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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

HEATHERGLEN LOT NO. 1

LDT  
SECURITY TITLE COMPANY

THIS DECLARATION is made and executed this 16th day of April, 1979, by TRENDSETTER AFFILIATES, INC., a Utah corporation, (hereinafter referred to as "Declarant"), pursuant to the provisions of the Utah Condominium Ownership Act (Sections 57-8-36), Utah Code Annotated (1953), as amended.

R E C I T A L S:

A. Declarant is the owner of the real property (the Tract) described in Article II hereof.

B. Declarant has constructed, or is in the process of constructing, upon the Tract a building, including two Units and other improvements. All of such construction has been, or is to be, performed in accordance with the plans contained in the Record of Survey Map to be recorded concurrently herewith.

C. Declarant desires, by filing this Declaration and the Record of Survey Map, to submit the Tract and all improvements now or hereafter constructed thereon to the provisions of the Act as a Condominium Project to be known as "Heatherglen Lot No. 1."

D. Declarant intends to sell to purchasers the fee title to the individual Units contained in the Building, together with the undivided ownership interests in the Common Areas and Facilities appurtenant to such Units, subject to the covenants, restrictions, and limitations herein set forth.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby makes the following Declaration:

I. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act.

1. Act shall mean and refer to the Utah Condominium Ownership Act (Sections 57-8-1 through 57-8-36, Utah Code Annotated (1953), as the same may be amended from time to time.
2. Declaration shall mean and refer to this instrument.
3. Declarant shall mean and refer to Trendsetter Affiliates, Inc., a Utah Corporation, and its successors and assigns.

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**SECURITY TITLE COMPANY**

Recorded at Request of \_\_\_\_\_  
at 9:25A m Fee Paid \$ 24.00 KATIE L. DIXON, Recorder,  
Salt Lake County, Utah, By Evelyn Thompson Dept. Date APR 25 1979  
Evelyn Thompson

4. Record of Survey Map and Map shall mean and refer to the Record of Survey Map filed herewith, consisting of One (1) sheet, and prepared and certified to by Kenneth Watson, a duly registered Utah Land Surveyor.

5. Property shall mean and refer to the land, the Building, all improvements thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

6. Building shall mean and refer to the building on the Tract containing two Units and comprising a part of the Property.

7. Management Committee and Committee shall mean and refer to the Management Committee of the Heatherglen Lot No. 1 Condominium Project.

8. Common Areas and Facilities and Common Areas shall mean, refer to, and include:

(a) The real property and interests in real property which this Declaration submits to the terms of the Act.

(b) All Common Areas and Facilities designated as such in the Survey Map.

(c) All Limited Common Areas and Facilities.

(d) All foundations, columns, girders, beams, supports, perimeter walls and roofs constituting a portion of or included in the improvements which comprise a part of the Project, and any walkways, fences, and other common facilities.

(e) All portions of the Project not specifically included within the individual Units.

(f) All Common Areas as defined in the Act, whether or not expressly listed herein.

9. Limited Common Areas shall mean and refer to those Common Areas designated herein or in the Map as reserved for the use of a certain Unit to the exclusion of the other Unit. Limited Common Areas consist of the yard area (front, side and back) adjacent to the Unit as indicated in the Map as "Limited Common Area".

10. Condominium Unit and Unit means and refers to a separate physical part of the Property intended for independent use, consisting of rooms or spaces located in the Building. Units are shown in the Map by single cross-hatching. All decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors, hardware and door frames, and trim, consisting of, among others and as appropriate, wallpaper, paint, flooring, carpeting and tile shall be considered part of the Unit. Any structural members or any other property of any kind, including fixtures and appliances

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within any Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the Building within which the Unit is situated shall be considered part of the Unit.

11. Unit Designation shall mean and refer to the street address which designates a Unit in the attached Exhibit "A" and in the Map.

12. Unit Owner or Owner shall mean and refer to the owner of the fee in a Unit and the percentage of undivided interest in the Common Areas which is appurtenant thereto. The Declarant shall be deemed the owner of all unsold Units. In the event a Unit is the subject of an executory contract of sale, the contract purchaser shall, unless the seller and the purchaser have otherwise agreed and have informed the Committee in writing of such agreement, be considered the Unit Owner for purposes of voting and Committee membership.

13. Common Expenses shall mean and refer to all sums which are expended on behalf of both Unit Owners and all sums which are required by the Management Committee to perform or exercise its functions, duties, or rights under the Act and this Declaration.

14. Common Profits shall mean and refer to the balance of income, rents, profits, and revenues from the Common Areas remaining after deduction of the Common Expenses.

15. Association shall mean and refer to the Association of Unit Owners of Heatherglen Lot No. 1 acting as a group in accordance with the Declaration. Each Unit Owner shall be a member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Unit in which the Owner has the necessary interest, and shall not be separated from the Unit to which it appertains. The property, business and affairs of the Association shall be governed by the Management Committee.

16. Condominium Project and Project shall mean and refer to the Heatherglen Lot No. 1 Condominium Project.

17. Tract shall mean and refer to the real property hereby submitted to the Project.

18. Mortgage shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered.

19. Mortgagee shall mean any person named as a Mortgagee or beneficiary under or holder of a deed of trust.

20. Percentage Interest shall mean and refer to the percentage undivided interest of each Unit in the Common Areas as set forth in Exhibit "A" annexed hereto.

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21. Size shall mean and refer to the square footage of each Unit, exclusive of basement and garage, as depicted on the Map and shown in said Exhibit "A".

## II. SUBMISSION

Declarant hereby submits to the provisions of the Act to be known as "Heatherglen Lot No. 1", the following described Tract in Salt Lake County, Utah:

Lot No. 1 HEATHERGLEN SUBDIVISION,  
according to the official plat thereof  
on file and of record in the Official  
Records of Salt Lake County, Utah.

## III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon and under the following covenants, conditions, and restrictions:

1. Description of Improvements. The improvements included in the Project are now or will be located on the Tract described in Article II above, and all such improvements are described on the Map. The Map indicates the number of stories, the number of Units which are contained in the Building, which comprise a part of such improvements, the dimensions of the Units, and all Common Areas thereof. There are two Units contained in the Building. The building is of wood frame construction, with brick veneer and aluminum siding and asbestos shingled roof.

2. Description and Legal Status of Units. The Map shows the Unit Number of each Unit, its location, dimensions from which its size may be determined, and the Common Areas to which it has immediate access. Each Unit shall be capable of being separately owned, encumbered, and conveyed.

3. Contents of Exhibit "A". Exhibit "A" to this Declaration furnishes the following information with respect to each Unit: (a) The Unit Designation; (b) Its Size; and (c) Its Percentage Interest.

4. Common and Limited Common Areas. The Common Areas contained in the Project are described and identified in Article I of this Declaration. Neither the Percentage Interest nor the right of exclusive use of a Limited Common Area and Facility shall be separated from the Unit to which it appertains; and even though not specifically mentioned in the instrument of transfer, such Percentage Interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate. Each Unit Owner shall at its own cost keep the Limited Common Areas designed for exclusive use in connection with his Unit in a clean, sanitary and attractive condition at all times.

5. Computation of Undivided Interests. The proportionate share of the Unit Owners in the Common Areas of the

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Project is based on the Size that each Unit bears to the aggregate Size of both Units. The proportionate ownership in the Common Areas shall be for all purposes including, but not limited to, voting, participation in Common Profits and assessment for Common Expenses.

6. Unit Maintenance. Each Owner shall at his own cost and expense maintain, repair, paint, re-paint, tile, tax, paper or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, windows and doors forming the boundaries of his Unit and all walls, ceiling, floors, windows and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in, or connected with, his Unit. Each Unit shall be maintained so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of the other Unit.

7. Easement for Encroachment. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance for the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon the adjoining Unit, an easement for such encroachment and for the maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either to the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building on the Tract, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

8. Access for Repair of Common Areas. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owner of the other Unit shall have the irrevocable right, to be exercised by the Committee, as its agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit. The Committee shall also have such rights independent of the agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the instance of the Committee or of Unit Owners; provided, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all

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such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by an Owner pursuant hereto shall be collected by the Committee or by the other Owner by assessment.

9. Right of Ingress, Egress, Lateral Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and to the Limited Common Areas designated for use in connection with his Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

10. Easement to Management Committee. The Management Committee shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

11. Easement for Utility Services. There is hereby created a blanket easement upon, across, over and under the Tract above described in Article II for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephones, electricity, and other utility services.

12. Use of Condominium and Common Areas.

(a) Each of the Units in the Project is intended to be used for single family residential housing and is restricted to such use.

(b) Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Committee, but for such activity, would pay, without the prior written consent of the Committee. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Committee and the Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

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(c) No structural alterations to any Unit be made by any Owner without the prior written consent of the other Owner.

(d) Notwithstanding anything contained herein to the contrary, until the Declarant has completed and sold both Units, neither a Unit Owner who has purchased a Unit from the Declarant nor the Committee shall interfere with the completion of improvements and sale of the remaining Unit. The Declarant reserves the right to use any Unit owned by Declarant as a model, management office or sales office until such time as Declarant conveys title thereto to a purchaser.

13. Status and General Authority of Committee.  
The Project shall be managed, operated, and maintained by the Management Committee as agent for, and in the name of, the Association. The Management Committee shall have, and is hereby granted, the following authority and powers:

(a) The authority, without the vote or consent of the Unit Owners or of any other person(s), to grant or create, on such terms as it deems advisable, utility and similar easements over, under, across, and through the Common Areas.

(b) The authority to execute and record, on behalf of both Unit Owners, any amendment to the Declaration or Map which has been approved by the vote or consent necessary to authorize such amendment.

(c) The power to sue and be sued.

(d) The authority to enter into contracts which in any way concern the Project, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the agreement has been obtained.

(e) The power and authority to borrow money so long as such action has been authorized by any vote or consent which is necessary under the circumstances.

(f) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners.

(g) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions as agent for the Association.

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Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

14. Composition of Management Committee. The Committee shall be composed of two members who have ownership in the Units. The Committee members shall be elected for two-year terms. Members shall serve on the Committee until their successors are elected and qualify. Only Unit Owners and officers and agents of corporate owners shall be eligible for Committee membership. At the annual meeting each Unit Owner may vote his Percentage Interest in favor of as many candidates for Committee membership as there are seats on the Committee to be filled; provided, however, that Declarant itself shall act as the Committee until the sale of both Units of the Project.

15. Committee Officers and Agents. The Committee shall perform its functions through those members who are elected as officers by the Committee and through such agents or employees as the Committee may appoint. Any agent or employee of the Committee may at any time be removed with or without cause by a unanimous vote of the Committee members. The officers of the Committee, and their respective powers and functions, shall be as follows:

(a) Chairman. The Chairman shall be the chief executive of the Committee and shall exercise general supervision over the property and affairs of the Project. He shall preside over all meetings of the Committee and of the Unit Owners. He shall execute all instruments on behalf of the Committee.

(b) Secretary. The Secretary shall keep minutes of meetings of the Committee and of the Unit Owners and shall keep all records which are required or made necessary by the Act, this Declaration, or the Committee.

(c) Treasurer. The Treasurer shall have custody and control of the funds available to the Committee. He shall furnish the Committee with a bond, in the amount specified by the Committee, conditioned upon the faithful performance of his duties. The offices of Secretary and Treasurer may be held by the same Committee member.

16. Committee Meetings. (a) A regular meeting of the Committee shall be held immediately after the adjournment of each annual Owners meeting. Other regular meetings shall be held at regular intervals at such time and place as the Committee may provide. No notice need be given of regular Committee meetings.

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(b) Special Committee meetings shall be held whenever called by the Chairman or a majority of the Committee. Either oral or written notice of special meetings shall, unless a waiver of such notice is signed by all members, be given to each Committee member at least 24 hours before the time fixed for the meeting. Any meeting attended by all Committee members shall be valid for all purposes.

(c) A quorum for the transaction of business at any Committee meeting shall consist of all the members then in office.

(d) Members of the Committee, as such, shall not receive any stated salary or compensation; provided that nothing herein contained shall be construed to preclude any member thereof from serving the Project in any other capacity and receiving compensation therefor.

(e) For or at any meeting of the Committee, any member thereof, may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Committee at any meeting thereof shall be deemed waiver of notice by him of the time and place thereof.

(f) The Committee may adjourn any meeting from day to day or for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

(g) The Committee shall require that all officers and employees of the Committee handling or responsible for funds shall require adequate fidelity bonds. The premium on such fidelity bonds shall be paid by the Committee.

17. Meeting of Unit Owners. (a) The first regular meeting of the Association shall be held at 7:00 p.m. on the second Tuesday in March, 1980, and the subsequent regular meetings shall be held on the second Tuesday in March of each succeeding year. Whenever such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be at a location in Salt Lake County, Utah specified in the Notice of Meeting. At least ten days before the date of the regular meeting a written notice thereof shall be personally delivered or mailed postage prepaid to each Unit Owner at his last known address. Such notice shall state the time, place, and general purpose of the meeting.

(b) Special Meetings. Special meetings of the Association may be called by the Chairman of the Committee, by both Committee members, or by either Unit Owner. At least four (4) days before the date set for a special meeting written notice such as that described in the immediately preceding paragraph shall be personally delivered or mailed postage prepaid to each Unit Owner at his last known address.

(c) Waiver of Notice. No notice of any Association meeting shall be required if a waiver of such notice is signed by both Owners. Whenever both Owners meet in person or by proxy such meeting shall be valid for all purposes. A quorum for the transaction of business at an Association meeting shall consist of all the Percentage Interest. In the event a quorum is not present at an Association meeting, whether regular or special, the meeting may be adjourned and rescheduled (rescheduled meeting) for a time no earlier than 48 hours, and no later than thirty (30) days, after the time set for the original meeting. No notice of such rescheduled meeting shall be required. A quorum for the transaction of business at the rescheduled meeting shall be one-half ( $\frac{1}{2}$ ) of the Percentage Interest.

(d) Voting. When a quorum, as provided herein, is present at any meeting, the vote of Unit Owners representing 100% (50% if the meeting is a rescheduled meeting) of the Percentage Interest, present in person or represented by proxy, shall decide any question of business brought before such meeting, including the election of the Committee. All votes may be cast either in person or by proxy. All proxies shall be in writing, and in the case of proxies for the annual Association meeting, they shall be delivered to the Secretary of the Committee at least five (5) days prior thereto. Proxies for special Association meetings must be of record with the Secretary of the Committee at least two (2) days prior to such meeting.

18. Accounting. (a) The books and accounts of the Committee shall be kept under the direction of the Treasurer and in accordance with the reasonable standards of accounting procedures.

(b) Report. At the close of each accounting year, the books and records of the Committee shall be reviewed by a person or firm selected by the Committee. Report of such review shall be prepared and submitted to the Unit Owners at or before the annual meeting of the Association.

(c) Inspection of Books. Financial reports, such as are required to be furnished, shall be available at the principal office of the Committee or the Treasurer for inspection at reasonable times by any Unit Owner.

19. Capital Improvements. Additions or capital improvements to the Project which cost no more than \$500.00 may be authorized by the Management Committee alone. Additions or capital improvements the cost of which will exceed such amount must, prior to being constructed, be authorized by both Unit Owners.

20. Operation and Maintenance; Apportionment of Common Expenses. The Committee shall provide for such repair, maintenance, and replacement of those Common Areas that must be replaced on a periodic basis and shall keep the Common

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Areas clean, functional, attractive and generally in good condition and repair. The Committee shall have no obligation regarding maintenance or care of Units. Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among both Units in proportion to their Percentage Interest.

21. Payment of Expenses. Before the end of each calendar year the Committee shall prepare a budget which sets forth an itemization of the Common Expenses which are anticipated for the coming year. Such budget shall take into account any deficit or surplus realized during the current year. The total of such expenses shall be apportioned among all the Units on the basis of their Percentage Interest. Prior to the first day of each month during the year covered by the budget each Unit Owner shall pay to the Committee as his share of the Common Expenses 1/12th of the amount so apportioned to his Unit. If such monthly payments are too large or too small as a result of unanticipated income or expenses, the Committee may effect an equitable change in the amount of said payments. The dates and manner of payment shall be determined by the Committee. The foregoing method of assessing the Common Expenses to the Unit Owners may be altered by the Committee so long as the method it adopts is consistent with good accounting practices and requires that the portion of Common Expenses borne by each Owner during a 12-month period be determined on the basis of his Percentage Interest.

22. Remedies for Nonpayment. Should either Unit Owner fail to pay when due his share of the Common Expenses, the other Unit Owner may enforce any remedy provided in the Act or otherwise available for collection of delinquent Common Expense assessments, including but not limited to, imposition of lien on Units of Owners who are in default. Regardless of the terms of any agreement to which the Committee is not a party, liability for the payment of Common Expense assessments shall be joint and several, and any remedy for the collection of such assessments may be enforced against any person holding an ownership interest in the Unit concerned, against the interest which is held by him, against either or both the seller or purchaser under an executory contract of sale covering the Unit concerned, against the interests in the Unit which are held by any such seller or purchaser, and against any combination or all of such persons and interests. Any relief obtained, whether or not through foreclosure proceedings, shall include the Committee's costs and expenses and a reasonable attorney's fee. In the event of foreclosure, after the institution of the action the Unit Owner shall pay a reasonable rental for his use of the Unit and the Committee shall, without regard to the value of the Unit, be entitled to the appointment of a receiver to collect any rentals due from the Owner or any other person.

23. Insurance. The Management Committee shall secure and at all times maintain the following insurance coverages:

- (a) A multi-peril policy or policies of fire and casualty insurance, with extended coverage and

all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value. Each such policy shall contain the standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of Mortgagees as their interests may appear. The assured shall be the Association.

(b) A comprehensive policy of public liability insurance insuring the Association, the Committee, the Manager, and the Unit Owners against any liability incident to the ownership, use, or operation of the Common Areas and public ways of the Project or of any Unit which may arise among themselves, to the public, or to any invitees, or tenants of the Project, or of the Unit Owners. Limits of liability under such insurance shall be not less than Two Hundred Thousand Dollars (\$200,000.00) per occurrence, for personal property injury and/or property damage. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association or other Unit Owners. The scope of coverage must include all other coverage in the times and amounts required by private institutional mortgage investors for similar projects in location, construction and use.

(c) The Association shall maintain fidelity coverage to protect against dishonest acts on the part of Committee Members, employees, or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which in no event shall be less than one and one-half times the insured's estimated annual operating expenses and reserves. 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 following additional provisions shall apply with respect to insurance:

(a) In addition to the insurance and bond coverages described above, the Committee shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with all condominium projects similar to the Project in construction, nature and use.

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(b) All policies shall be written by a company holding a rating of BBB+ or better from Best's Insurance Reports.

(c) The Committee shall have the authority to adjust losses.

(d) Insurance secured and maintained by the Committee shall not be brought into contribution with insurance held by the individual Unit Owners or their mortgagees.

(e) Each policy of insurance obtained by the Committee shall provide: a standard mortgagee clause commonly accepted by private institutional mortgage investors in the Area in which the Project is located; a waiver of the insurer's subrogation rights with respect to the Committee, the Manager, the Unit Owners, and their respective servants, agents, and guests; that it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Unit Owner or Owners; that it cannot be cancelled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Committee or of the Manager without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners; and that a mortgagee clause endorsement providing that there shall be not less than 10 days notice of reduction or cancellation relating to any of the policies.

(f) Any Unit Owner may obtain additional insurance at his own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Committee. Any Unit Owner who individually obtains insurance covering any portion of the Project shall supply the Committee with a copy of his policy within 30 days after he acquires such insurance.

24. Damage to Project. In the event of damage or destruction of part or all of the improvements in the Condominium Project, the following procedures shall apply:

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

(b) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the

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Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and both Unit Owners shall be assessed for any deficiency on the basis of their respective Percentage Interest.

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

Any reconstruction or repair which is required to be carried out by this Paragraph 24 regarding the extent of damage to or destruction or Project improvements shall be made by three MAI appraisers selected by the Management Committee. The decision of any two such appraisers shall be conclusive.

25. Certain Provisions Applicable to Declarant.

Notwithstanding any other provision herein contained, for so long as Declarant continues to own any of the Units the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of Unit Owner to pay assessments, except as herein otherwise provided, as to each Unit owned by Declarant in accordance with the Declaration.

(a) Declarant specifically disclaims any intent to have made any warranty or representation in connection with the project or the Declaration except as specifically set forth herein or in any agreement for sale of a Unit, and no person shall rely upon any warranty or representation not so specifically made therein.

(b) No amendment may be made to the Declaration without the written consent of Declarant so long as Declarant retains the ownership of one Unit; provided, however, that the obligation to acquire said written consent of Declarant shall cease on a date two (2) years from the date of recording of the final phase of the Declaration.

26. Amendment. Except as provided below, the vote of 100% of the Percentage Interest shall be required to amend this Declaration or the Map. Any amendment so authorized shall

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be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Paragraph for amendment has occurred. The foregoing right of amendment shall be subject to the following paramount rights:

(a) Until both Units of the Project have been sold, Declarant shall have, and is hereby vested with, the right to unilaterally amend this Declaration or the Map. Such right shall obtain without regard to the subject matter of amendment, so long as the amendment involved is consistent with law.

(b) Notwithstanding anything to the contrary contained in the Declaration, neither the insurance provisions of paragraph 23, nor the mortgagee protection provisions of paragraph 29 shall be amended without the written approval of all institutional first Mortgagees.

27. Consent Equivalent to Vote. In those cases in which the Act or this Declaration requires the vote of a stated percentage of the Project's Percentage Interest for the authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the necessary Percentage Interest.

28. Eminent Domain. Whenever all or part of the Common Areas shall be taken, injured or destroyed as the result of the exercise of the power of eminent domain, each Unit Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, but in any proceeding for the determination of damages, such damages shall be determined for such taking, injury or destruction as a whole and not for each Unit Owner's interest therein. After such determination each Unit Owner shall be entitled to a share in the damages in the same portion as his Percentage Interest in the Common Areas.

29. Mortgagee Protection. Notwithstanding anything to the contrary contained in the Declaration:

(a) An adequate reserve fund for repair, maintenance and replacement of the Common Areas must be established and shall be funded by regular monthly payments rather than by special assessments.

(b) There shall be established a working capital fund for the initial months of operation of the Project equal to a minimum amount of two months' estimated Common Area charge for each Unit.

(c) Any mortgage holder which comes into possession of the Unit pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage or deed (or assignment in lieu of foreclosure) shall be exempt from any "right of first refusal", or other provisions which may exist relating to sale or lease of the Units in the Project.

(d) Any agreement for professional management of the Project, or any other contract providing for services by the Declarant must provide for termination by either party without cause or payment of a termination fee of 90 days or less written notice and a maximum contract term of three years.

(e) In the event of damage to or destruction of any Unit, which loss exceeds \$1,000.00, or any part of the Common Areas, which loss exceeds \$10,000.00, the institutional holder of any first mortgage on a Unit shall be entitled to timely written notice to any such damage or destruction. No Unit Owner or other party shall be entitled to priority over such institutional holder with respect to the distribution to such Unit of any insurance proceeds regardless of the amount of loss.

(f) If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, which taking of Common Areas exceeds \$10,000.00, or which taking of Units exceeds \$1,000.00, the institutional holder of any first mortgage of a Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition. No Unit Owner or other party shall have priority over such institutional holder regardless of the amount of the condemnation award with respect to the distribution to such Unit of the proceeds of any award or settlement.

(g) With the exception of a lender in possession of a Unit following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Unit Owner shall be permitted to lease his Unit for transient or hotel purposes. No Unit Owner may lease less than the entire unit. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and By-Laws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing.

(h) Each holder of a first mortgage lien on a Unit who obtains title to a Unit by virtue of remedies provided in the Mortgage, including but not limited to, foreclosure of the mortgage, or by deed of assignment in lieu of foreclosure, shall take the Unit free of unpaid charges and shall not be liable for any unpaid claims or assessments and charges against the Unit which accrue prior to the acquisition of title of such Unit by Mortgagee.



(i) Any holder of the Mortgage is entitled to written notification from the Management Committee of any default by the Mortgagor or such Unit in the performance of such Mortgagor's obligation under the Declaration which is not cured within thirty (30) days.

(j) Any lien which the Management Committee may have on any Unit in the Project for the payment of Common Expense assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any first mortgage on the Unit.

(k) Unless at least 75% of the first Mortgagees (based on one vote for each Mortgage owned) of Units have given their prior written approval neither the Management Committee, Declarant, nor the Association shall:

(1) By act or omission, seek to abandon or terminate the Project.

(2) Change the pro-rata interest or obligation of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro-rata share of ownership of each Unit in the appurtenant Common Areas.

(3) Partition or subdivide any Unit.

(4) Make any material amendment to the Declaration or to the By-Laws of the Management Committee, including, but not limited to, any amendment which would change the percentage interests of the Unit Owners in the Common Areas, except as provided in paragraph 26 concerning certain rights reserved to Declarant.

(5) By act or omission, seek to amend, partition, subdivide, encumber, sell, abandon or transfer, the Common Areas. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this subparagraph).

(6) Use hazard insurance proceeds for losses to any condominium property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or the Common Areas of the Project.

(7) Terminate professional management and assume self-management of the Project.

(1) The holders of first mortgages (or trust deeds) shall have the right to examine the books and records of the Project.

(m) Whenever there is a change of ownership of a Unit, the Committee shall require that the new Unit Owner furnish the Committee with the name of the holder of any first mortgage (or trust deed) affecting such Unit. The Management Committee or Manager shall maintain a current roster of Unit Owners and of the holders of first mortgages (or trust deed) affecting Units in the Project.

30. Duty of Owner to Pay Taxes on Unit Owned. It is understood that under the Act each Unit (and its Percentage Interest in the Common Areas) in the Project is subject to separate assessment and taxation of each taxing authority and the special district (s) for all types of taxes and assessments authorized by law, and that as a result thereof no taxes will be assessed or levied against the Project as such, except for certain personal properties thereof. Accordingly, each Unit Owner will pay and discharge any and all taxes and assessments which may be assessed against him on his Unit.

31. Covenants to Run With Land; Compliance. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of the Act, the terms of this Declaration, and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Committee on behalf of Unit Owners, or, in a proper case, by an aggrieved Unit Owner. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

32. Information Regarding Transferee of Unit. Any Unit Owner who sells, leases, or otherwise disposes of his Unit shall submit to the Committee pertinent information concerning the transferee or new occupant within one week of any transfer of title or possession on a form furnished by the Committee.

33. Duty of Unit Owners; Remedy. Each Unit Owner shall comply strictly with the provisions of this Declaration and with the administrative rules and regulations drafted pursuant thereto as the same may be lawfully amended from time to time and with the decisions adopted pursuant to this Declaration and the administrative rules and regulations, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee or manager on behalf of the Unit Owners, or in a proper case, by an aggrieved Unit Owner.

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34. Indemnification of Management Committee. Each member of the Management Committee shall be indemnified and held harmless by the Unit Owners against all costs, expenses, and fees, reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Committee.

35. Invalidity. The invalidity of any provisions of this Declaration, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

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

37. Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

38. Topical Headings. The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define, limit, extend, or otherwise affect the content, meaning or intent of this Declaration or any paragraph or provision hereof.

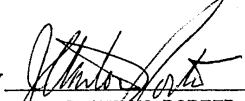
39. Conflicts. This Declaration is set forth to comply with the requirements of the Act. In the event of any conflict between this Declaration and the provisions of the Act, the provisions of the latter shall control.

40. Effective Date. This Declaration shall take effect upon recording in the office of the County Recorder of Salt Lake County, Utah.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has caused this instrument to be executed and its seal be affixed hereto on the 16th day of April, 1979.

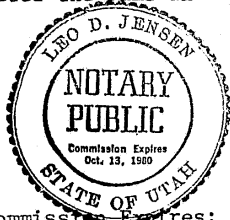
TRENDSETTER AFFILIATES, INC.

By

  
J. STANTON PORTER,  
Vice President

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

On the 16th day of April, 1979, personally appeared before me J. Stanton Porter, who being by me duly sworn did say that he is the Vice President of Trendsetter Affiliates, Inc., a Utah Corporation, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors and he duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.



*Leo D. Jensen*  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at Salt Lake County, Utah

My Commission Expires:  
October 13, 1980

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EXHIBIT A

HEATHERGLEN LOT NO. 1

<u>Unit No.</u>	<u>Size</u>	<u>Percentage Interest</u>
A	1007 Square feet	50%
B	1007 Square feet	50%
		<hr/>
		100%

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