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DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

OF

VILLANDRIE PLANNED UNIT DEVELOPMENT

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# BK8513P61519

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF VILLANDRIE PLANNED UNIT DEVELOPMENT

THIS DECLARATION is made and executed this day of October, 2001, by KHC, LLC, a Utah limited liability company (hereinafter referred to as "Declarant").

### RECITALS

- A. Declarant is the record owner of that certain tract of property more particularly described in Article II of this Declaration.
- B. Declarant desires to provide for the preservation of the value and amenities of the Property and for the maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Article II of this Declaration and the various Lots now or hereafter contained within said Property to the covenants, conditions and restrictions, easements, charges, assessments, obligation, and liens hereinafter set forth.
- C. Declarant deems it desirable for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, 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 Declarant has caused to be incorporated under the laws of the State of Utah, a nonprofit corporation, Villandrie Homeowners= Association, Inc.

NOW THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property described in Article II hereof shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, restrictions, easements, charges, assessments, obligations, and liens hereinafter set forth.

### I. DEFINITIONS

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

- 1. Association shall mean and refer to the Villandrie Homeowners= Association, Inc. a Utah nonprofit corporation.
- 2. Board of Trustees shall mean and refer to the governing board of the Association which constitutes the management committee appointed or elected in accordance with the Declaration and in accordance with the Articles of Incorporation and Bylaws of the Villandrie Homeowners= Association, Inc.
- 3. Common Areas shall mean and refer to all portions of the Project except the Lots and all improvements thereon. The Common Areas are designated as parcels A, B, and C, on the Plat.
- 4. Declarant shall mean and refer to KHC, LLC, a Utah limited liability company, and any successor or assign who comes to stand in the same relationship to the Project as its predecessor.
- 5. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Villandrie Planned Unit Development.
- 6. Dwelling Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence.
- 7. Lot shall mean and refer to any of the separately numbered and individually described plots of land described on the Plat: (a) which is intended to be owned individually, rather than by an association of Owners or in common by Owners of different Lots; and (b) which is intended to be used as the site of a single Dwelling Unit.
- 8. Mortgagee shall mean any person named as a mortgagee or beneficiary under or holder of a deed of trust by which a Lot is encumbered.
- 9. Owner shall mean and refer to the person or persons, including the Declarant, owning in fee simple a Lot in the Project, as such ownership is shown by the records of the County Recorder of Salt Lake County, State of Utah. Notwithstanding any applicable theory relating to a mortgage, deed of trust or like instrument, the term "Owner" shall not mean or include a mortagee 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.
- 10. Plat shall mean and refer to the final subdivision plat for AVillandrie P.U.D. and Amending Lot 13 of Towncrest Terrace,@ dated October 12, 2000 and filed for record in the office of the County Recorder of Salt Lake County, State of Utah, as Entry No. 774425, Book 2000 P, Pages 291, and any amendments thereto hereafter recorded in the office of the County Recorder of Salt Lake County, State of Utah.

- 11. Project shall mean and refer to the Property and all improvements thereon which are subject to this Declaration and the Plat.
- 12. Property shall mean and refer to all of the real property which is covered by the Plat, as more particularly described in Article II hereof.
- 13. Total Votes of the Association shall mean and refer to the total number of votes appertaining to all Lots in the Project, as shown on the Plat.

### II. DESCRIPTION

Beginning at a point N89157'24" W 1388.620 feet along the Section line and SOUTH 926.499 feet from the North Quarter Corner of Section 27, Township 2 South, Range 1 East, Salt Lake Base & Meridian, said point also being the Northwest corner of Lot 11 of Towncrest Terrace Subdivision, a Subdivision recorded in the Office of Salt Lake Recorder, Utah, Entry No.1593456, Book S, Page 69; and running thence SOUTH along said Sub-Boundary 154.400 feet to the Northwest corner of Lot 13 said Subdivision; thence EAST 103.630 feet to the Northeast corner of said Lot 13; thence SOUTH 27.150 feet to a point around a 60.210 foot radius curve to the right, through a central angle of 28119'45"; an arc distance of 29.770 feet, a chord bearing of S 14109'52" W 29.468 feet, thence to a point around a 65.000 foot radius curve to the left, through a central angle of 26118'10", an arc distance of 29.840 feet, a chord bearing of S 15110'40" W 29.578 feet to the Southeast corner of said Lot 13; thence N 87158'00" W 88.731 feet; thence SOUTH 155.450 feet to the North line of Somerset Estates Sub. Plat "A"; thence S 89155'01" W 216.904 feet along said North Sub. Boundary to Pondoray Park NR.2 Sub.; thence N 00118'40" W 329.521 feet; thence EAST 137.193 feet; thence NORTH 61.769 feet, thence EAST 81.500 feet to the point of beginning. Containing 10 Lots, 3 Parcel, 84,994.08 square feet or 1.9500 Acres.

### III. THE ASSOCIATION

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

membership in the Association and all rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.

- 2. Voting Rights . The Association shall have the following described two classes of voting membership:
- Class A. Class A Members shall be all Owners, including the Declarant. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.
- Class B. The Class B Member shall be the Declarant. Declarant as the Class B Member, shall have the right to control the Association to the extent of having the exclusive right (either directly or through a person designated by the Declarant) to elect, appoint and remove the Trustees of the Board and the officers of the Association until the Transition Date (as hereinafter defined). The special control rights of the Declarant, as the Class B Member, shall cease and terminate upon the earlier of the following (the "Transition Date"):
- (a) the date ninety (90) days after the conveyance by Declarant of seventy percent (70%) or more of the Lots created by the Declaration to Owners other than Declarant;
- (b) the date ninety (90) days after Declarant relinquishes Class B membership rights by giving written notice to the Association and all Owners.
- 3. Board of Trustees. The Board of Trustees, acting on behalf of the Association, shall administer and enforce the terms and provisions of this Declaration. In addition, the Board of Trustees, acting on behalf of the Association and subject to the obligations and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon and shall keep the same in good, clean, attractive, safe and sanitary condition, order and repair.
- 4. Rules and Regulations . The Board of Trustees, acting on behalf of the Association, may make reasonable rules and regulations governing the use of the Dwelling Units, the Lots, the Common Areas and all parts of the Project, which rules and regulations shall be consistent with the rights and duties established by this Declaration, the Articles and the Bylaws. The Board of Trustees, acting on behalf of the Association, may take judicial action against any Owner or occupant to enforce compliance with such rules and regulations or other obligations of such Owner or occupant arising hereunder, or to obtain damages for noncompliance therewith, as permitted by Law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys= fees, from the offending Owner or occupant.

- 5. Granting Easements . The Board of Trustees may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, easements, licenses and rights-of-way over, under, across and through the Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.
- 6. Power of Attorney and Amendments. Each Owner makes, constitutes and appoints the Association his true and lawful agent in his name, place and stead to make, execute, sign, acknowledge and file with respect to the Project such amendments to this Declaration and the Plat as may be required by law or by vote taken pursuant to the provisions of the Declaration.

### IV. ASSESSMENTS

- 1. Agreement to Pay Assessments . The Declarant, for each Lot owned by it within the Project, and for and as the owner of the Project and every part thereof, hereby covenants and each Owner of any Lot by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected form time to tie as provided in this Article.
- 2. Purpose of Assessments . Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include, but is not limited to, payment of the cost of taxes and insurance on the Common Areas; maintenance, repair and improvement of the Common Areas; operation of the heating system for streets and sidewalks; management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration, the Articles of Incorporation and the Bylaws.
- 3. Annual Assessment s. The Board of Trustees shall, on behalf of the Association, assess against each Lot in the Project an Annual Assessment. Annual Assessments shall be based upon advance estimates of the Association=s cash requirements to provide for payment of all estimated expenses arising out of or connected with the performance of its obligations, functions and purposes.

Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided that the first fiscal year shall begin on the date this Declaration is recorded, and, on or before December 1 of each year thereafter, the Board of Trustees shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus form the prior operating periods. The

budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year.

Except with respect to the first fiscal year, the Board of Trustees shall notify each Owner as to the amount of the Annual Assessment against his 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 twelve equal monthly installments due on the first day of each calendar month commencing January 1 of the fiscal year for which such assessment is due. For the fiscal year commencing January 1, 2001, the Annual Assessment shall be \$1,800.00 per year.

The monthly assessments provided for herein shall commence as to each Lot on the first day of the calendar month following the earliest of the following: (i) the date a deed is delivered to the purchaser of a Lot or, if the sale is by way of a contract of sale, the date the contract is executed by the parties thereto, (ii) the date of occupancy under an occupancy agreement, or (iii) the date the Owner actually takes possession of a Lot.

All unpaid portions of any Annual Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

- 4. Special Assessments . In addition to the Annual Assessments authorized by this Article, the Board of Trustees may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote, in person or by proxy, of at least sixty percent (60%) of the Total Votes of the Association, Special Assessments, payable over such period as the Board of Trustees may determine, for the purpose of defraying, in whole or in part, (a) any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments, (b) the cost of any construction, reconstruction or unexpectedly required repair or replacement in connection with the Common Areas, and (c) any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). The Board of Trustees shall give notice in writing of each such Special Assessment and the time for payment thereof to each Owner; no payment shall be due less than 15 days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.
- 5. Uniform Rate of Assessment . Both Annual and Special Assessments shall be fixed at a uniform rate for all Lots. Declarant, for each unsold Lot owned by it in the Project, shall pay both Annual and Special Assessments as herein provided.
- 6. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and to ensure that the Association will have cash available to meet unforeseen expenditures. The reserve fund shall be maintained out of regular assessments for Common Expenses.

- 7. 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. The Association may charge a reasonable fee for issuing such a certificate.
- 8. Nonpayment of Assessments; 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 with the Association and with the other Owners to pay to the Association the Annual and Special Assessments described in this Article, together with the interest and costs of collection provided herein. All such amounts shall (a) be, constitute, and remain the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due; (b) be secured by a charge and continuing lien upon the Lot in favor of the Association with respect to which such assessment is made. Suit to recover a money judgment for an Owner=s personal obligation may be maintained by the Association without foreclosing or waiving the lien securing the same. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys= fees. If there is a delinquency in payment of an assessment, the Board of Trustees may prepare a record a written notice of lien and record the same in the office of the County Recorder of Salt Lake Country, State of Utah. 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 foreclosure in 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 proceeding, including reasonable attorneys= fees, and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any 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.
- 9. Tax Collection by County Authorized. It is recognized that under the Declaration the Association will own the Common Areas and that it may be obligated to pay property taxes to Salt Lake County, State of Utah. Each Owner of a Lot as a member of the Association will be required to reimburse the Association for his pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Salt Lake County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.
- 10. Amendment of Article. This Article may be amended only upon the affirmative vote, in person or by proxy, of at least sixty percent (60%) of the Total Votes of the Association.

V. OPERATION AND MAINTENANCE

- 1. Maintenance of Lots and Dwelling Units . The Owner of each Lot shall provide for the maintenance of the Lot and all improvements thereon, including the interior and exterior of any Dwelling Unit, so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Lot or Dwelling Unit in the Project. The Association shall have no obligation regarding maintenance except as provided herein. If an Owner fails to maintain his Lot or to make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Association to preserve and protect the attractive appearance and value of the Property, or if an Owner shall fails to observe any covenant or restriction imposed on such Owner by the terms of this Declaration, then the Association shall give written notice to such Owner, stating with particularly the nature of the default and the corrective action which the Association determines to be required, and requesting that the corrective action be carried out within a period of 30 days after the giving of the notice. If such Owner fails to carry out the requested corrective action within the period of time specified by the notice, the Association shall cause the corrective action to be taken and shall levy a special assessment for the cost thereof to such Owner. The special assessment shall be due and payable within 30 days after the Association gives written notice thereof and will be secured by the assessment lien created in this Declaration.
- 2. Operation and Maintenance of Common Areas . The Association shall provide for the maintenance and operation of the Common Areas, the curbs, gutters and sidewalks 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. In recognition of County flood control requirements imposed on the Project, the Association shall maintain the storm water detention areas called for by Salt Lake County and designated on the Plat. Said maintenance shall include all steps reasonably necessary to prevent said detention areas from losing their capacity to retain storm run-off water. In this regard, the Association shall maintain the contours of the earth in said detention areas in the configuration established and described on the Plat, and shall not allow structures of any type to be placed or erected in said areas which may cause a significant reduction in the water detention capacity thereof. Notwithstanding anything contained in the Declaration to the contrary, the Declarant, the Owners, or Mortgagees shall not have the power or authority to change, by vote, or alienation, transfer, sale or otherwise, the use of the detention areas designated on the Plat unless the consent of the Salt Lake County Flood Control Division has first been obtained in writing. In connection with this covenant by the Association to maintain the storm water detention areas, Salt Lake County is hereby made a party to the covenants set forth herein. The County shall have no vote in the affairs of the Association, but it shall have the right to protect, as a party to this Declaration, the use, of the storm water detention areas for that purpose.
- 3. Utilities. The Association shall pay for all utility services furnished to the Common Areas. The Owner of each Lot shall pay for all utility services furnished to the individual Lot, except as may hereafter be determined by the Association.

- 4. Insurance. The Association shall secure and at all times maintain the following insurance coverages:
- (a) A policy or policies of fire, casualty and multi-peril insurance, with extended coverage endorsement, in an amount equal to the full insurable replacement value, covering the Common Areas, including, without limitation, improvements thereon and common personal property and supplies belonging to the Association. The name of the insured under each such policy shall be in form and substance similar to: AVillandrie Homeowners= Association, Inc. for the use and benefit of the individual Lot owners and Mortgagees, as their interests may appear.@
- (b) A policy or policies of comprehensive public liability insurance, insuring the Owners, the Association, and its Board of Trustees, officers, agents and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property of the Owners. Limits of liability under such insurance shall be not less than \$250,000.00 for any on person injured; \$1,000,000 for all persons injured in any one accident; and \$100,000 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 insureds as between themselves are not prejudiced.
- (c) 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 Project in construction, nature and use.

The following additional provisions shall apply with respect to insurance:

- (1) All policies shall be written by a company holding a rating of AAA@ or better from Best=s Insurance Reports.
  - (2) The Association shall have the authority to adjust losses.
- (3) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.
- (4) The Association shall have no obligation to secure or maintain any insurance for a Lot or Dwelling Unit. Each Owner shall be solely responsible to secure and maintain insurance for any risks relating to his Lot or Dwelling Unit.

### VI. RIGHTS IN COMMON AREAS

1. Easement of Enjoyment. Each Owner shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Subject to this

- 2. Limitation of Easement . An Owner's right and easement of use and enjoyment in and to the Common Areas shall be subject to the following:
- (a) The right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas;
- (b) The right of the County of Salt Lake and any other governmental or quasi-governmental body having jurisdiction over the Project to access and rights of ingress and egress over and across any street, parking areas, walkway, or open area contained within the Project for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and
- (c) The right of the Association to dedicate or transfer all or any part of the Common Areas, and any sewer, water and storm drain trunk lines 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 requires, however, the affirmative vote, in person or by proxy, of at least sixty percent (60%) of the Total Votes of the Association
- 3. Transfer of Title to Common Areas . Declarant agrees that it shall, on or before twenty-four (24) months from the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, State of Utah, convey to the Association title to the Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities).

### VII. RESTRICTIONS ON USE

- 1. Use of Common Areas . The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Dwelling Units. No admission fees, charges for use, leases, or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas.
- 2. Residential Use. Each Lot within the Project may have one (1) Dwelling Unit constructed thereon which shall be used exclusively for residential purposes and for no other purpose. Occupancy of the Dwelling Unit for residential use, whether by the Owner or a tenant under a long term lease or rental agreement, shall be deemed to be residential occupancy. No home business or occupation may be pursued in a Dwelling Unit which brings customers, clients, employees or independent contractors involved in such business or occupation to the Dwelling Unit; which creates any noise, odor or other nuisance; or which creates any condition or

- 3. No Subdivision or Timesharing . No Owner shall cause a Lot or Dwelling Unit located thereon to be divided or occupied in any manner which would provide that the exclusive use, occupancy or possession of the Dwelling Unit circulates among more than one (1) Owner or occupant or in any other manner which would violate the applicable ordinances of the applicable government authority. Any arrangement, however denominated, which would provide for timesharing or any other method for the rotation or circulation of the right to occupy a Dwelling Unit shall be strictly prohibited.
- 4. No Short Term Rentals. It is the policy and intent of this Declaration and the Association that no Dwelling Unit or any part thereof shall be rented or leased for a term of less than six (6) months, and that no overnight, daily, weekly, or monthly rentals or leases or any arrangement which has a similar effect shall be permitted.
- 5. Leasing . Any Lease or sublease of a Dwelling Unit shall be in writing. No Lease shall be used to contravene any of the provisions of this Declaration. No Lease or sublease shall be for less than an entire Dwelling Unit. All lessees and sublessees of any Dwelling Unit shall abide by and be subject to any and all of the provisions, covenants, conditions, restrictions, prohibitions and terms of this Declaration, the Articles, the Bylaws and regulations, including provisions relating to assessments and collections thereof, and any liens therefore, as if Owners hereunder and each Lease or sublease of any Dwelling Unit shall so provide. Each Lease or sublease of any Dwelling Unit shall provide that any failure to abide by the provisions, covenants, restrictions, prohibitions and terms of this Declaration, the Articles, the Bylaws and regulations, including provisions relating to assessments and collections thereof, and any liens therefore, shall be a breach and event of default under such Lease or sublease. If an Owner or lessor of an Owner shall lease any Dwelling Unit, the Owner or lessor of an Owner shall promptly notify the Association, in writing, of (i) the fact of the Lease, (ii) the name of the tenant under such Lease, (iii) the address of the Owner during the term of the Lease, and (iv) the terms and conditions of such Lease. As used in this Section, the term "Lease" shall include a lease, sublease, rental arrangement, license or any other arrangement for exclusive or partially exclusive use of a Dwelling Unit by one person or a group of persons related by marriage or blood other than an Owner. Any Lease made for any Dwelling Unit which is not in accordance with the provisions of this Section shall not be voidable by the Association, and the Association shall, as an alternative to declaring such Lease void, have the right to a reformation of such Lease to conform it to the provisions of this Section. The Association shall also have the right to reimbursement of damages from any Owner for all damages or injury (including a reasonable attorneys' fee) resulting to the Association from any failure of a Lease to conform to this Section. Any Owner who shall lease its Dwelling Unit in accordance with the provisions of this Declaration shall remain personally liable in the manner set forth in this Declaration for any and all charges, costs and expenses property charged against said Dwelling Unit during the time of occupancy of any lessee or sublessee of said Owner.

- (a) Unlicenced or Inoperable Vehicles. No Vehicle which is inoperable or unlicenced shall be allowed within the Project, unless said Vehicle is stored inside an Owner's garage.
- (b) Parking on Roads. No Vehicle, inoperable or operable, shall be parked or placed within the Common Areas, including roads, except temporarily on a road if the Vehicle belongs to a guest or invitee of an Owner, but not for more than any forty-eight hour period, and only for hours such as the Association may designate, which designated hours may be fewer than twenty-four in any single day.
- (c) Dwelling Unit Driveways. In general, Vehicles may be parked temporarily in the driveway of a Dwelling Unit; provided however, (i) only one Vehicle may be parked overnight in a driveway, which is exclusively appurtenant to one Dwelling Unit, wide enough for only one auto, and no more than two Vehicles may be parked overnight in a driveway, which is exclusively appurtenant to one Dwelling Unit, wide enough for two or more autos, and (ii) no Vehicle may be parked in a driveway for more than thirty (30) days within any sixty (60) day period and each driveway must be without any Vehicle on it overnight for at least twenty (20) days within any sixty (60) day period.
- (d) Access Restriction. No Vehicle belonging to an Owner or his guests, tenants, licensees or invitees shall be parked in such a manner as to impede or prevent ready access to any other Owner=s Dwelling Unit driveway. Any Vehicle which remains so placed as to be in violation of any of the foregoing for the time period provided above, or if no time period shall have been specifically provided, for over 24 hours, consecutively or cumulatively within any five day period, after personal notice of such violation given by the Association (i) to the owner of the Vehicle, or (ii) to the Owner in whose household or whose guest or invitee is the owner of the Vehicle, or (iii) if neither the Owner, his guest or his invitee is present at the Project or able to receive notice, then on the Vehicle in a conspicuous location; shall be subject to removal and storage by the Association, at the expense of the owner of the Vehicle, or, if owner of the Vehicle is not an Owner, then at the expense of the Owner in whose Dwelling Unit the owner of the Vehicle is a guest, tenant, licensee, or invitee, which cost and expense shall be payable within a reasonable time and shall also be a lien against said Owner=s Dwelling Unit and the personal liability of the Owner. All persons operating a Vehicle in the Project shall be subject to and obey posted parking regulations. The Association shall have the right to promulgate such regulations consistent with this Declaration as may be necessary to provide for the safe use of Vehicles within the project. No Owner, its guest or invitees, shall use any portion of the Project (except the interior of a garage for repairs to the Owner's Vehicle) for any mechanical work or maintenance upon any Vehicle, except emergency repairs necessary to make such Vehicle operable.

- 7. Garbage and Refuse Disposal. No Dwelling Unit shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste and such materials shall not be kept except in covered containers. All trash containers shall be covered and kept screened from view from the street in the garage of the Dwelling Unit, except during collection. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. The burning of rubbish, leaves or trash within the Project is prohibited. No unsightly material or objects are to be stored on any Dwelling Unit.
- 8. Maintenance Cooperation . No Owner shall interfere with activities of the Association with respect to Common Areas, including the grading, landscaping, decorating, maintaining, caring for, repairing, replacing constructing or reconstructing or cleaning of any Common Areas in fulfillment of the duties, obligations and responsibilities of the Association towards the Common Areas set forth herein.
- 9. Dwelling Unit Exterior . Exterior antennas are prohibited on or about the Dwelling Units. Exposed metal flues, vents, ventilator or other metallic rooftop protrusions shall be coated or painted with a neutral color which will blend harmoniously with the surrounding landscaping and related improvements. Satellite reception dishes of a diameter of not more than 24 inches are allowed provided they are placed or screened so they are reasonably screened from neighboring properties. The location of satellite reception dishes and any screening thereof must be approved by the Association as part of the Dwelling Unit exterior. All power lines and similar type cables shall be buried underground, No personalized mailboxes, banners, addresses or other exterior decor or identifying or decorating materials may be affixed, posted or otherwise displayed on or about the Dwelling Units, but all such matters shall be subject to the rules and regulations promulgated by the Board of Trustees from time to time. Traditional Christmas and other holiday decorations and lights may be displayed on the exterior of Dwelling Units if such are tasteful and are not intrusive to other owners, and all such matters shall be subject to the regulation by the Association acting through the Board of Trustees. Nothing contained in this Declaration shall restrict the Association from decorating the Common Areas for seasonal, holiday or other occasions or permanently.
- 10. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on, in or upon any part of the Project which is or may become a nuisance or which may cause disturbance or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.
- 11. Restrictions on Signs. The American flag and the flag of the State of Utah may be flown on one flagpole attached to each Dwelling Unit exterior in a tasteful manner and in a size consistent with the residential character of the Project. No signs, flags or advertising devices of any nature, including without limitation, commercial, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, without the prior inspection and written approval of the Board of Trustees, except as may be necessary temporarily to caution

or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Association. All such signs or devices must also comply with applicable zoning ordinances.

- 12. Pets and Animals . No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or in the Common Areas except that household pets may be kept or housed in Dwelling Units pursuant to rules and guidelines adopted in writing by the Board of Trustees, but such permission shall be deemed conditional and subject to revocation by the Board of Trustees. In no event shall any pet be permitted in any portions of the Common Areas unless carried or on a leash. Each pet owner shall clean up all feces deposited by its pet(s) from the Common Areas. Each Owner who keeps a pet in a Dwelling Unit shall indemnify and hold all other Owners harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such pet in the Project. If a pet disturbs other owners by barking or in other ways becomes obnoxious, the Board of Trustees may give notice to the owner of such pet to cause such annoyance to be discontinued; and if such annoyance is not discontinued and corrected or in the case of a pet biting a person or other animal the Board of Trustees may revoke its permission to keep the pet in the Project and the pet shall be immediately and permanently removed therefrom. No animal shelter, dog-type run, doghouse or other animal enclosure may be built, located or kept in the Project.
- 13. Driveways . No driveway shall be used for storage. No vehicle, camper, boat, trailer or any other item located upon said driveway shall be permitted to extend into any roadway.
- 14. Recreational Vehicles. Notwithstanding any of the foregoing, recreational vehicles, boats, personal water craft, travel trailers and similar vehicles ("RVs") may not be parked within the Project, except within the garage of a Dwelling Unit or temporarily in the driveway of a Dwelling Unit, but not in any such driveway for more than forty-eight (48) hours within any one week period. No separate RV storage area may be set aside or designated in the Project.
- 15. No Alterations. No Owner shall, without the prior written consent of the Board of Trustees in each specific instance, make or cause to be made any alteration, addition, removal or improvement in or to the Common Areas or any part thereof, or do any act that would impair the structural soundness or integrity of the buildings or other improvements, or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Project.
- 16. No Obstruction. No Owner shall obstruct the Common Areas or any part thereof. No owner shall store or cause to be stored in the Common Areas any property whatsoever, unless the Board of Trustees shall consent thereto in writing.
- 17. Prohibition of Damage and Certain Activities. Except with the prior written consent of the Board of Trustees, nothing shall be done or kept in any Dwelling Unit, in the Common Areas, or in any other part of the Project that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Dwelling Unit that would

increase the rate of insurance on the Project or any part thereof over that which the Association would pay, but for such activity. Nothing shall be done or kept in any Dwelling Unit or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental authority or the Association. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or by the guests, tenants, licensees, or invitees of such Owner.

- 18. No Commercial Business. No commercial business shall be permitted within the Project unless the same is permitted by applicable law and approved in writing by the Association, and, if applicable, VA, FHA, FNMA, and/or FHLMC.
- 19. Rules and Regulations. Each Owner shall comply strictly with all rules and regulations adopted by the Association for the governance of the Dwelling Units, the Common Areas, and the Project, as such rules and regulations may be modified, amended, and construed by the Association in the sole discretion pursuant to the Bylaws.
- 20. Slope Protection . All slopes or terraces on any Lot shall be maintained so as to prevent any erosion or encroachment thereof upon adjoining property or adjacent streets and roadways.
- 21. Trees and Shrubs. None of the existing living trees or shrubs on the Property which are planted by Declarant as part of the Project landscaping, shall be removed for any reason by any Owner from his Lot, unless he shalt have first obtained written consent for such removal from die Board of Trustees of the Association, or the Architectural Review Committee, which consent shall not be unreasonably withheld. The provisions of this Section relating to the removal of trees and shrubs shall not be applicable or binding upon Declarant with respect to the initial clearing, grading and landscaping of the project Common Areas and the installation of utilities serving the Subdivision.

### VIII. ARCHITECTURAL REVIEW COMMITTEE

1. Architectural Review Committee. The Board of Trustees of the Association shall appoint a three-member Committee to serve as the Architectural Review Committee. The function of the Committee shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed, the Board itself shall perform the duties required of the Committee. Until such time as all Lots are sold, the Architectural Committee shall consist of Kelvyn H. Cullimore, Paul Burningham, and Kent Burningham.

- 2. Submission to Committee . No Dwelling Unit, accessory or addition to a Dwelling Unit, including walls, fences, antennas, porches, or patios, which is visible from the Common Areas, landscaping or other improvement of a Lot which is visible from the Common Areas shall be constructed, or accomplished, and no alteration, or refurbishing of the exterior of any Dwelling Unit shall be performed, unless complete construction and landscape plans and specifications as well as a plot plan showing location and the surrounding topography, shall have first been submitted to and approved by the Architectural Review Committee.
- 3. Standards . 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. In this regard, the following design, building and materials restrictions shall govern the construction of any Dwelling Unit and/or any other structure visible from any Common Area:
- (a) Minimum Dwelling Unit size, excluding garage, unfinished interior space, porch and open patio areas:
- (1) Dwelling Units with multiple levels above grade shall not be less than 2,200 square feet in size on said multiple levels above grade level.
- (2) Dwelling Units with single story above ground shall be not less than 1,750 square feet in size on said story above ground.
- (b) Exterior building materials shall be restricted to brick, glass, wood, stucco or stone. No aluminum, steel, vinyl, or any other type of sheet siding shall be used, nor shall concrete block or cinder block materials be used on any Dwelling Unit or other building on any Lot in the Project unless written approval is first obtained from the Board of Trustees of the Association or the Architectural Review Committee.
  - (c) Roofing materials shall be restricted to architectural asphalt shingles.
- (d) A Dwelling Unit shall provide enclosed garage space for two vehicles unless approved otherwise by the Architectural Review Committee.
- (e) The improvement of any Lot, and the construction of a Dwelling Unit, or any other structure thereon, shall comply fully with applicable County ordinances and zoning regulations, including, without limitation, County front, back and side yard setbacks or as otherwise approved by the Architectural Review Committee.
- 4. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved in writing within fifteen (15) days after submission.

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- 5. 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.
- 6. Exception for Declarant . The foregoing provisions of this Article shall not apply to any improvement, construction, landscaping; or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas, and which occurs at any time during 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.

### IX. RIGHTS OF MORTGAGEES

- 1. Notice of Default . In the event an Owner neglects for a period of thirty (30) days or more 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 mortgage covering such Owner's Lot.
- 2. Abandonment, Termination, Etc. Unless all of the holders of mortgages on the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission or otherwise:
- (a) To abandon or terminate the project or to abandon or terminate the arrangement which was established by the Declarant and the Plat of the Project;
  - (b) To partition or subdivide any Lot or the Common Areas;
- (c) To abandon, partition, subdivide, encumber, sell, hypothecate, transfer or otherwise encumber all or any part of the Common Areas, except for the creating of easements and similar purposes consistent with their intended use of the said Areas; or
- (d) to use hazard insurance proceeds received because of damage to any part of the Project for any purposes other than the repair, replacement, or reconstruction of such improvements.
- 3. Notice of Substantial Damage or Destruction . The Association shall notify all institutional holders of any mortgage lien or equivalent security interest on a Lot in writing in the event that there occurs any substantial damage to or destruction of any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$15,000. Said notice shall be given within twenty (20) days after the Association learns of such damage or destruction.
- 4. Condemnation or Eminent Domain Proceedings . The Association shall give written notice to all institutional holders of any mortgage lien or equivalent security interest of any

condemnation proceedings or proposed acquisition of any portion of the Common Areas within twenty (20) days after the Association learns of the same.

- 5. Hazard Policy to Include Standard Mortgagee Clauses. Each hazard policy of the insurance shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear, or shall be otherwise endorsed to fully protect the interest of mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each mortgagee at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.
- 6. Rights Upon Foreclosure of Mortgage. Each holder of a mortgage (or deed of trust) on a Lot who comes into possession of the Lot by virtue of foreclosure of the mortgage, or by deed or assignment, in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Lots including the mortgaged Lot.
- 7. Mortgagees' Rights Concerning Amendments. No material amendment to this Declaration, the Articles of Incorporation or the By-Laws of the Association affecting an Owner=s voting rights, obligation for assessments or use of Common Areas shall be accomplished or effective unless at least two-thirds (2/3) of the mortgagees (based on one vote for each mortgagee) of the individual Lots have given their prior written approval to such amendment.
- 8. No Right of First Refusal. Neither the Association nor the Owners acting as a group, shall enforce, assert, or claim any right of first refusal to purchase a Lot or any option to buy a Lot in this Project.

### X. GENERAL PROVISIONS

- 1. Intent and Purpose. The provisions of this Declaration, and any Supplemental or Amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Project. Failure to enforce any provision, covenant, condition or restriction contained in this Declaration, or in any Supplemental or Amended Declaration, shall not operate as a waiver of any such provision, covenant, condition or restriction or of any other provisions, covenants, conditions, or restrictions.
- 2. Construction and Interpretation. The provisions of this Declaration shall be in addition and supplemental to all other provisions of law. 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 pad thereof, and any gender shall include the other gender. The invalidity or enforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. To the extent of any inconsistency, the provisions of the Declaration shall control over the Articles of Incorporation of the Association and said Articles shall control over the Bylaws of the Association.

- 3. Notices . Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been property furnished if mailed, postage prepaid, to the person who appears as an Owner, at the latest address for such period appearing in the records of the Association at the time of mailing.
- 4. Amendment . Except as otherwise provided herein, this Declaration may be amended upon the affirmative vote, in person or by proxy, of at least sixty percent (60%) of the Total Votes of the Association; and, so long as the Class B membership exists, the written consent of the Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date. Any amendment authorized pursuant to this Section shall be evidence by an instrument executed by the President or Vice President of the Association and by the Declarant, if the Class B membership exists, and shall be duly recorded in the office of the Salt Lake County Recorder, State of Utah. In such instrument the President or Vice President of the Association shall certify that the vote required by this Section for amendment has occurred.
- 5. Consent in Lieu of Voting. 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 Owners entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership considered. The following additional provisions shall govern any application of this Section 4.
- (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.
- (b) The total number of votes required for authorization or approval under this Section 4 shall be determined as of the date on which the last consent is signed.
- (c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

- (d) Unless the consent of all Owners whose memberships are appurtenant to the same Lot are secured, the consent of none of such Owners shall be effective.
- 6. 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.
- 7. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the property may be assigned.
- 8. Information Concerning Transfer of Lot and Transfer Fee. Any Owner who sells, leases for a term (including extensions) in excess of one (1) year, or otherwise transfers or conveys his Lot shall submit to the Association pertinent information concerning the transferee within ten (10) days of said transfer of title or possession, and in the event of sale, the selling Owner, or the purchaser, as agreed between them, shall pay the Association a transfer fee of Fifty Dollars (\$50.00).
- 9. Transfer of Common Areas . The Board of Trustees of the Association may, in connection with dissolution of the Association or otherwise, dedicate or transfer all or any part of the Common Areas, or any sewer, water and storm drainage trunk lines within the Villandrie P.U.D., to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Board. Any such dedication or transfer requires the affirmative vote, in person or by proxy, of at least sixty percent (60%) of the Total Votes of the Association.
- 10. Dissolution . Subject to the restrictions set forth in Article IX of this Declaration pertaining to mortgagee protection, the Association may be dissolved upon the affirmative vote, in person or by proxy, of at least seventy percent (70%) of the Total Votes of the Association. Upon dissolution of the Association all of its assets (including the Common Areas) may be dedicated or transferred to an appropriate public agency or authority to be used for purposes similar to those provided for in the By-Laws, the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a non profit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, curbs, gutters and sidewalks on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth in Article V of this Declaration.
- 11. Agent for Service. The name and address of the person to receive service of process in all cases shall be the registered agent and address of the Association as shown on the official corporate records maintained by the Department of Commerce of the State of Utah. On the date of this Declaration, the registered agent of the Association is: Kay H. Cullimore, whose address is 7192 South Villandrie Lane, Salt Lake City, Utah 84121.

- 12. Declarant's Covenant to Construct Common Areas . Declarant hereby covenants to construct all the improvements on the Common Areas indicated on the Plat within two (2) years after the filing of this Declaration in the office of the County Recorder of Salt Lake County, State of Utah.
- 13. Enforcement by County . If the Association fails to maintain the Common Areas, along with the curbs, gutters and sidewalk, in good order and condition, Salt Lake County shall have the right, but not the obligation, upon giving the Association thirty (30) days notice in writing, to step in and do the necessary maintenance and management with the same right to lien the Lots and collect the costs thereof against the Owners as the Association has under this Declaration shall not affect the validity or enforceability of the remainder hereof.
- 14. 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 the Declarant, and all parties who hereafter acquire any interest in a Lot or in the common Areas shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.
- 15. Effective Date. This Declaration and any Amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, State of Utah,

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the date first above written.

DECLARANT:

KHC, LLC, a Utal limited liability company

Kelvyn H. Cullimore, Manager

STATE OF UTAH

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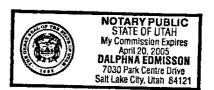
### ) ss.

## COUNTY OF SALT LAKE )

On October 13, 2001, personally appeared before me Kelvyn H. Cullimore, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

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