

203

Ent 260571 Bk 1044 Pg 216
Date 17-Mar-2008 4:10PM Fee \$203.00
LuAnn Adams - Filed By df
Box Elder Co., UT
For MT VIEW TITLE & ESCROW INC
03-249-0001 thru 0128

WHEN RECORDED RETURN TO:
Parsons Behle & Latimer
One Utah Center
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Attn: Kimberly K. Chytraus

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
KOTTER CANYON ESTATES
(a planned residential unit development)**

39

**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS AND RESERVATION
OF EASEMENTS FOR KOTTER CANYON ESTATES,
A PLANNED RESIDENTIAL UNIT DEVELOPMENT**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR KOTTER CANYON, A PLANNED RESIDENTIAL UNIT DEVELOPMENT is made as of the ____ day of _____, 2008, by Kotter Canyon Estates, LLC, a Utah limited liability company (“Declarant”). Capitalized terms used herein shall have the meanings set forth in Article 2.

RECITALS:

A. Declarant intends to develop and sale certain residential lots located in Brigham City, Box Elder County, Utah as part of a subdivision to be known as the “Kotter Canyon Estates Subdivision”, more particularly described on Exhibit A attached hereto and by this reference made a part hereof (the “Property”).

B. Declarant intends to subdivide, develop and/or convey all of the Lots (defined below) and other land within the Kotter Canyon Estates Subdivision subject to a general plan of development, and subject to certain protective covenants, conditions and restrictions all as set forth in this Declaration, and which are deemed to be covenants running with the land mutually burdening and benefiting each of the Lots and other real property within the Kotter Canyon Estates Subdivision.

C. It is the intention of the Declarant in imposing the covenants, conditions and restrictions in this Declaration (defined below) to protect and enhance the property values and aesthetic values of the Lots all for the mutual protection and benefit of the Lots and the Owners of the Lots. The covenants, conditions and restrictions in this Declaration are intended to, and shall in all cases run with the title of the land, and be binding upon the successors, assigns, heirs, lien holders, and any other Person holding any interest in the Lots, and shall inure to the benefit of all other Lots in the Kotter Canyon Estates Subdivision. Notwithstanding the foregoing, no provisions of this Declaration shall prevent Declarant from the completion of Improvements, or from using any Lot owned by Declarant as a model home, temporary construction or sales office, nor limit Declarant’s right to post signs or engage in other reasonable activities on the Property incidental to sales or construction which are in compliance with the applicable ordinances of Brigham City.

NOW, THEREFORE, Declarant hereby declares, covenants, and agrees as follows:

**ARTICLE I
DEFINITIONS**

Unless the context clearly requires the application of a more general meaning, the following terms, when used in this Declaration, shall have the following meanings:

- 1.1 “ARC” has the meaning set forth in Section 3.1.

- 1.2 “Articles of Incorporation” has the meaning set forth in Section 4.1.
- 1.3 “Assessment” means an annual assessment or a special assessment imposed by the Association.
- 1.4 “Association” means KOTTER CANYON ESTATES HOMEOWNERS ASSOCIATION, INC., an Utah nonprofit corporation and as the context requires, the officers and directors thereof.
- 1.5 “Association Areas” means all areas designated as “Common Area”, “Limited Common Area”, and “Wetlands” on the Kotter Canyon Plat together with all equipment, facilities, fixtures, and other personal property and real property improvements used and/or owned by the Association for the use and benefit of all Owners, including without limiting the generality of the foregoing, (a) Improvements; (b) the detention basins; (c) the Wetlands; (d) the Trail System; (e) the entryway and Association Area landscaping and related improvements and equipment; (f) the Water Feature Zone; and (g) all equipment, fixtures, facilities, and other personal property and real property improvements owned or hereafter purchased in accordance with this Declaration with monies from the Association Expense Fund. Except as otherwise set forth in this Declaration, the Association Areas shall be owned by the Association. Subject to this Declaration, all Association Areas shall be maintained, managed and controlled by the Association for the use and enjoyment of the Owners as more fully described in this Declaration.
- 1.6 “Association Expenses” has the meaning set forth in Section 6.2.1(b).
- 1.7 “Association Expense Fund” has the meaning set forth in Section 6.2.1(c).
- 1.8 “Building” means any building containing Dwellings constructed on the Property.
- 1.9 “Bylaws” has the meaning set forth in Section 4.7.
- 1.10 “City” means Brigham City, Utah.
- 1.11 “County” means Box Elder County, a corporate body and political subdivision of the State of Utah, and its appropriate departments, officials, and boards.
- 1.12 “Declarant Control Period” means the period of time Declarant is in control of the appointment of members of the Kotter Canyon Board as set forth in Section 17.6 below.
- 1.13 “Declaration” means this Declaration of Covenants, Conditions and Restrictions and Reservation of Easement for the Kotter Canyon Estates Subdivision a planned residential unit development, together with any subsequent amendments, supplements or additions.
- 1.14 “Dwelling” means all or the portion of a Building situated upon a Lot designed and intended for use and occupancy as a single family residence. Each Dwelling shall be owned by the Owner or Owners of the Lot on which the Dwelling is situated subject to all of the terms, covenants, conditions, restrictions and easements of this Declaration.

1.15 “Excavation” means any disturbance to the surface of the land, including the removal of native vegetation, and also including trenching which results in removal of soil or rock from a depth of more than 12 inches from the natural surface of the land, or any grading of the surface. Excavation shall include any activities for which an excavation or grading permit would be required under the ordinances and regulations as adopted by the City.

1.16 “Improvement” means all improvements, structures and appurtenances of every type and kind, including but not limited to Buildings, Dwellings, garages, storage buildings, sheds and additions to them; Trail System, retaining walls, gazebos, fences, driveways, trees, shrubs, bushes, landscaping, playground equipment, pools, patios, decks, gazebos, tennis courts, hard surfaced areas, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any Building.

1.17 “Kotter Canyon Board” means the duly elected and acting board of directors of the Association.

1.18 “Kotter Canyon Plat” means the official subdivision plat of the Kotter Canyon P.U.D. Subdivision as approved by the City, as it may be amended from time to time, that was recorded in the official records of the County Recorder’s Office, on FEBRUARY 8, 2008, as Entry No. 258753. The Kotter Canyon Plat is hereby incorporated into this Declaration by this reference.

1.19 “Kotter Canyon Estates Subdivision” has the meaning set forth in Recital A above.

1.20 “Limited Common Areas” means all Association Areas designated on the Kotter Canyon Plat as “Limited Common Area”, for the exclusive use of the adjacent Townhome Unit or Dwelling on patio home lots, respectively, including, but not limited to, fireplace inserts, balconies, decks, patios, and air conditioning compressors and pads.

1.21 “Lots” means the single family residential building lots, patio home lots and Townhome Units shown on the Kotter Canyon Plat, as the same may be amended from time to time. A Lot does not include Association Areas.

1.22 “Mortgage” means any mortgage, deed of trust, or other security instrument by which a Lot or any part thereof is encumbered.

1.23 “Owner” means the Person or Persons having title to any Lot. Owner shall mean the Person holding fee simple title, and buyers under any contract, but shall exclude any Person or entity holding title only for purposes of securing performance of an obligation, unless that entity has taken possession. “Owner” shall not include the County.

1.24 “Person” means a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

1.25 “Recreational Activities” has the meaning set forth in Section 15.1.

1.26 “Townhome Unit” means a Lot within the Kotter Canyon Estates Subdivision which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as an attached single family residence built or to be built on any Lot within the Kotter Canyon Plat. The term “Townhome Unit” refers to the Lot, which is part of the Townhome Unit, as well as any Improvement on the Lot.

1.27 “Trail System” means that certain system of trails, walkways and related improvements as set forth on the Kotter Canyon Plat.

1.28 “Water Feature Zone” means a portion of the Association Area designated on the Kotter Canyon Plat as a water feature, the water flow of which is seasonal with little or no water flow at certain times of the year.

1.29 “Wetlands” means a portion of the Association Area designated as “wetlands” on the Kotter Canyon Plat and determined to be jurisdictional wetlands by the U.S. Army Corps of Engineers.

ARTICLE II DIVISION OF PROPERTY

2.1 Submission to Declaration. All of the Kotter Canyon Estates Subdivision is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and improved as a residential subdivision to be known as Kotter Canyon Estates Subdivision. All of the Kotter Canyon Estates Subdivision is and shall be subject to the covenants, conditions, restrictions, easements, uses, limitations, and obligations set forth in this Declaration and in the Kotter Canyon Plat, each and all of which are declared and agreed to be for the benefit of the Kotter Canyon Estates Subdivision and in furtherance of a plan for improvement of said property and the division thereof into Lots. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to any Person acquiring, leasing, or owning an interest in any Lot, their lessees, heirs, executors, administrators, devisees, successors and assigns.

2.2 Subdivision into Lots. Pursuant to the Kotter Canyon Plat, the Kotter Canyon Estates Subdivision is divided into +/- 128 separate legal Lots consisting of residential building lots, patio home lots and Townhome Units as more particularly described on the Kotter Canyon Plat. The Owner of each Lot, regardless of the size, purchase price or location of the Lot, shall have the right to use the Association Areas for the purposes and uses designated by the Kotter Canyon Board.

ARTICLE III ARCHITECTURAL REVIEW COMMITTEE

3.1 Acknowledgement. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of a Lot, acknowledges that, as the Association and the Owners of the Lots, the Association acting in its behalf and on behalf of the Owners has a substantial interest in ensuring that the development and design of the Kotter Canyon Estates Subdivision is uniformly developed and maintained. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner’s Lot unless and

until the Architectural Review Committee of the Association ("ARC") has given its prior written approval for such activity in accordance with the procedures of this Article.

3.2 Architectural Review Committee. The ARC shall consist of at least three (3), but not more than seven (7), Persons who shall be approved, shall serve, and may be removed and replaced in the Kotter Canyon Board's discretion. The ARC may, in the Kotter Canyon Board's direction, be divided into one or more committees, each of which shall have the sole responsibility for performance of those ARC responsibilities as may be designated by the Kotter Canyon Board. The members of the ARC need not be Owners or representatives of Owners, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount as the Kotter Canyon Board may establish.

3.3 Fees. The ARC may establish and charge reasonable fees not to exceed \$500.00 for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals.

3.4 Procedures.

3.4.1 Application. Prior to commencing any construction, modification or alteration of any Improvement, commencing any Excavation, or commencing any activity within the scope of this Article, an Owner shall submit an application for approval of the proposed activity in such form as the ARC may specify. A prospective purchaser who is a party to a binding contract to purchase a Lot also may be permitted to submit an application for approval. Such application shall include drawings and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The ARC may require the submission of such additional information as the Kotter Canyon Board or the ARC deem reasonably necessary to consider any application.

3.4.2 Review Criteria. In reviewing each submission, the ARC may consider any factors it deems relevant. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular Improvements. The ARC shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to appeal so long as they are made in accordance with the procedures set forth herein.

3.4.3 Procedures Applicable to ARC. The ARC shall, within thirty (30) days after receipt of a completed application and all required information, respond in writing to the applicant at the address specified in the application. The response may: (a) approve the application, with or without conditions; (b) approve a portion of the application and disapprove other portions; or (c) disapprove the application. The ARC may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with this Declaration unless a variance has been granted pursuant to Section 3.5.6. In the event that the ARC fails to respond within the thirty (30) day period, disapproval of

the application shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

3.4.4 Effectiveness of Approval. If construction does not commence on a project for which Plans have been approved within one (1) year, unless otherwise set forth in the approval, from the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any construction activity. Once construction is commenced, it shall be diligently pursued to completion. All construction shall be completed within one (1) year of commencement unless otherwise specified in the Notice of approval or unless the ARC grants an extension in writing, which it shall not be obligated to do. If approved construction is not completed within the required time, it shall be considered nonconforming and, unless an extension of time is granted, shall be subject to enforcement action by the Association, the ARC, or any aggrieved Owner.

3.4.5 No Waiver of Future Approvals. Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the architectural requirements set forth in this Declaration, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed activity until the work is completed, in which case it may be unreasonable to require changes to the Improvements involved, but the ARC may refuse to approve similar proposals in the future. Approval of applications or Plans for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

3.4.6 Variances. The ARC may, upon the request of an Owner and the submission of an application for a variance, authorize variances from compliance with any of the architectural requirements set forth in this Declaration when circumstances such as topography, natural obstructions, hardship (which hardship shall not be either financial in nature or caused by the applicant), or aesthetic or environmental considerations warrant, in the sole discretion of the ARC, as appropriate, but only in accordance with duly adopted regulations and only within the scope of the ARC's authority. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. No variance may be impliedly approved. If a variance is required in connection with an application, the variances shall be specifically listed and requested on the application. No provision of this Article 3 shall be deemed to require the recordation of any variance.

EACH OWNER ACKNOWLEDGES THAT DETERMINATIONS AS TO VARIANCES HEREUNDER ARE PURELY SUBJECTIVE AND OPINIONS MAY VARY AS TO THE AESTHETIC EFFECT OF ANY PARTICULAR WAIVER. THEREFORE, EACH AUTHORIZED REVIEWER SHALL HAVE THE SOLE DISCRETION TO MAKE FINAL,

CONCLUSIVE, AND BINDING DETERMINATIONS ON VARIANCES AND THEREFORE SUCH DETERMINATIONS SHALL NOT BE SUBJECT TO APPEAL. THERE ARE NO THIRD PARTY BENEFICIARIES TO ANY VARIANCE WHICH MAY BE GRANTED PURSUANT TO THIS SECTION 3.5.6. FURTHERMORE, THE ASSOCIATION OR THE ARC SHALL HAVE NO DUTY TO DISCLOSE THE GRANTING OR EXISTENCE OF ANY VARIANCE. EVERY OWNER AGREES, BY ACQUIRING TITLE AND/OR POSSESSORY RIGHTS TO ANY LOT, THAT HE OR SHE WILL NOT BRING ANY ACTION OR SUIT AGAINST THE ASSOCIATION OR THE ARC OR ANY DESIGNATED REPRESENTATIVE OF ANY OF THE FOREGOING FOR THE RECOVERY OF DAMAGES BY REASON OF ANY REQUEST FOR A VARIANCE MADE BY SUCH OWNER, ANY OTHER OWNER OR ANY OTHER PERSON, WHETHER SUCH REQUESTS IS GRANTED OR DENIED.

3.4.7 Limitation of Liability. The standards and procedures in this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Kotter Canyon Estates Subdivision but shall not create any duty to any Person. Review and approval of any application are made on the basis of aesthetic considerations only, and the ARC shall not bear any responsibility for ensuring: (a) structural integrity or soundness of approved construction or modifications; (b) compliance with building codes and other governmental requirements, including, without limitation, obtaining all necessary permits or approvals from governmental authorities; (c) approval of the construction or modification by the governing municipality or whether such approval will be obtained; or (d) conformity of quality, value, size, or design with other Dwellings or the Improvements on a Lot. Neither (1) the Association, the Kotter Canyon Board, the ARC or any committee or member of the foregoing, nor (2) any Person retained by an ARC as a consultant, nor (3) any employee, agent or representative of those listed in (1), (2), (3) above, (collectively, "Protected Persons") shall be held liable for any claim whatsoever arising out of construction on or modifications to any Lot.

No Protected Person shall be held liable for soil conditions, drainage, or other general site work; any defects in Plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Protected Persons shall be defended and indemnified by the Association as provided for in this Declaration or as required by Utah law.

3.4.8 Enforcement. Any construction, alteration, or other work done in violation of this Article or the applicable architectural requirement shall be deemed to be nonconforming. Upon written notice from the Association, or the ARC, the Owner of such Lot shall, at his or her own cost and expense and within such time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or restore the real property, Lot or Dwelling to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association, or its designees shall have the right to record a Notice of Non-Compliance and/or to enter the real property, remove the violation, and restore the real property to substantially the same condition as previously existed. All costs (which may include administrative charges and legal fees), together with interest at the rate established by the Kotter Canyon Board (not to exceed the maximum rate then

allowed by Utah law), may be assessed against the non-conforming Lot under this Section 3.5.8 and collected as an Special Assessment unless otherwise prohibited in this Declaration. The right of the Association or its designees to remove a non-conforming construction, alteration, or other work in violation of this Article or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which the Association, or its designees may have at law, in equity, or elsewhere in the Declaration, Articles of Incorporation or Bylaws of the Association.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved activity and all activity previously approved with respect to the same Lot, unless approval to modify any application has been obtained. If any Owner fails to commence and diligently pursue to completion all approved activity by the deadline set forth in the approval, the Association or its designees, shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the procedures set forth in the ARC's rules and regulations, if any, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Special Assessment unless otherwise prohibited in this Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the architectural requirements set forth in this Declaration may be excluded from the Kotter Canyon Estates Subdivision, subject to any applicable notice and hearing procedures set forth by the Association. In such event, the Association, and its officers and directors, employees, agents, or representatives shall not be held liable to any Person for exercising the rights granted by this paragraph.

The Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC. To the fullest extent permitted by Utah law, enforcement of this Article by the Association shall not be subject to laches or any statute of limitations. Any Special Assessment levied for costs due under this Section 3.5.8 shall not be considered a fine or penalty and may be imposed apart from, or in conjunction with any other Special Assessment permitted under this Declaration.

ARTICLE IV ASSOCIATION

4.1 Association. The Association has caused to be filed articles of incorporation with the Utah Department of Commerce to create the Association ("Articles of Incorporation"). The members of the Association shall be the Owners of Lots within the Kotter Canyon Estates Subdivision, and the Association is established to perform the functions and exercise the rights and powers for the benefit of the Lots and the Owners and the enforcement of the covenants as set forth in this Declaration. Each Owner of a Lot shall be a member of the Association. Membership in the Association shall be an appurtenance to each Lot, and is transferable only in conjunction with the transfer of the title to a Lot. The Association shall have and exercise, as necessary, the powers set forth in this Declaration.

4.2 Enforcement Powers. The Association shall have the power to enforce the covenants set forth in this Declaration by actions in law or equity brought in its own name, the power to retain professional services needed for the enforcement of the covenants and to incur expenses for that purpose. The Kotter Canyon Board shall have the authority to compromise claims and litigation on behalf of the Association resulting from the enforcement of these covenants. The Kotter Canyon Board shall have the exclusive right to initiate enforcement actions in the name of the Association, however this shall not limit the individual rights of Owners to enforce personally the covenants set forth in this Declaration in their own name. The Association may appear and represent the interests of the Kotter Canyon Estates Subdivision at all public meetings concerning zoning, variances, water rights or other matters of general application and interest to the Lots and/or Owners. Owners of the Lots may appear individually.

4.3 Kotter Canyon Board and Officers.

4.3.1 The affairs of the Association shall be conducted by the Kotter Canyon Board consisting of at least three (3) and not more than five (5) directors and also by such officers as the Kotter Canyon Board may elect or appoint in accordance with the Articles of Incorporation and the Bylaws as the same may be amended from time to time. The Kotter Canyon Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Kotter Canyon Board, be responsible for the day-to-day operation of the Association. The Kotter Canyon Board shall determine the compensation to be paid to the manager.

4.3.2 The Kotter Canyon Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by this Declaration, the Articles of Incorporation and the Bylaws of the Association, including, but not limited to, the following: (i) administration of the Association; (ii) preparing and administering an operational budget; (iii) establishing and administering an adequate reserve fund; (iv) scheduling and conducting the annual meeting and other meetings of the Owners; (v) collecting and enforcing the assessments and fees from the Owners; (vi) accounting functions and maintaining records; (vii) promulgation and enforcement of rules and regulations; (viii) causing the Association Areas to be maintained; (ix) entering into contracts, deeds, leases and/or other written instructions or documents and to authorize the execution and delivery thereof by the appropriate officers; (x) opening bank accounts on behalf of the Association and to designate the signatures therefore; (xi) bringing, prosecuting and settling litigation for itself, the Association and the Kotter Canyon Estates Subdivision; (xii) owning, purchasing or leasing, holding and selling or otherwise disposing of, on behalf of the Owners, items of real and personal property; (xiii) doing all other acts necessary for the operation and maintenance of the Kotter Canyon Estates Subdivision and the performance of its duties as agent for the Association including the maintenance and repair of any portion of the Kotter Canyon Estates Subdivision if necessary to protect or preserve the Kotter Canyon Estates Subdivision; (xiv) purchasing and maintaining insurance; and (xv) all the other duties imposed upon the Kotter Canyon Board pursuant to this Declaration, including enforcement thereof.

4.3.3 The directors of the Kotter Canyon Board may be removed, replaced or elected by the majority vote of Owners, at any meeting of the Owners conducted in accordance with the Bylaws, provided, however, that during the Declarant Control Period, any director

appointed by Declarant cannot be removed except by Declarant. The number of directors of the Kotter Canyon Board may be changed by amendment of the Bylaws of the Association.

4.4 Ownership and Use of Association Areas. Unless otherwise determined by the Kotter Canyon Board, all Association Areas shall be owned by the Association; provided, however that any Association Areas which are designated as Common Areas or Limited Common Areas on the Kotter Canyon Plat shall be owned by each Owner as an equal undivided interest which shall be appurtenant to each Lot and shall pass with the title to each Lot. Subject to the limitations contained in this Declaration, and subject to any rules and regulations adopted by Declarant or by the Association, each Owner shall have the non-exclusive right to use and enjoy the Association Areas, the non-exclusive right to use and enjoy any Limited Common Areas designated for the exclusive use of such Owner along with the Owners of certain other designated Lots, and the exclusive right to occupy and use their Lot and any Limited Common Areas designated for the exclusive use by such Owner. Title to no part of a Lot may be separated from any other part thereof, and each Lot and the undivided interest in the Association Areas appurtenant to each Lot shall always be conveyed, devised, encumbered and otherwise affected only as a complete Lot.

4.5 Maintenance of Association Areas. The Association Areas shall be maintained, cleaned, replaced, repaired and reconstructed by the Association and be re-landscaped, rebuilt, replaced, repaired or materially altered only with the review, approval and consent of the Kotter Canyon Board, and in accordance with the provisions of this Declaration. Without limiting the generality of the foregoing, the Association shall: (a) maintain, clean, replace, repair and keep in a sanitary condition and in a state of good repair all Association Areas; (b) re-landscape, reconstruct and repair all Association Areas at such time as the same are in a state of disrepair and require replacement; and (c) maintain, clean, repair and keep in a sanitary condition and in a state of good repair all areas, easements, Improvements, landscaping and vegetation set forth in the Declaration or the Kotter Canyon Plat as the responsibility of the Association.

4.6 Rules and Regulations. By a majority vote, the Kotter Canyon Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations that restrict and govern the use of the Association Areas. The rules and regulations shall not discriminate among Owners. Each Owner, the family members of each Owner, and any invitee, licensee or tenant of each Owner shall comply with all of the rules and regulations. ALL OWNERS ARE GIVEN NOTICE THAT USE OF THE ASSOCIATION AREAS IS LIMITED BY THE RULES AND REGULATIONS AS AMENDED, EXPANDED, AND OTHERWISE MODIFIED FROM TIME TO TIME. EACH OWNER, BY ACCEPTANCE OF A DEED, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF HIS OR HER LOT CAN BE AFFECTED BY THIS PROVISION AND THAT THE RULES AND REGULATIONS MAY CHANGE FROM TIME TO TIME. ALL PURCHASERS OF LOTS ARE ON NOTICE THAT THE KOTTER CANYON BOARD MAY HAVE ADOPTED CHANGES TO THE RULES AND REGULATIONS. COPIES OF THE CURRENT RULES AND REGULATIONS MAY BE OBTAINED FROM THE ASSOCIATION.

4.7 Bylaws. The day to day administration of the Association's affairs, including the manner in which directors are elected and their terms of office are set forth in the bylaws of

the Association ("Bylaws"), which may be amended from time to time by the Association as provided in those Bylaws. No amendment of the Bylaws shall have the effect of releasing or amending the covenants, conditions, or restrictions set forth in this Declaration.

4.8 Voting Rights. There shall be one vote for the membership in the Association that is appurtenant to each Lot and each Owner shall be entitled to cast one vote for each Lot he or she owns. It being specifically understood that each Townhome Unit shall be entitled to cast only one vote. In the case of a Lot with multiple Owners, the Owners will agree among themselves how the vote applicable to that Lot will be cast, and if no agreement can be reached, no vote will be received from that Lot. Any of the multiple Owners appearing at the meeting in person or by proxy is deemed to be acting with proper authority for all of the other Owners of that Lot, unless the other Owners are also present and object or have filed written objections to that Owner's representation of the other Owners of the Lot in question.

4.9 Amplification. The provisions of this Article 4 may be amplified by the Articles of Incorporation and the Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

4.10 Relationship with Other Properties: Entities. The Association may enter into contractual agreements or covenants to share costs with the owner(s) of any neighboring real property or any other Person or entity to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of maintenance for any portion of the Association Areas.

4.11 Budgeting for Reserves: Use of Reserves. The Kotter Canyon Board shall establish and maintain a separate reserve account for the repair, replacement and restoration of the major components of the Association Areas based upon the age, remaining life and the quantity and replacement cost of major components of the Association Areas, in accordance with the provisions of this Declaration and the Bylaws; provided, however, that the reserves of the Association must not be used for the daily maintenance expenses of the Kotter Canyon Estates Subdivision. The Kotter Canyon Board shall additionally cause to be conducted at least once every five (5) years a study of the reserves required for the repair, replacement and restoration of the major components of the Association Areas. Such reserve study shall be prepared in compliance with Utah law and shall be reviewed at least annually (during the preparation of the Association budget) to determine if those reserves are sufficient or whether any adjustments are necessary to maintain adequate reserves.

4.12 View Impairment.

NEITHER DECLARANT NOR THE ASSOCIATION GUARANTEES OR REPRESENTS THAT ANY VIEW OVER AND ACROSS LOTS OR THE VIEW OF ANY ASSOCIATION AREAS FROM LOTS ADJACENT TO THE ASSOCIATION AREAS WILL BE PRESERVED WITHOUT IMPAIRMENT. DECLARANT AND THE ASSOCIATION SHALL NOT HAVE ANY OBLIGATION TO RELOCATE, PRUNE, OR THIN TREES OR OTHER LANDSCAPING THAT MAY LIMIT OR IMPAIR THE VIEW FROM A LOT. TREES AND OTHER LANDSCAPING MAY BE ADDED TO LOTS AND TO THE OPEN

SPACE FROM TIME TO TIME SUBJECT TO APPLICABLE LAW AND THE ARTICLES OF INCORPORATION, BYLAWS AND THIS DECLARATION. ANY SUCH ADDITIONS OR CHANGES MAY DIMINISH OR OBSTRUCT ANY VIEW FROM THE LOTS AND ANY EXPRESS OR IMPLIED EASEMENTS FOR VIEW PURPOSES OR FOR THE PASSAGE OF LIGHT AND AIR ARE HEREBY EXPRESSLY DISCLAIMED.

ARTICLE V EASEMENTS

5.1 Easements for Maintenance. The Association shall have the irrevocable right to have access from time to time to all Association Areas during such reasonable hours as may be necessary for the maintenance, cleaning, repair, and replacement thereof or for making emergency repairs at any time herein necessary to prevent damage.

5.2 Right to Ingress and Egress. Each Owner shall have the right to ingress and egress over, upon, and across the streets shown on the Kotter Canyon Plat as necessary for access to such Owner's Lot, and such rights shall be appurtenant to and pass with the title to each Lot.

5.3 Easements Deemed Created. All conveyances of Lots within the Kotter Canyon Estates Subdivision hereafter made, whether by the Kotter Canyon Plat or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

5.4 Easements Reserved by Association. The Association shall have the power to grant and convey to any third party and hereby reserves unto itself transferable easements and rights of way, including but not limited to rights of ingress and egress, in, on, over and under the Kotter Canyon Estates Subdivision for the purpose of: (a) constructing, erecting, operating and maintaining lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm drains and pipes, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities to provide common utility services to the Kotter Canyon Estates Subdivision; and (b) constructing, erecting, repairing, replacing, operating and maintaining the Association Areas and Improvements thereto.

5.5 Utility Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Kotter Canyon Plat. Within these easements, no structure, planting, or other material 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 drainage channels in the easement area, or which may obstruct or retard the flow of water through drainage channels in the easement area of each Lot. The easement area of each Lot and all Improvements in it shall be maintained continuously by the respective Owner of such Lot, except for those improvements for which a public authority or utility company is responsible.

5.6 Easements for Encroachments. If any part of the Association Areas encroaches or shall hereafter encroach upon any Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Dwelling encroaches or shall

hereafter encroach upon the Association Areas, or upon an adjoining Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easement must extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Association Areas or the Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of one or more of the Buildings or any improvements constructed or to be constructed within the Property, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Property or any part thereof.

5.7 Stream Easement. The Association shall have an easement over the Water Feature Zone for the maintenance, repair, and replacement of the water feature.

5.8 Fees for Extraordinary Use. The Association shall have the right, acting through the Kotter Canyon Board, without Owner, mortgagee and agency approvals, to charge reasonable admission or other fees for special or extraordinary uses of the Association Areas.

5.9 Restrictions. The Association shall have the right, acting through the Kotter Canyon Board, without Owner, mortgagee or agency approvals, to suspend the right of any Owner, and the rights of any Owner's household, tenants, guests and invitees to conduct Recreational Activities or other portions of the Association Areas (to the extent that access and utility service are not impaired) for a period not to exceed sixty (60) days, unless such rights are suspended for failure to pay assessments, in which case such rights may be suspended until the assessments are fully paid.

5.10 Easements. ALL OWNERS ARE GIVEN NOTICE THAT THEIR LOTS SHALL BE SUBJECT TO EASEMENTS AS SHOWN ON THE KOTTER CANYON PLAT AND THE EASEMENTS CREATED UNDER THIS DECLARATION.

5.11 Inseparability. Every devise, encumbrance, conveyance, or other disposition of a Lot, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Lot, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association, and an irrevocable license to use, occupy and enjoy the Association Areas. No Owner nor the Association may bring any action for partition thereof.

5.12 Separate Taxation. Each Lot and all Improvements located thereon shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. All such taxes, assessments, and other charges on each respective Lot shall be separately levied against the Owner thereof. All such taxes, assessments, and other charges on the streets, shown on the Kotter Canyon Plat within the Kotter Canyon Estates Subdivision shall be separately levied against the Association. No forfeiture or sale of any Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot or rights in and to the Association Areas.

5.13 Mechanics' Liens. No labor performed or material furnished for use in connection with any Lot with the consent or at the request of an Owner or his agent or contractor

shall create any right to file a statement, claim, or notice of mechanic's lien against the Lot of any other Owner not expressly consenting to or requesting the same or against any of the Association Areas.

5.14 Restriction on Easement Rights Granted by Owners. Without the prior written consent of the Association, no Owner of any Lot within the Kotter Canyon Estates Subdivision shall grant any easement, license, permit or other rights to any other Person or entity for the purpose of granting to such other Person or entity any rights of ingress and egress, any rights to construct, operate or maintain any road, trail or other right of entry or passage over and across such Lot, any rights to construct, operate, maintain, repair or replace any utility easements or any other rights or interests not otherwise established and created pursuant to the Kotter Canyon Plat and this Declaration.

ARTICLE VI ASSESSMENTS

6.1 Agreement to Pay Assessments. Each Owner of a Lot by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association all assessments, both regular and special, made by the Association for the purposes provided in this Declaration. Assessments made by the Association shall be fixed, established and collected from time to time as provided in this Article VI.

6.2 Regular Assessments. Regular assessments shall be computed and assessed against all Lots in the Kotter Canyon Estates Subdivision as follows:

6.2.1 Association Expenses.

(a) Annual Budget. On or before the 1st day of November of each year, the Association shall prepare, or cause to be prepared, an operating budget setting forth an itemized statement of the anticipated receipts and disbursements for the coming calendar year and taking into account the general condition of the Kotter Canyon Estates Subdivision. Each such budget, together with a written statement from the Association outlining a plan of operation for the year in question and justifying in every important particular the estimates made, shall be submitted to the Owners on or before the 15th day of November of each year. Such budget, with any changes therein, shall be adopted by the Owners at each annual meeting of the Owners. Said operating budget shall serve as the basis for the schedule of proposed monthly assessments for the annual period for which it is prepared. Said budget shall also constitute a major guideline under which the Association shall operate during such annual period.

(b) Basis of Annual Budget. The annual budget shall be based upon the Association's estimates of the cash required to provide for payment of expenses ("Association Expenses") arising out of or connected with maintenance and operation of the Association Areas and any funds to be placed in the reserve account in accordance with the reserve study. Such actual expenses and estimated expenses may include, among other things, the following: expenses of management; governmental taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain; repairs and

maintenance; security, gate house operation, wages for Association employees, including fees for a manager, if any; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve; sinking or reserve funds required or allowed herein; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Lots and/or the Owners or by reason of this Declaration.

(c) Annual Assessments. The Association shall establish a regular, equal monthly assessment (which shall be the same for all of the Lots) to be paid by each Owner to the Association for deposit into a deposit account in the name of the Association ("Association Expense Fund"). The dates and manner of payment shall be determined by the Association. The foregoing method of assessing the Association Expenses to the Owners may be altered by the Association so long as the method it adopts is consistent with good accounting practice and requires that the Association Expenses be apportioned equally among and assessed equally to all Lots. Each monthly installment of the regular assessment shall bear interest at the rate of one and one-half percent (1½%) per month from the date it becomes due and payable until paid. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Lot for such assessment.

6.2.2 Inadequate Funds. In the event that the Association Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth below, except that the vote therein specified shall not be necessary.

6.3 Special Assessments. In addition to the regular assessments, the Association may levy, at any time and from time to time, upon affirmative vote by Owners of at least fifty-one percent (51%) of the Lots, special assessments, payable over such periods of time as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Association Areas or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be apportioned equally among and assessed equally to all Lots. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been mailed. All unpaid portions of any special assessment shall bear interest at the rate of one and one-half percent (1½%) per month from the date such portions become due until paid.

6.4 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot as follows:

6.4.1 to cover the costs, including overhead and administrative costs, of providing services to certain Lots, either upon request of an Owner pursuant to any menu of special services that may be offered by the Association or which the Kotter Canyon Board determines (in its sole discretion) are benefiting fewer than all of the Owners, such as snow removal, landscaping services, and driveway and walkway maintenance. A Specific Assessment may be levied against the Owners of Townhome Units and patio home lots for the maintenance

of the Assessment Areas adjacent to and benefiting the Townhome Units and patio home lots, and also for landscaping and snow removal of to the extent such Assessment Areas only benefit such Owners. Specific Assessments for special services may be levied in advance of the provision of the requested service; and

6.4.2 to cover costs incurred in bringing the Lot into compliance with this Declaration, the Articles of Incorporation, the Bylaws, and any rules and regulations adopted by the Kotter Canyon Board, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, his or her agents, contractors, employees, licensees, invitees, or guests; provided, the Kotter Canyon Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the procedures set forth in the Kotter Canyon rules and regulations before levying any Specific Assessment under this Section.

6.5 Assessment of Certain Costs of Maintenance and Repair of Association Areas. In the event that the need for maintenance or repair of Association Areas, Improvements and other property maintained by the Association is caused through the willful or negligent act of any Owner or any family members, guests, invitees or tenants of such Owner, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and the Owner's Lot is subject and shall be secured by the lien for Assessments under Section 6.6.

6.6 Lien for Assessments. All sums assessed to the Owner of any Lot within the Kotter Canyon Estates Subdivision pursuant to the provisions of this Article 6, together with interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Article 6, the Association may prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Each Owner shall be deemed to have consented to the filing of a notice of lien against such Owner's Lot. Such notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced by nonjudicial foreclosure or judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including attorneys' fees, and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid in at any foreclosure sale, and to own, lease, mortgage or convey the subject Lot.

6.7 Personal Obligation of Owner. The amount of any Assessment against any Lot shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Association Areas or by abandonment of his Lot, or by waiving any services or amenities. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the

costs and expenses incurred by the Association in connection therewith, including reasonable attorney's fees.

6.8 Statement of Account. Upon written request of any Owner, mortgagee, prospective mortgagee, or prospective purchaser of a Lot and payment of any reasonable fee assessed, the Association shall issue a written statement setting forth the following: (a) the amount of the unpaid Assessments, if any, with respect to such Lot, and (b) the amount of the current regular assessment with respect to such Lot and the date such Assessment becomes or became due. Such statement shall be conclusive upon the Association in favor of Persons who rely thereon in good faith.

6.9 Personal Liability of a Purchaser. A purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid Assessments against such Lot up to the time of the grant of conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount of such Assessments paid by the purchaser for such Assessments.

6.10 Amendment of Article. Except as may be necessary to conform to the law, as it may be amended from time to time, this Article VI shall not be amended unless the Owners of at least fifty-one percent (51%) of the Lots consent and agree to such amendment by a duly recorded instrument, provided, however, that for so long as Declarant own any of the Property or the Additional Land, this Article VI cannot be amended without Declarant's prior consent.

ARTICLE VII INSURANCE

7.1 Types of Insurance. The Kotter Canyon Board may elect to obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah:

7.1.1 Fire and Casualty Insurance. The Kotter Canyon Board shall have the authority to, and shall obtain, insurance for all Buildings, Improvements, and structures, fixtures and equipment, and common personal property and supplies now or at any time hereafter constituting a part of the Association Areas, or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location, and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Property, or, if the policy does not include an "all risks" endorsement, a policy that includes the "broad form" covered causes of loss, in amounts at all times (i) that is sufficient to prevent the Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision; and (ii) that is not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage). This insurance shall also:

(a) provide that no assessment may be made under the policy against a first mortgage lender, or its insurer or guarantor, and, that any assessment under such policy

made against others may not become a lien on a Lot and its appurtenant interests superior to a interest of the first mortgage lender;

(b) be written in the name of the Association for the use and benefit of the Owners, or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Owners;

(c) have a deductible amount no greater than the lesser of one thousand dollars (\$1,000) or one percent of the policy face amount;

(d) be paid for by the Association through annual assessments of the Owners;

(e) contain a waiver of subrogation of rights by the carrier as to the Association, to its officers and directors, and to all Owners;

(f) provide that the insurance shall not be prejudiced by any acts or omissions of individual Owners who are not under the direct control of the Association; and

(g) be primary, even if an Owner has other insurance that covers the same loss.

7.1.2 Public Liability and Property Damage Insurance. The Association shall obtain and maintain a commercial policy of general liability insurance covering all of the Association Areas, Lots, Improvements, Buildings, public ways, each to the extent owned by or under the Association's supervision, and any other areas under the Association's supervision, and Dwellings, if any, owned by the Association, even if leased to others, insuring the Association, the directors of the Kotter Canyon Board, and the Owners and Occupants, with such limits as the Kotter Canyon Board may determine, but no less than the greater of (i) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (ii) one million dollars (\$1,000,000), for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, the Kotter Canyon Board, or other Owners, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of such Association Areas, Lots and Buildings, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Coverage shall also include without limitation, liability for operation of automobiles on behalf of the Association and all activities of the Association pursuant to the terms of this Declaration and the Articles of Incorporation and the Bylaws of the Association.

7.1.3 Workers' Compensation Insurance. Workers' compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association, if any, in the amounts and in the forms now or hereafter required by law.

7.1.4 Fidelity Insurance or Bond. The Kotter Canyon Board shall obtain and maintain fidelity insurance providing coverage for the Association against dishonest acts on the part of directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is in no event less than the greater of (i) an amount equal to the Association's reserve funds plus three months' assessments on all Lots, and (ii) the maximum amount that will be in the custody of the Association or a manager at any time while the policy is in force. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association and any insurance trustee. Any manager who handles funds of the Association shall maintain a policy of fidelity insurance providing coverage no less than that required of the Association, which bond or insurance policy names the Association as an additional obligee.

7.2 Form of Insurance. Each policy of insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Utah which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports-international edition, a "BBBQ" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above. Each insurance policy shall also be, insofar as possible, shall be in the following form:

7.2.1 Fire and Casualty Insurance. Casualty and hazard insurance in a form or forms naming the Association as the insured, as trustee for the Owners, and which policy or policies shall specify the interest of each Owner (Owner's name and Lot number), and shall contain a standard, noncontributory mortgagee clause in favor of each mortgagee which from time to time shall give notice to the Association of its mortgage. The Association shall furnish to each Owner, and to each mortgagee requesting in writing the same, a certificate of coverage, including an identification of the Owner's interest.

7.2.2 Public Liability and Property Damage Insurance. Public liability and property damage insurance which names the Association as the insured, as trustee for each Owner, for the manager, if any, and which protects each Owner, the manager, if any, against liability for acts or omissions of any of them in connection with all activities of the Association pursuant to the terms of this Declaration and the Articles of Incorporation and the Bylaws of the Association.

7.3 Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in

addition to any insurance coverage required by this Declaration in such amounts and in such forms as the Association may from time to time deem appropriate.

7.4 Adjustment and Contribution. Exclusive authority to adjust losses under the insurance policies hereafter maintained by the Association shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their mortgagees.

7.5 Insurance Carried by Owners. Each Owner is responsible for and shall obtain insurance, at his own expense, providing coverage upon his Lot and any respective Limited Common Area, and all Improvements and personal property located thereon, and for general liability coverage, including without limitation, coverage for personal injury, property damage, and such other risks as each Owner may deem appropriate; provided that if the insurer under said policy is the insurer under any policy issued pursuant to Sections 7.1 and 7.2 above, then any insurance policy obtained by an Owner shall provide that it does not diminish the insurance carrier's coverage for liability arising under any of the insurance policies obtained by the Association pursuant to this Article. The Association shall have no obligation or responsibility to carry insurance on the Lots, or any Improvements located on the Lots.

7.6 Review of Insurance. The Kotter Canyon Board shall review from time to time the coverage and policy limits of all insurance maintained by the Association.

ARTICLE VIII DAMAGE OR DESTRUCTION

8.1 Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Association Areas of the Kotter Canyon Estates Subdivision upon their damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute an appointment by said grantee of the Association as his attorney in fact as herein provided. As attorney in fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of an Owner in the Association Areas which may be necessary or appropriate to execute the powers herein granted.

8.2 Destruction of Association Areas. Upon the damage or destruction of all or any portion of the Association Areas, the Association shall proceed to repair and reconstruct the Association Areas. The Association shall use insurance proceeds from the insurance it is obligated to carry to accomplish such repair and reconstruction. In the event insurance proceeds are insufficient to accomplish the repair and reconstruction as required herein, then the Association shall levy a special assessment against all Owners pursuant to the provisions of Article VI above to collect funds necessary to accomplish such repairs and reconstruction.

8.3 Repair or Reconstruction. As soon as practicable after receiving estimates on the cost of repair or reconstruction, the Association shall diligently pursue to completion the repair or reconstruction of that part of the Association Areas damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as

attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith.

8.4 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and any amounts received from assessments shall constitute a fund for the payment of the costs of such repair and reconstruction. It shall be deemed that the first monies disbursed in payment for the costs of such repair or reconstruction shall be made from insurance proceeds. If there is a balance after payment of all of the costs of such repair or reconstruction, such balance shall be held and used by the Association to offset future expenses of the Association.

ARTICLE IX CONDEMNATION

9.1 Condemnation. If at any time or times all or any part of the Association Areas shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Association Areas in lieu of condemnation, but under threat of condemnation, shall be deemed to be taken by power of eminent domain.

9.2 Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain shall be held and used by the Association to offset future expenses of the Association.

ARTICLE X RESTRICTIONS ON USE

The following restrictions on use apply to all Lots and Association Areas within the Kotter Canyon Estates Subdivision:

10.1 Zoning Regulations. The lawfully enacted zoning regulations of the City and of any other governmental body having jurisdiction with respect to the Property, including without limitation any and all applicable building, fire, and health codes, are in full force and effect in the Kotter Canyon Estates Subdivision, and no Lot may be occupied in a manner that is in violation of any such statute, law, ordinance or regulation. If the provisions of this Declaration are more stringent than any applicable governmental statute, law, ordinance or regulation, it is the intent that the provisions of this Declaration shall control. This Declaration shall not authorize any uses, improvements, or activities that are prohibited by any local, state or federal statute, law, ordinance or regulation.

10.2 No Mining Uses. The property within the Kotter Canyon Estates Subdivision shall be used for residential purposes only, and no surface occupation for mining, drilling, or quarrying activity will be permitted at any time on any Lot, Associate Area, street, or other area within the Kotter Canyon Estates Subdivision.

10.3 No Business or Commercial Uses. No portion of the Kotter Canyon Estates Subdivision may be used for any commercial business use; provided, however, that nothing in this provision is intended to prevent the use by any Owner of his Lot for a home occupation. No

home occupation will be permitted, however which requires or encourages the Owner's clients, customers, patients or others to come to the Lot to conduct business, or which requires any employees outside of the Owner's immediate family or household. No retail sales of any kind may be made in the Kotter Canyon Estates Subdivision. No materials, machinery, equipment, or inventory associated with any home occupation may be stored outside on any Lot. No signs associated with any home occupation are permitted.

10.4 Completion Required Before Occupancy. No Dwelling may be occupied prior to its completion and the issuance of at least a temporary certificate of occupancy by the City.

10.5 Primary Dwelling to be Constructed First. No garage, storage unit, or other out building or Improvement may be constructed prior to the commencement of construction of the primary Dwelling on the Lot.

10.6 No Re-Subdivision. No Lot may be subdivided.

10.7 Underground Utilities. All water, gas, electrical, telephone, television, and any other utility or transmission lines in the Kotter Canyon Estates Subdivision are to be underground, including lines within any Lot which service installations or Improvements entirely with that Lot.

10.8 Maintenance of Property. All Lots, and the Improvements on them, shall be maintained in a clean, sanitary, attractive and marketable condition at all times. No Owner shall permit his Lot or the Improvements on it to fall into disrepair.

10.9 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Lot, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots.

10.10 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, or which would cause the cancellation of conventional property casualty insurance. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than properly supervised and contained barbecues). No Owner will occupy a Lot in a manner that is in violation of any State of Utah or federal environmental protection law or regulation concerning the storage, disposal, or use of toxic or hazardous materials.

10.11 No Open Burning; Open Fires. The open burning of yard trimmings, construction waste, or other materials on the Lot is prohibited.

10.12 No Unsightliness. No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during the construction of any Improvement, Dwelling or addition); open storage or parking of farm or construction equipment, inoperable motor vehicles, boats, campers, trailers, trucks larger than pick-up trucks (except during periods of actual loading and unloading); accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage except

as stored in tight containers in an enclosure such as a garage; lawn or garden furniture except during the season of use; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that it is visible from any other Lot or any public or private street.

10.13 No Annoying Lights. Any outdoor lighting shall be subject to approval by the ARC, and no outdoor lighting shall be permitted except for lighting that is designed to aim downward and limit the field of light to the immediate vicinity of the building or Improvement it is intended to serve. Lighted tennis courts, sport courts, and similar lighted recreation facilities are prohibited.

10.14 No Annoying Sounds. No speakers, or other noise making devices may be used or maintained on any Lot which create noise that might reasonably be expected to be unreasonably or annoyingly loud from adjoining Lots, except for properly operating and maintained security or fire alarms.

10.15 Vehicles Restricted to Streets. No motor vehicle will be operated on the Kotter Canyon Estates Subdivision except on improved streets and driveways. No snowmobiles or motorcycles will be operated on any Lot except for ingress and egress by duly licensed, "street legal" vehicles or while loading the equipment for lawful transport on public streets.

10.16 Animals. The use of animals for pets, housing, breeding, or boarding must comply with the existing animal regulations for the City and with the rules and regulations promulgated by the Kotter Canyon Board from time to time. No kennel or dog run may be placed closer than fifty (50) feet to any Dwelling other than that of the Owner of the kennel.

10.17 No Firearms. No firearms of any kind, except b-b guns, pellet guns, or similar air-powered firearms, may be discharged within the Kotter Canyon Estates Subdivision.

10.18 Restrictions on Signs. No signs will be permitted on any Lot or within the Kotter Canyon Estates Subdivision; except for traffic control and directional signs for the roadways placed by the City or the Association or temporary signs warning of some immediate danger and except for such other signs as may be approved by the ARC. Signs indicating a Lot is for sale may be placed in accordance with the City sign regulations. The Declarant may erect signs for Declarant's use acceptable to the City at the entrances to the Kotter Canyon Estates Subdivision or within the same announcing the availability of Lots and Dwellings within the Kotter Canyon Estates Subdivision and giving sales information. An entrance monument for the Kotter Canyon Estates Subdivision may be constructed by Declarant, at Declarant's sole discretion.

10.19 No Transient Lodging Uses. The Lots are to be used for residential housing purposes only and shall not be rented in whole or in part for transient lodging purposes, boarding house, "bed and breakfast," or other uses for providing accommodations to travelers.

10.20 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept on any Lot, except in sanitary containers approved by the ARC. All equipment for the storage or disposal of waste

or rubbish shall be kept in a clean and sanitary condition and must meet the approval of the ARC.

10.21 Parking and Storage of Personal Property. No storage of any articles, material, equipment or vehicles of any nature is permitted in the front yard portion of any Lot, except that regularly used passenger cars and light pickup trucks may be parked on the driveway areas in the front yard. Boats, trailers, campers, motorized vehicles, motor homes and all other types of recreational and/or accessory equipment may be parked on the public right-of-way or in a driveway for not more than twenty-four (24) hours. Such recreational vehicles or equipment may be parked on a Lot on a parking pad separate from the driveway that complies with Brigham City regulations so long as such vehicles and equipment are inside of the Lot setback lines, do not encroach into the setback area, are not perpetually unsightly as determined by the Kotter Canyon Board, and the parking pad and parking of vehicles and equipment comply with the rules and regulations promulgated by the Kotter Canyon Board from time to time. Notwithstanding the foregoing, no boats, trailers, campers, motorized vehicles and all other types of recreational and/or accessory equipment may be parked on a Townhome Unit. This provision may be amended unilaterally by the Declarant during the Declarant Control Period, or by the Kotter Canyon Board in the Association rules, without the written consent of Owners.

10.22 Outdoor Furniture. All furniture placed on the front porches and other outdoor areas within any Lot that is within public view must be of a type and quality generally characterized as "outdoor furniture."

10.23 Association Areas. Nothing shall be altered or constructed in or removed from the Association Areas, except upon written consent on the Kotter Canyon Board. There shall be no obstruction of the Association Areas by any Owner. Owners shall neither store nor leave any of their property in the Association Areas, except with the prior written consent of the Kotter Canyon Board.

10.24 Rules. No Owner shall violate the rules and regulations for the use of Lots and Association Areas as adopted from time to time by the Association.

10.25 Leases. Any lease or rental agreement for a Dwelling must be in writing and must be subject to the terms of this Declaration, the Bylaws, rules, regulations and other documentation of the Association. An Owner shall not lease such Owner's Unit for an initial term of less than six (6) months. The Owner shall provide a copy of the lease or rental agreement to the Kotter Canyon Board within ten (10) days after the lease is executed and prior to occupancy. An Owner shall be responsible and liable for any damage to the Kotter Canyon Estates Subdivision caused by its tenants. Within ten (10) days after delivery of written notice of the creation of a nuisance or material violation of these restrictive covenants, the Owner shall proceed promptly to abate the nuisance or cure the default, and notify the Kotter Canyon Board in writing of his or her intentions.

10.26 Used or Temporary Structures: No used or previously erected or temporary house, structure, house trailer, mobile home, camper, or nonpermanent outbuilding shall be placed, erected, or allowed to remain on any Lot except during construction periods, and no Dwelling shall be occupied in any manner prior to its completion and approval.

10.27 Association Areas. No Owner not any other person shall erect Improvements on the Association Areas.

10.28 Wetlands and Water Feature Zone. The U.S. Army Corps of Engineers ("Corps") has issued a jurisdictional determination dated December 7, 2007 (the "Jurisdictional Determination") determining that 6.57 acres of the Property are jurisdictional waters of the United States, including wetlands. Pursuant to Nationwide Permit Number 29 issued by the Corps on December 7, 2007 to Distinct Properties (the "Corps Permit"), the Corps has permitted development activity in approximately 0.49 acres of jurisdictional wetlands, pursuant to certain conditions set forth therein. The Association and all Owners shall comply with the terms of the Corps Permit, including but not limited to the Kotter Canyon Mitigation Plan, dated November 5, 2007, and all applicable conditions of the Corps Permit and Jurisdictional Determination. No Owner nor any other person shall enter, disturb, alter or change the Wetlands and/or Water Feature Zone, including permitting any domestic animal to enter or disturb the Wetlands and/or Water Feature Zone, without prior written approval and any required permits issued by the Corps, and from any other governmental entity which may have jurisdiction over the Wetlands and/or Water Feature Zone. Each Owner shall at all times comply with any rules and regulations promulgated by the Kotter Canyon Board from time to time with respect to the Wetlands and/or Water Feature Zone, with such rules being consistent with the approvals for the Kotter Canyon Subdivision and as may be required by the Corps and any other applicable governmental entities from time to time.

ARTICLE XI RESTRICTIONS ON IMPROVEMENTS

All Improvements on any Lot shall be subject to the following restrictions:

11.1 Compliance with this Declaration. All Dwellings and Improvements to a Lot and all construction and landscaping activities must comply with: (a) all codes, rules, regulations and requirements of the County; and (b) the Declaration, including the architectural requirements set forth herein.

11.2 Number of Dwellings. Only one Dwelling may be constructed on any Lot.

11.3 Construction Activity Confined. All construction activity, Improvements, and Dwellings are to be confined to the respective Owner's Lot area.

11.4 Building Setback. All building setbacks from property line shall conform to the applicable City ordinances and the Kotter Canyon Plat.

11.5 Slope and Drainage Control. No Improvement, planting or other material shall be placed or permitted to remain, nor shall any other activities be undertaken, which may damage or interfere with established slope ratios, which create erosion or sliding problems, or which may change the direction or flow of drainage channels or obstruct or retard the flow of water through drainage channels, including, without limitation, the Wetlands. The slope control areas of each Lot and all Improvements within them shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company

is responsible. All Lot Owners shall retain and control all water runoff from such Owner's Lot or Lots, so as not to damage or hinder other Lots or Owners.

11.6 Towers, Satellite Receivers and Antennas. No towers, exposed or outside radio, television or other electronic antennae, with the exception of television receiving antennae, shall be allowed or permitted to remain on any Lot. Satellite receivers, in excess of eighteen (18) inches in diameter, must have an enclosure to screen them from view from any surrounding Lot Owner.

11.7 Landscaping. The Landscaping of the front yard of each Lot, including the planting of grass or the placement of sod, and the planting of at least 2 trees per front yard and a minimal number of shrubs, must be completed within one (1) year from the time the construction of the Dwelling is completed, as may be reasonably extended due to inclement weather. In the event construction of the Dwelling is finished during a time of year when landscaping is difficult or impractical, the front yard landscaping shall be completed within sixty (60) days of the weather permitting installation of such landscaping, as determined in Declarant's sole discretion. The Landscaping of the back yard and side yards of each Lot does not need to be completed within such timeframe. The Owner of each Lot within the Kotter Canyon Estates Subdivision shall keep such Owner's Lot clean of weeds and trash. If the Owner fails to do so, the Declarant or the ARC shall have the right to cause such maintenance work to be done and to cause the cost of such maintenance work to be charged to and paid by the Owner of such Lot. The recordation by the Declarant and/or the ARC in the Office of the Recorder of Box Elder County, Utah of a Notice of Charge against the Owner of any Lot shall constitute a lien against such Lot, which lien shall remain in effect until such amount, together with interest thereon at the rate of eighteen percent (18%) per annum from the date of such Notice of Charge, is paid. Thereupon the Notice of Charge shall be released of record.

11.8 Minimum Architectural Requirements. The following shall be considered to be minimum architectural requirements with respect to Dwellings constructed within the Kotter Canyon Estates Subdivision, although the ARC shall have broad discretion in the approval of plans for Dwellings constructed in the Kotter Canyon Estates Subdivision and shall be entitled to consider factors in addition to the following minimum requirements:

11.8.1 No Dwelling shall be permitted on any Lot that is not of a quality workmanship and materials that are substantially the same or better than that of the surrounding structures within the Kotter Canyon Estates Subdivision. Exterior materials on all Dwellings shall be limited to brick, rock, cultured stone, stucco, hardy plank, or similar manufactured materials of equal quality. Upon the express written approval of the ARC, other exterior building materials may be used. Exceptions to the foregoing requirements may be allowed to accommodate an architectural duplication of a certain era or style, such as Victorian. No Dwellings shall be constructed with readily combustible exterior finishes, which prohibition shall preclude without limitation wood shingles, wood soffits, wood fascia and wood siding. At least 75% of each of the front and the two sides of each Dwelling must be finished with exterior materials consisting of either rock, brick, cultured stone, or hardy plank, as approved by the Kotter Canyon Board or the ARC.

11.8.2 No dome, A-frame or modified A-frame Dwellings shall be allowed or constructed.

11.8.3 No prefabricated Dwellings or trailers shall be allowed or constructed.

11.8.4 Roofs on all buildings shall be constructed with a minimum pitch angle of 6:12, provided, however, that a 4 inch rise in 12 inches may be approved in very selected roof areas. All roofs shall be made of fire resistant dimensional shingles or other roofing materials approved by the ARC. The shingles must be a minimum of 30 year dimensional shingles.

11.8.5 All buildings, structures and improvements on any Lot shall comply with the construction guidelines and specifications of the planning and building department of the governmental authority having jurisdiction over the Kotter Canyon Estates Subdivision.

11.8.6 All fencing within the Kotter Canyon Estates Subdivision must be approved by the ARC. All fencing must be in compliance with the City's height and set-back requirements. No chain link fences of any type are allowed for perimeter fencing of any lot within the Kotter Canyon Estates Subdivision; provided, however, that fencing around a dog run in the back yard of a Lot shall not be considered perimeter fencing.

11.8.7 For any Dwelling constructed on a single family residential building lot, the above ground square feet area of such Dwelling, exclusive of garage, basement, and any porches, shall not be less than:

- (a) 1850 square feet for a single level residence;
- (b) 3000 square feet for a two-level residence, with not less than 1500 square feet per level.

11.8.8 If an Owner desires to construct a Dwelling designed with a split entry or multiple levels, the plans shall be reviewed by the ARC and approval shall be granted in the discretion of the ARC, and the total area of floor space shall meet the minimum criteria of either subsection 11.8.7(a) or 11.8.7(b) above, if the opposite split entry levels were deemed to be one level.

11.8.9 If the ARC finds that the plans for any Dwelling submitted fail to meet the minimum main floor area, but the overall aggregate area is met, the ARC may approve the plans if, in its opinion the Dwelling to be constructed is substantially equivalent in value to a home which would meet the minimum floor area on the main floor level.

11.8.10 Each Dwelling shall meet the minimum set back requirements for the front, side, and back yards as required by the City, unless a variance is obtained by the City and approved by the ARC. In no event shall the side yard setback for a Dwelling constructed on a single family residential building lot be less than ten (10) feet from the respective Lot's boundary line.

11.8.11 Each Dwelling to be constructed as a Townhome Unit or on a patio home lot shall be constructed pursuant to plans approved by the Kotter Canyon Board. The

above ground square feet of a Townhome Unit shall be a minimum of 1380 square feet, with a maximum of 1600 square feet, unless otherwise approved by the ARC. The above ground square feet of a Dwelling constructed on a patio home lot shall be a minimum of 1500 square feet, with a maximum of 2000 square feet, unless otherwise approved by the ARC.

11.9 Exterior Lighting Standards. All exterior lighting must be adequately shielded and controlled to prevent glare and illumination to adjacent properties or streets. Bare light globe fixtures, such as flood and spot lights, are prohibited.

ARTICLE XII OWNERS' MAINTENANCE OBLIGATIONS

It is the obligation of each Owner to maintain his Lot at all times in order to preserve and enhance the enjoyment of the Kotter Canyon Estates Subdivision:

12.1 Duty to Maintain. It is the obligation of the Owner of each Lot to maintain his Lot and the Improvements to the Lot (including Limited Common Areas, if any) in a good state of repair and an attractive, safe and healthy condition. The Owner of a Townhome Unit shall also maintain the surface and integrity of the interior supporting walls. An Owner shall not alter any utility lines, pipes, wires, conduits, or systems which serve one or more other Dwellings. Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Kotter Canyon Board. Such right to repair, alter, and remodel is coupled with the obligation to replace any materials removed with similar types or kinds of materials. All fixtures and equipment installed within the Dwelling shall be maintained and kept in repair by the Owner thereof. An Owner of a Townhome Unit shall do no act and shall perform no work that will or may impair the structural soundness or integrity of the Townhome Unit in which such Owner's Dwelling is located, impair any easement or hereditament, or violate any laws, ordinances, regulations and codes of the United States of America, the State of Utah, the County of Box Elder, or any other agency or entity which may then have jurisdiction over said Townhome Unit. Any expense to the Association for investigation under this Article shall be borne by Owner if such investigation establishes a violation of this paragraph.

12.2 Repair by Association. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is a dangerous, unsafe, unsanitary, or unsightly condition in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demanding that the Owner correct the condition within thirty (30) days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement together with all expenses and fees of the Association shall be charged to the Owner, who agrees to pay promptly such amounts for work performed under this Section 12.2. All sums assessed to the Owner of a Lot under this Section 12.2, together with interest at the rate of one and one-half percent (1½%) per month, shall constitute an Assessment by the Association and shall be secured by a lien on such Lot in favor of the Association. The Association shall have all rights and remedies to enforce an Assessment under this Section 12.2 in the same manner as Assessments under Article VI.

12.3 Right of Entry. The Association shall have a right of entry and access to, over, upon, and through all of the Kotter Canyon Estates Subdivision, including each Lot, each Dwelling, the Association Areas, to enable the Association to perform its obligations, rights, and duties pursuant hereto with regard to maintenance, repair, restoration, and/or servicing of any items, things or areas of the Kotter Canyon Estates Subdivision. In the event of an emergency, the Association's right of entry to a Dwelling may be exercised without notice; otherwise, the Association shall give the Owners or Occupants of a Dwelling no less than twenty-four hours advance notice prior to entering a Dwelling.

12.4 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the ARC. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or siding or trim materials will be made without the advance consent of the ARC.

12.5 Repair Following Damage. In the event of casualty loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss provided, however, that alterations or deviations from the originally approved plans will require prior approval of the ARC. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent further damage, or to prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the Kotter Canyon Board, provided that any such measures must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Lot for more than ninety (90) days without repairs commencing, and any damaged structure which does remain un-repaired after ninety (90) days following the occurrence of damage is deemed a nuisance which may be abated by the Association at the expense of the Owner.

12.6 Private Streets. There are depicted on the Kotter Canyon Plat two private streets within the Kotter Canyon Estates Subdivision. The Association shall not have any responsibility, obligation, or liability for the maintenance, repair, and replacement of such private streets. The private street located off of 250 East Street shall serve the Kotter Canyon P.U.D. Subdivision Phase No. 2, which is not part of the Property and is not encumbered by this Declaration. The private street located off of Highland Boulevard shall serve Lot 45 and Lot 46. The Owners of Lot 45 and Lot 46 shall have the sole responsibility and obligation for all maintenance (including all snow removal), repair, and replacement of such private street.

ARTICLE XIII RESTRICTED ACCESS

Each purchaser of a Lot is hereby notified that State Highway 38 is a restricted access highway. Except as otherwise specifically set forth in on the Kotter Canyon Plat and this Declaration, no Owner of a Lot having frontage on State Highway 38 may access their Lot directly from State Highway 38.

ARTICLE XIV CONSTRUCTION REGULATIONS

14.1 Required Construction Regulations. To minimize the inconvenience to adjoining Owners, the following construction regulations shall be enforced during the construction period. These regulations shall be made a part of the construction contract between the Owner and his or her contractor on any Improvements on a Lot. Each Owner shall be bound by these regulations, and violations committed by the contractor shall be deemed a violation by the Owner for which the Owner is liable.

14.2 Portable Office or Trailer. Any owner whose contractor desires to bring a portable office or trailer onto a Lot shall first apply for and receive written approval from the ARC. The ARC will work with the Owner to determine the best location for the portable office. The portable office will be located only in a location approved by the ARC, which shall be on the Owner's Lot and within the area that can be disturbed by construction or within driveway areas.

14.3 Removal of Temporary Office. The temporary office may not be installed prior to the commencement of construction, and must be removed upon the first to occur of (i) the issuance of a Certificate of Occupancy, (ii) the termination, expiration, or cancellation of the building permit, or (iii) the suspension of construction activities for a period of sixty (60) days.

14.4 Construction Debris Removal. Owners and their contractors must comply with applicable City ordinances requiring the placement and maintenance of a trash container or dumpster on the Lot during construction. Owners and their contractors are responsible for collection of trash at the end of each work day and depositing construction trash, packing material, unusable scraps, and other debris in a suitable container. Lightweight material must be weighted down to prevent wind from blowing it away. Debris must be contained until removed from the Lot to an appropriate land fill. The dumpster must be regularly serviced. No trash may be burned, buried, or otherwise disposed of on the Lot. No concrete trucks may be cleaned out on any Lot or anywhere within the Kotter Canyon Estates Subdivision.

14.5 Construction Area Appearance. The Lot must be maintained in a reasonably organized and neat condition at all times during the construction of the Dwelling or any other Improvements. Materials must be stored in neat stacks and covered. No more material may be delivered to the site than can reasonably be consumed in a week's time, provided that once the Dwelling is enclosed, materials may be stored inside, out of sight, indefinitely.

14.6 Sanitary Facilities. Each Owner is responsible for the installation and maintenance of an approved portable toilet facility on the site during construction. The portable toilet must be located on the Lot at a location approved by the ARC and must be removed from the site at such time as the permanent plumbing system is operational.

14.7 Removal of Mud. The Owner and each contractor are responsible for keeping mud from the construction site on such Owner's Lot from being deposited on the roadways of the Kotter Canyon Estates Subdivision. This may require cleaning of truck tires before leaving the site.

14.8 Duration of Construction. It is the obligation of the Owner to proceed with construction with all reasonable speed once construction has commenced, and in any event, all exterior surfaces of the building shall be substantially complete within a period of twelve months from commencement. All landscaping and soil stabilization work must be completed as soon as possible after completion of the exterior of the Dwelling, but in no event later than the summer following completion of the exterior of the Dwelling.

ARTICLE XV RECREATIONAL ACTIVITIES

15.1 Assumption of Risk and Waiver of Claims. Each Owner, by its purchase and/or ownership of a Lot, hereby acknowledges that the Kotter Canyon Estates Subdivision contains a stream flowing through the Association Areas, the Wetlands, and the Trail System which have inherent risks as well as recreational-type activities, which may include, without limitation: swimming, hiking trails, biking trails, wildlife, horses and horseback riding and similar facilities, events, activities and programs (such inherent risks and activities are referred to collectively as the "Recreational Activities"), and each such Owner expressly assumes the risk of noise, nuisances, hazards, personal injury, or property damage related to any and all Recreational Activities and the existence of the stream, Wetlands, and the Trail System. Each such Owner agrees that neither the Association, any committee created by the Association, nor any of their directors, officers or members, shall be liable to an Owner or any other person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to: (a) the proximity of an Owner's Lot to any Recreational Activity; (b) the proximity of an Owner's Lot to the Wetlands; (c) any claim arising in whole or in part from the negligence of the Association, or any committee created by the Association or any of their directors, officers or members; or (d) any Recreational Activity (collectively referred to herein as the "Waived Claims").

15.2 Indemnification. Each Owner hereby agrees to indemnify, defend and hold harmless the Association, and any committee created by the Association, and their directors, officers or members from and against any and all Waived Claims asserted by such Owner and/or by such Owner's visitors, family, agents, contractors or tenants. Each Owner further covenants that the Association, any committee created by the Association, and the owners and operators of all Recreational Activities shall have the right, in the nature of an easement, to subject all or any portion of the Kotter Canyon Estates Subdivision to nuisances incidental to the maintenance, operation or use thereof, and to the carrying out of such Recreational Activities.

ARTICLE XVI MORTGAGEE PROTECTION

16.1 Mortgage Protection. No breach of any of the covenants, conditions, restrictions, and limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure or trustee's sale.

16.2 Priority of Liens. No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions of Article VI shall constitute a lien on each respective Lot prior and superior to all other liens except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any recorded Mortgage on such Lot made in good faith and for value and recorded prior to the date on which any such Assessment or Assessments become due.

16.3 Mortgage Holder Rights in Event of Foreclosure. Any mortgagee of a Mortgage of record which obtains title to a Lot by the foreclosure of the Mortgage on the Lot or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid Assessments by the Association and charges against the Lot which accrued prior to the date of the acquisition of title to such Lot by such acquirer. Any unpaid Assessments shall be deemed to be Association Expenses collectible from all of the Lots in the Kotter Canyon Estates Subdivision, including the Lot that has been acquired in accordance with the provisions of this Section.

16.4 Amendment. No provision of this Article XVI shall be amended without the prior written consent of at least two-thirds of all first Mortgagees on the Lots within the Kotter Canyon Estates Subdivision as appear on the Official records of the County as of the date of such amendment, and so long as Declarant owns any interest in any of the Lots, without Declarant's prior written consent.

ARTICLE XVII ADDITIONAL RIGHTS RESERVED TO DECLARANT

17.1 Reservation of Easement. Declarant hereby reserves an easement throughout the Kotter Canyon Estates Subdivision for a period of six (6) years from the recording of this Declaration for the purpose of completing all improvements contemplated by this Declaration and the Kotter Canyon Plat. Declarant's use of the easement reserved pursuant to this Section 17.1 is conditioned on the requirement that Declarant shall repair and restore any damage caused by Declarant as the result of the use of the easement by Declarant. In order for Declarant to use the easement reserved pursuant to this Section 17.1, Declarant must reasonably determine that there is not a reasonably available alternate means of access.

17.2 Marketing and Sales Activities. Declarant may construct and maintain upon portions of the Association Areas and Lots such facilities and activities as may be reasonably required, convenient, or incidental, to the construction or sale of Lots, including, but not limited to, business offices, signs, model Lots, and sales offices, and shall have easements for access to and use of such facilities.

17.3 Right to Develop. Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Association Areas for the purpose of making, constructing, and installing such Improvements to the Association Areas, or as it deems appropriate in its sole discretion.

17.4 Right to Approve Additional Covenants. During the Declarant Control Period, no Person shall record any declaration or similar instrument affecting any portion of the Property without Declarant's review and consent. The granting or withholding of such consent shall be within Declarant's sole discretion. Any recording without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant. Once approved by Declarant and recorded, any declaration or similar instrument affecting any portion of the Property shall be in addition to and not in limitation of, the provisions of this Declaration. In the event of any conflict between this Declaration, the Articles of Incorporation, Bylaws, or any rule or regulation adopted by the Kotter Canyon Board and any declaration or similar instrument affecting any portion of the Property which is recorded, then the terms of the this Declaration, the Articles of Incorporation, Bylaws, or any rule or regulation adopted by the Kotter Canyon Board shall control.

17.5 Right to Approve Change in Community Standards. No amendment to or modification of any rules or regulations shall be effective without prior notice to and the written approval of Declarant during the Declarant Control Period.

17.6 Right to Appoint and Remove Directors During Declarant Control Period. There is hereby established a Declarant Control Period of the Association during which period Declarant or persons designated by it shall have the authority to appoint and remove the Association officers and directors. The Declarant Control Period shall terminate on the earlier of: (a) five (5) years after the recordation in the Office of the Recorder of Box Elder County, Utah of the most recently recorded Kotter Canyon Plat; or (b) one hundred twenty (120) days after the date 85% of the total number of Lots in the Kotter Canyon Estates Subdivision are conveyed to Owners other than Declarant; or (c) the date Declarant delivers to the Association written notice of Declarant's election to relinquish control of the Association. After termination of the Declarant Control Period, the Kotter Canyon Board shall be elected as provided in the Bylaws.

17.7 Right to Transfer or Assign Declarant Rights. Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a recorded written instrument signed by Declarant. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

17.8 Exclusive Rights to Use Name of Development. No Person shall use the name "Kotter Canyon" or any derivative of such name in any printed or promotional material without Declarant's prior consent. However, Owners may use the name "Kotter Canyon" in printed or promotional matter where such term is used solely to specify that particular real property is located within the Kotter Canyon Estates Subdivision. Notwithstanding, the Association shall be entitled to use the words "Kotter Canyon" in its name.

17.9 Equal Treatment. For so long as Declarant owns any part of the real property described in Exhibit A or any interest therein, the Association shall not, without the prior consent of Declarant, adopt any policy, rule, or procedure that:

17.9.1 limits the access of Declarant and its respective successors, assigns, and affiliates or their employees, agents, representatives, and/or guests, including visitors, to the Association Areas of the Association or to any real property owned by any of them;

17.9.2 limits or prevents Declarant and its respective successors, assigns, and affiliates or their personnel from advertising, marketing, or using the Association or its Association Areas or any real property owned by any of them in promotional materials;

17.9.3 limits or prevents Owners from becoming members of the Association, subject to the provisions of this Declaration and the Bylaws, or enjoying full use of its Association Areas;

17.9.4 discriminates against or singles out any group of Members or prospective Members or Declarant this provision shall expressly prohibit the establishment of a fee structure (i.e., Special Assessments and other mandatory fees or charges other than Special Assessments and use fees) that discriminates against or singles out any group of Owners or Declarant, but shall not prohibit the establishment of Special Assessments;

17.9.5 impacts the ability of Declarant and its respective successors, assigns, and affiliates, to carry out to completion its development plans and related construction activities for the Kotter Canyon Estates Subdivision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction, and landscaping activities and utilities; or

17.9.6 impacts the ability of Declarant and its respective successors, assigns, and affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner. The Association shall not exercise its authority over the Association Areas (including, but not limited to, other means of access to the Property) to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Property over the streets and other Association Areas within the Property.

ARTICLE XVIII GENERAL PROVISIONS

18.1 Remedies. The covenants, conditions, and restrictions contained in this Declaration may be enforced as follows:

18.1.1 Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by any other Owner or by the Association in its own name. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment all of the reasonable costs of enforcement, including attorneys' fees and costs of litigation.

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

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

18.1.4 The failure to take enforcement action shall not be construed as a waiver of the covenants contained in this Declaration nor a waiver of the right to take enforcement action with respect to a future violation of such covenants or any other violations.

18.2 Compliance. Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association or by an aggrieved Owner.

18.3 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

18.4 Limited Liability. Neither the Association, the directors of the Kotter Canyon Board, the ARC or its individual members, nor any other Owner shall have personal liability to any other Owner for actions or inactions taken under these covenants, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority under these covenants, and without malice.

18.5 Term of Covenants, Renewal. This Declaration shall expire fifty (50) years from the date it is first recorded with the Recorder of Sanpete County, Utah, provided however that in the last year prior to expiration, this Declaration shall be automatically extended for successive periods of twenty (20) years, unless, by a vote of at least a majority of the then Owners of said Lots, it is agreed to amend or release this Declaration in whole or in part by an appropriate instrument in writing specifying the provisions to be amended or released, and by recording said instrument in the office of the Recorder of Box Elder County, Utah.

18.6 Amendment. Subject to the provisions of this Declaration, the Owners of fifty-one percent (51%) of the Lots may amend the provisions of this Declaration, provide, however, that so long as the Declarant owns an interest in the Property, no such amendment shall occur without Declarant's written approval, which approval may be withheld in the Declarant's sole absolute discretion. Any amendment must be in writing and be approved by fifty-one percent (51%) of the Owners at the time of the amendment, and Declarant as provided for herein. No amendment which has the effect of substantially or materially altering the size, nature, or use of the Improvements on any Lot permitted by this Declaration will be binding upon the holder of any mortgage or trust deed on any Lot unless the mortgage or trust deed holder joins in the

amendment. Any amendment authorized pursuant to this Section 18.6 shall be accomplished through the recordation of an instrument executed by the Association.

18.7 Constructive Notice. Every Person who owns, occupies, or acquires any right, title or interest in any Lot in the Kotter Canyon Estates Subdivision is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the covenants, conditions, easements and restrictions against his or her Lot, whether or not there is any reference to this Declaration in the instrument by which he/she acquires his/her interest in any Lot.

18.8 Notices. All notices under this Declaration are deemed effective five (5) business days after the date of mailing, whether delivery is proved or not, provided that any mailed notice must have postage pre-paid and be sent to the last known address of the property tax assessment rolls if no other address for an Owner is known. Notices delivered by hand are effective upon delivery.

18.9 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Kotter Canyon Estates Subdivision. Section headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

18.10 Recitals Incorporated. The Recitals set forth in this Declaration are hereby incorporated herein.

18.11 Covenants Run with the Land. The covenants, conditions, and restrictions in this Declaration are covenants running with the land, and shall burden and benefit the successors and assigns of the Owners for so long as the Declaration is in effect.

IN WITNESS WHEREOF, the Association has caused this Declaration to be executed as of the date first above written.

Kotter Canyon Estates, LLC, a Utah limited liability company

By: 

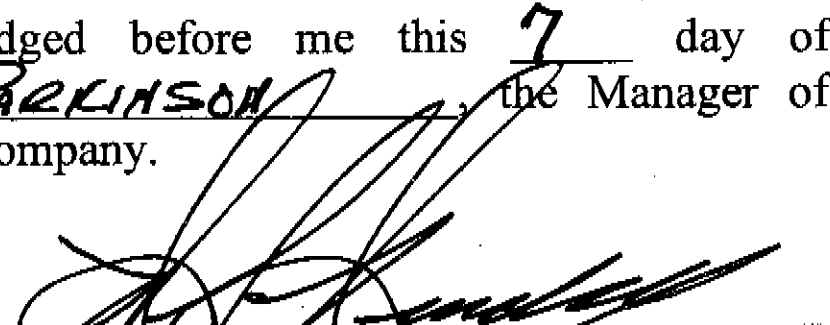
Print Name: KEVIN M. PARKINSON

Title: Manager

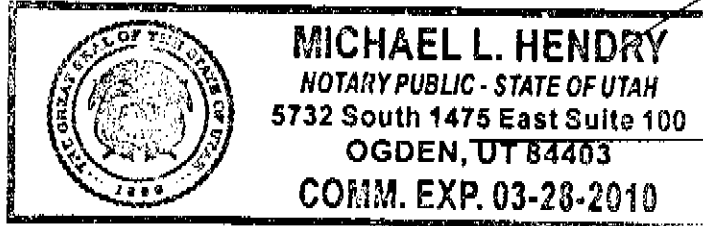
STATE OF Utah)

COUNTY OF WEBER) : ss.

The foregoing instrument was acknowledged before me this 7 day of MARCH, 2008, by KEVIN M. FARLINSON, the Manager of Kotter Canyon Estates, LLC, a Utah limited liability company.


NOTARY PUBLIC
Residing at:

My Commission Expires:



**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
KOTTER CANYON ESTATES SUBDIVISION**

(Legal Description of Kotter Canyon Estates Subdivision)

The real property referenced in the foregoing instrument as the Kotter Canyon P.U.D. Subdivision is located in Box Elder County, Utah and is more particularly described as:

All of the real property included on the subdivision plat for the Kotter Canyon P.U.D. Subdivision, including lots 1 through 128, all common area, all limited common area, and all wetlands shown thereon, recorded on FEBRUARY 8, 2008, as Entry No. 258753 in the official records of Box Elder County, Utah.