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NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
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BY: ZJN, DEPUTY - WI 16 P.

**DECLARATION OF
HOMEOWNERS ASSOCIATION
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
ELK RUN COTTAGES, P.U.D.,
A PLANNED UNIT DEVELOPMENT
MAGNA, UTAH**

This Declaration is made and executed this day 22nd of November, 1999, by Elk Run, L.L.C., a Utah limited liability company, for itself, its successors, grantees and assigns (hereinafter referred to as "Developer").

RECITALS

- A. Developer is the record owner of that certain tract of Property more particularly described in Article II of this Declaration. Developer desires to create on said Property a planned unit development.
- B. Developer desires to provide for preservation of the values and in said development and for the maintenance and snow removal of the Hammer Head roadways contained within the Cottages Phase 1 & 2 of the Elk Run Development. To this end and for benefit of the Property and of the Owners thereof, Developer desires to subject the Property described in Article II of this Declaration to the covenants, restrictions, easements, charges, and liens hereinafter set forth.
- C. Developer deems it desirable, for the efficient preservation of the values and amenities in the development, to create an entity which possesses the power to maintain and administer the maintenance of the hammer head roadways and covenants, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Developer has, in conjunction with recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a non-profit corporation, the ELK RUN COTTAGES P.U.D., PROPERTY OWNERS ASSOCIATION.

ASSOCIATION

ASSOCIATION. The Association is, or will be prior to the close of Buyer's escrow, incorporated as a Utah non-profit corporation. The sole purpose and reason for the formation and existence of the Association is to maintain and remove snow from the Hammer Head Road Ways in satisfaction of a condition imposed by the County for development of the project and to collect maintenance assessments from project homeowners to pay for the maintenance of the Hammer Head Roads.

By acquiring title to a Unit in the project, Buyer becomes a member of the Association and has one vote to cast at elections of the Association's Board of Directors ("Board") and at other meetings of the members of the Association in accordance with the development agreement and CCR's, and the Articles of Incorporation and Bylaws of the Association.

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Seller is permitted to appoint a majority of the five (5) positions on the Board until Seller sells seventy-five percent (75%) of the 93 lots which can be included in the Elk Run Cottages. Any positions on the Board not appointed by Seller will be filled by election of the project homeowners.

NOW, THEREFORE, for the foregoing purposes, Developer declares that the Property described in Article II to this Declaration is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants restrictions, easements, charges and liens here-in after set forth.

1. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated.

- 1.1 Declaration shall mean this Declaration of Covenants, Conditions, and Restrictions.
- 1.2 Plat shall mean the subdivision plat covering the Property, entitled "ELK RUN COTTAGES, P.U.D." executed and acknowledged by Developer on the day of July, 1999, prepared and certified by Gordon Casey, (a duly registered Utah Land Surveyor) and filed for record in the office of the County Recorder of Salt Lake County, Utah.
- 1.3 Property shall mean the entire tract of real property covered by the Cottages Plats, a description of which is set forth in Article II of this Declaration.
- 1.4 Lot shall mean any of the Ninety-Three (93) separately numbered and individually described parcels of land as shown on the plats.
- 1.5 Hammer Head Roadways shall mean that part of the Property which is not included within the Lots, but including roadways within or adjacent to the Lots' together with all improvements other than utility lines which are now or hereafter constructed or located thereon except for utility lines.
- 1.6 Residential Unit shall mean a structure or portion of a structure which is designed and intended for residential use, together with all improvements located on such Lot which are used in conjunction with such Residential Unit.
- 1.7 Owner shall mean the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.
- 1.8 Association shall mean the ELK RUN COTTAGES P.U.D. PROPERTY OWNERS ASSOCIATION, a Utah nonprofit corporation.
- 1.9 Member shall mean every person who holds membership in the Association.

2. PROPERTY DESCRIPTION

The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property situated in Salt Lake County, State of Utah:

PHASE I - COTTAGES

Beginning at a point N.89°35'44" W. 695.00 ft. along the section line and S.00°24'16"W. 33.00 ft. from the N 1/4 Corner Section 32, T. 1 S., R. 2 W., S.L.B. & M.; thence S.00°24'16"W. 7.00 ft.; thence S.89°35'44"E. 5.00 ft.; thence Southeasterly 31.42 ft. along the arc of a 20.00 ft. radius curve to the right (Note: long chord bears S.44°35'44"E. 28.28 ft. with a central angle of 90° 00'00"); thence S.00°24'16"W. 240.00 ft.; thence Southerly 268.04 ft. along the arc of a 355.00 ft. radius curve to the right (Note: long chord bears S.22°02'05"W. 261.72 ft. with a central angle of 43°15'38"); thence S.43°39'54"W. 75.39 ft.; thence Southerly 239.37 ft. along the arc of a 265.00 ft. radius curve to the left (Note: long chord bears S.17°47'17"W. 231.31 ft. with a central angle of 51°45'14"); thence Southwesterly 22.66 ft. along the arc of a 15.00 ft. radius curve to the right (Note: long chord bears S.35°10'47"W. 20.56 ft. with a central angle of 86°32'13"); thence S.11 33'06"E. 60.00 ft.; thence Easterly 80.99 ft. along the arc of a 670.00 ft. radius curve to the right (Note: long chord bears N.81°54'40"E. 80.94 ft. with a central angle of 6°55'33"); thence Easterly 31.79 ft. along the arc of a 230.00 ft. radius curve to the right (Note: long chord bears N.89 20'00"E. 31.76 ft. with a central angle of 7°55'07"); thence S.86°42'26"E. 152.31 ft.; thence Easterly 41.84 ft. along the arc of a 762.17 ft. radius curve to the left (Note: long chord bears S.88 °16'48"E. 41.83 ft. with a central angle of 3°08'43"); thence S.89°51'09"E. 174.00 ft.; thence N.00° 08'51"E. 856.84 ft.; thence N.89°35'44"W. 284.36 ft. to the point of beginning containing 6.829 acres, 35 lots.

ALSO:

Beginning at a point being N.89°35'44"W. 410.79 ft. along the section line and S.00°08'51"W. 829.84 ft. from the North 1/4 Corner Section 32, T. 1 S., R. 2 W., S.L.B. & M.; thence S.89° 51'09"E. 351.29 ft.; thence Northeasterly 31.42 ft. along the arc of a 20.00 ft. radius curve to the left to the west right of way of 8400 West Street (Note: long chord bears N.45°08'51"E. 28.28 ft. with a central angle of 90°00'00"); thence S.00°09'51"W. 106.00 ft. along said right of way; thence Northwesterly 31.42 ft. along the arc of a 20.00 ft. radius curve to the left (Note: long chord bears N.44°51'09"W. 28.28 ft. with a central angle of 90°00'00"); thence N.89°51'09"W. 115.50 ft.; thence N.87°33'43"W. 150.12 ft.; thence N.89°51'09"W. 115.50 ft.; thence N.87°33'43"W. 150.12 ft.; thence N.89°51'09"W. 85.78 ft.; thence N.00°08'51"W. 60.00 ft. to the point of beginning containing 0.544 acres.

PHASE II – COTTAGES

Phase II to become part of this agreement at the time Phase II is recorded. The boundary description will be included as an addendum to this agreement at that time.

Excluding all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent they are located outside the Lots included within the above-described tract.

Reserving unto Developer its employees, agents, and successors, however, such easements and rights of ingress and egress over, across, through, and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for the Developer, its employees, agents and successors (in a manner not inconsistent with the provisions of this Declaration) to engage in construction upon or to improve the Hammer Head Roadways with such structures and facilities (including, but not limited to parking areas, sidewalks, parking area and sidewalk lighting, and various landscaped areas) designed for the use and enjoyment of all the Members, as Developer may reasonably determine to be appropriate. If, pursuant to this reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its

terms, expire thirty (30) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

All of the foregoing is subject to all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all instruments of record which affect the above-described tract or any of record which affect the above-described tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record.

III. MEMBERSHIP AND VOTING RIGHTS

- 3.1 Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Neither the issuance nor the holding of shares of stock shall be necessary to evidence membership in the Association.
- 3.2 Voting Rights. The Association shall have the following described classes of voting membership:
- (a) Class A. Class A Members shall be all Owners other than the Developer until the Class B membership ceases, at which time the Developer shall become a Class A Member with respect to any Lot or Lots which the Developer may own at that time or from time to time. Class A Members shall be entitled to one (1) vote in each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one (1) Class A vote exist in any Lot.
 - (b) Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to six (6) votes for each Lot in which the Developer holds the interest required for membership in the Association. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:
 - (1) When the total number of votes held by all Class A Members equals the 75% of the 93 lots that are held by owners other than the Developer.
 - (2) The expiration of thirty (30) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

IV. PROPERTY RIGHTS IN HAMMER HEAD ROADWAYS

- 4.1 Easement of enjoyment. Each Member shall have a right and easement of use and enjoyment in and to the Hammer Heads. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any tenant, lessee, or contract purchaser who does business on such Members Lot.
- 4.2 Transfer of Title. Developer agrees that it shall, at or prior to the time the Class B membership is converted to Class A membership, convey to the Association title to the Hammer Head Roadways free and clear of all liens (other than the lien of any assessments, or for easements or rights of way reserved to the Developer or otherwise enforceable in law or equity).

- 4.3 Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Hammer Heads shall be subject to the following:
- (a) The right of Salt Lake County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, and providing any other governmental or municipal service;
 - (b) The right of the Association to dedicate or transfer all or any part of the Hammer Heads to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership in which Members are present in person or by proxy and are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10), but not more than thirty (30), days prior to the meeting date.
 - (c) The right to the Developer, prior to conveyance of the Hammer Head Roadways to the Association, and after said conveyance, the right of the Association to grant and reserve easements and right-of-way through, under, over and across the Hammer Head Roadways, for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone and other utilities.
- 4.4 Utility Easement. The Developer for itself and its successors and assigns, including but not limited to the Association, hereby grants easements over, under, in, on and through the Hammer Head Roadways for the installation, construction, reconstruction, relocation, removal, maintenance, repair, operation and inspection of sewer, water, drainage, electric, gas and telephone facilities and wires, lines, cables, conduits, pipes and other necessary and proper attachments therewith, for the benefit of the Property or any part thereof, to the Developer, the Association, any federal, state or local authority, commission or agency having jurisdiction there over and any corporation, be it public, quasi-public or private, supplying or servicing such facilities.
- 4.5 Form for Conveyance. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows: Lot Numbers contained within the ELK RUN COTTAGES, P.U.D., as the same is identified in the Plat recorded in the office of the County Recorder of Salt Lake County, Utah, and in the "Declaration of Covenants, Conditions, and Restrictions of the ELK RUN COTTAGES, P.U.D." recorded in the office of the County Recorder of Salt Lake County, Utah. TOGETHER WITH a right and easement of use and enjoyment in and to the Hammer Heads described, and as provided for, in said Declaration of Covenants, Conditions, and Restrictions. Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall insure to the benefit of any party who acquires any interest in a Lot.

V. ASSESSMENTS

- 5.1 Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the

Association the monthly and the special assessments described in this Article, together with all other fines, penalties, interest and costs of collection as described in this agreement. All such amounts shall be, constitute, and remain: (i) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (ii) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Hammer Head Roadways or by abandonment of his Lot.

- 5.2 Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of the Hammer Head Road Maintenance and Snow Removal. The use made by the Association of funds obtained from Assessments may include payment of the cost of: taxes, if any, and insurance on the Hammer Head Roads. Improvements of the Hammer Head Roads; management and supervision of the Hammer Head Roads; establishing and funding a reserve to cover major repair or replacement of improvements within the Hammer Head Roads; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.
- 5.3 Maximum Monthly Assessment. As of the date set under Section 5.7, each Lot shall be subject to a monthly assessment of not more than one-ninety-third (1/93) of the yearly assessment rate. From and after January 1, 2001, the maximum monthly assessment may be increased or decreased so long as the change is assented to by sixty percent (60%) of the votes of each class of membership which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10), but not more than thirty (30), days prior to the meeting date. The Board of Directors of the Association may from time to time and in its discretion set the amount of the monthly assessment at any sum not in excess of the then applicable maximum amount.
- 5.4 Special Assessments. From and after the date set under Section 5.7, the Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (ii) the cost of any construction, reconstruction, or unexpectedly required repair or replacement of an improvement or of personal property upon the Hammer Head Roadways. Any such special assessment must be assented to by fifty-one percent (51%) of the votes of each class of membership which Members present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10), but not more than thirty (30) days prior to the meeting date.
- 5.5 Quorum Requirements. The quorum required for any action authorized by Section 5.3 or Section 5.4 above shall be as follows: At the first meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all the votes of each class of membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in Section 5.3) at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.
- 5.6 Uniform Rate of Assessment. Both monthly and special assessments shall be divided at a uniform rate. All assessments shall be allocated among the Owners based on one-ninety-third (1/93) of the costs.

- 5.7 Monthly Assessment Due Dates. The first monthly and special assessments provided for herein shall commence and be paid to the Association at the Title Company at the closing of the property by the owner. The Association must give owner at least fifteen (15) days prior to the effective date of any change in amount of the monthly assessment, the Association shall give each Owner written notice of the amount and first due date of the assessed changes.
- 5.8 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot, the Association shall issue a certificate stating whether or, not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.
- 5.9 Effect of Non-payment -- Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute and remain a continuing lien on the Lot. The person who is the Owner of the Lot at the time the assessment falls due shall be and remain personally liable for payment. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorney's fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.
- 5.10 Exception for Developer. Notwithstanding anything to the contrary contained in this Declaration, if at the time specified in Section 5.7 for the commencement of monthly assessments the Developer retains title to any Lot, the rate of all assessments made upon such Lot under the provisions of Section 5.3 shall be one-half (1/2) the amount specified therein and the rate of any assessment made upon such Lot under the provisions of Section 5.4 shall be one-half (1/2) of the amount charged to other Owners thereunder. The terms of this Section 5.10 shall continue in operation and effect as to any Lot retained by the Developer until either (i) the Developer sells, leases, or otherwise conveys any interest in such Lot, or (ii) the expiration of one (1) year from the date upon which the Developer conveys the Hammer Head Roads to the Association, whichever shall first occur.

VI. OPERATION AND MAINTENANCE

- 6.1 Responsibility to Rebuild or Repair. Because the physical condition of each Residential Unit effects the value of every other Residential Unit, the Owner of each Unit shall maintain its Residential Unit in such a manner that it shall have the continued capacity to be used as a Residential Unit, and thus benefit the other Residential Units. The Owner shall not cause or permit to occur any damage, loss or injury to the Owners of the benefited Residential Units or their tenants by or as a result of any act of negligence or any willfull, wanton or reckless act on its part or on the part of its tenant with respect to the Owner's Residential Unit. Should any Residential Unit be damaged or destroyed by fire, flood, wind, snow or any other cause of whatever nature, the Owner shall cause the Residential Unit upon the Lot owned by him to be repaired or rebuilt. Such repair or rebuilding shall commence not later than ninety (90) days after the occurrence of the damage or destruction and shall be completed not later than one (1) year after such occurrence.

- 6.2 Liability for Physical Damage. Notwithstanding anything to the contrary contained in this Article VI, the Owner in the course of building, rebuilding, repairing, maintaining or otherwise working or causing work to be done upon his Lot shall be liable to the Owners of any adjacent Lots or to the Association with respect to the Hammer Head Roads for any physical damage to any other Lot or Residential Unit and for any physical damage to any Hammer Head Road. The Owner shall cause any such damage to be repaired and the Lot, Residential Unit or Hammer Head Road affected to be placed in the same state or condition that it was in prior to said damage. All such repairs shall be subject to the approval of the Board of Directors of the Association.
- 6.3 Maintenance of Residential Units. Each Residential Unit shall be maintained by the Owner there of at his own cost and expense so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Residential Units. The Association shall have no obligation regarding maintenance of landscape or care of Residential Units.
- 6.4 Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Hammer Heads as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive, and generally in good condition and repair.
- 6.5 Liability of Owner During Construction. The Owner, in the course of building, shall not be liable to the Owners of adjacent Lots affected by such work for any inconvenience, annoyance, disturbance or loss of business to the Owner effected by the performance of such work (or his tenants) arising out of or during the performance of such work (unless occasioned by the negligence of the Owner of the improvement with respect to which the work in question was being performed or its agents); but the Owner of the Lot or Residential Unit with respect to which such work is being performed shall make all reasonable efforts to keep any such inconvenience, annoyance, disturbance, or loss of business to the minimum reasonably required by the work in question.

VII. INSURANCE

The Association shall secure and at all times maintain the following insurance coverage:

- (i) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Hammer Head Roadways. The name of the insured under each such policy shall be in form and substance similar to: "Elk Run Cottages, P.U.D. Property Owners' Association for the use and benefit of the individual Lot Owners and mortgagees, as their interests may appear."
- (ii) A policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Hammer Head Roadways which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$1,000,000.00 for any one person injured, \$1,000,000.00 for all persons injured in any one accident, and \$100,000.00 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not, prejudiced.

- (iii) A policy of workmen's compensation insurance, which meets the requirements of the law; provided, however, that such insurance coverage shall not be required unless the Association hires an employee or employees.
- (iv) A policy of fidelity insurance covering those employees hired by the Association to handle Association funds, in amounts as determined by the Board of Directors of the Association.
- (v) Proof of insurance (liability and workmen's compensation) shall be required from all sub-contractors hired by the Association.

The following additional provisions shall apply with respect to insurance:

- (a) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction' nature, and use.
- (b) All policies shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best's Insurance Reports of Class X or better.
- (c) The Association shall have the authority to adjust losses.
- (d) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.
- (e) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: (i) A waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employee invitees, and tenants; (ii) That it cannot be canceled, suspended, or invalidated due to the conduct of any particular Owner or Owners; (iii) That it cannot be canceled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent, or employee of the Association without a prior written demand that the defect be cured; and (iv) That any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

In addition to coverage obtained by the Association, Owners of individual Lots shall obtain policies of fire and casualty insurance and a policy or policies covering their agents and employees against liability incident to the ownership of their separate lots and improvements thereon. These policies shall contain all the provisions set forth above where possible.

VIII. USE RESTRICTIONS

- 8.1 Use of Common Areas. The Common Areas shall be used only in a manner consistent with the planned unit residential concept and with the use restrictions applicable to Lots and Residential Units.
- 8.2 Use of Lots and Residential Units. All Lots are intended to be improved with Residential Units and are restricted to such use. No Lot or Residential Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Residential Unit, so as to create a nuisance or interfere with the rights of any Owner, or in a way which

would result in an increase in the cost of any insurance covering the Hammer Head Roads.

- 8.3 **Non-harmonious Use.** No use or operation will be made, conducted or permitted on any Lot, or any portion of a Lot, which is obnoxious to or out of harmony with the residential use of all property in the Elk Run Cottages, P.U.D. Prohibited activities include, but are not limited to, the following: any public or private nuisance; any noise or sound that is objectionable due to its intermittent character, beat, frequency, shrillness or loudness; any obnoxious odor; any noxious, toxic, caustic or corrosive fuel or gas; any dust, dirt or fly ash in excessive quantities; any unusual fire explosion or other damaging or dangerous hazards; any assembly, manufacture or distillation operation; and the raising of animals except as generally permitted in residential developments in Salt Lake County, Utah.
- 8.4 **Recreational Vehicles.** No snow mobile, recreational equipment, trailer, camper, boat or truck larger than one (1) ton or any other similar equipment shall be permitted to remain upon any Lot, or any portion of a Lot, for more than a 24-hour period unless written approval is granted by the Association. The Association may levy a fine for any violation of this paragraph 8.4 of up to Fifty Dollars (\$50.00) for each day the violation continues.
- 8.5 **On Street Parking.** On street parking is intended for temporary visitors only. No motor vehicle, boat, recreational equipment, or any similar item may be parked, stored or left on or next to the streets in and around the Property for more than a six (6) hour period unless written approval is granted by the Association. The Association may levy a fine for any violation of this paragraph 8.5 of up to Fifty Dollars (\$50.00) for each day the violation continues.
- 8.6 **Garages Required.** Each home within the Elk Run Cottages P.U.D. shall have at minimum one, two-car garage.
- 8.7 **Use of Garage.** Any garage constructed on a Lot is intended for the parking of motor vehicles. Although incidental storage in a garage otherwise used for the parking of motor vehicles is permitted, no garage may be used for storage to such an extent or in such manner that the storage prohibits or otherwise interferes with its primary use in the parking of motor vehicles. The Association may from time to time prescribe detailed rules regarding the use of garage space for storage. The Association may levy a fine for any violation of this paragraph 8.6 or the rules issued by the Association of up to Fifty Dollars (\$50.00) for each day the violation continues.
- 8.8 **Height Limitation.** No dwelling shall exceed the height limitation for the Zone of Salt Lake County as specified at the time of recordation of the Elk Run Cottages final plat.
- 8.9 **Dwelling Size.** The minimum dwelling sizes shall be as follows: (40%) 900 sq. ft. of finished floor area for ramblers and 1,000 sq. ft. (60%) of finished floor area for multi-level and two-story homes.
- 8.10 **Landscaping.** Fully landscaped front yards shall be installed prior to occupancy of each home. For homes completed during winter months, a landscape agreement with the builder and developer must be completed prior to occupancy to assure landscape completion. Each home shall include one tree in the front yard. Deciduous trees shall be at least 1-1/2 inches in caliper and coniferous trees shall be a minimum height of five (5) to six (6) feet.
- 8.11 **Fencing of individual lots** shall be restricted to the rear yard only. Fencing within side yard space as defined by Salt Lake County Regulations shall be complied too. Fencing

material shall be white vinyl, 20-year no maintenance and shall be, six (6) feet in total height.

- 8.12 Temporary Structures and Equipment. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out building shall be used on any Lot at any time as a Residential Unit, either temporarily or permanently unless approved in writing by the Association. No trailer, camper, boat, truck larger than one (1) ton, or similar equipment shall be permitted to remain upon any Lot, unless written approval is given by the Association; provided, however, that this sentence shall not apply to any Lot during the construction of a Residential Unit thereon, except as to any camper or boat.
- 8.13 Electronic Antennas. No television, radio or other electronic antenna shall be erected, constructed, placed or permitted to remain on any of the Lots unless and until the same shall have been approved in writing by the Association; (Antennas should be placed inside attic spaces). The approval shall not be withheld unreasonably.
- 8.14 Exception for Developer. Notwithstanding the restrictions contained in this Article VIII, for the five (5) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Developer shall have the right to use any Residential Unit owned by it, and any part of the Hammer Head Roads reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvements of the Hammer Head Roads or improvement and/or sale of all Lots owned by Developer / Builder.

IX. ARCHITECTURAL CONTROL

- 9.1 Architectural Control Committee. The Board of Directors of the Association shall serve as the Architectural Control Committee, the function of which shall be to insure that all improvements and landscaping within the Property harmonize with the existing surroundings and structures. (The initial Architectural Control Committee shall be 2 members of Elk Run Development Stephen E. Howcroft, Cory J. Gust & a mutually agreed Architect.) These persons shall serve on this committee until the association is turned over to the homeowners as outlined in the agreement at which time the Association shall then become the Architectural Control Committee.
- 9.2 Submission to Committee. No Residential Unit, accessory or addition to a Residential Unit, landscaping, sign or other improvement of a Lot shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Residential Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee, whose judgment shall be final in all cases.
- 9.3 Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures.
- 9.4 Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period, it shall be deemed to have approved the material submitted.

- 9.5 Building Materials. All Residential Units shall have masonry front elevations. Masonry shall consist of brick, stone, or stucco in any combination so as to comprise the building material for the complete front elevation. Side and rear elevations shall be masonry or siding. All siding must be approved by the Architectural Control Committee.
- 9.6 No Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article IX.
- 9.7 Exception for Developer. The foregoing provisions of this Article X shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Developer on any Lot or on any part of the Hammer Head Roads and which occurs at any time during the twenty (20) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.
- 9.8 Swamp Coolers. Swamp Coolers or any other rooftop units are not permitted in the cottages. Central Air conditioning is permitted for cooling which must be located at ground level outside the structure.

X. MISCELLANEOUS

- 10.1 Notices. Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as a Member or Owner, at the latest address for such person appearing, in the records of the Association at the time of mailing.
- 10.2 Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners.
- 10.3 Amendment. Any amendment to this Declaration shall require: (i) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes which members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and, so long as the Class B membership exists, (ii) the written consent of Developer. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all members at least ten (10), but not more than thirty (30), days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast fifty percent (51%) of all the votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 12.3) at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association (and by the Developer if the Class B membership then exists).
- 10.4 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction, the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by

obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership concerned.

- 10.5 Mortgage Protection. In the event an Owner neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage (or trust deed) covering such Owner's Lot.
- 10.6 Failure of Residents to Elect a Board. In the event that the residents fail to appoint and maintain a Board for any period longer than thirty (30) days, after they have been given control as outlined in this agreement to administer the homeowners association, any one (1) resident, or the developer still has the right to turn the management of the association to a third party in the form of a management company. The Management Company will then be the administrator of the association and enforce this agreement and charge the market rate for the services for management. (Homeowners should be aware that this would mean a significant increase in monthly fees.)

The lien for unpaid assessments provided for under Article V shall be subordinate to any first mortgage (or trust deed) affecting a Lot, but only to the extent of assessments which become due prior to foreclosure of the mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure.

Unless all holders of first mortgages (or trust deeds) on the individual Lots have given their prior written approval, neither the Association nor any other party shall be entitled to:

- (a) Alter the provisions of Section 5.6 (pertaining to uniform rate of assessment);
- (b) Partition or subdivide any Lot or the Hammer Head Roads or dedicate or transfer (pursuant to Section 4.3 (c)) all or any part of the Hammer Head Roads; or
- (c) By act or omission seek to abandon or materially alter the arrangement which is established by this Declaration.

- 10.7 Developer's Rights Assignable. The rights of Developer under this Declaration or in any way relating to the Property may be assigned.
- 10.8 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. This Declaration shall be liberally construed to effect all of its purposes.
- 10.9 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitude, as the case may be, and shall be binding upon and shall inure to the benefit of Developer, all parties who hereafter acquire any interest in a Lot or in the Common Areas, and their respective grantees, transferees, heirs, devisees' personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Residential Unit shall comply with, and all interests in all Lots or in the Hammer Head Roads shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations

contemplated by this Declaration. By acquiring any interest in a Lot or in the Hammer Head Roads, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

10.10 Effective Date. This Declaration and any amendment hereof shall take affect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

10.11 Street Lighting. Any lot designated by the developer, which requires street lighting, shall be wired to the closest residential unit. That unit shall be responsible for paying electricity cost. Maintenance of the bulbs and fixtures will be the responsibility of Salt Lake County.

EXECUTED the day and year first above written.

"DEVELOPER"
Elk Run Development, LLC

By Don Parker Pres
Don Parker, Member- Pres
NuTeam Inc Member

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

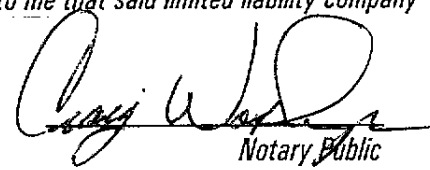
On this 2nd day of February, 2000, personally appeared before me Don Parker, who having been first duly sworn, deposed and said that he is a member of Elk Run Development, LLC and has executed the foregoing document on behalf of said limited liability company.

NOTARY PUBLIC
Residing at: _____

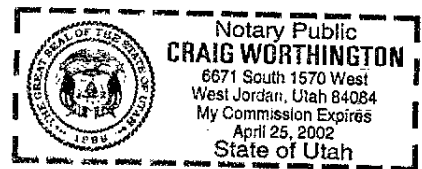
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State of Utah)
County of Salt Lake) ss.

On the 2ND day of FEBRUARY, 2000 A.D., personally appeared before me DON PARKER, who being by me duly sworn, did say, for himself, that he, the said DON PARKER is the member of NU TEAM, INC., who is the Managing Member of EILK RUN DEVELOPMENT L.C. and that the within and foregoing instrument was signed in behalf of said limited liability company by authority of its by-laws and a resolution of its board of directors and said DON PARKER duly acknowledged to me that said limited liability company executed the same.


Notary Public

My Commission Expires: 4-25-02 Residing In: WEST JORDAN, UTAH



BK8340P64237

EXHIBIT "A"

Beginning at a point North 89°35'44" West 695.00 feet along the Section Line and South 00°24'16" West 33.00 feet from the North Quarter corner of Section 32, Township 1 South, Range 2 West, Salt Lake Base and Meridian; thence South 00°24'16" West 7.00 feet; thence South 89°35'44" East 5.00 feet; thence Southeasterly 31.42 feet along the arc of a 20.00 foot radius curve to the right (Note: long chord bears South 44°35'44" East 28.28 feet with a central angle of 90°00'00"); thence South 00°24'16" West 240.00 feet; thence Southerly 268.04 feet along the arc of a 355.00 foot radius curve to the right (Note: long chord bears South 22°02'05" West 261.72 feet with a central angle of 43°15'38"); thence South 43°39'54" West 75.39 feet; thence Southerly 239.37 feet along the arc of a 265.00 foot radius curve to the left (Note: long chord bears South 17°47'17" West 231.31 feet with a central angle of 51°45'14"); thence Southwesterly 22.66 feet along the arc of a 15.00 foot radius curve to the right (Note: long chord bears South 35°10'47" West 20.56 feet with a central angle of 86°32'13"); thence South 11°33'06" East 60.00 feet; thence Easterly 136.81 feet along the arc of a 670.00 foot radius curve to the right (Note: long chord bears North 84°17'52" East 136.57 feet with a central angle of 11°41'57"); thence Easterly 91.48 feet along the arc of a 2020.00 foot radius curve to the right (Note: long chord bears South 88°33'18" East 91.48 feet with a central angle of 2°35'41"); thence South 87°15'28" East 158.45 feet; thence Easterly 94.20 feet along the arc of a 2080.00 foot radius curve to the left (Note: South 88°33'18" East 94.19 feet with a central angle of 2°35'41"); thence North 00°08'51" East 856.84 feet; thence North 89°35'44" West 284.36 feet to the point of beginning.

ALSO:

Beginning at a point being North 89°35'44" West 410.79 feet along the Section line and South 00°08'51" West 829.84 feet from the North Quarter corner of Section 32, Township 1 South, Range 2 West, Salt Lake Base and Meridian; thence South 89°51'09" East 351.29 feet; thence Northeasterly 31.42 feet along the arc of a 20.00 foot radius curve to the left to the West right-of-way of 8400 West Street (Note: long chord bears North 45°08'51" East 28.28 feet with a central angle of 90°00'00"); thence South 00°08'51" West 106.00 feet along said right-of-way; thence Northwesterly 31.42 feet along the arc of a 20.00 foot radius curve to the left (Note: long chord bears North 44°51'09" West 28.28 feet with a central angle of 90°00'00"); thence North 89°51'09" West 115.50 feet; thence North 87°33'43" West 150.12 feet; thence North 89°51'09" West 85.78 feet; thence North 00°08'51" East 60.00 feet to the point of beginning.

ALSO KNOWN AS THE COTTAGES AT ELK RUN, A P.U.D.

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