

WHEN RECORDED RETURN TO:

TCAP LC
4115 Sunrise Drive
Park City, UT 84060

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ALAN SPRIGGS, SUMMIT COUNTY RECORDER
1995 MAY 02 14:14 PM FEE \$106.00 BY DMG
REQUEST: TCAP

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR PINEBROOK COTTAGES,
an Expandable Condominium Project
SUMMIT COUNTY, UTAH

THIS DECLARATION made this 2nd day of May, 1995 by TCAP LC, a Utah Limited Liability Company, hereinafter referred to as "Declarant":

WITNESSETH:

WHEREAS, Declarant shall be, at the time of recordation of this document, the Owner of the real Property in the County of Summit, State of Utah, described as:

Beginning at a point on the Northeasterly line of proposed Pinebrook Blvd., said point being South 1213.50 feet along the Section Line and West 243.47 feet from the East quarter corner of Section 11, Township 1 South, Range 3 East, Salt Lake Base and Meridian and running thence South 77° 28' 34" East 454.18 feet; thence North 68° 15' 14" East 504.46 feet to the Southwesterly line of Property conveyed to Larry James Kilby as described in Book M-82, Page 835, of the Summit County Records; thence South 35° 44' 46" East 561.22 feet along said Property line; thence South 10° 28' 00" West 227.90 feet; thence South 68° 46' 02" West 90.27 feet; thence North 89° 50' 22" West 498.31 feet; thence South 58° 15' 36" West 164.94 feet to the Northeasterly line of said proposed Pinebrook Blvd., and a 315.00 foot radius curve to the right (radius point bears North 26° 33' 17" East); thence along said line the following (4) courses: Northerly along the arc of said curve 200.03 feet, North 27° 03' 42" West 311.65 feet to a point on a 1235.00 foot radius curve to the left, (radius point bears South 62° 56' 18" West) along the arc of said curve 190.55 feet and North 35° 54' 07" West 161.64 feet to the point of beginning, and

WHEREAS, Declarant has deemed it desirable to establish a general plan for the improvement and development of this entire parcel and a specific plan for the improvement and development of the southern portion of the said Property, including Cottage Loop Public Right of Way, Cottage Court private street, and Units 27-64 and 85-90 of the Pinebrook Cottages generally located on this parcel's southern portion and described as:

Phase One of the Pinebrook Cottages Condominium Map as shown by the official Map thereof recorded in the office of the Recorder of Summit County, Utah, and

WHEREAS, Declarant, in accordance with the Utah Condominium Ownership Act as amended, (Title 57, Chapter 8, Utah Code Annotated), has deemed it desirable to impose the adoption and establishment of covenants, conditions and restrictions upon said portion of the said Property and each and every Unit and portion thereof and upon the use, occupancy, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of said real Property, and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the value, desirability and attractiveness of the portion of said real Property and any additional portion of said real Property or other Property which may be annexed thereto, pursuant to the provisions of this Declaration, to create a corporation to which should be delegated and assigned the powers of maintaining administering the Association Owned Ground and administering and enforcing these covenants, conditions, and restrictions and collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to; and

WHEREAS, Declarant will construct upon said Property, Buildings and other improvements in accordance with the plans and specifications set forth in the Record of Survey

Map filed concurrently herewith, and

WHEREAS, Declarant desires by filing this Declaration and Record of Survey Map to submit the above described Property, Buildings and improvements to the provisions of the Utah Condominium Ownership Act as a Condominium Project known as Pinebrook Cottages Condominiums, and

WHEREAS, Declarant desires and intends to sell fee title to the individual Units contained in said Condominium Project, together with undivided ownership interests in the Common Areas and Facilities appurtenant thereto, to various purchasers, subject to the covenants, limitations, and restrictions contained herein, and

WHEREAS, The Pinebrook Cottages Homeowners' Association, a nonprofit corporation, is incorporated under the laws of the State of Utah for the purpose of exercising the powers and functions aforesaid;

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of said Property, Buildings and other improvements thereupon as described above and such additions thereto as may hereafter be made pursuant to Article II hereof shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of the whole Property and all of the Units and Property described herein, and all improvements thereupon, and the Owners thereof, their successors and assigns. These covenants, conditions, restrictions, and easements shall run with the said Units and Property and shall be binding on all parties having or acquiring any right, title or interest in the described Units and Property or any part thereof and shall inure to the benefit of each Owner thereof and are imposed upon said Property and every part thereof as a servitude in favor of each and every parcel thereof as the dominant tenement or tenements.

ARTICLE I DECLARATION

Section 1. Name of the Condominium Project. The name by which the Condominium Project shall be known as Pinebrook Cottages.

Section 2. Definitions. The following terms, unless the context clearly indicates otherwise, used in these covenants, conditions, and restrictions shall be applicable to this Declaration and also to any supplemental declaration recorded pursuant to Article II hereof and are defined as follows:

Subsection 1. "Association" shall mean and refer to the Pinebrook Cottages Homeowners' Association, a nonprofit corporation, incorporated under the laws of the State of Utah, its successors and assigns.

Subsection 2. "Common Area" shall mean all real Property owned by the Association for the use and enjoyment of the Members of the Association.

Subsection 3. "Limited Common Areas" shall consist of those parts of the Property intended for the exclusive use of the Owners of a particular Unit. In addition to those areas shown on the Record Map as Limited Common Ownership, Limited Common Areas shall include all driveways and entry walks. Each such driveway and entry walk shall be for the exclusive use of, and shall be maintained, including snow removal, by the Owners of the Unit to which it is adjacent. Also within the Record Map Limited Common Ownership area, each fenced area shall be for the exclusive use of the Owners of the Unit to which said fenced area is adjacent. Where fences intersect Project Property lines, the Project Property lines together with the fences shall act as to enclose, i.e., define the fenced area. Landscaping within fenced areas shall be maintained by the Owners of the Unit to which said fenced area is adjacent. All other areas shown on Record Map as Limited Common Ownership shall be landscaped and maintained as Common Area by the Association.

Subsection 4. "Common Areas and Facilities" shall mean and refer to:

- (1) The above described land, except that portion included within any Unit as shown on the survey map;
- (2) That portion of the Property not specifically included in the respective Units nor within any Limited Common Area as herein defined or as shown on the survey map;
- (3) All apparatus, installations and other parts of the Property necessary or convenient to the

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existence, maintenance and safety of the Common Areas and Facilities or normally in common use;
(4) Those areas specifically set forth and designated in the map as "Common Ownership"; and
(5) All utility pipes, lines, wires, cables, etc. located on the Property outside of the boundaries of all Units.

Subsection 5. "Common Expenses" shall mean and refer to all expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities and unfenced Limited Common Areas; to all items, things and sums described in the Utah Condominium Ownership Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Utah Condominium Ownership Act, this Declaration, the by-laws, such rules and regulations pertaining to the Condominium Project as the Association and Unit Owners or the Association's Board of Trustees may from time to time adopt, and such other determinations and agreements lawful or made and/or entered into by the Board of Trustees.

Subsection 6. "Fenced Limited Common Area": shall mean the Limited Common Area immediately adjacent to a Unit and enclosed by the Unit itself and a fence as described herein. A Fence may incorporate rock, berm, vegetation, and Property line barriers as well as traditional wood or stone fences.

Subsection 7. "Unit" shall mean any parcel of Property and improvements thereon shown as a separate numbered Unit on the recorded Condominium Map. Each family "home" of each "Twinhome Building" shall be deemed to be one Unit for the purposes of this Declaration.

Subsection 8. "Member" shall mean and refer to every person or entity who holds Membership in the Association.

Subsection 9. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee title to any Unit which is a part of the Properties, including contract sellers and buyers, but excluding those having such interest merely as security for the performances of an obligation.

Subsection 10. "Declarant" shall mean and refer to TCAP LC, its successors and assigns.

Subsection 11. "Deed of Trust" shall mean the conveyance of any Unit or other portion of the Property to secure the performance of an obligation.

Subsection 12. "Conveyance" shall mean and refer to conveyance of a fee title to any Unit.

Subsection 13. "Properties" or "Property" shall mean and refer to that certain Property hereinbefore described and such additions thereto as hereafter may be made subject to this Declaration, and excluding any real Property that hereafter may be withdrawn from this Condominium pursuant to this Declaration.

Subsection 14. "Condominium", "Condominium Project", "Project", "Pinebrook Cottages", or "The Pinebrook Cottages" shall mean the Pinebrook Cottages Condominium according to the official Map thereof recorded in the office of Summit County, State of Utah, and any Condominium hereafter added pursuant to the terms of this Declaration.

Subsection 15. "Building" or "Twinhome Building" shall mean any structure comprising of two attached family dwellings.

Subsection 16. "Twinhome" or "home" shall mean each attached family residence.

Subsection 17. "Expansion Property" shall mean the area generally to the north of the Units shown on the Condominium Map, with future Unit footprints as indicated on the master site plan as approved by Summit County.

Subsection 18. "Board of Trustees" or "Board of Trustees" shall mean the three (3) to six (6) Members who are elected by the Association to manage the Association. The initial Board of Trustees shall be:

James A. Doilney, 1351 Moray Court, Park City, UT 84060

Kenneth Shoulders, 2921 American Saddler Drive, Park City, UT 84060

Michael Watts, 3100 Crestline Drive, Park City, UT 84060

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

Section 3 Submission Submission to Condominium Ownership. Declarant hereby submits the above-described Property, Buildings, and other improvements constructed thereon or hereafter to be constructed, together with all appurtenances thereto, but not including any

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Public Rights of Way, to the provisions of the Act as a Condominium Project and this Declaration is submitted in accordance with the terms and the provisions of the Act and shall be construed in accordance therewith. It is the intention of Declarant that the provisions of the Act shall apply to the Property.

Section 4. Covenants to Run with the Land. This Declaration containing covenants, conditions and restrictions relating to the Project shall be enforceable equitable servitudes which shall run with the land and this Declaration and its servitudes shall be binding upon Declarant, its successors and assigns and upon all Unit Owners or subsequent Unit Owners, their grantees, mortgagees, successors, heirs, executors, administrators, devisees and assigns.

Section 5. Description of Property.

a) **Description of Land.** The land which is subject to this declaration is that tract or parcel in Summit County, Utah, more particularly described as Phase One of the Pinebrook Cottages Condominium Map as shown by the official Map thereof recorded in the office of the Recorder of Summit County, Utah.

(b) **Description of Buildings.** The significant improvements contained or to be contained in the the first phase of the Project include twenty-two (22) Twinhome Buildings. Each Building contains two Units. There are three Building types, each with a standard and an alternate elevation. In the the first phase of the Project there will be constructed eleven (11) Plan 1 Buildings, six (6) Plan 2 Buildings, and five (5) Plan 3 Buildings. The Buildings are constructed of wood frame, wood exterior and asphalt shingle roofs.

The "Cottonwood" - Plan 1 standard elevation, or Plan 1 alternate elevation,
The "Millcreek" - Plan 2 standard elevation, or Plan 2 alternate elevation,
The "Whitewater" - Plan 3 standard elevation, or Plan 3 alternate elevation.

All Units will be on two or more levels with two car garage and furnace room, laundry/mud room, kitchen, dining, livingroom, and 2.5 bathrooms. Plan 1 may have 2 bedrooms and a den or 3 bedrooms. Plan 2 will have 3 bedrooms. Plan 3 may have 3 bedrooms and a den or 4 bedrooms. In addition Plan 3 will include a family room. All Units will have separately metered utilities. No reflective surfaces other than normal window and door surfaces are to be used. Units in the expansion area may have different configurations.

(c) **Description and Legal Status of Units.** The Map shows the Unit Number of each Unit, its location, associated Limited Common Areas to which it has immediate access, and the Common Areas and Facilities. The vertical boundaries of the Unit shall be the exterior surface of the outside walls of the Building bounding a Unit; and (ii) the center line between any double studded interior walls between two Units. The Association shall however, have the right to repair, restrain, maintain, or replace siding, logs, trusses, shingles, footings, foundations, roof structure, exterior walls, or bearing walls. Individual Unit Owners shall not have the right to modify in any way the siding, logs, trusses, shingles, footings, foundations, roof structure, exterior walls, or bearing walls.

(d) **Common Areas and Facilities.** Except as otherwise provided in the Declaration, the Common Areas and Facilities shall consist of the areas and facilities described in the definition and constitute in general all of the parts of the Property except the Units. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include the following, whether located within the bounds of a Unit or not;

(1) Any utility pipe or line or system servicing more than a single Unit, and all ducts, wires, conduits, and other accessories used therewith;

(2) All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities in the Map;

(3) All repairs and replacements of any of the foregoing.

(e) **Limited Common Areas.** Limited Common Areas shall consist of those parts of the Property intended for the exclusive use of the Owners of a particular Unit. In addition to those areas shown on the Record Map as Limited Common Ownership, Limited Common Areas shall include all driveways and entry walks. Each such driveway and entry walk shall be for the exclusive use of, and shall be maintained, including snow removal, by the Owners of the Unit to which it is adjacent. Also within the Record Map Limited Common Ownership area, each fenced area shall be for the exclusive use of the Owners of the Unit to which said fenced area is adjacent. Where fences intersect Project Property lines, the Project Property lines together with the fences shall act

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as to enclose, i.e., define the fenced area. Landscaping within fenced areas shall be maintained by the Owners of the Unit to which said fenced area is adjacent. All other areas shown on Record Map as Limited Common Ownership shall be landscaped and maintained as Common Area by the Association. The Association shall however, have the right to use any Limited Common Area for surface drainage or utility placement.

ARTICLE II
ANNEXATION OF ADDITIONAL PROPERTY

Any real Property may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article as follows:

Section 1. Annexation Without Approval and Pursuant to General Plan. Any real Property, including that to the north, which is owned by the Declarant and described on page one hereof, may be annexed to and become subject to this Declaration and subject to the jurisdiction and a part of the Association without the approval, assent or vote of the Association or its Members, providing and on condition that:

(a) Prior to the conveyance of title to any improved Unit within the real Property to be annexed to individual purchasers thereof, fee title or right-of-way to the Common Area within said real Property shall be conveyed to the Association, free and clear of any and all encumbrances and liens, except current real Property taxes, which taxes shall be prorated to the date of transfer, and easements, covenants, conditions and restrictions then of record, including those set forth in this Declaration.

(b) A supplementary Declaration of Covenants, Conditions and restrictions, as described hereinafter in Section 3 of this Article describing the real Property to be annexed shall be executed and recorded by TCAP LC, the Owner of said real Property or its successors and assigns. The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real Property described therein, making said real Property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the Owners of Units in said real Property shall immediately and automatically be Members of the Association.

Section 2. Annexation Pursuant to Approval. Upon approval in writing of the Association, pursuant to a two-thirds vote of those present at a meeting for this purpose that has been duly called of Members including proxies who are entitled to vote, any Owner of communal Property, multiple family Units and/or family residential Property and/or Property for the general use of Owners of such residential Property who desire to add such Property to the plan of this Declaration and to subject such Property to the jurisdiction of the Association, may file of record a Supplementary Declaration, as described in Section 3 of this Article.

Section 3. Supplementary Declarations. The additions authorized under the foregoing sections shall be made by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions or similar instrument, with respect to the additional Property which shall extend to the plan of this Declaration to such Property.

Such Supplementary Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added Property and as are not inconsistent with the plan of this Declaration. In no event, however shall any such Supplementary Declaration merger or consolidation, revoke, modify or add to the covenants established by this Declaration within the existing Property, except as hereinafter otherwise provided.

The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real Property described therein, making said real Property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the Owners of Units in said real Property shall automatically be Members of the Association.

Section 4. Mergers or Consolidations. Upon a merger or consolidation of the Association with another Association, as provided in its Articles of Incorporation, its Properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated Association or, alternatively, the Properties, rights and obligations of another Association may, by operation of law, be added to the Properties, rights and obligations of the Association as a

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surviving corporation pursuant to a merger. The surviving or consolidated Association may administer the covenants, conditions and restrictions established by this Declaration within the existing Property, together with the covenants and restrictions established upon any other Property, as one plan.

ARTICLE III MEMBERSHIP

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Unit which is subject by covenants of record to assessment by the Association, shall be a Member of the Association. The terms and provisions set forth in this Declaration, which are binding upon all Owners of all Units and all Members in the Association, are not exclusive, as the Member shall, in addition, be subject to the terms and provisions of the Articles of Incorporation and the Bylaws of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one Membership for each Unit owned. Membership shall be appurtenant to and may not be separate from the ownership of any Unit which is subject to assessment by the Association. Ownership of such Unit shall be the sole qualification for Membership.

Section 2. Transfer. The Membership held by any Owner of a Unit shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Unit, and then only to the purchaser or deed of trust holder of such Unit. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Unit should fail or refuse to transfer the Membership registered in his name to the purchaser of such Unit, the Association shall have the right to record the transfer upon the books of the Association.

Section 3. Voting Rights. The Association shall have two (2) classes of voting Membership.

Class A. Class A Members shall be all those Owners as defined in Section 1 above with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Unit in which they hold the interest required for Membership by Section 1. When more than one person holds such interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast for any one Unit.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Unit completed, under construction, or planned for construction in which it holds the interest required for Membership by Section 1.

All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles and Bylaws of the Association.

ARTICLE IV PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Members' Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Area, if any, and such easement shall be appurtenant to and shall pass with the title to every assessed Unit, subject to the following provisions:

(a) The right of the Association to established uniform rules and regulations pertaining to the use of the Common Area and Limited Common Areas including the recreational facilities thereof.

(b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and Limited Common Areas and facilities and to aid thereof, to mortgage said Property, provided that the rights of any mortgagee shall be subordinate to the rights of the Members.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility, or to any Association or master Association of

homeowners in Pinebrook, for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless a written instrument pursuant to a three-fourths majority vote of those present at a meeting for this purpose that has been duly called of Members including proxies who are entitled to vote has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than ten (10) days in advance. However, the Declarant reserves the right to grant easements over any part of the Common Area or any other designated utility easement areas for utility purposes.

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

Section 2. Delegation of Use. Any Member may delegate, in accordance with the Bylaws, his right of enjoyment of the Common Area and facilities to the Members of his family, his tenants or contract purchasers who reside on the Property.

Section 3. Waiver of Use. No Member may exempt himself from personal liability for assessments duly levied by the Association, nor release the Unit owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Unit other than by sale thereof.

Section 4. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that in the event it designates any portion of the Property as a Common Area, that it will convey fee title or rights-of-way to such Common Areas in the existing Property to the Association, free and clear of all encumbrances and liens, except current real Property taxes, which taxes shall be prorated to the date of transfer, and easements, conditions and reservations then on record, including those set forth in this Declaration.

Section 5. Nothing in this Declaration shall be construed to obligate Declarant to designate or provide any part of the Property as Common Area.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the lien and Personal Obligation of Assessments. Each Member, by acceptance of a real estate contract or deed therefor, covenants and agrees to pay to the Association: (1) regular assessments or charges, and (2) special assessments for capital improvements, and other Association purposes, such assessments to be fixed, established and collected from time to time as hereinafter provided, and shall be a continuing lien upon the Unit against which each such assessment is made. Each such assessment together with any interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Property at the time when the assessment fell due. In any conveyance, except to a mortgagee holding a first lien on the subject Unit, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Board of Trustees setting forth the amounts of the unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the grantor in the excess of the amount set forth. No Membership may transferred to a subsequent purchaser until all assessments, interest, penalties and other charges that are due have been paid in full to the Association.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Members of the Association and, in particular, for the improvement and maintenance of the improvements, services, and facilities devoted to this purpose, and related to the use and enjoyment of the Common Area and unfenced Limited Common Area, for the purpose of landscape maintenance and of periodic restaining siding and fencing, replacing roof shingles, replacing fence posts and rails, of all individual homes throughout the Condominium, and for

enforcement of these CC&Rs. The assessments will also cover snow removal expense for Cottage Court and the footpath connecting the ends of Cottage Loop Road, but there will be no snow removal provided for Cottage Loop Road, a public road, nor for any unit driveways or walkways. Assessments may also be used to fund payments for maintenance, insurance, or other work which is the normally the obligation of any owner. If the Association pays an individual Owner's obligation, the Association shall recover costs from the Owner..

Section 3. Regular Assessments. The amount and time of payment of regular assessments shall be determined by the Board of Trustees of the Association after giving due consideration to the current maintenance costs, reserve requirements for periodic maintenance and capital expense, and future needs of the Association. Written notice of the amount of an assessment, regular or special, shall be sent to every Owner, and the due date for the payment of same shall be set forth in said notice.

Section 4. Special Assessments. In addition to the regular assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal Property related thereto, or costs incurred for any other Association purpose, provided that any such assessment shall have the assent of a majority of the Members entitled to vote at a meeting duly called for this purpose. Written notice of such meeting shall be sent to all Members not less than ten (10) calendar days nor more than thirty (30) calendar days in advance of the meeting.

In assessing Unit Owners, no assessment for a single improvement in the nature of a capital expenditure exceeding the sum of \$5,000.00 shall be made without the same having been first voted on and approved by at least a majority of the Project's undivided ownership interest.

Section 5. Uniform Rate of Assessment. Both regular and special assessments shall be fixed according to each Association Member's percentage of owned building square footage as shown in Exhibit "A" hereto. Assessments shall be collected monthly or at such other times as the Board may determine. The percentages shown in Exhibit "A" are equal to a unit's building square footage exclusive of garages, walks, decks, and patios, divided by the total of all unit's building square footage exclusive of garages, walks, decks, and patios. This same formula shall apply if and when any units are constructed on expansion parcels.

Section 6. Date of Commencement of Regular Assessments and Fixing Thereof. The regular assessments provided for herein shall commence as to all Units on the first day of the month following the purchase of each Unit to an individual Owner. Monthly or annual assessments will be payable at times designated by the Board of Trustees of the Association.

Section 7. Certificate of Payment. The Association shall, upon the written request of any Unit Owner or any encumbrance or prospective encumbrance of a Unit, and upon payment of a reasonable fee not to exceed \$10, issue to the requesting person or persons, a written statement setting forth the unpaid assessments with respect to the Unit covered by the request. This written statement of indebtedness is conclusive upon the remaining Unit Owners in favor of all persons who rely thereon in good faith. Unless the Association complies with the request for a statement of indebtedness within ten (10) days, all unpaid assessments which became due prior to the date of the making of such request are subordinate to the lien held by the person requesting the statement. Any encumbrance holding a lien payable with respect to the Unit and upon payment the encumbrance shall have a lien on such Unit for the amounts paid of the same rank as the lien of his Unit.

Section 8. Exempt Property. The following Property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All Properties dedicated to and accepted by a local government or public authority;
- and
- (b) The Common Area, if any.

Section 9. No Assessment for Taxes. It is understood that under the Act each Unit, together with its percentage of undivided interest in the Common Areas and Facilities in the Project, is deemed a parcel and subject to separate assessment and taxation by each assessing Unit and special district for all types of taxes authorized by law. Each Unit Owner of record will, accordingly, pay and discharge any and all taxes which may be assessed against his Condominium Unit.

ARTICLE VI
NONPAYMENT OF ASSESSMENTS

Section 1. Delinquency. Any assessment provided for in this Declaration, which is not paid when due, shall be delinquent. With respect to each assessment not paid within fifteen (15) days after its due date, the Association may, at its election, require the Owner to pay a "late charge" in the sum to be determined by the Association, but not to exceed \$20 per each delinquent assessment. If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may, at its option, bring an action at law against any person obligated to pay the same, or, upon compliance with the notice provisions set forth in Section 2 hereof, to foreclose the lien (provided for the Section 1 of Article V hereof) against the Unit, and there shall be added to the amount of such assessment any late charges, interest and all costs of collecting the same, including a reasonable attorney's fee, whether incurred by filing suit or not. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or in equity or lien foreclosure against all proper parties for the collection of such delinquent assessments.

Section 2. Notice of Lien. No action shall be brought to foreclose said assessment lien or to proceed under the power of sale herein provided less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, to the Owner of said Unit.

Section 3. Foreclosure Sale. Any such foreclosure and subsequent sale provided for above is to be conducted in accordance with the laws of the State of Utah relating to liens, mortgages, and deeds of trust. The Association, through its duly authorized agents, shall have the power to bid on the Unit at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

Section 4. Curing of Default. Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed \$25.00, to cover the costs of preparing and filing or recording such release, together with payment of such other costs, interest or fees as shall have been incurred.

Section 5. Cumulative Remedies. The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 6. Subordination of Assessment Liens. If any Unit subject to a monetary lien created by any provision hereof shall be subject to the lien of a deed of trust: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such deed of trust; and (2) the foreclosure of the lien of deed of trust or the acceptance of a deed in lieu of foreclosure of the deed of trust shall not operate to affect or impair the lien hereof, except that the lien hereof for said charges as shall have accrued to the foreclosure or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the deed of trust, with the foreclosure-purchaser or deed-in-lieu grantee taking title free of the lien hereof for all said charges that have accrued up to the time of the foreclosure of deed given in lieu of foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the foreclosure or deed given in lieu of foreclosure.

ARTICLE VII
ARCHITECTURAL CONTROL

It is the intent of the Declarant to build all the homes within the Condominium. Homes built by the Declarant, as well as any modification, repair, reconstruction, or fence Limited Common Area decks or patios, whether part of the Association as defined herein or part of a larger Association expanded to incorporate additional Units, shall be required to comply with the

architectural intent of this section, and with the exception of the Declarant, required to complete the filings specified herein.

Section 1. Approval by Board of Trustees. Other than Buildings constructed by the Declarant, together with associated landscaping, and fencing, no Building, fence, wall, or any other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made, nor shall any excavating, alteration of any stream, waterway, pond, or clearing, removal of shrubs or trees or landscaping or fencing on any Unit within the Properties be done unless a written application is submitted for approval of such improvement or improvements to the Board of Trustees and in connection therewith shall submit two complete sets of plans and specifications for the proposed improvement or improvements, together with a reasonable processing fee as determined by the Board of Trustees. For any improvement, such submittal shall include:

- (a) An overall plan view of the proposed improvement or improvements.
- (b) The location which said improvement or improvements will be placed or constructed including the location of existing improvements.
- (c) Floor plans of each floor level for reconstruction, or interior modification of Units.
- (d) The basic structural system of the improvement or improvements and the materials to be used in the construction thereof.
- (e) Elevations may be required at the discretion of the Board of Trustees.
- (f) Plan for temporary and permanent parking of vehicles in connection with the construction.
- (g) Provision for any impact on any easement or service.
- (h) Proposed time schedule for completion.
- (i) A survey acceptable to the Board of Trustees locating Unit corners, Fenced Limited Common Areas, utilities locations, and the proposed position of the improvement.
- (j) Any additional demands or requirements for culinary or irrigation water.
- (k) Specifications for water conserving plumbing fixtures in compliance with regulatory agencies.

Section 2. If the Board of Trustees shall not give its consent to the proposed improvement unless, in the opinion of the Board of Trustees, the improvement is properly located relative to Fenced Limited Common Area, setbacks, and other considerations, and properly designed relative to architecture, contour, materials, shapes, colors, and the general character of the improvement shall be in harmony with existing structures and improvements, and in harmony with the surrounding landscape, and the improvements shall be designed and located upon the Unit so as to minimize the disruption to the natural land forms.

Section 3. The Board of Trustees shall have the right to disapprove any application in the event said application and the plans and specifications submitted therewith are not of sufficient detail, or are not in accordance with the provisions herein set forth, or if the design or construction of the proposed improvement is not in harmony with neighboring improvements and the general surroundings, or if the design and the plans for construction do not include sufficient safeguards for preservation of the environment. The decision of the Board of Trustees shall be final, binding and conclusive on all of the parties affected. The Board of Trustees may restrict or refuse any proposed improvement for any reason.

Section 4. Declarant reserves the right to change at any time prior to construction the bounds and area of any Unit and associated Limited Common Areas owned by it provided such change does not adversely affect the access to any Unit sold to a third party, and that such change has been approved and is in accordance with the various county, state, and/or federal regulations controlling this Condominium Project.

Section 5. Non-Waiver. The approval of the Board of Trustees of any plans, drawings, or specifications for any work done or proposed, or in connection with any other matter, requiring the approval of the Board of Trustees under these restrictions, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whenever subsequently or additionally submitted for approval. Upon approval or disapproval of the plans by the Board of Trustees, one set of plans shall be returned to the Unit Owner and one set shall be retained by the Committee. If the Board of Trustees fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

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In order to obtain such approval, the Owner must submit for consideration of the Board of Trustees such details and information with relation to the contemplated action as the Board of Trustees shall request.

Section 6. Professional Assistance. If at any time the Board of Trustees shall determine that it would be in the best interest of the Members and Owners of the Condominium Project for such Owner to employ professional assistance, to design any improvement involved in the proposed work, the Board of Trustees shall inform such Owner in writing of its determination, whereupon all plans and specifications shall be prepared by such qualified professionals as the Board of Trustees shall determine.

Section 7. Landscaping Control. Each Member shall maintain his Unit and associated Fenced Limited Common Areas in an attractive and safe manner so as not to detract from the community.

Section 8. Board of Trustees Rules. The Board of Trustees may, from time to time and in its sole discretion adopt, amend, and repeal by unanimous vote, rules and regulations to be known as "Board of Trustees Rules" which, among other things interpret or implement the provisions of Section 1 to be applied to all improvements occurring or commencing after such adoption, amendment, or repeal. A copy of the Board of Trustees Rules as they may from time to time be adopted, amended or repealed, certified by any Member of the Board of Trustees, shall be available from the Board of Trustees.

Section 9. Building and Landscaping Time Restrictions. The exterior construction of any Building shall be completed within one (1) year following commencement of construction. The front yard and unfenced side yard of each Unit shall be landscaped by the Declarant within a period of one (1) year following completion or occupancy of each Building. Fenced rear and side yards shall be landscaped within a period of one(1) years following completion or occupancy of each dwelling.

All Members of the Association possessing vacant Units shall be responsible for keeping such Units clean in appearance and free from all refuse and potential fire hazards. No vacant Unit shall be used for storage of any kind except during the construction period.

Section 10. Appointment of Board of Trustees. The Declarant shall appoint the Board of Trustees, consisting of not less than three (3) Members for a term not to exceed three (3) years. In the event of the death or resignation of any Member of the Committee, the Board of Trustee of the Association, with the approval of the Declarant, shall appoint such Member's successor.

Section 11. Liability. Neither the Board of Trustees nor any Member thereof shall be liable to any Owner or third persons for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or (c) the development or manner of development of any Property within the Condominium Project.

Section 12. General Provisions. The powers and duties of such Committee shall be in force for a period of forty (40) years from the date of recording of this Declaration. Such powers and duties shall continue following the forty year period until a written instrument has been executed and duly recorded by the then record Owners of a majority of the Units appointing a representative or representatives who shall thereafter exercise the same powers previously exercised by said Committee. Said representatives may be the Members of the Board of Trustees of the Association.

Section 13. Variances. A petition may be filed for a variance by any Owner. The Board of Trustees may, in its sole discretion, by a unanimous affirmative vote of the Members of the Board of Trustees, allow reasonable variances as to any of the covenants and restrictions contained in this instrument, on such terms and conditions as it shall require.

ARTICLE VIII DUTIES AND POWERS OF THE ASSOCIATION

Section 1. Duties and Powers. In addition to the duties and powers enumerated in the Articles of Incorporation and By-laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) Own and/or maintain and otherwise manage all of the Common Areas, unfenced Limited Common Areas, and all facilities, improvements and landscaping thereon, including but not

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limited to the private streets and street fixtures, any under drain system, and all other Property acquired by the Association.

(b) Pay any real and personal Property taxes and other charges assessed against the Association.

(c) Have the authority to maintain, repair, and improve, for the benefit of all of the Common Areas, unfenced Limited Common Areas, and all facilities, improvements and landscaping thereon, all water, gas, electrical, and refuse collection services.

(d) Grant easements where necessary to utilities and sewer facilities over the Common Areas, unfenced Limited Common Areas, and all facilities, improvements and landscaping thereon to serve the Common Areas, unfenced Limited Common Areas, and all facilities, improvements and landscaping thereon, and the Units.

(e) Maintain such policy or policies of insurance as the Board of Trustees of the Association deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its Members. The Board of Directors shall obtain and maintain Workers Compensation Insurance if required to meet the requirements of the laws of the State of Utah. The Board of Directors shall obtain and maintain directors' and officers' liability insurance, if reasonably available, covering all of the directors and officers of the Association. This insurance will have limits determined by the Board of Directors. The Association may carry other insurance which the Board of Directors considers appropriate to protect the Association.

(1) Hazard Insurance. The Board of Trustees of the Association shall at all times maintain in force hazard insurance meeting the following requirements:

(a) A multi-peril type policy covering the entire Condominium (for Units Common Areas and Facilities, and Limited Common Areas and Facilities) shall be maintained in the amount of the value of all improvements on the project, as determined by the Board of Trustees, with provision for automatic increases in coverage to cover any increases in value of the project. Such policy shall provide coverage against loss or damage by fire and other hazards covered by the standard extended coverage endorsement and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as customarily are covered with respect to condominium projects similar to the Project in construction, location, and use.

(b) The named insured under each policy required to be maintained by the foregoing shall be in form and substance essentially as follows: "Association of Unit Owners of the Pinebrook Cottages Condominium Project, or its authorized representative, for the use and benefit of the individual Owners."

(c) Each such policy shall include the standard mortgagee clause (without contribution) which either shall be endorsed to provide that any proceeds shall be paid to the Association of Unit Owners for the use and benefit of Mortgagees as their interests may appear or shall be otherwise endorsed to fully protect the interests of Mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each Mortgagee at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

(d) Each such policy shall provide that notwithstanding any provision thereof which gives the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable if it is in conflict with any requirement of law or without the prior written approval of the Association.

(2) Liability Insurance. The Board of Trustees of the Association of Unit Owners shall at all times maintain in force a comprehensive policy of public liability insurance covering all of the Common Areas and Facilities. Such insurance shall include a "Severability of Interest Endorsement" or its equivalent which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of other Owners, the Board of Trustees, or the Association of Unit Owners. The coverage afforded by such public liability insurance shall include liability for non-owned and hired automobiles, liability for property of others, and such other risks as customarily are covered with respect to condominium projects similar to the Project in construction, location, and use. The limits of liability under such insurance shall not be less than \$1,000,000.00 for all claims of personal injury and/or property damage arising out of a single occurrence.

(3) General Requirements Concerning Insurance. Each insurance policy maintained pursuant to the foregoing Sections shall be written by an insurance carrier which is licensed to transact business in the State of Utah. Each such policy shall provide that: (a) coverage

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shall not be prejudiced by any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association of Unit Owners or the Board of Trustees; (b) coverage shall not be prejudiced by any failure by the Association or Board of Trustees to comply with any warranty or condition with regard to any portion of the Project over which the Association and Committee have no control; (c) coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insureds named therein, including any Mortgagee named as an insured; and (d) the insurer waives any right of subrogation it might have as to any and all claims against the Association, the Board of Trustees, any Unit Owner, and/or their respective agents, employee, or tenants. If due to changed circumstances, excessive cost, or any other reason, the insurance coverage required to be obtained and maintained hereunder cannot reasonably be secured, with respect to such coverage the Association or the Board of Trustees shall obtain and maintain such substitute, different or other coverage as may be reasonable and prudent under the circumstances as they then exist.

(4) **Destruction or Damage.** In the event of destruction or damage of part or all of the Condominium Project, the procedures of this section shall apply.

(a) If proceeds of the insurance maintained by the Board of Trustees are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

(b) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Units shall be assessed for any deficiency on the basis of their respective appurtenant percentages of undivided ownership interest.

(c) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Board of Trustees are not alone sufficient to accomplish restoration, and if the Unit Owners within 100 days after the destruction or damage by a vote of at least 75% of the entire undivided ownership interest in the Project elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subsection (b) above.

(d) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage and by a vote of at least 75% of the entire undivided ownership interest in the Project, elect to repair or reconstruct the affected improvements, the Board of Trustees shall promptly record with the Summit County Recorder a notice setting forth such facts. Upon the recording of such notice the provisions of subsections (1) through (4) of Section 57-8-31, Utah Code Annotated (1953), shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

(e) Any reconstruction or repair which is required to be carried out by this section shall be accomplished at the instance and direction of the Board of Trustees. Any determination which is required to be made by this section regarding the extent of damage to or destruction of Project improvements shall be made as follows: the Board of Trustees shall select three MAI appraisers; each appraiser shall independently arrive at a figure representing the percentage of Project improvements which have been destroyed or substantially damaged; the percentage which governs the application of the provisions of this section shall be the average of the two closest appraisal figures.

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

(g) Have the power to establish and maintain a working capital and contingency fund in an amount to be determined by the Board of Trustees of the Association.

(h) Have the power to: establish uniform maintenance standards for all Units and associated Limited Common Areas; lien any Unit, which is not being properly maintained as determined by the Board of Trustees; and enter any Unit and associated Limited Common Areas to perform required maintenance on the Unit or and associated Limited Common Areas of the exterior surface of Buildings, fencing, landscaping outside of fenced areas, driveways, walkways, and pedestrian easements.

(i) The Board of Trustees shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Unit which is owned by him. In the event of any transfer of a fee or undivided fee interest in a Unit either the transferor or transferee shall furnish the Board of Trustees with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Summit County, Utah. The Board of Trustees may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Board of Trustees may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Summit County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Board of Trustees is otherwise advised.

(j) The Board of Trustees shall have discretionary powers to prescribe the manner of maintaining and operating the Condominium Project and to determine the cash requirements of the Board of Trustees to be paid as aforesaid by the Owners under this Declaration. Every such reasonable determination by the Board of Trustees within the bounds of the Act, and this Declaration shall be final and conclusive as to the Owners, and any expenditures made by the Board of Trustees, within the bounds of the Act and this Declaration shall as against the Owner be deemed necessary and properly made for such purpose.

**ARTICLE IX
DEVELOPMENT AND SPECIAL DECLARANT RIGHTS**

Section 1. Reservation. The Declarant reserves the following Development and Special Declarant Rights ("Declarant Rights") which may be exercised, where applicable, anywhere within the Condominium Project:

- (a) To complete the improvements indicated on the Map;
- (b) To exercise any Declarant Rights reserved herein;
- (c) To maintain business/Sales offices, parking spaces, management offices, storage areas, nursery, construction yard, signs, advertising and model Twinhomes;
- (d) To maintain signs and advertising on the Units and adjacent Limited Common Areas, and within Right of Ways and Common Areas to advertise the Condominium Project;
- (e) To use and to permit others to use easements through the Property as may be reasonably necessary for construction within the Condominium Project or any annexations to the Condominium Project, and for the purpose of discharging Declarant's obligations under this Declaration;
- (f) To appoint or remove any officer of the Association or a Member of the Board of Directors during the Period of Declarant Control subject to the provisions of this Declaration;
- (g) To merge or consolidate the Condominium Project with another development lands and/or subject it to a Master Association;
- (h) To amend the Declaration and/or The Map in connection with the exercise of any Declarant Rights;
- (i) To exercise any other Declarant Rights created by any other provisions of this Declaration.

Section 2. Rights Transferable. Any Declarant Rights created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the Declarant Rights transferred and recorded in Summit County, Utah. Such instrument shall be executed by the transferor Declarant and the transferee.

Section 3 Limitations. The Declarant Rights shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such Declarant Rights shall terminate without further act or deed at the earlier of the following: as long as the Declarant (a) is obligated under any warranty or obligation; (b) holds a Development Right to create additional Units within the Condominium Project or on a development parcel the Declarant intends to annex into the Condominium Project; (c) owns any Unit; (d) owns any Security Interest in any Unit; or (e) three years have elapsed after recording of this Declaration. Earlier termination of certain rights may occur by statute.

Section 4 Interference with Declarant Rights. Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Declarant Rights without the

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prior written consent of the Declarant.

Section 5. Use by Declarant. The exercise of any Declarant Right by Declarant shall not unreasonably interfere with the access, enjoyment or use of any Unit or Twinhome, associated Limited Common Area by any Owner nor the access, enjoyment or use of the Common Area; nor shall any activity be conducted which might be unsafe, unhealthy, or hazardous to any person.

Section 6. Models, Sales Offices and Management Offices. Subject to the limitation set forth in Paragraph 10.3 hereof, the Declarant, its duly authorized agents, representatives and employees may maintain any Twinhome owned by the Declarant as a model, sales, leasing, construction and/or management office.

Section 7. Declarant's Easements. The Declarant reserves the right to perform warranty work, and repairs and construction work on Units or Twinhomes and exterior elements of Twinhome Buildings and any other improvements, to store materials in secure areas, and to control and have the right of access to work and repair until completion. All work may be performed by the Declarant without the consent or approval of the Board of Directors. The Declarant has an easement through the Units or Twinhomes, associated Limited Common Areas, Common Areas, and as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Declarant Rights, whether arising under the Act or reserved in this Article.

Section 8. Signs and Marketing. The Declarant reserves the right for Declarant to post signs and displays on the Units or Twinhomes and within Limited Common Areas, Right of Ways and Common Areas to advertise the Condominium and in order to promote sales of Units. Declarant also reserves the right for Declarant to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

Section 9 Declarant's Personal Property. The Declarant reserves the right to retain all personal Property and equipment used in the sales, management, construction and maintenance of Right of Ways and Common Areas that has not been represented as Property of the Association. The Declarant reserves the right to remove from the Condominium (promptly after the sale of the last Unit) any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

ARTICLE X EASEMENTS

Section 1. The rights and duties of the Owners of Units within the Project with respect to sanitary sewer and water, electricity, solar heating systems, gas, telephone, data communications, cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer connections and/or water connections or electricity, gas or telephone, data communications, and cable television lines, solar heating systems, or drainage facilities are installed within the Property, which connections, lines or facilities, or any portion hereof lie in or upon Units owned by Association Members or other than the Owner of a Unit served by said connections, the Association and the Owners of any Unit served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary thereof, to enter the homes and associated Limited Common Areas or to have utility companies or service companies enter the homes and associated Limited Common Areas in or upon which said connections, lines or facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

(b) Wherever sanitary sewer connections and/or water connections or electricity, gas or telephone, data communications, or cable television lines, solar heating systems, or drainage facilities are installed within the Properties, which connections serve more than one Unit, the Owner of each Unit served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his Unit.

Section 2. Easements over the Units' associated Limited Common Areas and Common Areas and Public Rights of Ways for the installation and maintenance of electric, telephone, data communications, cable television, water, gas, and sanitary sewer lines, drainage facilities, and street entrance ways as shown on the recorded Condominium Map, or other documents of record, are hereby reserved by Declarant, together with the right to grant and transfer the same for the use

and benefit of the Members of the Association.

Section 3. Easements for installation and maintenance of utilities and drainage facilities and for pedestrian access to Common Areas are reserved as shown on the recorded Map and Owners are advised that easement dimensions and locations vary as to specific Units and associated Limited Common Areas as noted on the recorded Map. Within these easements, no structure, including bridges, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of water through drainage channels in the easements. The easement area of each Unit and associated Limited Common Areas and all improvements in it or thereupon shall be maintained continuously by the Owner of the Unit, except for those improvements for which a public authority or utility company is responsible.

Section 4. In addition to the restrictions referenced in Section 3 of this Article, no excavation may take place without approval by the Board of Trustees and coordination with representatives the utility companies. Landscaping and fencing in easement areas is permitted, but in the event of said landscaping and/or fencing interferes with utility line installation or maintenance, or proper drainage, said landscaping and/or fencing may be subject to temporary removal or modification at Unit Owner's expense.

Section 5. Emergency Easements. A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Condominium to enter upon any part of the Condominium Project including Units, associated Limited Common Areas, Common Areas, and Public Rights of Ways in the performance of their duties.

Section 6. The Board of Directors has the right to grant permits, licenses and easements over the Common Areas and within Limited Common Areas for utilities, maintenance, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium Project. The Board of Directors has the right to grant periodic temporary permits, licenses and easements to conduct maintenance of fences, siding, and roofs. The Board of Directors has the right to grant temporary permits, licenses and easements, if in its opinion it becomes necessary, to repair and/or replace individual Twinhome exterior elements, including fencing, siding, shingles, driveways, walkways, and landscaping which have not be properly maintained, repaired and/or replaced by the Owner. The Board of Directors has the right to grant permanent and/or temporary permits, licenses and easements necessary to comply with any law, ordinance or order of any governmental authority.

Section 7. In the event that, by reason of the construction, reconstruction, settlement or shifting of any part of any of the Buildings, any part of the Common Areas and facilities encroaches or shall hereafter encroach upon any part of any Unit or any part of the Common Areas and Facilities or any other Unit, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and the Common Areas and facilities, as the case may be, so long as all or any part of the Building containing any such Unit shall remain standing; provided, however, that in no event shall a valid easement or any encroachment be created in favor of any Unit Owner or in favor of the Unit Owners as Owners of the Common Areas and facilities if such encroachment occurred due to the willful conduct of such Unit Owner or Owners.

ARTICLE XI USE RESTRICTIONS

The general objectives and intent of these covenants, restrictions and conditions is to create and maintain a residential district characterized by the following; family Twinhome dwellings, consistent architecture, consistent materials, consistent colors, well kept Building exteriors and fences, well kept lawns, trees and other plantings; Common Areas, minimum vehicular traffic, minimum nuisances, and quiet residential conditions favorable to family living.

Section 1. Zoning Regulations. The lands within the Properties shall never be occupied or used by or for any Building or purpose or in any manner which is contrary to the planning and zoning ordinances and regulations applicable thereto validly enforced from time to time.

Section 2. Land Use and Building Type.

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(a) No Unit shall be used except for family residential purposes. No timeshare or nightly rental use will be allowed on any family residential Unit.

(b) No family Twinhome dwelling shall be erected or placed on any Unit in the Condominium with floor space in said dwelling of less than 1100 square feet, excluding garage and patio.

(c) All family Twinhome dwellings may include the following accessory Building and structures not used for residential occupancy: an attached private garage for the storage of not more than two automobiles and only other structures which are approved by the Board of Trustees.

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

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

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

Section 3 Fences. No fences shall be allowed in the front yards or in side yards from the average front line of the family Twinhome dwelling exterior chimney chase forward. Hedges, shrubs, flowering plants, hardscape, trees, and other landscape elements will be permitted if they do not interfere with driving visibility.

Section 4. Building Location. No family Twinhome dwelling shall be erected or located outside the exception in accordance with the Record Map, or Record Map as amended.

Section 5. Height Requirements. Except as required by the Declarant during Project construction, no Buildings shall exceed two stories of living space except on those Units where the natural grade differential from the front of the Building pad to the rear of the Building pad allows for a walkout basement level.

Section 6. Recontouring. No recontouring shall be allowed without prior written approval of the Board of Trustees.

Section 7. Nuisances. No noxious or offensive activity shall be carried on within any Unit or its associated Limited Common Areas, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 8. Temporary Structures. No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used by any Owner at any time as a residence either temporarily, meaning two or more days, or permanently. No temporary structure, house trailer, mobile home, camper, or non-permanent outbuilding shall ever be placed or erected on any Common Area or Limited Common Area except with the approval of the Board of Trustees. No Unit shall be occupied in any manner prior to its completion.

Section 9. Overnight Parking and Storage of Vehicles. No vehicle of any kind, including but not limited to, automobiles, trucks, buses, tractors, trailers, camping vehicles, boats, boat trailers, snowmobiles, mobile homes, two and three wheeled motor vehicles, or other wheeled vehicles shall be permitted to be parked on any public street within the Condominium Project between the hours of 1:00 o'clock A.M. and 10:00 A.M. of any morning or at any other time while it is snowing. The storage of any automobiles, trucks, buses, tractors, trailers, camping vehicles, boats, boat trailers, snowmobiles, mobile homes, two and three wheeled motor vehicles, or other wheeled vehicles shall be forbidden unless such vehicles are kept from the view of the general public, Common Areas, and vehicular traffic. Among other purposes, this provision is meant to exclude storage of these items from Limited Common driveways.

Section 10. Pets. No animals, other than house pets, shall be kept or maintained. These animals shall be contained or otherwise controlled at all times and shall be restricted to two per household. Individual Owners will be responsible to control their animals so that dust and odor do not become a problem to the Property Owners. Animal privileges may be revoked by the Association if the Owner does not adhere to the above restrictions.

Section 11. Signs. No home Owner shall place a sign of any kind shall be displayed to the public view on any Unit except legal notices and one sign of not more than three (3) square feet advertising the Property for sale or rent, or signs used by a builder to advertise the Property during the construction and sale.

Section 12. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon the Property. Nor shall

oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon the Property. No derrick or other structures designed for use in boring for oil, oil products, or natural gas shall be erected, maintained or permitted upon the Property.

Section 13. Garbage and Refuse Disposal. No Unit or adjacent Limited Common Area shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Such trash, rubbish, garbage or other waste shall not be kept except in sanitary containers. No rubbish, trash, papers, junk or debris shall be burned within any Unit or adjacent Limited Common Area. Garbage containers shall be permitted to be placed at the end of the driveways only on trash collection days. At all other times trash containers must be kept in garages or other acceptable visually screened areas.

Section 14. Sewage Disposal, Waste Disposal and Water Supply. No individual sewage disposal system or water supply systems shall be permitted for any Unit nor may any Owner pump water from or impound any stream, waterway or pond at any time for any purpose. All Units, Common Area and Limited Common Area facilities shall be fitted and furnished with water conserving toilets, faucets, showerheads and such other water conserving devices as are available.

Section 15. Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner of the Property within the triangular area formed by the street Property lines and a line connecting them at points twenty (20) feet from the intersection of the street lines, or in the case of a rounded Property corner from the intersection of the street Property lines extended. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 16. No Business Uses. The lands within the Property shall be used exclusively for family residential living purposes and shall never be occupied or used for any commercial or business purpose other than traditional home business conducted within the home and except that the Declarant or its duly authorized agent may use any Twinhome owned by Declarant as a sales office, sales model, or Property office or rental office, and with the further exception that any Owner or his duly authorized agent may rent or lease said Owner's residential Building from time to time.

Section 17. Lease of a Twinhome. Any Owner shall have the right to lease his or her home upon such terms and conditions as the Owner may deem advisable, subject to the following:

(a) No Owner may lease less than his or her entire home;

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

(c) Such lease or rental agreement shall state that the failure of the lessee or renter to comply with the terms of the Declaration or any Bylaws of the Association, Articles of Incorporation or the Rules and Regulations of the Association shall constitute a default and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them;

(d) Any Owner who leases his or her home for a period of more than one month, shall within five days after the execution of such lease, forward a copy of same to the Board of Directors.

(e) Any Owner who rents his or her home through a management company or directly shall forward a copy of the standard rental agreement to the Board of Directors.

Section 18. Underground Utility Lines. All permanent water, gas, electrical, telephone, data communications, and television cables, other electronic pipes and lines and all other utility lines within the limits of the Property must be buried underground and may not be exposed above the surface of the ground.

Section 19. Maintenance of Property. All Units, all adjacent Limited Common Areas, and all improvements on the Property shall be kept and maintained by the Owner thereof and/or the Association in a clean, safe, attractive and slightly condition and good repair.

Each Owner shall keep his or her Twinhome exterior, including fences, driveways and Limited Common Area landscaping in good order, condition and repair and in a clean and sanitary condition, and shall do all things which may at any time be necessary to maintain the good appearance and condition of his or her Unit. In the event any Owner shall fail to do this in a manner satisfactory to the Board of Directors, the Board of Directors after Notice and Hearing shall have the

right to maintain, repair and reconstruct same. The cost of such maintenance, repair and reconstruction shall be chargeable to such Owner by Individual Assessment.

Each Twinhome is subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) for providing emergency or delinquent maintenance, repair and reconstruction in accordance with the above.

Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality.

In addition, each Owner shall be responsible for all damage to any other Twinhomes resulting from his or her failure or negligence to make any of the repairs required by this Paragraph. Each Owner shall perform his or her responsibility in such manner as shall not unreasonably disturb or interfere with the other Owners. Each Owner shall promptly report to the Board of Directors any defect or need for repairs for which the Association is responsible.

The Association shall be responsible for all Common Areas and facilities, and unfenced Limited Common Areas.

Section 20. No Hazardous Activities. No activity shall be conducted within any Unit or adjacent Limited Common Area and no improvements constructed within any Unit or adjacent Limited Common Area which are or might be unsafe or hazardous to any person or party. Without limiting the generality of the foregoing, no firearms shall be discharged within any Unit or adjacent Limited Common Area, and no open fires shall be lighted or permitted within any Unit or adjacent Limited Common Area except in a contained barbecue Unit while attended and in use for cooking purposes or within safe and well designated interior fireplaces.

Section 21. Dwelling Construction and Fence Restrictions. In order to maintain a harmonious community development and protect the character of the neighborhood, the following guidelines are set out:

(a) Dwelling style, design, materials, colors, and any alterations or additions thereto shall be consistent throughout the Condominium Project and will conform to the standards determined and established by the Declarant.

(b) Exterior Twinhome Building construction materials will be limited to log posts, wood trusses, wood siding, asphalt shingles and shall be in earth tones indigenous to the area and approved by the Board of Trustees. No reflective finish other than glass shall be used on exterior surfaces other than surfaces of hardware fixtures, including but without limitation, the exterior surfaces of any of the following: roofs, all projections above roofs, retaining walls, doors, trim, fences, pipes, equipment, and only those mailboxes approved by the Board of Trustees or required by the US. Postal Service.

(c) Roof design, including pitch, shape, materials, trim, and style shall be limited to those determined and established by the Declarant. Roofs shall be constructed so that no reflective surfaces are visible by other Property Owners.

(d) Location of all approved storage equipment, garbage and refuse containers, air conditioning equipment, clothes drying lines, and utility pipes, etc., must be placed within Fenced Limited Common Areas or garages in such a manner as not to be conspicuous from public streets, Common Areas, or open space.

(e) Any light used to illuminate garages, patios, walkways, entrances, driveways, or for any other purpose shall be so arranged as to reflect light away from adjacent residences and away from the vision of passing motorists.

(f) Fences shall be of wood and/or stone. No fences or walls of chain link, wire mesh, brick or unpainted concrete block shall be allowed. A Fence may incorporate rock, berm, vegetation, and Property line barriers as well as traditional wood or stone fences. Fence design, including shape, materials, location, and style shall be limited to those determined, established, and installed by the Declarant. Any fence gates installed by a homeowner shall be of the same materials and character as the fence to which it is connected.

(g) Hedges, shrubs, flowering plants, and hardscape shall not exceed six feet in height.

Section 22. Off-Road Vehicles. No automobiles, trucks, motorcycles, trail bikes, snowmobiles, four-wheel drive vehicles or vehicles of any kind shall be operated on any of the Declarant's Property wherever the same may be situated or any place within the Project, other than the public roadways.

Section 23. Unit and adjacent Limited Common Area and Common Area: Uses, Restrictions. The Board of Trustees or its duly authorized agents shall have the right, at any time,

and from time to time without any liability to the Owner for trespass or otherwise to enter Unit and adjacent Limited Common Area and Common Area or upon any portion of the Property for the purpose (1) of removing any improvement constructed, reconstructed, finished, altered, or maintained upon such area in violation of these covenants, (2) of restoring or otherwise reinstating such areas, and (3) of otherwise enforcing without any limitation, all of the restrictions set forth in this Declaration. No improvement, excavation or other work which in any way alters any Unit and adjacent Limited Common Area and Common Area or any other area of the Property from its natural or improved state existing on the date the Unit was first sold shall be made or done except upon strict compliance with this Declaration.

Section 24. Removal of Natural Foliage. No trees shall be removed without the prior written approval of the Board of Trustees.

Section 25. Restoration of Cut and Fill. Declarant shall be responsible for restoration of cut and fill slopes between the back of the curb and each respective Property. All cut or fill slopes shall be restored as per Declarant's landscaping plan for such area at the sole expense of the Declarant. All restoration shall be approved by the Board of Trustees and shall be completed within six months of creation of cut or fill conditions.

Section 26. Rules regarding Fires. No exterior fires whatsoever, except barbecue fires contained in receptacles provided therefor, shall be allowed.

Section 27. Antennas. No antenna of any sort, either installed or maintained, which is visible from the front of neighboring Properties shall be allowed. No satellite dishes larger than 24 inches in diameter shall be permitted except as may be allowed by the Board of Trustees.

Section 28. Rules and Regulations. No Owner shall violate the rules and regulations for the use of the Unit and adjacent Limited Common Area and Common Area as adopted from time to time by the Association. No such rules and regulations shall be established which violate the intention or provisions of this Declaration or which shall unreasonably restrict the use of any Unit and adjacent Limited Common Area and Common Area by any Owner.

ARTICLE XII AMENDMENTS

At any time while any provision, covenant, condition or restriction contained in this Declaration or amendment thereto is in force and effect, it may be amended or repealed by the recording of a written instrument specifying the amendment or repeal, executed by Owners, (and *Eligible Mortgagees, if required*), representing a majority of the combined votes of both classes of Membership entitled to vote. It is intended by this paragraph that the Declarant having three (3) votes per Unit owned, as per Article III, Section 3 above, shall have sufficient votes, by itself, to amend this Declaration until such time as 75% or more of the Units within the Properties and additional annexation properties which are owned by Class A Members.

Section 1. Effective Date. Any such amendment shall be effective upon the recording of the amendment together with a notarized Certificate of the Secretary of the Association certifying that the requisite number of Owners and Eligible Mortgagees, if required, have given their written consent to the amendment. The Secretary shall further certify that originals of such written consents by Owners and Eligible Mortgagees, as applicable, along with the recorded amendment, are in the records of the Association and available for inspection.

Section 2. Recordation. Each amendment to the Declaration must be recorded.

Section 3. Signatures. Where a Twinhome is owned by more than one person, the execution of any amendment shall be valid if executed by any one Owner. Signatures need not be notarized. The signature need not be identical to the name of the recorded Owner, but shall be sufficiently close as to be identified as a proper signature of such person. All signatures shall be irrevocable even upon death or conveyance of the Twinhome, except that if an amendment is not recorded within one year of the date of signature, then the executing Owner or their successor or assigns may revoke their signature by a written and notarized document delivered to the Secretary of the Association.

Section 4. Counterparts. Amendments can be executed in counterparts, provided that such recorded document shall also contain a certification of the Secretary of the Association that all

counterparts, as executed, are part of the whole.

Section 5. Time to Appeal. No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Association's Declaration, any Articles of Incorporation or Bylaws unless it is commenced within one year from the effective date of said amendment, unless fraud or willful negligence is asserted and proven.

Section 6. Eligible mortgagees. Amendments may be subject to the consent requirements of eligible mortgagees.

Section 7. Declarant Reservation. Declarant reserves the right to amend, without the consent of Owners or First Mortgagees this Declaration, The Map, any Articles of Incorporation or Bylaws, any time within the limitations set forth herein, as follows:

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

(b) To comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages.

(c) To comply with any requirements of governmental and regulatory agencies and laws.

Section 8. Rights and Provisions Respecting Additional Land. The Condominium Project established by this declaration is an expandable Condominium and the Declarant has the right to add other land to the Project in accordance with the following provisions:

(a) Declarant hereby reserves the option to expand the Project by the addition of any portion of the additional land referred to in the legal description on page one above.

(b) There shall be no limitations on Declarant's option and no consent shall be required of any Unit Owners in order to expand the Project, except as provided herein.

(c) The option to expand the Project may be exercised by Declarant at any time or times within seven (7) years for the recording of this declaration.

(d) Any portion of the additional land may be added to the Project, at any time, without regard to its size, location or configuration, but any portion added must be contiguous to the Project as it existed immediately prior to the addition concerned, and it is not necessary that all of the additional land be added.

(e) No assurances are made as to the locations of any improvements or of the descriptions of other improvements that may be made on the additional land nor that any Units constructed on the additional land will be substantially identical to the original Units.

(f) The total maximum number of Units that may be constructed on the additional land described on page one is 46.

(g) Each Unit built on any portion of the additional land, which is added to the Project, shall be used only for residential housing.

(h) Any structures erected on any portion of the additional land, which is added to the Project, shall be compatible with the structures on the land originally in the Project in terms of quality of construction, principal materials to be used and architectural style.

(i) Declarant reserves the right to create Limited Common Areas and facilities within any portion of the additional land which may be added to the Project but no assurance is made as to the types, sizes and maximum number of such Limited Common Areas.

(j) Procedure for Expansion. Any expansion of this Project shall be deemed to have occurred at the time of recording of an amendment to this declaration, together with a record of survey map, executed by the Owners of the additional land to be added to the Project, containing a description of the Property to be added to the Project and a statement reallocating the undivided interests in the Common Areas and facilities as required by the Act.

Section 9. Consent of Declarant Required. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such Amendment, which consent shall be evidenced by the execution by Declarant of any certificate of amendment. The foregoing requirement for consent of Declarant to any amendment shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event, shall terminate without further act or deed in accordance with the limitations set forth herein.

Section 10. Expenses. All expenses associated with preparing and recording an amendment shall be allocated as Association expenses.

**ARTICLE XIII
GENERAL PROVISIONS**

Section 1. Enforcement and Arbitration. Any controversy, claim, or dispute arising out of or related to this Declaration of Covenants, Conditions, and Restrictions and By-Laws, or breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgement upon the award rendered by the arbitrator(s) may be entered in any court of law having jurisdiction thereof. Furthermore, it is agreed by any and all parties to this Declaration of Covenants, Conditions, and Restrictions and By-Laws that any and all fees of the American Arbitration Association shall be paid in advance, on a prorata basis by the parties to such arbitration, or at such time as specified by the American Arbitration Association.

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

Section 2. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of forty (40) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Units has been recorded, agreeing to change said covenants in whole or in part.

Section 3. Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 4. Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Owner, and their heirs, personal representatives, successors and assigns.

Section 5. Consent to Future Zoning. Each Unit Owner hereby acknowledges receipt of a copy of this Declaration, of the recorded Condominium Map showing the proposed Project of attached family Twinhome dwellings, i.e. Units, adjacent Limited Common Areas, Common Areas, Public Right of Ways, and easements, and other matters of record, and the Declarant's phase two and phase three preliminary Maps, and acknowledges that Declarant intends to request phase two and phase three final Map approval which will incorporate changes which Declarant may make in order to make the optimum use of Declarant's land located in the vicinity of the Condominium and as is generally shown on Declarant's phase two and phase three preliminary Maps. Each Unit Owner for himself, his successors and assigns hereby consents to and covenants not to object to any application made by Declarant for said phase two and phase three final Map approval. Each Unit Owner for himself, his successors and assigns, covenants and agrees to execute any and all instruments in writing that may be required or need by Declarant to obtain said approvals and changes.

Section 6. Withdrawal of Properties. The trustees of the Association shall have the authority to withdraw any Units and associated adjacent Limited Common Areas from the operation of this Declaration prior to the sale of said Unit or Units so that said Units and associated adjacent Limited Common Areas shall not thereafter be subject to any of the provisions of this Declaration.

Section 7. Limited Liability. Neither Declarant, the Association, the Trustees of the Association, the Board of Trustees, nor any Member, Agent, Representative, Officer, Director or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter pertaining or contemplated by this Declaration, provided, however, that this limited liability shall not apply if the loss, expense or liability involved resulted from the willful misconduct or gross negligence of such person. Covenants, conditions or restriction herein contained nor the enforcement of any lien provisions herein shall defeat or render invalid the lien of any deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure of trustee's sale, or otherwise.

Section 8. Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

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Section 9. Nuisance. The result of every act or omission whereby any provision, condition, restriction, covenant, easement or reservation contained in this Declaration is violated in whole or in part is hereby declared to be and constitutes a nuisance and every remedy allowed by law or equity against a nuisance either public or private, shall be applicable against every such result and may be exercised by the Association or any other Unit Owner in the Project. Such remedy shall be deemed cumulative and not exclusive.

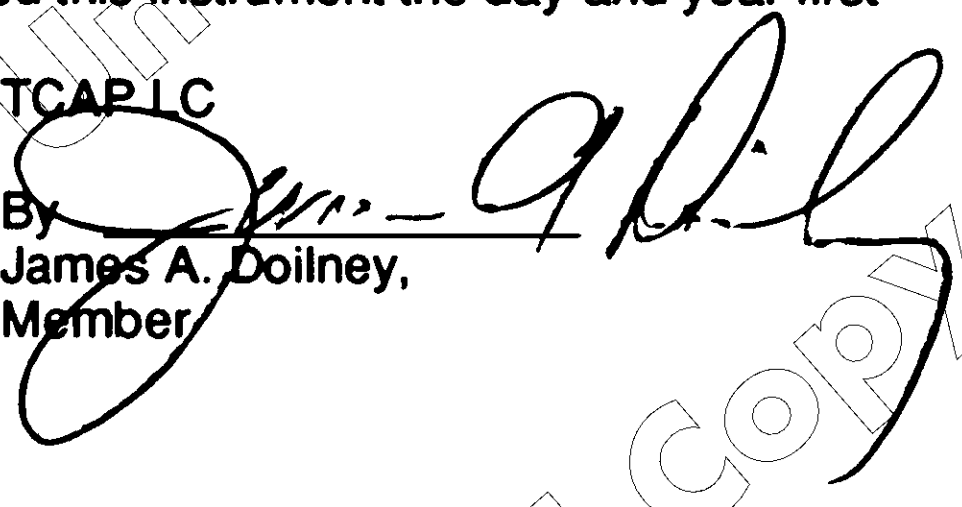
Section 10. Conflict. This Declaration and other Documents are intended to comply with the requirements of the State of Utah and Summit County. If there is any conflict between this Declaration and other Documents and the provisions of the statutes, the provisions of the statutes shall control.

Section 11. Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address with the Association, and except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail, all other notices or demands intended to be served upon an Owner shall be delivered personally and/or sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to TCAP LC, 1237 Pinebrook Boulevard, Park City, UT, 84060, Registered Agent for the Association until the Registered Agent is changed by a notice duly filed with the Office of the Secretary of State of Utah (Change of Registered Agent).

Section 12. No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur

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

TCAP LC

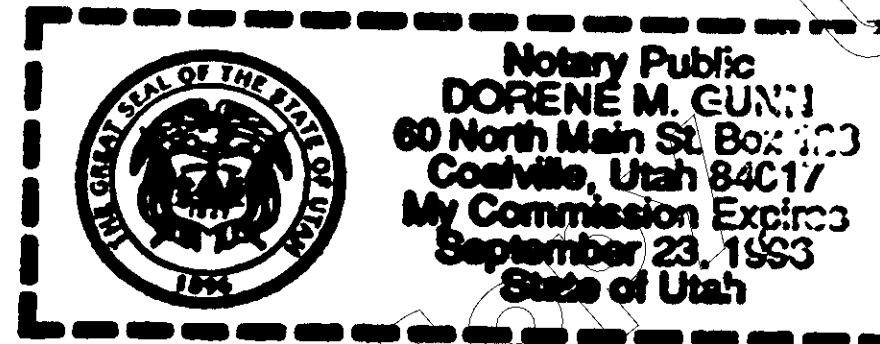
By 
James A. Doilney,
Member

STATE OF UTAH
ss.
COUNTY OF SUMMIT

BEFORE ME, a Notary Public in and for said county and state, on this 2 day of May, 1995, personally appeared James A. Doilney, known to me to be a Member of TCAP LC, the Limited Liability Company that executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

Notary Public 

Residing at: _____



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EXHIBIT "A"

Unit #	Unit Square Footage	Ownership %	Votes
85	1,380	1.97255575%	1
86	1,380	1.97255575%	1
87	1,980	2.83018868%	1
88	1,980	2.83018868%	1
89	1,650	2.35849057%	1
90	1,650	2.35849057%	1
27	1,380	1.97255575%	1
28	1,380	1.97255575%	1
29	1,980	2.83018868%	1
30	1,980	2.83018868%	1
31	1,380	1.97255575%	1
32	1,380	1.97255575%	1
33	1,650	2.35849057%	1
34	1,650	2.35849057%	1
35	1,380	1.97255575%	1
36	1,380	1.97255575%	1
37	1,380	1.97255575%	1
38	1,380	1.97255575%	1
39	1,980	2.83018868%	1
40	1,980	2.83018868%	1
41	1,650	2.35849057%	1
42	1,650	2.35849057%	1
43	1,380	1.97255575%	1
44	1,380	1.97255575%	1
45	1,650	2.35849057%	1
46	1,650	2.35849057%	1
47	1,380	1.97255575%	1
48	1,380	1.97255575%	1
49	1,380	1.97255575%	1
50	1,380	1.97255575%	1
51	1,980	2.83018868%	1
52	1,980	2.83018868%	1
53	1,650	2.35849057%	1
54	1,650	2.35849057%	1
55	1,380	1.97255575%	1
56	1,380	1.97255575%	1
57	1,380	1.97255575%	1
58	1,380	1.97255575%	1
59	1,650	2.35849057%	1
60	1,650	2.35849057%	1
61	1,980	2.83018868%	1
62	1,980	2.83018868%	1
63	1,380	1.97255575%	1
64	1,380	1.97255575%	1
Totals	69,960	100.00000000%	44

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**BY-LAWS OF The Pinebrook Cottages
An Expandable Condominium Project**

I. IDENTITY

These are the By-Laws of the Pinebrook Cottages, a Condominium Project, duly made and provided for in accordance with the Utah Condominium Ownership Act. Any term used herein which is defined in the Declaration to which these By-Laws are appended shall have the meaning ascribed therein.

II. APPLICATION

All present or future Owners, tenants, or other persons who might use the facilities of the Pinebrook Cottages in any manner are subject to the regulations set forth in these By-Laws. The mere acquisition or rental of any of the Units or parts thereof or the Common Areas and facilities will signify that these By-Laws are accepted, ratified, and will be complied with by said persons.

III. ADMINISTRATION OF CONDOMINIUM PROJECT

1. **Place of Meetings.** Meetings of the Unit Owners shall be held at such place within the State of Utah as the Board of Trustees may specify in the notice, except as herein otherwise specified.

2. **Annual Meetings.** The first annual meeting of the Unit Owners shall be held at the Project on the second Tuesday in January, 1997, or sooner at the Declarant's discretion. Thereafter, the annual meetings shall be held on such day of each succeeding year; provided, however, that whenever such date falls on Saturday, Sunday or a legal holiday, the meeting shall be held on the next succeeding business day, and further provided that the Board of Trustees may by resolution fix the date of the annual meeting on such date or at such other place as the Board of Trustees may deem appropriate.

3. **Special Meetings.** Special meetings of the Association of Unit Owners may be called at any time by the Board of Trustees or by Unit Owners who collectively hold at least thirty (30) percent of the total vote. Notice of said meeting shall be delivered not less than ten (10) days prior to the date fixed for said meeting. Such meeting shall be held on the Project or such other place as the Board of Trustees or Unit Owners calling the meeting may specify and the notice thereof shall state the date, time and matters to be considered.

4. **Notices.** Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered 72 hours after a copy of the same has been deposited in the United States Mail, postage prepaid, addressed to the Unit Owner concerned.

5. **Quorum.** At the meeting of the Unit Owners, the Owners of more than fifty (50) percent in the aggregate of interest in all classes of undivided ownership of the Common Areas and Facilities shall constitute a quorum for any and all purposes, except where by express provisions a greater vote is required, in which event a quorum shall be the percentage of interest required for such vote. In the absence of a quorum the chairman of the meeting may adjourn the meeting from time to time, without notice other than by announcement at the meeting, until holders of the amount of interest requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.

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6. **Voting.** When a quorum is present at any meeting, the vote of the Unit Owners representing more than fifty (50%) percent of the undivided interest present at the meeting either in person or represented by proxy, shall decide any question of business brought before such meeting, including the election of the Board of Trustees, unless the question is one upon which, by express provision of the Declaration or these by-laws, a greater vote is required, in which case such express provision shall govern and control the decision of such question. All votes may be cast either in person or by proxy.

7. **Waivers of Notice.** Any Unit Owner may at any time waive any notice required to be given under these by-laws, or by statute or otherwise. The presence of a Unit Owner in person at any meeting of the Unit Owners shall be deemed such waiver.

IV. BOARD OF TRUSTEES

1. **Purpose of Powers.** The business, Property and affairs of the Condominium Project shall be managed and governed by the Board of Trustees.

2. **Election.** The Board of Trustees shall be elected as provided in the Declaration.

3. **Vacancies.** Vacancies on the Board of Trustees shall be filled as provided in the Declaration.

4. **Regular Meetings.** A regular annual meeting of the Board of Trustees shall be held immediately after the adjournment of each annual meeting of the Unit Owners. Regular meetings, other than the annual meeting, shall or may be held at regular intervals at such places and at such times as either the president or the Board of Trustees may from time to time designate.

5. **Special Meetings.** Special meetings of the Board of Trustees shall be held whenever called by the president, vice president, or by two or more Members. By unanimous consent of the Board of Trustees, special meetings may be held without call or notice at any time or place.

6. **Quorum.** A quorum for the transaction of business at any meeting of the Board of Trustees shall consist of a majority of the Members of the Board of Trustees then in office.

7. **Compensation.** Members of the Board of Trustees as such, shall not receive any stated salary or compensation; provided that nothing herein contained shall be construed or preclude any Member of the Board of Trustees from serving the Project in any other capacity and receiving compensation therefor.

8. **Waiver of Notice.** Before or at any meeting of the Board of Trustees, any Member thereof, may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member of the Board of Trustees at any meeting thereof shall be a waiver of notice by him of the time and place thereof.

9. **Adjournments.** The Board of Trustees may adjourn any meeting from day to day or for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty days.

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V. OFFICERS

1. **Designation and Election.** The principal officers of the Board of Trustees shall be a president, a vice president, and a secretary, and a treasurer, all of whom shall be elected by and from the Board of Trustees. The Board of Trustees may appoint an assistant secretary and an assistant treasurer and such other officers as in their judgment may be necessary or desirable. Such election or appointment shall regularly take place at the first meeting of the Board of Trustees immediately following the annual meeting of the Unit Owners; provided, however, that elections of officers may be held at any other meeting of the Board of Trustees.

2. **Other Officers.** The Board of Trustees may appoint such other officers, in addition to the officers hereinabove expressly named, as they shall deem necessary, who shall have authority to perform such duties as may be prescribed from time to time by the Board of Trustees.

3. **Removal of Officers and Agents.** All officers and agents shall be subject to removal, with or without cause, at any time by the affirmative vote of the majority of the then Members of the Board of Trustees.

4. **President.** The president shall be the chief executive of the Board of Trustees, and shall exercise general supervision over its Property and affairs. He shall sign on behalf of the Condominium Project all conveyances, mortgages and contracts of material importance to its business, and shall do and perform all acts and things which the Board of Trustees may require of him. He shall preside at all meetings of the Unit Owners and the Board of Trustees. He shall have all of the general powers and duties which are normally vested in the office of the president of a corporation, including, but not limited to, the power to appoint committees from among the Members (or otherwise) from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Condominium Project.

5. **Vice President.** The vice president shall take the place of the president and perform his duties whenever the president shall be absent or unable to act. If neither the president nor the vice president is able to act, the Board of Trustees shall appoint some other Member thereof to do so on an interim basis. The vice president shall also perform such other duties as shall from time to time be prescribed by the Board of Trustees.

6. **Secretary.** The secretary shall keep the minutes of all meetings of the Board of Trustees and of the Unit Owners; he shall have charge of the books and papers as the Board of Trustees may direct; and he shall in general, perform all the duties incident to the office of secretary.

7. **Treasurer.** The treasurer shall have the responsibility for the funds and securities of the Board of Trustees and shall be responsible for keeping full and accurate accounts of all receipts of all disbursements in books belonging to the Board of Trustees. He shall be responsible for the deposit of all moneys and all other valuable effects in the name, and to the credit of, the Board of Trustees in such depositories as may from time to time be designated by the Board of Trustees.

8. **Compensation.** No compensation shall be paid to the officers for their services as officers. No remuneration shall be paid to an officer for services performed by him for the Board of Trustees in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board of Trustees.

VI. ACCOUNTING

1. **Books and Accounts.** All books and accounts shall be kept under the direction of the treasurer and in accordance with the reasonable standards of accounting procedures.

2. **Report.** An accounting of the income and expenses of the Condominium Project shall be prepared and submitted to the Unit Owners at or before the annual meeting of the Unit Owners. Provided, however, that a certified audit by a certified public accountant approved by the Unit Owners shall be made if Owners representing at least seventy-five (75%) percent of the undivided interest in the Common Areas and Facilities determine to require the same.

3. **Inspection of Books.** The books and records of the Condominium Project shall be available at the principal office of the Board of Trustees for inspection at reasonable times by any Unit Owner.

VII. RULES

The Board of Trustees shall have the power to adopt and establish, by resolution, such Project, management and operational rules and regulations as it may deem necessary for the maintenance, operation, management and control of the Condominium Project, and the Board of Trustees may from time to time, by resolution, alter, amend, and repeal such rules and regulations. Unit Owners shall at all times obey such rules and regulations and use their best efforts to see that they are faithfully observed by their lessees and the persons over whom they have or may exercise control or supervision, it being clearly understood that such rules and regulations shall apply and be binding upon all Unit Owners and the Condominium Project. Provisions of the Act pertaining to rules and regulations are incorporated herein by reference and shall be deemed a part hereof.

VIII. AMENDMENT OF THE BY-LAWS

These By-Laws may be altered or amended by the majority vote of the Board of Trustees or of the Association of Unit Owners except where the Act or the Declaration require a different procedure for their amendment or alteration.

IX. OPERATION AND MAINTENANCE OF THE CONDOMINIUM PROJECT

The Board of Trustees shall be responsible for the maintenance, control, operation and management of the Condominium Project in accordance with the provisions of the Act, the Declaration under which the Condominium Project was established and submitted to the provisions of the Act, these by-laws and such rules and regulations as the Association of Unit Owners may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the Association of Unit Owners.

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