

6090036

WHEN RECORDED, RETURN TO:

Kaufman and Broad - Utah, Inc.
6925 South Union Park #525
Midvale, Utah 84047
Attn: Brent Harmon

6090036
05/30/95 12:12 PM 132.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
REC BY: Z JOHANSON DEPUTY - WI

DECLARATION
OF
RESTRICTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
OF
COPPER MOUNTAIN ESTATES NO. 2

WHEREAS, KAUFMAN AND BROAD - UTAH, INC., a California corporation ("Declarant"), is the legal and beneficial owner of a certain tract of land situated in Salt Lake County, State of Utah, described as follows (the "Subdivision"):

COPPER MOUNTAIN ESTATES NO. 1 SUBDIVISION PHASE TWO, consisting of Lots 201-306 (inclusive), according to the official plat thereof as recorded in the office of the Salt Lake County Recorder.

WHEREAS, Declarant is about to sell individual lots in the Subdivision, which it desires to subject, pursuant to a general plan of improvement, to certain restrictions, conditions, covenants, restrictions and agreements as hereinafter set forth;

NOW, THEREFORE, the undersigned Declarant declares that the property described heretofore is held and shall be sold, conveyed, leased, occupied, resided upon, hypothecated and held subject to the following restrictions, conditions, covenants and agreements between itself and the several owners and purchasers of said property and between themselves and their heirs, successors and assigns:

1. MUTUAL AND RECIPROCAL BENEFITS. All of the restrictions, conditions, covenants and agreements set forth herein shall be made for the direct, mutual and reciprocal benefit of each and every lot created on the above-described property and shall be intended to create a mutual and equitable servitude upon each of said lots in favor of each other lot created on the aforesaid property and to create reciprocal rights and obligations between the respective owners of all of the lots so created and to create a privity of contract and estate between the grantees of said lots, their heirs, successors and assigns, and shall, as to the owners of each lot in the Subdivision, their heirs, successors and assigns, operate as covenants running with the land for the benefit of all other lots in the Subdivision.

COURTESY RECORDING

This document is being recorded solely as a courtesy and an accomodation to the parties named therein. LANDMARK TITLE COMPANY hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.

LTC #13270

BK 7159 PG 0634

2. PERSONS BOUND BY THESE RESTRICTIONS AND COVENANTS. All covenants and restrictions herein stated shall run with the land comprising the Subdivision, and all owners, purchasers or occupants thereof shall by acceptance of contracts or deeds be conclusively deemed to have consented and agreed with the present and future owners of said land and with his or their successors and assigns to conform to and observe the following covenants, restrictions and stipulations as to the use thereof and construction of residences and improvements thereon, for a period from the date hereof to January 1, 2025, at which time said covenants and restrictions shall be automatically extended for successive periods of 10 years, unless, by a vote of at least two-thirds (2/3) of the then owners of said lots, it is agreed to amend or release said covenants in whole or in part by an appropriate agreement in writing specifying the restrictions or covenants to be amended or released, and by filing said agreement with the office of the Salt Lake County Recorder.

3. LAND USE AND BUILDING TYPE. No lot shall be used except for residential and related purposes. No building shall be erected, altered, or permitted to remain on any lot other than one detached single-family dwelling and a private garage for not more than three (3) vehicles. The Architectural Control Committee (as described below) shall have power to further limit the number of stories and the height of structures for new construction on the lots in its sole and exclusive discretion, as described herein.

4. ARCHITECTURAL CONTROL COMMITTEE. An architectural control committee (hereinafter the "Architectural Control Committee" or "Committee"), consisting of three (3) members is hereby created. It is intended that Declarant shall control the Committee for so long as the Declarant owns any lots in the Subdivision. However, nothing herein shall preclude the Declarant from relinquishing control over the Association at an earlier date, at the Declarant's sole discretion. The Declarant may fill vacancies in the Committee and remove members thereof at its pleasure, so long as the Declarant owns any lots in the Subdivision. Declarant shall also have the right, at any time, at its sole discretion, to permit one or more of the members of the Committee to be elected by the vote of a majority of the lot owners. Any member of the Committee may resign from the Committee, at any time, upon at least thirty (30) days written notice to the other Committee members. When Declarant no longer owns any lots in the Subdivision, or at such earlier time as the Declarant may determine, the members of the Committee may be removed, replaced or elected by the majority vote of lot owners, at any meeting of the owners at which owners of at 51% of the lots in the Subdivision are present. The functions of the Committee shall be, in addition to the functions elsewhere in the Declaration set forth, to pass upon, approve or reject any plans or specifications for structures to be erected on lots in the Subdivision, to maintain the Buffer (as defined in Section 8, below), and to enforce the covenants and restrictions set forth herein, so that all structures shall conform to the restrictions and general plans of the Declarant, and of the Committee, for the improvement and development of the whole Subdivision. Nothing in this paragraph shall be construed as authorizing or empowering the Committee to change or waive any restrictions which are set forth in this Declaration except as herein specifically provided. The Committee may act by any two (2) of its members, and any authorization approval or power made by the Committee must be in writing signed by at least two (2) members.

5. ARCHITECTURAL CONTROL COMMITTEE MEMBERS. The initial members of the Committee shall be as follows:

Michael C. McGee 6925 Union Park Center Suite 525 Midvale, Utah 84047	Clinton R. Linschoten 6925 Union Park Center Suite 525 Midvale, Utah 84047	Russ Anderson 6925 Union Park Center Suite 525 Midvale, Utah 84047
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6. ARCHITECTURAL AND STRUCTURAL CONTROL.

a. Approval Required. For the purpose of further insuring the development of the Subdivision as a residential area of high standards, the owner or occupant of each lot, by acceptance of title thereto, or by taking possession thereof, covenants and agrees that no building, wall/fence in excess of six (6) feet, swimming pool, or other structure shall be placed upon said lot unless and until the plans and specifications and plot plan have been approved in writing by the Architectural Control Committee. Each such building, wall, fence, swimming pool, or other structure shall be placed on the lot only in accordance with the plans and specifications and plot plan so approved in writing by the Committee. No material alteration of the exterior appearance of any home or other structural improvement in the Subdivision shall be made without the Committee's written approval.

b. Plans and Specifications. In connection with said approval, complete plans and specifications of all proposed buildings, structures (including all concrete and masonry walls), and exterior alterations, together with detailed plans showing the proposed location of the same on the particular lot, shall be submitted to the Committee before construction or alteration is started, and such construction or alteration shall not be started until written approval thereof is given by the Committee. All plans and specifications for such approval must be submitted at least fourteen (14) business days prior to the proposed construction starting date.

c. Approval or Denial. As to all improvements, construction and alterations within the Subdivision, the Committee shall have the right to refuse to approve any design, plan or color for such improvements, construction or alterations, which is not suitable or desirable in the Committee's opinion, for any reason, aesthetic or otherwise, and in so passing upon such design, the Committee shall have the right to take into consideration the suitability of the proposed improvement, the material of which it is to be built and the exterior color scheme of the proposed improvement, the harmony thereof with the surroundings, the effect or impairment that such improvements will have on the view of surrounding building sites, and any and all facts which, in the Committee's opinion, shall affect the desirability or suitability of such proposed structure, improvements or alterations. The approval of the Committee of any plans or specifications submitted for approval as herein required shall not be deemed to be a waiver by the Committee of its right to object to any of the features or elements

embodied in such plans and specifications, if or when the same features or elements are embodied in the plans and specifications of any other improvements submitted for Committee approval.

7. ARCHITECTURAL PROCEDURE. The Committee's approval or disapproval shall be in writing. All decisions of the Committee shall be final, and neither the Declarant, the Committee nor their designated representatives shall be subject to any liability therefore. Any errors or omissions in the design of any building or landscaping, and any violations of county ordinances are the sole responsibility of the lot owners and/or their designer or architect. The Committee's review of plans shall in no way be construed as an independent review of the structural or mechanical adequacy of the proposed improvements, or with architectural soundness thereof, and neither the Declarant or the Committee shall have responsibility for a determination of such adequacy or soundness.

8. OPEN SPACE BUFFER. An open space buffer approximately ten (10) feet wide shall be created and maintained along the southern boundary of the Subdivision, between 3500 South Street and the Subdivision (the "Buffer"). Although the property comprising the Buffer is owned by Salt Lake County, the County has required that the Buffer be improved by the Declarant with landscaping, and that such landscaping be maintained by the owners of lots in the Subdivision. Accordingly, the Buffer shall be maintained under the direction and management of the Architectural Control Committee, from assessments paid by owners pursuant to Section 16, below. No structures of any kind shall be constructed in the Buffer, except that the Declarant shall have the right to erect one or more signs in the Buffer advertising the Subdivision and the lots therein for sale, and no changes shall be made to the landscaping, grading, adjoining walls or other features of the Buffer without the prior written consent of the Committee. The Committee shall have the right, at its discretion, to hire a professional management, maintenance, landscaping or similar company to perform the day-to-day tasks of maintaining the Buffer, and the costs and fees charged by such company shall be paid by the lot owners through their assessments pursuant to Section 16, below.

9. MOVING OF STRUCTURES. No structure of any kind shall be moved from any other place to the Subdivision without written approval of the Committee.

10. COMPLIANCE WITH ZONING ORDINANCES OF SALT LAKE COUNTY. All improvements in the Subdivision shall be placed and used upon the lots in accordance with the provisions of the applicable provisions of the Salt Lake County zoning ordinance, unless otherwise modified or restricted by the covenants herein.

11. TEMPORARY STRUCTURES. No trailer, tent, shack or other out-building shall be placed upon or used at any time within the Subdivision as a temporary or permanent residence.

12. NUISANCES AND RELATED MATTERS.

a. 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 neighborhood or the owners or occupants of any other lots in the Subdivision.

b. Pets. No barn, coop, shed, sty or building of any type shall be constructed for the purpose of housing pigs, cows, sheep, goats, horses, poultry, or livestock, and none of the foregoing shall be kept, maintained or permitted at any place within the limits of the Subdivision. A reasonable number of household pets will be permitted in accordance with Salt Lake County ordinances, so long as such pets do not constitute a nuisance for other residents of the Subdivision.

c. Storage. No campers, boats, boat-trailers, house-trailers, automobiles, trucks, motorhomes, horse or other trailers shall be stored in excess of five (5) days in driveways, on streets, or other areas in open view within the Subdivision. Any of the above vehicles, or any part thereof, not in actual use shall be stored or placed in a garage, behind a fence, or other walled-off or enclosed space. No commercial vehicle exceeding three quarters (3/4) of a ton shall be kept or stored upon any lot unless such vehicle is kept or stored in an enclosed garage when not in use. No commercial vehicle owned or in the possession or under the control of any resident or occupant in the Subdivision shall be parked overnight in any street within the Subdivision. "Commercial vehicle" for this purpose shall include, but not be limited to, any truck, pickup, van, bus, tractor, station wagon, taxi, automobile, or other vehicle used primarily for business or other commercial purposes as distinguished from vehicles used primarily for the transportation of persons other than for hire or other than for business or other commercial purpose.

d. Signs. Except for signs displayed by the developer during the construction and lot sales period, no signs, other than name plates, shall be displayed to the public view on any lot except one sign not exceeding four square feet advertising the sale or lease of a lot.

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

f. Rubbish. No rubbish shall be stored or allowed to accumulate anywhere in the Subdivision, except in sanitary containers. Rubbish shall include, but not be limited to bushes or weeds, household wastes, and automobiles, campers, trailers, boats, or parts thereof, which have been in a state of disrepair or unassembled for a period exceeding fourteen (14) days. Trash, garbage or other wastes shall be kept in sanitary containers, maintained in a clean and sanitary condition, and stored in garages screened by adequate planting or fencing so as to be concealed from view of neighboring lots and streets.

g. Transmitting and Receiving Equipment. No external radio, citizen's band, ham radio or any similar transmitting and/or receiving antennas or equipment shall be placed upon any structure or lot; provided, however, television and radio antennas or other electronic reception devices may be erected so long as they shall be completely erected, constructed and placed within the enclosed area of the dwelling or garage on the lot. Exceptions must first be approved in writing by the Architectural Control Committee. Any installation of a satellite reception dish on any lot shall be located so that it is obscured from view of the street and neighbors by fencing, plants or tasteful construction to obscure the dish.

13. EASEMENTS. Easements and rights of way are hereby reserved to the Declarant, its successors and assigns, in and over the real property subject to this Declaration for the erection, construction, maintenance and operation therein or thereon of drainage pipes or conduits and pipes, conduits, poles, wires and other means of conveying to and from lots in said tract, gas, electricity, power, water, telephone services, sewage and other things for convenience to the owners of lots in the Subdivision, including but not limited to, those shown on the Subdivision plat. No structures of any kind shall be erected over any of such easements except upon written permission of the Declarant, its successors or assigns. All purchasers of lots shall, by acceptance of contracts or deeds for every lot, thereby be conclusively deemed to have granted an easement to the Declarant to permit the Declarant take any and all actions necessary to develop the Subdivision, and to improve, market and sell all lots owned by the Declarant therein.

14. SET BACKS. No dwelling house or other structure shall be constructed or situated on any of said lots created except in conformity with the "set back" lines as established in each instance by the Architectural Control Committee or by law, and in conformity with any additional "set back" lines which may be fixed by the undersigned, its successors and assigns, on the recorded subdivision plat, contracts or deeds to any or all of the lots created on said property. Technical terms such as "set back" and all other such terms as used in this Declaration shall be defined, where possible, and shall have the meaning assigned by the Salt Lake County Zoning Ordinance or the Uniform Building Code, as applicable.

15. MANNER OF VOTING. In any matters where the owners are given the right to vote herein, each lot owner of record shall be entitled to one vote for each lot owned by him, provided, however, where there is more than one record owner of a lot, all of such owners must act unanimously in order to cast a vote for that lot.

16. ASSESSMENTS.

a. Agreement to Pay Assessments. Each owner of any lot in the Subdivision, by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Committee to pay to the Committee all assessments made by the Committee for the purposes

provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Section 16.

b. Annual Assessments. Prior to January 1, 1996 the costs of maintaining the Buffer shall be paid by Declarant. Thereafter, all such costs shall be paid by the lot owners in the Subdivision. Annual assessments to maintain, repair and replace the Buffer shall be computed and assessed against all lots in the Subdivision, beginning January 1, 1996. Such assessments shall be apportioned among, and assessed to, all lots and their owners, equally, with each lot being assessed an amount equal to the total assessments divided by the number of lots in the Subdivision.

c. Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following. On or before December 1 of each year the Committee shall prepare and furnish to each lot owner a budget for maintaining the Buffer during the upcoming year. The budget shall itemize the estimated expenses of such fiscal year and any deficit or surplus from the prior fiscal year.

d. Notice and Payment. The Committee shall notify each owner in writing as to the amount of the annual assessment against his or her lot on or before December 1 each year for the fiscal year beginning on January 1 next following. Each annual assessment shall be payable in a single installment on or before January 1 of each year, or on such other basis as the Committee shall determine. The Committee shall have the right to charge a late fee equal to five percent (5%) of any assessment not paid within 15 (15) days of the due date thereof. In addition, all unpaid installments of any annual assessment shall bear interest at the rate established by the Committee not to exceed eighteen percent (18%) per annum from fifteen (15) days after the date each such assessment became due until paid. The failure of the Committee to give timely notice of any annual budget or assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the owner in the manner provided in this Declaration.

e. Inadequate Funds. In the event that the funds collected from the owners as provided herein prove inadequate at any time for whatever reason, including nonpayment of any owner's assessment, the Committee may levy additional assessments by written notice to the owners.

f. Lien for Assessments. All sums assessed to owners of any lot within the Subdivision pursuant to the provisions of this Section 16, together with fees and interest thereon as provided herein, shall be secured by a lien on such lot in favor of the Committee, for the benefit of each other Owner. To evidence a lien for unpaid sums assessed pursuant to this Section 16, the Committee may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the owner of the lot and

a description of the lot. Such a notice shall be signed by a member of the Committee and may be recorded in the office of the County Recorder of Salt Lake County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by law. In any such foreclosure, the owner shall be required to pay the costs and expenses of such sale, and such amounts shall be secured by the lien being foreclosed. The owner shall also be required to pay to the Committee any assessments against the lot which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Committee shall have the right and power, on behalf of the Committee and the other owners in the Subdivision, to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject lot in the name of the Committee. For any nonjudicial foreclosure sale by exercise of the power of sale granted herein, the Committee shall designate a trustee, satisfying the qualifications set forth in Utah Code Ann. § 57-1-21, or any successor statute, who is hereby empowered to give the appropriate notices, conduct the foreclosure sale and issue a trustee's deed to the purchaser at any such sale.

g. Personal Obligation of Owner. The amount of all assessments against any lot shall be the personal obligation of the owner of such lot to the Committee. Suit to recover a money judgment for such personal obligation shall be maintainable by the Committee without foreclosing or waiving the lien securing the same. No owner may avoid or diminish any such personal obligation by sale or abandonment of his lot. In the event of any suit to recover a money judgment of unpaid assessments hereunder, the involved owner shall pay the costs and expenses incurred by the Committee in connection therewith, including reasonable attorneys' fees.

h. Personal Liability of Purchaser. The personal obligation of an owner to pay unpaid assessments against his lot as described in Section 16 shall not pass to successors in title unless assumed by them. However, a lien to secure unpaid assessments shall not be affected by the sale or transfer of the lot unless foreclosure by a first mortgagee is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent owner from paying further assessments.

17. ADDITIONAL COVENANTS.

a. Maintenance of Landscaping. All owners shall maintain their hedges, plants, shrubbery, trees, and lawns in a neat and trim condition at all times. Each lot owner shall plant and maintain grass or other approved vegetation in the public portion of property between the curb and gutter and sidewalk in front or to the side of his or her lot.

b. Fences and Walls. No fence or wall shall be erected, placed or altered on the front yard of any lot in the minimum building setback line, unless prior approval is given by the Architectural Control Committee. No wall or fence except a decorative

wood, stone or brick fence not exceeding six (6) feet in height measured from the adjoining ground surface inside the fence, may be erected or maintained on any lot without the approval of the Committee. Rear and side yard fencing designs finished by developer according to the County Planning Commission approval must be maintained by the lot owner after closing. Boundary planting along any lot lines, except trees with single trunks, shall not be permitted to grow higher than six (6) feet.

c. Change in Grade. The surface grade or elevation of the various lots in the Subdivision shall not be substantially altered or changed in any manner which would affect the relationship of such lot to other lots in the Subdivision, or which would result in materially obstructing the view from any other lot in the Subdivision.

d. Concrete Maintenance. Each lot owner shall at all times keep the curb and gutter and sidewalk in front of his lot in good condition, and shall repair any cracks or breaks in such concrete within a reasonable time after receiving notification to do so from the Committee.

e. Utilities. All electric, television, cable television, telephone and other utility line installments and connections from the property line of any lot to the residence or structures thereon shall be placed underground.

18. BREACH OF VIOLATION OF COVENANTS. In the event of a violation or breach or attempted violation or breach of any of these covenants, restrictions, limitations, conditions, or agreements by any person or concern claiming by, through or under Declarant, or by virtue of any judicial proceedings, Declarant or the owner of any Lot of residential site in the Subdivision, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent such violation or breach.

19. RECOVERY. In the event of the Declarant, Architectural Control Committee or any property owner in this subdivision are successful in prosecuting any violation of these restrictive covenants, he may recover, in addition to any other damages, costs, and expenses of the litigation, including reasonable attorneys fees from the party found to be in violation thereof.

20. EFFECT OF WAIVER OR BREACH OR FAILURE TO ENFORCE. Each and all of the covenants, conditions, restrictions and agreements contained herein shall be deemed and construed to be continuing, and the extinguishment of any right of re-entry or reversion for any breach shall not impair or affect any of the covenants, conditions, restrictions or agreements, so far as any future or other breach is concerned. It is understood and agreed by and between the parties hereto that no waiver of a breach of any of the covenants, conditions, restrictions, and agreements herein contained shall be construed to be a waiver of any other breach of the same, or other covenants, conditions, restrictions, and agreements; nor shall failure to enforce any one of such restrictions, either by forfeiture or otherwise, be construed as a waiver of any other restriction or condition.

21. SEVERABILITY. Invalidation of any one or any portion of any one of these covenants and restrictions by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this document on this _____ day of May 10, 1995.

KAUFMAN AND BROAD - UTAH, INC.,
a Utah corporation

Michael C. McGee
Michael C. McGee, President

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

The foregoing instrument was acknowledged before me this 10 day of may, 1995, by Michael C. McGee, the President of Kaufman and Broad - Utah, Inc., a California corporation.

Jennifer Beavers
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

