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Merlene Mosher

Merlene Mosher
Recorder of Grand County

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF ORCHARD VILLA TOWNHOMES, PHASE ONE

THIS DECLARATION, Made on the date hereinafter set forth by PORTAL DEVELOPMENT L.L.C., a Utah limited liability company, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Moab, County of Grand, State of Utah, which is more particularly described as follows, to wit:

Orchard Villa Townhomes, Phase One according to the plat thereof recorded November 5, 1993, as entry number 429748 in book 457 at page 465. (Plat)

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Orchard Villa Townhomes Homeowners Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Project, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Project" or "Property" shall refer to the property, the subject of the Plat and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property and improvements located within the Project other than the Lots and dwellings located thereon as shown on the Plat, all of which

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shall be owned in common by Owners of Lots in the Project for the common use and enjoyment of all Owners. The Common Area includes the areas designated on the Plat as park and recreation area and the streets denominated Hale Avenue and Alberta Court.

Section 5. "Lot" shall mean and refer to a lot and the dwelling thereon, including the land upon which it is located together with exclusive use of the appurtenant Restricted Common Area, non-exclusive use of the remainder of the Common Area and all rights of membership in the Association.

Section 6. "Restricted Common Area" shall mean and refer to those portions of the Common Area set aside for exclusive use of a Lot Owner or Owners pursuant to Article II hereof.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to all of the Common Area subject to the following provisions:

(a) The right of the Association to adopt reasonable rules and regulations for the use of the Common Area.

(b) The right of the Association to suspend the voting rights and right to use of the Common Area by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.

(c) The right of the Association, subject to the provisions of the Articles of Incorporation, to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the Property.

Section 3. Parking Rights. Ownership of each Lot shall entitle the Owner or Owners thereof to the use of automobile

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parking spaces which are adjacent to each Lot, such use shall be limited to two (2) automobiles.

Section 4. Restricted Common Area. Each Lot Owner shall have the exclusive use and enjoyment of the private walkways leading to the dwelling located on the Lot together with the patio appurtenant thereto according to the original design and construction. Such exclusive right shall be conveyed with the fee title to the Lot and shall not be separated or separately conveyed and each such exclusive right shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Lot.

Section 5. Partition of Common Area Prohibited. No Owner shall bring any action for partition or division of any of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation, management, use, and enjoyment of the Common Area.

Section 6. General Restrictions.

(a) Antennae. No exterior radio and/or television antennae shall be erected or maintained in Project.

(b) Insurance Rates. Nothing shall be done or kept in the Project which will increase the rate of insurance on any Association Property without the approval of the Board, nor shall anything be done or kept in the Project which would result in the cancellation of insurance on any Association Property or which would be in violation of any law.

(c) Residential Use Only. No dwelling shall be occupied and used except for single family residential purposes and no trade or business shall be conducted therein; provided, however, home businesses shall be allowed which do not create additional vehicular or pedestrian traffic and which are not observable from the exterior of the dwelling or create any noise discernable from the exterior of the dwelling. No time share interest of any unit in the Project shall be allowed. An Owner shall have the right to rent his dwelling providing that the period of each rental shall be no less than thirty (30) days, shall be subject to a written lease, and all such rentals shall be subject to all terms and conditions of this Declaration.

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(d) Signs. No sign of any kind shall be displayed to the public view without the approval of the Association, except such signs as may be used by Declarant in connection with the development of the Project and sale of residences and Lots and except such signs of customary and reasonable dimensions as set forth by the Committee as may be displayed on or from a residence advertising the residence for sale or lease. All signs, except such signs as may be used by Declarant, shall be placed on the exterior of the residence parallel to the exterior wall. Any "For Sale" or "For Lease" signs not more than three(3) feet by two (2) feet, plain white with black block letter, shall not require Association approval.

(e) Animals. No animals of any kind shall be raised, bred or kept, except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. A "Reasonable Number" as used in this Section shall ordinarily mean no more than two (2) pets per household, provided, however, that the Association may determine that a Reasonable Number in any instance may be more or less. Each Owner shall be responsible for the control of his pets and for the clean-up of waste from his pets

(f) Air Conditioning. Air conditioning shall be included in the construction of each dwelling. No other air conditioning units may be located in any dwelling or on any Lot which is observable from the exterior without the written approval of the Association.

(g) Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot within the Project, and no odors shall be permitted to arise therefrom so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any Lot in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any such Lot without the prior written approval of the Association.

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(h) Exterior Maintenance and Repair. All exterior maintenance and repair of all improvements upon all Lots in the Project shall be performed by the Association. The Association shall at all times keep all improvements in good condition and repair. Exterior maintenance and repair shall include the exteriors of all improvements upon the Lots and the roofs but shall not include glass. All glass repair shall be performed by the Owner of each Lot. For this purpose, each Owner hereby grants to the Association such easements and rights-of-way over and across each Lot and the improvement situate thereon as shall be necessary to accomplish the necessary maintenance and repair.

(i) Payment of Utilities.

(a) Water, Sewer and Trash. All charges for water, sewer, and trash within the Project shall be paid by the Association.

(b) Other Utilities. Each Owner shall be responsible for the payment of all utilities other than water, sewer, and trash.

(j) Common Area. The Declarant shall initially landscape or plant and maintain in a neat and attractive condition the Common Area and the Association shall be responsible for the Common Area thereafter.

The Association shall be responsible for the removal of snow and ice from any streets and walks included within the Common Area. Each Owner shall be responsible for the removal of snow and ice from his driveway and from the walks included within the boundaries of the Owner's Lot.

(k) Violation of Project Rules. Each Owner shall obey and comply with all rules adopted by the Association. If any Owner, his family, or any licensee, lessee or invitee violates the Project rules, the Association may suspend the right of such person to use the Association properties, under such conditions as the Association may specify, for a period not to exceed thirty (30) days for each violation. Before invoking any suspension, the Association shall give such person Notice and Hearing. In the event any Owner of any Lot shall violate any Project rule or regulation which shall result in damage to any part of the Common Area or

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improvements thereon, the Association shall have the right after Notice and Hearing to assess the cost of repair of such damages against the Lot of the Owner or Owners responsible for such damage. Such assessment shall be added to and become a part of the Assessment to which such Lot is subject. Notwithstanding anything to the contrary in this Declaration, the Association shall not have the power to bar any Owner from use of the Common Area necessary to allow the Owner free access to and from his Lot, his parking areas, and a public way, whether as a pedestrian or in or upon any appropriate vehicle.

(l) Drainage. There shall be no interference with the established drainage pattern over any Lot within the Project unless adequate provision is made for proper drainage and is approved by the Association. For the purposes hereof, "Established Drainage" is defined as the drainage which exists at the time the overall grading of any Association Lot is completed, or which is shown on any plans approved by the Association. A permanent easement across the Common Area for drainage purposes is hereby granted.

(m) No Hazardous Activities. No activities shall be conducted on any Lot and no improvements constructed on any Lot which are or might be unsafe or hazardous to any person or property.

(n) No Temporary Structures. No tent or shack or other temporary building, improvement or structure shall be placed upon any Lot; provided, however, the Declarant and its agents may locate temporary structures upon the Project during the period of construction and development of the Project.

(o) Improvements and Alterations. There shall be no excavation or construction or alteration which in any way alters the exterior appearance of any improvement within the Project, nor removal of any improvement in the Project (other than repairs or rebuilding pursuant to Section 4(h) hereof) without the prior approval of the Association pursuant to Article V hereof.

(p) Vehicle Storage and Repair. No house trailer, motorcycle, camping trailer, hauling trailer, running gear or boat or accessories thereto, truck or pickup or van or

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camper van in excess of three-fourths (3/4) ton size shall be parked, stored, repaired, or maintained on any Lot. All such vehicles and accessories shall be stored within an area to be provided by the Association within a portion of the Common Area. Such storage shall be upon a first come-first serve basis and the Association may charge such fees therefore as shall be necessary to maintain the area in the Common Area.

Section 7. Easements.

(a) Reciprocal Easements. The Declarant hereby reserves for itself and the Association, their successors and assigns, a right-of-way and easement for exterior maintenance and repair of all improvements, and the installation and continued operation, maintenance, repair, alteration, inspection, and replacement of utility lines, including but not limited to, water lines, sewer lines, gas lines, telephone lines, television cable antenna lines, and such other utility lines and incidental equipment thereon, over, under, and across the Common Area and that portion of any Lot situate between any improvement and the street adjacent thereto. Declarant or Association shall, except in cases of emergency, furnish to all affected Owners twenty-four (24) hours' notice before exercising the rights granted by this Article. Perpetual reciprocal easements for the aforementioned purposes shall exist both for the benefit and burden of all of the Owners.

(b) Easements for Encroachments. If any portion of an improvement encroaches upon the Common Area, or upon an adjoining improvement, a valid easement for the encroachment and for the maintenance of same, as long as it stands, shall and does exist. If any portion of the Common Area encroaches upon an improvement a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Area or the improvement.

(c) Reservation of Easements. Declarant reserves for itself and the purchaser of the existing Project Lot the use of the easements set forth in this Article II which are intended to and shall be for the benefit of all Owners, and

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no reference thereto need be made in any deed, instrument of conveyance, or any other instrument.

(d) Easement for Utilities. The Declarant hereby grants a right-of-way and easement for utility purposes including, but not limited to, water lines, sewer lines, gas lines, telephone lines, television cable antenna lines, and such other utility lines and incidental equipment over, under, and across the Common Area. Such utility easements and right-of-way shall be binding upon the Declarant and the Association and their respective successors and assigns.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

ARTICLE IV

ASSESSMENTS

Section 1. Covenant of Personal Obligation of Assessments.
Every Owner, by acceptance of the deed or other instrument of

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transfer of his Lot, is deemed to personally covenant and agree with every other Owner and with the Association and hereby does so covenant and agree to pay to the Association the (a) annual assessments, (b) special assessments, and (c) default assessments applicable to his Lot; such assessments to be established and collected as hereinafter provided. No Owner may waive or otherwise escape personal liability for the payment of the assessments provided for herein by non-use of the Common Area or the facilities contained therein or by abandonment or leasing of his Lot. In addition to the foregoing, every Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Utah governmental subdivisions applicable to his Lot as well as all charges for utilities applicable to his Lot other than utilities paid by the Association.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety, convenience, and general welfare of the Owners including the improvement and maintenance of the Project and of the services and facilities located thereon. Proper uses of the assessments levied by the Association shall include, but are not limited to, the expenditures for funds for taxes, fees, expenses, charges, levies, premiums, expenditures, or other costs of the Association for:

- (a) Repairing, replacing, and maintaining the common elements;
- (b) Repairing, replacing, and maintaining the exterior of the improvements on each Lot and, in the event of destruction by fire or other hazard, replacement of the dwellings on each Lot as provided in Article VII hereafter;
- (c) Installing, maintaining, and repairing roads and underground utilities upon, across, over, and under any part of the Project;
- (d) Installing, constructing, maintaining, and repairing lighting, walkways, and related facilities;
- (e) Furnishing garbage and trash pickup and water and sewer services to the Project;
- (f) Providing horticultural services to the Project such as mowing grass, caring for the grounds and sprinkling

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system, walks, and pathways, and landscaping the trees, shrubs, and grass;

(g) Obtaining and maintaining insurance in accordance with the provisions of this Declaration;

(h) Establishing and maintaining reserves for repairs, maintenance, taxes, capital improvements, and other purposes;

(i) Carrying out all powers, rights, and duties of the Association; and

(j) Generally for any other purposes and uses that the Association shall determine to be necessary to meet the primary purposes of the Association.

Section 3. Annual Assessments. The total annual assessments against all Lots upon which improvements have been erected shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during each assessment year which estimates may include, among other things,

(a) Expenses of management;

(b) Taxes and special assessments;

(c) Premiums for all insurance which the Association is required or permitted to maintain;

(d) Common lighting, heating, and other utility charges, water charges, trash collection, and sewer service charges;

(e) Repairs and maintenance;

(f) Wages for Association employees;

(g) Legal and accounting fees;

(h) Any deficit remaining from a previous assessment year;

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(i) The creation of reasonable contingency reserves, surpluses, and sinking funds; and

(j) Any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the Owners under and by reason of this Declaration.

Section 4. Apportionment of Annual Assessments. The Association's total annual assessments for an assessment year shall be apportioned against all Lots upon which dwellings have been erected and initially occupied. The Project will consist of thirty-two (32) lots upon which will be constructed sixteen (16) three-bedroom dwellings and sixteen (16) two-bedroom dwellings. Until such time as the Project has been fully constructed and all dwellings occupied, the Owners of the three-bedroom dwellings shall pay fifty-six percent (56%) of all annual assessments and the Owners of the two-bedroom dwellings shall pay forty-four percent (44%) of all annual assessments. When the Project has been completed and all dwellings occupied, each Owner of a three-bedroom dwelling shall pay .035% of all annual assessments and the Owners of two-bedroom unit dwellings shall pay .0275% of all annual assessments.

If an improvement is erected during the year, the Owner of that Lot shall pay to the Association a prorata share of the current annual assessment upon the improvement being completed and occupied. If an improvement is erected during an assessment year, the number of months or portion thereof remaining in the assessment year shall be divided into the share paid by a Lot Owner owning that type of dwelling and the resulting amount shall be paid to the Association by the Lot Owner.

Section 5. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of capital improvements upon the Common Area including fixtures and personal property related thereto. The apportionment of special assessments shall be the same as annual assessments.

Section 6. Monthly Payments of Assessments. Both annual and special assessments may be paid on a monthly basis, the

amount of which shall be determined by dividing the annual assessment by twelve (12) and the resulting amount shall be the amount to be paid each month. All assessments shall be due on the first (1st) day of each month and shall be deemed delinquent if not received by the Association on the tenth (10th) day. All assessments paid subsequent to the tenth (10th) day shall pay a late charge in an amount from time to time to be established by the Association in an amount not exceeding ten dollars (\$10.00).

Section 7. Lien for Assessments. The annual and special assessments shall be burdens running with and a perpetual lien in favor of the Association upon the specific Lot to which such assessment applies. To evidence such lien the Association may prepare a written lien notice setting forth the description of the Lot, the amount of assessments thereof which are unpaid as of the date of such lien notice, the name of the Owner or Owners thereof, and any other information that the Association may deem proper. The lien notice shall be signed by a member of the Board of Directors of the Association and shall be recorded in the office of the Clerk and Recorder of Grand County, Utah. Any such lien notice shall not constitute a condition precedent nor delay the attachment of the lien but such lien is a perpetual lien upon the Lot and attaches without notice at the beginning of the first (1st) day of any period for which any assessment is levied or assessed.

Section 8. Remedies for Nonpayment of Assessments. If any annual or special assessments are not paid when due, interest shall accrue at the rate of fifteen percent (15%) per annum commencing with the thirtieth (30th) day from the date the assessment was due and the Association may thereafter bring an action at law or in equity or both against any owner personally obligated to pay the same and may also proceed to foreclose its lien against a particular Lot in the manner and form provided by Utah law for foreclosure of real estate mortgages in and through the courts. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments may be commenced and pursued by the Association without foreclosing or in anyway waiving the Association's lien therefore. In the event any such assessment is not fully paid when due and the Association shall commence such an action against any Owner personally obligated to pay the same or shall proceed to foreclose its lien against the particular lot, then all unpaid monthly installments, annual and special assessments, and all default assessments and any late charges, accrued

interest, the Association's costs and expenses in reasonable attorney fees incurred for preparing and recording any lien notice, and the Association's costs of suit expenses and reasonable attorney fees shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds from the foreclosure sale of the particular Lot in satisfaction of the Association's lien. The Association shall have the power and right to bid in or purchase any Lot at foreclosure or any other legal sale and to acquire and hold lease mortgage, vote the Association votes appurtenant to ownership thereof, and convey or otherwise deal with the Lot.

Section 9. Successors' Liability. All successors in interest to an Owner shall be jointly and severally liable with the prior Owner for any and all unpaid assessments, interests, late charges, costs, expenses, and attorney fees without prejudice to any such successor's right to recover from any prior Owner any amount so paid. The foregoing liability of successors in interest for all unpaid assessments, interests, late charges, costs, expenses, and attorney fees shall not apply to any first mortgagee or first mortgagee's nominee who shall, in good faith and not for the primary purpose of circumventing the provisions of this section, acquire the Lot through a deed in lieu of foreclosure proceedings.

Section 10. Subordination of the Lien to Mortgagee. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Project and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of the Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or any utilities located in the party wall shall be shared by the Owners

who make use of the wall or such utilities in proportion to such use.

Section 3. Right to Contribute Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 4. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII

INSURANCE AND FIDELITY BONDS

Section 1. Association Insurance.

(a) The Association shall obtain hazard insurance on the Project in the form of a "master" or "blanket" policy of property insurance in an amount equal to the full replacement value exclusive of land, foundation, excavation, and other items normally excluded from coverage of the Project. Such master or blanket policy shall include an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent, and, if necessary, an "increased cost of construction endorsement." The policy shall not contain any provision that allows contributions or assessments to be made against any first mortgagee or become a lien on any Lot superior to the lien of a first mortgagee. The policy shall contain, as a minimum, protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, wind storm, and water damage.

(b) The Association shall obtain a comprehensive policy of public liability insurance covering all of the Common Area. Such comprehensive policy of public liability insurance shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as

shall customarily be covered with respect to projects similar in construction, location, and use of the Project.

(c) The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of its officers, managers, trustees, and employees and on the part of all others who handle or are responsible for handling the funds of the Association. Such fidelity coverage or fidelity bonds shall meet the following requirements:

(1) They shall name the Association as an obligee.

(2) They shall be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses of the Project including reserves.

(3) They shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(4) They shall provide that they may not be cancelled or substantially modified without at least thirty (30) days prior written notice to the Association.

(d) The Association shall obtain Workman's Compensation or similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

(e) The Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Insurance premiums for insurance to be provided by the Association shall be a common expense to be paid by monthly assessments levied by the Association.

Section 2. Insurance. Every Owner of a Lot shall maintain in full force an insurance policy, including fire and extended

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insurance coverage protection, on his unit's contents, including personal property, wall coverings, appliances, and similar such possessions. The insurance coverage shall be in a face amount equal to at least eighty percent (80%) of the replacement value of such contents determined as of the effective date of the policy. Each Owner, or his representative, shall furnish to the Association, not later than thirty (30) days after the effective date or renewal date of any such insurance policy, a written statement prepared and signed by the insurer acknowledging the amount of coverage in force and stipulating that all necessary premiums have been paid for the period of coverage set forth in the statement. Each Owner shall further advise his insurer to furnish the Association with a copy of any Notice of Termination of Coverage forwarded to the insured. This Section shall apply to each Owner, irrespective of whether or not he occupies the improvements on any Lot(s) owned by him.

Section 3. Repair and Reconstruction. As soon as practicable after obtaining estimates of any damage or destruction to any part of the Project, the Association shall diligently pursue to completion the repair and reconstruction of the part of the Project damaged or destroyed to substantially the same condition in which it existed prior to the damage or destruction. No consent or other action by any Owner shall be necessary in connection therewith.

Section 4. Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may levy, assess, and collect in advance from all Owners a special assessment sufficient to provide funds to pay such estimated or actual cost of repair and reconstruction.

Section 5. Alternate Plans for Restoration and Repair. Notwithstanding the provisions above set forth, the Association shall have the right by vote of seventy-five percent (75%) of the voting power of the Association to make alternate arrangements respecting the repair, restoration, or demolition of the damaged portion of the Project. The alternate plan may provide for special allocation of insurance proceeds, modification of design, or special allocations of any necessary assessments. Any plan adopted pursuant to this subparagraph shall be adopted within

sixty (60) days of the date of the damage or destruction and shall be supported by the vote of any Owner whose dwelling has been physically damaged to the extent the proposed plan affects the reconstruction of such dwelling.

Section 6. Interior Damage. Restoration and repair of any damage to the interior of a dwelling shall be made by and at the individual expense of the Owner of the dwelling so damaged. In the event of a determination to rebuild the damaged dwelling after partial or total destruction as provided in this article, such interior repair and restoration shall be completed as promptly as practicable.

Section 7. Owners. It shall be the responsibility of each Owner to make arrangements in regard to hazard insurance on the improvements located on their Lot and all personal belongings situate thereon, public liability insurance covering their Lot and improvement, and in addition the Owner may obtain such other and additional insurance coverage on or in relation to his Lot as he in his sole determination shall conclude to be desirable. Any such insurance obtained by an Owner shall waive the particular insurance company's right of subrogation against the Association and other Owners.

ARTICLE VIII

ANNEXING ADDITIONAL LOTS

Section 1. Reservation of Right to Expand. Declarant reserves the right to expand the Project to include additional Lots which, if done, will be denominated "Orchard Villa Townhomes, Phase Two."

Section 2. Supplemental Declarations and Supplemental Plats. Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder of Grand County, Utah, no later than five (5) years from date hereof, one or more supplemental declarations setting forth the Lots and other real property to be included in the expansion together with any covenants, conditions, restrictions, and easements particular to such property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.

Section 3. Expansion in Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the property subject to this Declaration as so expanded. For example, "Lot" shall mean the lots described on page one (1) of this Declaration plus any additional lots added by a supplemental declaration or declarations and references to this Declaration shall mean this Declaration as supplemented. All conveyances of Lots shall be effective to transfer rights in the property as expanded. The recordation in the records of Grand County, Utah, of a supplemental plat or plats incident to any expansion shall operate automatically to grant transfer and convey to the Association the new Common Area added to the property as a result of such expansion.

Section 4. Declaration Operative to New Lots. The new lots shall be subject to all of the terms and conditions of this Declaration and of any supplemental declaration upon placing the supplemental plats depicting the expansion property in supplemental declarations of public record in the real estate records of Grand County, Utah.

Section 5. Addition to Common Area. The Declarant expressly reserves the right to construct a swimming pool and appurtenant facilities upon that portion of the Project denominated on the Plat as "park and recreation area" or to construct a swimming pool and appurtenant facilities upon a portion of land to be annexed to the Project. The swimming pool and facilities shall be constructed for the joint use and enjoyment of the Owners of Orchard Villa Townhomes, Phase One and Orchard Villa Townhomes, Phase Two. The cost of the construction of the swimming pool and facilities shall be borne entirely by the Declarant; however, upon completion thereof, the same shall be dedicated to the Association and the cost of maintenance and repair thereof shall become the duty and obligation of the Association.

ARTICLE IX

RIGHTS OF MORTGAGEES

Section 1. No Prejudice to Rights of Mortgagee. No amendment or violation of this Declaration or other documents affecting the Project shall operate to defeat or render invalid the rights of any mortgagee of a Lot made in good faith and for

value provided that after foreclosure of any such mortgage such Lot shall remain subject to this Declaration and other Project documents.

Section 2. Termination of Assessment Liens. Any mortgagee or other entity or person which obtains title to a Lot pursuant to judicial foreclosure or powers provided in such mortgage shall take title to such Lot free and clear of any liens of unpaid assessments or charges against such Lot which accrued after the time such mortgagee recorded its mortgage and prior to the time such mortgagee acquires title to such Lot.

Section 3. Right to Examine Records. Mortgagees holding a first lien upon a Lot upon written request shall have the right to examine the books and records of the Association during normal business hours, require from the Association the submission of annual audited financial reports and other financial data, receive written notice of all meetings of the Owners, and designate in writing a representative to attend all such meetings.

Section 4. Authorization to Supply Mortgage Information. Each Owner hereby authorizes the Association to furnish to the holder of a first mortgage on his Lot information concerning the status of the mortgage and the loan which it secures.

Section 5. Additional Information to Mortgagee. The holder of each first mortgage shall be entitled, upon written request therefore, timely written notice of the following:

a. Any condemnation or casualty loss that affects either a material portion of the Project or the unit securing its mortgage;

b. Any sixty (60) day delinquency in the payment of assessments or charges owed by an Owner of a Lot upon which it holds a mortgage; or

c. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

Section 6. Authority to Contract With Lenders. The Association shall have the power and authority to enter into such contracts or agreements on behalf of the Association as are

required in order to satisfy the guidelines of any generally recognized federal agency or lending institution so as to allow for the purchase, guarantee, or insurance, as the case may be, by such entities of first mortgages encumbering Lots. Each Owner hereby agrees that it will benefit the Association and the membership of the Association as a class of potential mortgage borrowers and potential sellers of the residential Lots if such agencies or lending institutions approve the Property as a qualifying project under their respective policies, rules, and regulations as adopted from time to time.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than one hundred percent (100%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Termination of Prior Declaration. This Declaration supersedes and terminates in all respects the Declaration of Covenants, Conditions, and Restrictions for Orchard Villa Townhouses recorded November 5, 1993, as entry number 429747 in book 457 at page 445 and the terms and

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ORCHARD VILLA TOWNHOMES, PHASE ONE
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conditions thereof shall cease to have any force and effect with regard to the Project from the date of recordation hereof.

Section 5. Effective Date. This Declaration shall take effect upon recording.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 14 day of Jan., 1994.

PORTAL DEVELOPMENT L.L.C.

By Scott L. King
Scott L. King, Manager

By Carolyn C. King
Carolyn C. King, Manager

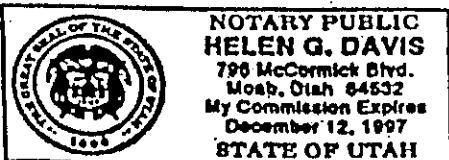
By Eileen Stewart
Eileen Stewart, Manager

Eileen
St

STATE OF UTAH }
 } ss.
COUNTY OF GRAND }

On the 14th day of January, 1994, personally appeared before me Scott L. King, Carolyn C. King, and Eileen Stewart who, being by me first duly sworn, did say, each for himself or herself, that they are members/managers of Portal Development L.L.C., a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company by authority on its Articles of Organization and each duly acknowledged to me that said limited liability company executed the same.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Helen G. Davis
Notary Public, in and for the State
of Utah, residing at Moab