (c) Purchase or otherwise obtain or acquire, for the benefit of all of the Association Owned Ground, all water, gas, electrical, and refuse collection services.
- (d) Grant easements where necessary to utilities and sewer facilities over the Association Owned Ground to serve the Association Owned Ground and the Lots.
- (e) Maintain such policy or policies of insurance as the Board of Trustees deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members.
- (f) Obtain and maintain workers compensation insurance if required to meet the requirements of the laws of the State of Utah.
- (g) Obtain and maintain directors' and officers' liability insurance, if reasonably available, covering all of the directors and officers of the Association.

(h) Establish all limits in any policy of insurance the Association obtains and maintains.

(i) Employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association.

(j) Establish and maintain a working capital and contingency fund in an amount to be determined by the Board of Trustees.

(k) Establish uniform maintenance standards for all Lots; lien any Lot, whether improved or not, which Lot is not being properly maintained as determined by the Board of Trustees; and enter any Lot to perform required maintenance on the Lot of the exterior surface of any building, fence, landscaping outside of fenced areas or driveway, walkway, or pedestrian easement.

#### ARTICLE IX DECLARANT RIGHTS

9.1 Reservation. The Declarant reserves the following development and special declarant rights (collectively "Declarant Rights") which may be exercised, where applicable, anywhere within the Subdivision Property:

(a) To complete any improvements depicted on the Plat;

(b) To exercise any Declarant Rights reserved herein;

(c) To maintain business and sales offices, parking spaces, management offices, storage areas, nursery, construction yard, signs, advertising and model Homes;

(d) To maintain signs and advertising on the Homes and within any rights of way and Association Owned Ground to advertise the Subdivision and Homes;

(e) To use and to permit others to use easements through the Subdivision as may be reasonably necessary for construction within the Subdivision or any annexations to the Subdivision, and for the purpose of discharging Declarant's obligations under this Declaration;

(f) To appoint or remove any officer of the Association or a member of the Board of Trustees during the period that the declarant controls the Association and the Subdivision subject to the provisions of this Declaration;

(g) To merge or consolidate the Subdivision with another subdivision development or subject the Subdivision to any master association of homeowners;

(h) To amend the Declaration or the Plat in connection with the exercise of any Declarant Rights; and

(i) To exercise any other Declarant Rights created by any other provisions of this Declaration.

9.2 Rights Transferable. Any Declarant Rights created or reserved under this Article for the benefit of Declarant may be transferred to any person by an instrument describing the Declarant Rights transferred and recorded in Summit County, Utah. Such instrument shall be executed by the transferor Declarant and the transferee.

9.3 Limitations. The Declarant Rights shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such Declarant Rights shall terminate without further act or deed at the earlier of the following: Declarant (a) is no longer obligated under any warranty or obligation for a Home, the Subdivision or this Declaration; (b) no longer holds any development right to create additional Homes within the Subdivision or on a development parcel that the Declarant intends to annex into the Subdivision; (c) no longer owns any Home in the Subdivision; (d) no longer owns any deed of trust in any Home; or (e) three years have elapsed after this Declaration is recorded. Earlier termination of certain Declarant Rights may occur by statute.

9.4 Interference with Declarant Rights. Neither the Association nor any Member or Owner may take any action or adopt any rule that will interfere with or diminish any Declarant Rights without the prior written consent of the Declarant.

9.5 Use by Declarant. The exercise of any Declarant Right by Declarant shall not unreasonably interfere with the access, enjoyment or use of any Home by any Owner nor the access, enjoyment or use of the Association Owned Ground.

9.6 Models and Offices. Subject to the limitation set forth in Paragraph 10.3 hereof, the Declarant, its duly authorized agents, representatives and employees may maintain any Home owned or leased by the Declarant as a model or sales, leasing or construction management office.

9.7 Declarant's Easements. The Declarant reserves the right to perform warranty work, repairs and construction work on Homes and exterior elements of Buildings and Lot improvements, to store materials in secure areas, and to control and have the right of access to work and repair until completion of all Homes and improvements in the Subdivision. All work may be performed by the Declarant without the consent or approval of the Board of Trustees, Association, Owners, or Members. The Declarant has an easement through the Lots and Homes as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Declarant Rights, whether arising by law, regulation or ordinance or reserved in this Article.

9.8 **Signs and Marketing.** The Declarant reserves the right for Declarant to post signs and displays on Homes, within rights of way, and Association Owned Ground to advertise the Subdivision and sales of Homes. Declarant also reserves the right for Declarant to conduct general sales activities throughout the Subdivision.

9.9 **Declarant's Personal Property.** The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of rights of way and Association Owned Ground that is not represented to be property of the Association. The Declarant reserves the right to remove from the Subdivision (promptly after the sale of the last Home) any and all goods and improvements used in development, marketing and construction of the Subdivision and Homes, whether or not they have become fixtures.

#### ARTICLE X EASEMENTS

10.1 **Easement for Utilities.** The following provisions govern the rights and duties of the Owners of Lots within the Property with respect to sewer, water, electricity, and solar heating systems; gas, telephone service, data communications, and cable television lines; and drainage facilities, among other services and utilities, (collectively the "Utilities"):

(a) **Easement for Maintenance.** Wherever (i) the Utilities are installed within the Property and (ii) the Utilities or any portion thereof lie in or upon Lots owned by the Association or other than the Owner of a Lot served by the Utilities, the Association and the Owners of any Lot served by the Utilities shall have the right, and are hereby granted an easement to the full extent necessary, to enter upon the Lots or to have operators or owners of the Utilities enter upon the Lots within the Property in which the Utilities or any portion thereof lie, to repair, replace and generally maintain the Utilities as or when the same may be necessary as set forth below.

(b) **Easement Enjoyment.** Wherever the Utilities are installed within the Property and the Utilities serve more than one Lot, the Owner of each Lot served by the Utilities shall be entitled to the full use and enjoyment of such portions of the Utilities serving the Owner's Lot.

10.2 **Reservation of Easements.** Easements over the Lots and Association Owned Ground for the installation and maintenance of Utilities and street entrance ways as shown on the Plat, or other documents of record, are hereby reserved by Declarant, together with the right to grant and transfer the same for the use and benefit of the Members of the Association.

10.3 **No Interference.** Easements for installation and maintenance of Utilities and for pedestrian access to Association Owned Ground are reserved as shown on the recorded Plat, and Owners are advised that easement dimensions and locations vary as to specific Lots as noted on



the recorded Plat. Within these easements, no structure, including bridges, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of Utilities, or which may change the direction of flow of water through drainage channels in any easement. The easement area of each Lot and all improvements in each Lot shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

10.4 No Excavation. In addition to the restrictions referenced in Section 10.3 hereof, no excavation may take place without approval by the Architectural Committee and coordination with representatives of any affected Utilities. Landscaping in easement areas and Lot line fencing is permitted, but in the event landscaping or fencing interferes with installing or maintaining Utilities, or proper drainage, such landscaping or fencing may be subject to temporary removal or modification at the Lot Owner's sole expense.

10.5 Emergency Easements. A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Subdivision to enter upon any part of the Subdivision in the performance of their duties.

10.6 Landscape Easement Area. The Association is hereby granted a landscape easement as set forth and depicted on the Plat over the frontage areas of each of the Lots in the Subdivision (hereinafter "Landscape Easement Area"). Declarant for each Home it builds on a Lot and the Association for each Home not built by Declarant on a Lot shall complete and install plantings, fences, and other improvements in the Landscape Easement Area. If a builder other than Declarant builds a Home on a Lot, that builder shall prepay the cost of improving the Landscape Easement Area for such Lot as a condition of the Association's approval of that builder's Home. The Association shall have the right to contract for improvement and maintenance of the Landscape Easement Area. Each Owner may place improvements in the Landscape Easement Area at their sole expense, but only after receiving written approval from the Association.

10.7 Special Grants. The Board of Trustees has the right to grant permits, licenses and easements over the Association Owned Ground and within five (5) feet of side yards and within ten (10) feet of rear yards for Utilities, maintenance, and other purposes reasonably necessary or useful for proper maintenance or operation. The Board of Trustees has the right to grant periodic temporary permits, licenses and easements to conduct maintenance of fences, siding, and roofs. The Board of Trustees has the right to grant temporary permits, licenses and easements, if in its opinion it becomes necessary, to repair or replace individual Home exterior elements, including fencing, siding, shingles, driveways, walkways, and landscaping which have not been properly maintained, repaired or replaced by the Owner. The Board of Trustees has the right to grant permanent or temporary permits, licenses and easements necessary to comply with any law, ordinance or order of any governmental authority.

10.8 Snow Removal & Storage Easement. There is hereby granted a ten foot (10') utility and snow storage easement on all dedicated road frontages as depicted on the Plat. Summit County will plow snow along the streets in the Subdivision consistent with a rural level of service. Summit County shall not be liable for any damage that it causes in connection with plowing snow in the Subdivision. The Association shall repair all damage caused by snow removal to any street improvement, including curbs and gutters.

#### ARTICLE XI USE RESTRICTIONS

The general objectives and intent of this Declaration is to create and maintain a residential subdivision characterized by the following: single family Home dwellings, compatible architecture, compatible materials, compatible colors, well-kept building exteriors and fences, well-kept lawns, trees and other plantings, Association Owned Ground, minimum vehicular traffic, minimum nuisances, and quiet residential conditions favorable to family living.

11.1 Zoning Regulations. The lands within the Property shall never be occupied or used by or for any building or purpose or in any manner which is contrary to any local planning and zoning ordinances and regulations applicable thereto validly enforced from time to time.

11.2 Land Use and Building Type.

(a) No Lot shall be used except for single family residential purposes. No buildings shall be erected, altered, placed or permitted to remain on any Lot other than one single family Home dwelling not to exceed two stories in height, except on those Lots where the natural grade differential from the front of the Building Pad to the rear of the Building Pad allows for a walkout basement level. No timeshare, nightly rental or use will be allowed on any Lot.

(b) No single family Home dwelling shall be erected or placed on any Lot in the Subdivision with floor space in the Home of less than 1150 square feet, excluding garage and patio.

(c) All single family Home dwellings may include the following accessory building and structures not used for residential occupancy: A private garage for the storage of not more than three automobiles and only other structures which are approved by the Architectural Committee.

(d) No single family Home dwelling may be combined with any other single family Home dwelling.

(e) Every single family Home dwelling must have a minimum of a two-car garage.

(f) Driveways for single family Home dwellings must be large enough to accommodate two parked automobiles side by side.

(g) There are notes on the Subdivision Plat that relate to building heights and construction materials.

11.3 **Fences.** Lot Owners must install and maintain property line fencing in back and side yards to the Landscape Easement. Fences MUST BE BUILT, stained and maintained in accordance with the Architectural Committee's design requirements and completed prior to occupancy.

11.4 **Building Location.** No single family Home dwelling or associated building shall be erected or located outside the Building Pad on any Lot. Building Pads are described on the recorded Subdivision Plat. Notwithstanding any language in this Section to the contrary, if easements for utilities, drainage, or other purpose as described on the recorded Plat require a greater setback from the front, rear, or side Lot line than that provided for as defined by the Building Pad, the requirements of the recorded Plat shall control. Likewise, if Summit County or any other governmental body having jurisdiction over the Subdivision has requirements or guidelines that are more strict than those set forth herein, the stricter guidelines shall control.

11.5 **Height.** No single family Home dwelling shall be erected to a height which is greater than thirty (30) feet above finished grade to the ridge of the predominate roof for two-story homes and not greater than twenty-two (22) feet above finished grade to the ridge of the predominate roof for a one-story home.

11.6 **Re-contouring.** No Lot shall be re-contoured without prior written approval of the Architectural Committee.

11.7 **Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood Subdivision.

11.8 **Temporary Structures.** No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily, meaning two or more days, or permanently. No temporary structure, house trailer, mobile home, camper, or non-permanent outbuilding shall ever be placed or erected on any Lot except with the approval of the Architectural Committee and only then during construction. No dwelling Home on any Lot shall be occupied in any manner prior to its completion without a written approval of the Architectural Committee. No old or secondhand structures shall be moved onto any Lot, unless granted by a variance. The intention hereof is that all dwellings and other buildings to be erected on any Lot, or within the Subdivision, shall be new construction of good quality workmanship and materials.

11.9 Overnight Parking and Storage of Vehicles. No vehicle of any kind, including but not limited to, automobiles, trucks, buses, tractors, trailers, camping vehicles, boats, boat trailers, snowmobiles, mobile homes, two, three or four wheeled motor vehicles, or other wheeled vehicles shall be permitted to be parked on any public street within the Subdivision between the hours of 1:00 A.M. and 10:00 A.M. or at any other time while it is snowing. The storage of any automobiles, trucks, buses, tractors trailers, camping vehicles, boats, boat trailers, snowmobiles, mobile homes, two, three and four wheeled motor vehicles, or other wheeled vehicles shall be forbidden unless such vehicles are kept from the view of the general public, Association Owned Ground, or vehicular traffic.

11.10 Pets. No animals, other than house pets, shall be kept or maintained. These animals shall be contained or otherwise controlled at all times and shall be restricted to two pets per household. Individual Owners shall be responsible to control their Lots so that dust and odor do not become a problem or annoyance to any Owner. Animal privileges may be revoked by the Association if the Owner does not adhere to the above restrictions.

11.11 Signs. No Owner shall place or display a sign of any kind to the public view on any Lot except legal notices and one professional sign of not more than two (2) square feet, one sign of not more than three (3) square feet advertising the property for sale or rent, or signs used by a builder to advertise the Lot or Home during construction and sale.

11.12 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any Lot, or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structures designed for use in boring for oil, oil products, or natural gas shall be erected, maintained or permitted upon any Lot.

11.13 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Such trash, rubbish, garbage or other waste shall not be kept except in sanitary containers. No rubbish, trash, papers, junk or debris shall be burned upon any Lot. Garbage containers shall be permitted to be placed at the end of the driveways only on trash collection days. At all other times trash containers must be kept in garages or other acceptable visually screened areas.

11.14 Sewage and Waste Disposal and Water Supply. No individual sewage or waste disposal system or water supply system shall be permitted on any Lot nor may any Owner pump surface or underground water from or impound any stream, water source, waterway or pond at any time for any purpose. All Homes and Association Owned Ground facilities shall be fitted and furnished with water conserving toilets, faucets, shower heads and such other water conserving devices as are reasonably available.

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11.15 Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or

permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

11.16 No Business Uses. The lands within the Property shall be used exclusively for single family residential living purposes and shall never be occupied or used for any commercial or business purpose other than traditional home business conducted within the home; provided however, the Declarant or its duly authorized agent may use any Lot owned by Declarant as a sales office, sales model, or property, management or rental office, and any Owner or his duly authorized agent may rent or lease the Owner's Home from time to time subject to limitations set forth herein.

11.17 No Re-subdivisions. No Lot shall be re-subdivided, and only one single family residence shall be constructed or allowed to remain per Lot.

11.18 Underground Utility Lines. All permanent water, gas, electrical, telephone, data communications, and television cables, other electronic pipes and lines and all other utility lines within the limits of the Property must be buried underground and may not be exposed above the surface of the ground.

11.19 Maintenance of Property. All Lots and all improvements on any Lot shall be kept and maintained by the Owner of any Lot in a clean, safe, attractive and slightly condition and good repair.

(a) Each Owner shall Home exteriors, including fences, driveways and landscaping in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating and painting which may at any time be necessary to maintain the good appearance and condition of his or her Lot or Home. In addition, each Owner shall be responsible for all damage to any other Homes resulting from his or her failure or negligence to make any of the repairs required by this Section. Each Owner shall perform his or her responsibility in such manner as shall not unreasonably disturb or interfere with the other Owners. Each Owner shall promptly report to the Board of Trustees any defect or need for repairs for which the Association is responsible.

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(b) The Owner of any Home shall maintain the Home exterior, including fences, driveways and landscaping in good order, condition and repair and in a clean and sanitary condition, and shall be solely responsible for its repair, maintenance and reconstruction. In the event any Owner shall fail to comply with this Section in a manner satisfactory to the Board of Trustees, the Board of Trustees after notice and hearing shall have the right to maintain, repair

and reconstruct same. The cost of such maintenance, repair and reconstruction shall be chargeable to such Owner by individual assessment. Each Home is subject to an easement in favor of the Board of Trustees (including its agents, employees and contractors) for providing emergency or delinquent maintenance, repair and reconstruction in accordance herewith. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality.

**11.20 No Hazardous Activities.** No activity shall be conducted on any Lot and no improvements constructed on any Lot which are or might be unsafe or hazardous to any person. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot, and no open fires shall be lighted or permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within safe and well designated interior fireplaces.

**11.21 Dwelling Construction and Fence Restrictions.** In order to maintain a harmonious community development and protect the character of the Subdivision neighborhood, the following conditions must be satisfied:

- (a) Dwelling style, design, materials, colors, and any alterations or additions thereto shall be consistent throughout the Subdivision and shall conform to standards determined by the Architectural Committee.
- (b) Exterior Home building construction materials shall be limited to log posts, wood siding, asphalt shingles and shall be in earth tones indigenous to the area and approved by the Architectural Committee. No reflective finish other than glass shall be used on exterior surfaces other than surfaces of hardware fixtures, including but without limitation, the exterior surfaces of any of the following: Roofs, all projections above roofs, retaining walls, doors, trim, fences, pipes, equipment, and only those mailboxes approved by the Architectural Committee or required by the U.S. Postal Service.
- (c) Roof design shall be limited to a minimum of a 4/12 pitch, unless otherwise approved by the Architectural Committee. Roofs shall be constructed so that no reflective surfaces are visible to other property Owners.
- (d) Location of all approved storage or utility buildings, garbage and refuse containers, air conditioning equipment, clothes drying lines, and utility pipes, among other similar items, must be placed at the rear of the Home dwelling and located on the Lot in such a manner as not to be conspicuous from the frontage street.
- (e) Any light used to illuminate garages, patios, walkways, entrances, driveways, or for any other purpose shall be so arranged as to reflect light away from adjacent residences and away from the vision of passing motorists.

(f) Fences shall be of wood or stone. No fences or walls of chain link, wire mesh, brick or unpainted concrete block shall be allowed. Hedges, shrubs, flowering plants, and hardscape shall not exceed six feet in height.

11.22 Off-Road Vehicles. No automobiles, trucks, motorcycles, trail bikes, snowmobiles, four-wheel drive vehicles or vehicles of any kind shall be operated on any portion of the Property wherever the same may be situated or any place on the Subdivision other than the public roadways.

11.23 Private Area: Uses, Restrictions. The Architectural Committee or its duly authorized agents shall have the right, at any time, and from time to time without any liability to the Owner for trespass or otherwise, to enter upon any private area for the purpose of (a) removing any improvement constructed, reconstructed, refinished, altered, or maintained upon such private area in violation of any covenant, condition or restriction of this Declaration, (b) restoring or otherwise reinstating such private areas, or (c) otherwise enforcing without any limitation, all of the covenants, conditions and restrictions set forth in this Declaration. No improvement, excavation or other work which in any way alters any private area from its natural or improved state existing on the date such private area was first sold shall be made or done except upon strict compliance with this Declaration.

11.24 Removal of Natural Foliage. No trees shall be removed without the prior written approval of the Architectural Committee.

11.25 Restoration of Cut and Fill. Declarant shall be responsible for restoration of cut and fill slopes between the back of the curb and each respective Lot. All cut or fill slopes shall be restored as per Declarant's landscaping plan for such area at the sole expense of the Declarant. All restoration shall be approved by the Architectural Committee and shall be completed within six months of creation of cut or fill conditions.

11.26 Exterior Fires. No exterior fires whatsoever, except barbecue fires contained in receptacles provided therefor, shall be allowed.

11.27 Antennas. No antenna of any sort, either installed or maintained, which is visible from the front of neighboring Lots shall be allowed. Satellite dishes greater than 24" in diameter shall not be permitted except as may be allowed by the Architectural Committee.

11.28 Rules and Regulations. No Owner shall violate the rules and regulations for the use of the Lots as adapted from time to time by the Association. No such rules and regulations shall be established which violate the intention or provisions of this Declaration or which shall unreasonably restrict the use of any Lot by its Owner.

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11.29 Lease of a Home. All Owners shall have the right to lease any Home that they own upon such terms and conditions as each Owner may deem advisable, subject to the following:

(a) No Owner may lease less than an entire Home or for transient or hotel purposes or for a term of less than 6 months;

(b) Any such lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, together with the Association's Bylaws, Articles of Incorporation, and Rules and Regulations;

(c) Such lease or rental agreement shall state that the failure of the lessee or renter to comply with the terms of the Declaration or the Association's Bylaws, Articles of Incorporation, or Rules and Regulations shall constitute a default. Any default shall be enforceable by either the Board of Trustees or the Owner-lessor, or by both of them.

(d) Any Owner who leases a Home shall, within five days after the execution of such lease, forward a copy of the lease to the Board of Trustees.

## ARTICLE XII AMENDMENTS

At any time while any provision, covenant, condition or restriction contained in this Declaration or amendment thereto is in force and effect, it may be amended or repealed by the recording of a written instrument specifying the amendment or repeal, executed by Owners, (and eligible holders of deeds of trust, if required), representing a majority of the combined votes of both classes of Members entitled to vote. Pursuant to Section 3.3 hereof, Declarant shall have sufficient votes, by itself, to amend this Declaration until such time as 75% or more of the Lots within the Property are owned by Class A Members.

12.1 Effective Date. Any amendment to this Declaration shall be effective upon the recording of the amendment together with a notarized Certificate of the Secretary of the Association certifying that the requisite number of Owners and eligible holders of deeds of trust, if required, have given their written consent to the amendment. The Secretary shall further certify that originals of such written consents by Owners and eligible holders of deeds of trust, as applicable, along with the recorded amendment, are in the records of the Association and available for inspection.

12.2 Recordation. Each amendment to the Declaration shall be recorded.

12.3 Signatures. Where a Home is owned by more than one person, the execution of any amendment shall be valid if executed by any one Owner of that Home. Signatures need not be notarized. The signature need not be identical to the name of the record Owner but shall be



sufficiently close as to be identified as a proper signature of such person. All signatures shall be irrevocable even upon death or Conveyance of the Home; provided however, if an amendment is not recorded within one year of the date of signature, then any executing Owner or their successor or assign may revoke the Owner's signature by a written and notarized document delivered to the Secretary of the Association.

12.4 Counterparts. Amendments may be executed in counterparts, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are part of the whole.

12.5 Time to Appeal. No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of this Declaration or the Association's Articles of Incorporation or Bylaws, unless it is commenced within one year from the effective date of such amendment, unless fraud or willful negligence is asserted and proven.

12.6 Eligible Holders of Deeds of Trust. Amendments to the Declaration may be subject to the consent requirements of beneficiaries of deeds of trust recorded in first priority before any other deed of trust.

12.7 Declarant Reservation. Declarant reserves the right to amend, without the consent of Owners or first mortgagees this Declaration, the Plat, or any Articles of Incorporation or Bylaws of the Association, any time within the limitations set forth herein, as follows:

(a) To make non-material changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement.

(b) To comply with any requirements of any local, state or federal government or agency (collectively "Agency") or to induce any Agency to make, purchase, sell, insure or guarantee first mortgages encumbering the Property or the Lots.

12.8 Consent of Declarant. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment, which consent shall be evidenced by the execution by Declarant of a certificate of amendment. The foregoing requirement for consent of Declarant to any amendment shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event, shall terminate without further act or deed in accordance with the limitations set forth herein.

12.9 Expenses. All expenses associated with preparing and recording an amendment shall be allocated as an Association expense.

### ARTICLE XIII GENERAL PROVISIONS

13.1 **Enforcement.** The Association shall have the right to enforce, by any proceeding at law or in equity, including injunctive proceedings, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Proper notice under this Section shall be defined to require written notice of any action authorized under this Section to be sent to the affected Member by certified mail at the Member's Lot address not less than ten (10) calendar days prior to taking any such action. 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. Costs of such enforcement, including reasonable attorney fees, shall be borne by the party(ies) in violation. Each Member and Owner at the time of Conveyance shall be deemed to have agreed that any violation of this Declaration shall constitute irreparable harm to the Association and the Owners and that mandatory or prohibitive injunctive relief shall be granted by any court of competent jurisdiction.

13.2 **Term.** The covenants, conditions and restrictions hereof shall run with the Property and each of the Lots and Association Owned Ground and shall be binding on all parties and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then Owners of the Lots has been recorded, agreeing to change this Declaration in whole or in part.

13.3 **Severability.** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

13.4 **Successors and Assigns.** This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Owner, and their heirs, personal representatives, successors and assigns.

13.5 **Consent to Future Zoning.** Each Lot Owner hereby acknowledges receipt of a copy of this Declaration, of the recorded Subdivision Plat showing the proposed development of single family Home dwellings and the Association Owned Ground, and the Declarant's phase two and phase three preliminary plat. Each Lot Owner acknowledges that Declarant intends to request phase two and phase three final plat approval that will incorporate changes which Declarant may make in order to make the optimum use of Declarant's land located in the vicinity of the Subdivision and as is generally shown on Declarant's phase two and phase three preliminary plat. Each Lot Owner for himself, his successors and assigns, hereby consents to and covenants not to object to any application made by Declarant for any phase two and phase three plat approval. Each lot owner for himself, his successors and assigns, covenants and agrees to execute any and all instruments in writing that may be required or needed by Declarant to obtain any approvals or changes to its phase two and phase three plat.

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13.6 Withdrawal of Properties. The Board of Trustees of the Association shall have the authority to withdraw any Association Owned Ground from the operation of this Declaration prior to any sale so that such Association Owned Ground shall not thereafter be subject to any of the provisions of this Declaration.

13.7 Limited Liability. Neither Declarant, the Association, the Board of Trustees of the Association, the Architectural Committee, nor any Member, Agent, Representative, Officer, Director or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter pertaining or contemplated by this Declaration; provided, however, that this limited liability shall not apply if the loss, expense or liability resulted from the willful misconduct or gross negligence of such person. Neither the covenants, conditions or restrictions herein contained nor the enforcement of any lien provisions herein shall defeat or render invalid the lien of any deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

13.8 Singular Includes Plural. Whenever the context of this Declaration requires the same, the singular shall include the plural and the masculine shall include the feminine.

13.9 Nuisance. The result of every act or omission whereby any provision, condition, restriction, covenant, easement or reservation contained in this Declaration is violated in whole or in part is hereby declared to be and constitutes a private and public nuisance. Every remedy allowed by law or equity against a nuisance either public or private, shall be applicable against every such result and may be exercised by the Association or any other Lot Owner in the Subdivision. Such remedy shall be deemed cumulative and not exclusive.

13.10 Conflict. This Declaration and other Documents are intended to comply with the laws, statutes and regulations of the State of Utah and the United States and the ordinances and regulations of Summit County (hereinafter "Legal Requirements"). If there is any conflict between this Declaration and the Legal Requirements, the Legal Requirements shall control.

13.11 Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address with the Association, and except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail, all other notices or demands intended to be served upon an Owner shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Trustees or the Association shall be sent by certified mail, postage prepaid, to MJM2 L.C., 1351 Moray Court, Park City, UT, 84060, Registered Agent for the Association until the Registered Agent is changed by a notice duly filed with the Office of the Secretary of State of Utah (Change of Registered Agent).

13.12 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

13.13 Effective Date. This Declaration shall take effect on the date this Declaration is recorded.

13.14 Condemnation. If at any time or times while this Declaration is in effect, all or any part of the Property shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

(a) Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "condemnation award," shall be payable to the Association.

(b) Complete Taking. In the event that all of the Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, this Declaration shall terminate. The condemnation award shall be apportioned among the Owners on a per Lot basis. If a standard different from the value of the Property as a whole is employed to measure the condemnation award in negotiation, judicial decree, or otherwise, then in determining allocation to the Owners, the same standard shall be employed to the extent it is relevant and applicable. The Association shall as soon as practicable determine each Owner's share of the condemnation award. Each Owner's share shall be paid into separate accounts and disbursed as soon as practicable in the following order:

1. For payment of the balance of the lien of any first deed of trust;
  2. For payment of taxes and special assessments liens in favor of any assessing entity;
  3. For payment of unpaid delinquent assessments levied against any Lot;
  4. For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
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5. The balance remaining, if any, shall be paid to the Owner.

(c) Partial Taking. In the event that less than all of the Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, this Declaration shall not terminate. Each Owner shall be entitled to a share of the condemnation award to be determined in the following manner: As soon as practicable the Association shall, reasonably

and in good faith, allocate the condemnation award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners, as follows: (i) the total amount allocated to taking of or injury to the Association Owned Ground shall be apportioned among the Owners on the basis of the number of Lots owned, (ii) the total amount allocated as severance damages shall be apportioned to those Lots or portions thereof, which were not taken or condemned, (iii) the respective amounts allocated to the taking of or injury to a particular Lot or improvements an Owner has made within their own Lot shall be apportioned to the particular Lot involved, and (iv) the total amount allocated as consequential damages and any other taking or injuries shall be apportioned as the Association determines to be equitable under the circumstances. If an allocation of the condemnation award is already established in negotiation, judicial decree, or otherwise, then in allocating the condemnation award, the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner provided in Section 13.14(b) hereof.

(d) Reorganization. In the event a partial taking results in the taking of a complete Lot, the Owner thereof automatically shall cease to be a Member of the Association. Thereafter, the Association shall reallocate the ownership, voting rights and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Lots for amendment of this Declaration as provided herein.

(e) Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 13.15 below.

13.15 Damage and Destruction. In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct any Home on any Lot, shall be used to reconstruct it. As used in this Section, "reconstruct" means restoring the Home to substantially the same condition in which it existed prior to the fire, casualty or other disaster, with each Lot and the Association Owned Ground having the same vertical and horizontal boundaries as before. Such reconstruction shall be accepted by the Association, subject to prior approval by the Architectural Committee.

If the insurance proceeds are insufficient to reconstruct any Home, damage to or destruction of the Home shall in no circumstance be the responsibility or obligation of the Association or other Owners.

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13.16 Insurance. The Association shall obtain and maintain, at all times, a policy or policies insuring the Association, the Owners and their agents, invitees and employees against any liability to the public or the Owners, and their invitees or tenants, incident to the ownership or use of the Association Owned Ground, issued by such insurance companies and with such limits of liability as determined by the Association. Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross-liability endorsement wherein the rights of

named insureds under the policy or policies shall not be prejudiced in any action against another named insured.

In addition, the Association may obtain insurance for such other risks of a similar or dissimilar nature as are or shall hereafter customarily be covered with respect to Association Owned Ground or other projects similar in construction, design and use.

13.17 Arbitration. Any controversy, claim, or dispute arising out of or related to this Declaration or the Association's bylaws, or breach thereof, shall be settled by arbitration in accordance with the Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court of law having jurisdiction thereof. Further, any and all fees of the American Arbitration Association shall be paid in advance, on a pro-rata basis by the parties to such arbitration, or at such time as specified by the American Arbitration Association.

In the event that the Association becomes involved in any controversy, claim, dispute, regardless of cause, it shall attempt to avoid litigation by agreeing to settle through the use of binding arbitration in accordance with the Arbitration Rules of the American Arbitration Association. Any judgment upon the award rendered by the arbitrator may be entered in any court of law having jurisdiction thereof. The Association shall attempt to incorporate this same Arbitration paragraph into any contract the Association may enter.

13.18 Remedies.

(a) Any single or continuing violation of provision of this Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Lot), by any other Owner, or by the Association in its own name. In any action brought to enforce any provision of this Declaration, the prevailing party shall be entitled to recover as part of its judgment all of the reasonable costs of enforcement, including attorney fees and costs, whether suit is filed or not.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state, or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. These covenants are to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the covenants contained in this Declaration in the future or against other similar violations.

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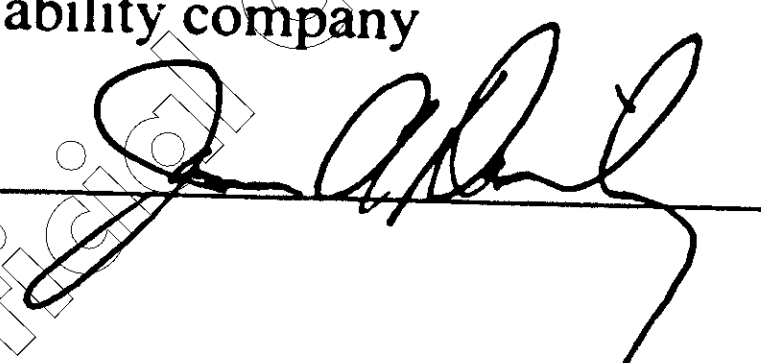
IN WITNESS WHEREOF, Declarant has executed this instrument on the day and year first written above.

**DECLARANT:**

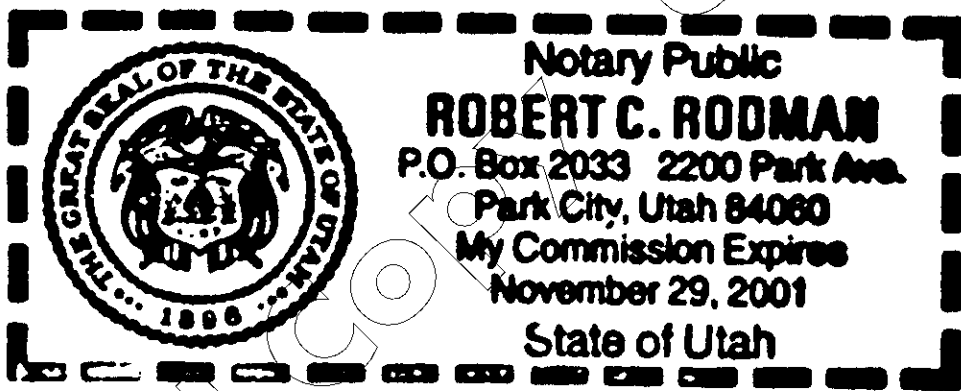
MJM2 L.C., a Utah limited liability company


By

James A. Doilney,  
Manager



The foregoing instrument was executed before me this 1 day of Sept, 1998, by James A. Doilney, the manager of MJM2 L.C., a Utah limited liability company.



  
NOTARY PUBLIC  
Residing at: Summit Co Utah

My Commission Expires on Nov 29, 2001

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