

NT 7501A.

ENABLING DECLARATION EMT 516135 Bk 436 Pg 297
DATE 19-SEP-1988 3:30PM Fee 34.50
FOR MICHAEL L GLEED, RECORDER
BRETNER ESTATES ** CACHE COUNTY, UTAH ** Recorded By MG
FOR NORTHERN TITLE COMPANY

A Diminimus Planned Unit Development

THIS DECLARATION is made and executed this 19 day of September, 1988, by Champlin Development, hereinafter designated and referred to as "DECLARANT", and all other owners of property within Bretner Estates.

WITNESSETH

WHEREAS, Declarant is the owner of the real property described in Exhibit A attached hereto and located in Logan City, Cache County, State of Utah; and,

WHEREAS, the aforesaid property consists of or will consist of the land described above, together with common area and limited common area improvements and related improvements which have been or are being constructed thereon as a diminimus planned unit development project in several separate phases; and,

WHEREAS, Declarant will construct the common areas, limited common areas, designated lots and other improvements upon the aforesaid premises as the first phase in accordance with the Record of Survey Map filed herewith, with Surveyor's certification dated the 20th day of July, 1988, consisting of one (1) sheet, prepared and certified by Edward Gifford, a duly registered Utah Land Surveyor; and,

WHEREAS the Declarant desires to provide for the preservation of the values and amenities in said development and to the maintenance of said open spaces and other common facilities; and, to this end, desires to subject the real property described above together with such additions as may hereafter be made thereto to the covenants, restrictions, easement, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and,

WHEREAS the Declarant has deemed it desirable, for the efficient preservation of the value and amenities in said development, to create an association or group to which should be delegated and assigned the power of maintaining and administering the said development properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, Declarant desires and intends by filing this Declaration and the aforesaid Record of Survey Map to submit the

above-described property and its subsequent Phases and the said common area improvements being constructed thereon, together with all appurtenances thereto, to the provisions of the Laws of the State of Utah and the Ordinances of the City of Logan as a diminimus planned unit development to be known as Bretner Estates; and,

WHEREAS, Declarant desires and intends to sell and convey its interest in the individual Units which are to be contained in the said development, together with the undivided ownership interests in the common areas, limited common areas and other facilities appurtenant thereto, to various purchasers, subject to the covenants, restrictions, limitations, conditions and uses to which the property submitted to said development shall hereafter be subject;

WHEREFORE, the following is hereby declared, agreed, covenanted and established:

PART I: DEFINITIONS

When used in this Declaration, the following terms shall have the meaning indicated. To the extent applicable to the tenor thereof and not expressly inconsistent herewith, definitions contained in the applicable Laws of the State of Utah and Ordinances of Logan City are incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

A. The terms "Law" or "Laws" shall mean and refer to the applicable laws of the State of Utah and applicable Ordinances of the City of Logan, as the same may be amended from time to time.

B. The terms "Diminimus Planned Unit Development", "P.U.D." or "Development" or "Project" shall mean and refer to Bretner Estates.

C. The terms "Record of Survey Map" or "Survey Map" shall mean and refer to that certain Record of Survey Map filed with this Declaration with Surveyor's Certificate dated the 20th day of July, 1988, consisting of one (1) sheet, prepared and certified by Edward Gifford, a duly registered Utah Land Surveyor and any subsequent documents prepared for subsequent Phases.

D. The term "Common Areas and Facilities" shall mean and refer to:

(1) The portions of the above-described real property and interests in real property which is subject to this Declaration and which submits to the Laws;

(2) Those Common Areas and Facilities specifically set

forth and designated as such in the Record of Survey Map and subsequent Record of Survey Maps in succeeding phases.

(3) That part of the Project not specifically included within the respective Units, as hereinafter defined;

(4) All Limited Common Areas and Facilities as further defined and designated herein;

(5) All parking areas;

(6) All installations for and equipment connected with the furnishing of Project utility services such as electricity, gas, water, and sewer, except such equipment servicing strictly a single living unit and not specifically designated as Common Facilities by the Management Committee;

(7) All pumps, motors, fans, compressors, ducts, and in general all apparatus, installations, and facilities included within the Project and existing for common use;

(8) All other parts of the Project normally in common use or necessary or convenient for its use, existence, maintenance, safety, or management.

(9) All "Common Areas and Facilities" so defined in the Law, whether or not expressly listed herein.

E. The term "Limited Common Areas and Facilities" shall mean those common areas and facilities designated in the declaration as reserved for use of a certain unit or units to the exclusion of the other units and/or those areas or facilities specifically set forth and designated as such in the Record of Survey Map and subsequent Maps in succeeding phases.

F. The terms "Bretner Estates Owners Group" or "Owners Group" shall mean and refer to all of the Association of Unit Owners of the Bretner Estates Units to be located in the Project, including the original purchasers and others who may become Unit Owners of this or subsequent Phases in the future. It is expressly covenanted and agreed that the Bretner Estates Owners Group is an unincorporated group of the Unit Owners bound together by this Declaration and such other agreements as they may make or enter into to accomplish the purposes and objectives contained herein.

G. The terms "Unit" or "Lot" or "Lots" shall mean and refer to one of the lots to be contained in the Project, which is designated as a "private area" lot on the Record of Survey Map attached hereto and by this reference made a part hereof, and subsequent Units shown on succeeding Survey Maps relating to the balance of the real property described in Exhibit A.

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H. The term "Living Unit" shall mean and refer to a structure which is designed and intended for use and occupancy as a single family residence, together with all improvements located on the respective Lot which are used in conjunction with such residence and designated on the survey map as private area or limited common area.

I. The terms "Unit Owner" or "Owner" shall mean and refer to the record owner (in the office of the Recorder of Cache County, Utah) of a fee or an undivided fee interest in the Unit contained in the Project, together with the undivided ownership interest in the Common Areas and Facilities appurtenant thereto as herein established.

The terms "Unit Owner" or "Owner" shall not refer to any mortgagee as herein defined unless such mortgagee has acquired title pursuant to foreclosure or other proceedings in lieu of foreclosure.

J. The term "Common Expenses" shall mean and refer to all sums which may be lawfully expended on behalf of all the Unit Owners and assessed against the Unit Owners in accordance with the provisions of the Laws, this Declaration and such other agreements, by-laws, rules and regulations as the Owners or Management Committee from time to time may make and adopt.

K. The term "Private Areas" shall mean the living unit and the back yard area of each unit which are restricted to the exclusive use access and control of the respective unit owner except as otherwise provided.

L. The terms "Management Committee" or "Committee" shall mean the Management Committee of the Project as further described herein.

M. The term "Manager" shall mean and refer to the person, persons, corporation or institution selected by the Management Committee to manage the Project, who shall be subject to the control of the Management Committee.

N. The term "Mortgage" shall mean and refer to any mortgage, deed of trust, or other security instrument by which a unit is encumbered.

O. The term "Mortgagee" shall mean and refer to any person named as the mortgagee or beneficiary of any mortgage under which the interest of any unit owner is encumbered.

P. The term "Declaration" shall mean this Enabling Declaration.

Q. The terms "Unit Number" or "Lot Number" shall refer to

the number which designates a Unit or Lot on the Record of Survey Map.

R. The term "family" shall mean one or more persons, and no more than four (4), none of whom are less than sixteen (16) years of age, who are related by blood, marriage or adoption, occupying a living unit as a single housekeeping unit. An exception to the relationship (by blood, marriage, or adoption) provisions may be allowed by a majority vote of Association members in instances in which reasons of health and medical needs requiring live-in nursing care are offered as justification for such exception.

S. The term "Phase II Land" shall mean and refer to that portion of the survey map designated as future development and also set forth in Exhibit B attached hereto and by this reference made a part hereof, which sets forth the property upon which Declarant may expand the project in one or more phases.

PART II: SUBMISSION, COVENANTS, CONDITIONS, USE RESTRICTIONS AND UNDERSTANDINGS.

A. Submission. Declarant hereby submits this Development and the ownership interest in the real property described herein, and the buildings, and other improvements constructed or to be constructed thereon, together with all appurtenances thereto, as described above and on the Survey Map, all to be known as Bretner Estates, to the provisions of the Law and the provisions of this Declaration. Subsequent portions of the Exhibit A property will be submitted upon recordation of subsequent Survey Maps.

It is the general purpose of Declarant and of the Unit Owners to have the Project operated and maintained under ownership, as a Personal Residence Diminimus P.U.D. project. This Declaration is submitted in accordance with the terms and provisions of the Law and shall be construed in accordance therewith.

B. Description of Improvements: The improvements included in the Project are described on the Survey Map.

C. Covenants to Run with Land. This Declaration and the covenants, restrictions, limitations, conditions and uses herein provided shall constitute covenants to run with the land and are hereby submitted to the Laws and shall inure to the benefit of and shall be binding upon all subsequent Owners of all or any part of the Development, and upon their grantees, successors, heirs, executors, administrators, devisees and/or assigns.

D. Units, Private Areas and Reservation of Easements. To establish a plan of Ownership for Phase One of the Development, the Development is hereby divided into five (5) Units or Lots as described on the Survey Map. Said Units, together with their

private areas consisting of the living units and back yards, and the appurtenant interests in the Common Areas, Limited Common Areas and other Facilities, shall constitute separate freehold estates for all purposes provided by the Law, and Declarant also hereby declares that the Project and every part hereof is held and shall be held, conveyed, devised, leased, granted, encumbered, used, occupied or otherwise affected in any manner subject to the provisions of this Declaration and the Law. Subsequent Phases will have units numbered consecutively.

Each unit owner shall own in fee simple the respective living unit structure and the real estate below said structure located on the respective lot and the back yard area appurtenant thereto, subject to the restrictions, easements, right-of-ways, covenants and conditions of this Declaration. All private areas are reserved for the exclusive and private use of the respective unit owners or their successors and assigns, except as otherwise provided herein.

Where the living unit structure shares common walls with another unit, each owner shall own to the center of said wall and insulation and also own those wires, ducts and other materials therein that service each respective living unit. Such common walls and attic spaces and real property are subject to and hereby reserved for unspecified utility easements for the benefit of other units and common areas and facilities of the Development for the purpose of delivering utilities to said units and common areas. Each back yard is subject to a right-of-way for the Management Committee or its designee for purposes of landscape and fence maintenance.

E. Common Areas and Facilities. Except as otherwise provided for herein for the Common Areas and Facilities of Phase One of the Project, as hereinabove defined and as shown on the Survey Map, are hereby set aside for the use and benefit of the respective Unit Owners in accordance with and for all purposes provided by the Law and this Declaration. Subject to the limits contained in this Declaration, any Unit Owner shall have the non-exclusive right to use the Common Areas and Facilities. The Common Areas and Facilities shall be used only in a manner which is consistent with their community nature.

Subject to the provisions hereof concerning reduction in magnitude of undivided interests in the event Phase Two and any subsequent phases are included in the Project, each Unit Owner shall own the percentage of undivided interest in the Common Areas and Facilities as determined by dividing one by the number of Units. The percentages of undivided ownership interest shall be appurtenant to the respective Units to which they have been assigned and shall not, from and after recording of this Declaration, be separated from such Units or be separately conveyed therefrom.

F. Limited Common Areas. The front porch, front flower beds and the front driveway that are appurtenant to each respective unit are reserved as limited common areas for the exclusive use of the ones occupying the unit appurtenant to such limited common areas. Such limited common areas shall still be maintained in common and such maintenance shall constitute a common expense to the owners group.

G. Property Rights in Common Areas.

1. Easement of Enjoyment. Each Owner shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Areas and Limited Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall it be separated therefrom. Any Owner shall grant the use and enjoyment described herein to any tenant, lessee, or contract purchaser who resides on such Owner's Lot.

2. Form For Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

All of Lot _____ of Bretner Estates, according to the official plat thereof, subject to the Enabling Declaration for Bretner Estates, all on file in the office of the Cache County Recorder.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

3. Transfer of Title. Declarant agrees that it shall, on or prior to the first conveyance of a Lot, convey to the Owners Group title to all Common Areas of the Development, and Declarant further agrees that it will discharge all liens and encumbrances on said Common Areas on or before the sale and closing of the last Lot in the Development.

4. Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Committee to suspend an Owner's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Owner's Lot remains unpaid and for a period not exceeding ninety (90)

days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Association;

(b) The right of the Committee to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas;

(c) The right of Cache County and any other governmental or quasi-governmental body having jurisdiction over the property to access and rights of ingress and egress over and across any street, parking area, walkway, or open spaces contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service; and,

(d) The right of the Committee to dedicate or transfer all of any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Committee. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of the Owners present in person or by proxy and entitled to vote at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Owners at least ten (10) days but not more than thirty (30) days prior to the meeting date.

5. Encroachments. If any portion of a Living Unit constructed by Declarant, or if any portion of a Living Unit reconstructed so as to substantially duplicate the Living Unit originally constructed by Declarant, encroaches upon the Common Areas or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the development, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

H. Condition, Maintenance and Use of Units. Each Living Unit shall be maintained by the Owner so as not to affect adversely the value or use of any other Unit. The Committee shall have no obligation regarding maintenance or care of the Living Units except as to those portions which are deemed common facilities.

I. Management Committee. The Project, including the Common Areas and Facilities, shall be managed, operated and maintained by the Management Committee as agent for the Bretner Estates Owners Group, in accordance with the terms, conditions and provisions of the Laws, this Declaration, and all other agreements and determinations, lawfully made and/or entered into by the Bretner Estates Owners Group and the Management Committee

respecting the Project.

J. Status and Authority of Management Committee. The Management Committee shall, in connection with its exercise of any of the powers delineated in subparagraphs (a) through (i) below, constitute a legal entity capable of dealing in its Committee name. 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 and Facilities and in areas of the living units and other private areas as herein reserved.

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

(c) The power and capacity 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 purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action has been authorized by any vote or consent which is necessary under the circumstances.

(f) The power and authority to add any interest in real property obtained pursuant to subparagraph (f) above to the Development, so long as such action has been authorized by the necessary vote or consent.

(g) 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 Development is maintained and used in a manner consistent with the interest of the Unit Owners.

(h) 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 Unit Owners.

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.

J. Composition of Management Committee. The Committee shall be composed of three members. At the first regular Owners meeting two Committee members shall be elected for two-year terms and one member for a one-year term. At each annual Owners meeting thereafter any vacant seat on the Committee shall be filled with a member elected for a two-year term. Only Unit Owners and Officers and agents of Owners other than individuals shall be eligible for Committee membership. At the annual meeting the percentage of undivided ownership interest appurtenant to a Unit may be voted in favor of as many candidates for Committee membership as there are seats on the Committee to be filled. Notwithstanding the foregoing limitations, until the first annual meeting of the Owners the Declarant shall hold all offices and all seats on the Owners Committee and may act as the manager of the project.

In the event a Committee seat becomes vacant for any cause the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected. A member shall serve on the Committee until his successor is elected and qualifies. Committee members shall be reimbursed for all expenses reasonably incurred in connection with Committee business. Members of the Committee shall not receive a salary for serving on the Committee but shall not be precluded from serving the Development in another capacity and receiving compensation therefore.

K. 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 Committee officer, agent, or employee may at any time be removed with or without cause by the vote of a majority of the Committee members. The officers of the Committee, and their respective powers and functions, shall be as follows:

(a) President. The President shall be the chief executive of the Development and of the Management Committee and shall exercise general supervision over the property and affairs of the Project. He shall sign on behalf of the Project all conveyances, mortgages and contracts or material importance to its business, and shall do and perform all acts and things which the Management Committee may require of him. He shall receive no compensation for his services as President of the Project or for acting in that capacity. The President shall be invited to attend meetings of each special committee, and shall be in each case where he may desire such status, an ex officio member of each committee.

(b) Vice President. In the event of the President's absence or inability to act, the Vice President shall have the powers of the President. He shall perform such other duties as the Management Committee may direct. The Vice President shall receive no compensation for his services in such capacity.

(c) Secretary. The Secretary shall keep the minutes of meetings of the Committee and of the Unit Owners, and such books and records as any resolution of the Management Committee may require him to keep. He shall be the custodian of the records of the Development, as are normally kept by a secretary. He shall perform such other services as the Management Committee may direct, but shall receive no compensation for his services in such capacity. An Assistant Secretary may be elected who shall in the event of the Secretary's absence or inability to act, perform the duties and functions of the Secretary.

(d) Treasurer. The Treasurer shall have the custody and control of the funds available to the Project, subject to the direction of the Management Committee. He shall, when requested by the President, report the state of finances of the Project at each Annual Meeting of the Unit Owners and at any meeting of the Management Committee. He shall perform such other services as the Management Committee may require of him but shall receive no compensation for his services in such capacity. The office of Vice President and Treasurer, or of Secretary and Treasurer may be held by the same Committee member.

L. Committee Meetings. 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. Special Committee meetings shall be held whenever called by the President or by any two members 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. A quorum for the transaction of business at any Committee meeting shall consist of a majority of all the members then in office.

M. Special Committees. The Management Committee may, by resolution passed by a majority of the whole committee, designate one or more special committees, each special committee to consist of two (2) or more, of the Unit Owners of the Project, which, to the extent provided in said resolution, shall have and may exercise the powers in said resolution set forth. Such special

committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Management Committee. Such special committees shall keep regular minutes of their proceedings and report the same to the committee when required. The President may appoint persons to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

N. Manager. The Committee may carry out through a Project Manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Committee, shall be responsible for managing the Project for the benefit of the Committee and the Unit Owners, and shall, to the extent permitted by law and the terms of the agreement with the Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself.

O. Owners Meetings. The regular meeting of the Unit Owners shall be held at 6:30 p.m. on the 1st Thursday in September, 1989 and on the 1st Thursday in September of each succeeding year. The place of meeting shall be at a location in Cache County, State of Utah, specified in the notice of meeting. At least 10 but not more than 30 days before the date of the regular meeting a written notice thereof shall be personally delivered or mailed postage prepaid to each person who appears as an Owner, at the latest address for such persons appearing, in the records of the Committee at the time of delivery or mailing. Such notice shall state the time, place, and general purpose of the meeting.

Special meetings of the Owners may be called by the President, by any two members of the Committee, or by Unit Owners cumulatively holding at least one-fourth of the undivided ownership interest in the Project. At least seven but not more than 30 days before the date set for a special meeting written notice thereof shall be given in the manner described in the immediately preceding paragraph.

No notice of any Owners meeting shall be required if a waiver of such notice is signed by all of the Owners. Whenever all the Owners meet in person or by proxy such meeting shall be valid for all purposes. The presence of Owners entitled to cast a majority of all the undivided ownership interest in the Project shall constitute a quorum for the transaction of business at any Owners meeting. In the event a quorum is not present at a meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than 48 hours, and no later than 30 days, after the time set for the original meeting. No notice of such rescheduled meeting shall be required. The presence of Owners entitled to cast 30% of all the undivided ownership interest in the Project shall constitute a quorum at a

rescheduled meeting.

P. Voting--Multiple Ownership. The vote attributable to and exercisable in connection with a Unit shall be the percentage of undivided ownership interest which is appurtenant thereto. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

Q. Capital Improvements. Additions or capital improvements to the Project which cost no more than \$400.00 may be authorized by the Management Committee alone. Additions or capital improvement the cost of which will exceed such amount must, prior to being constructed, be authorized by at least a majority of the undivided ownership interest in the Project. Any addition or capital improvement which would materially alter the nature of the Project must, regardless of its costs and prior to being constructed, be authorized by at least 75% of the Project's undivided ownership interest.

R. Operation and Maintenance. The Management Committee shall, as a portion of the Common Expenses, pay for all utility services furnished to the common areas. The Committee shall provide for such maintenance and operation of the Common Areas and Facilities, including Limited Common Areas, as may be reasonably necessary to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive, and generally in good condition and repair. Each owner shall pay for all utility services which are separately billed and metered to individual Lots by the utility or other party furnishing such service.

S. Payment of Expenses. Before May 1st of each year the Committee shall prepare a budget which sets forth an itemization of the Common Expenses which are anticipated for the 12-month period commencing with the following June 1st. Such budget shall take into account any deficit or surplus realized during the current fiscal year and such sums as may be necessary to fund an appropriate reserve to cover major repair or replacement of portions of the Common Areas and Facilities. The total of such expenses shall be apportioned among all Units on the basis of their appurtenant percentages of undivided ownership interest. Prior to the first day of each month during the fiscal year covered by the budget each unit owner shall pay to the Committee as his share of the Common Expenses one-twelfth 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 practice and requires that the portion of Common Expenses borne by each Unit during a 12-month period be determined on the basis of its appurtenant undivided ownership interest.

T. Personal Obligation and Remedies for Nonpayment. Declarant, for each Lot owned by it, and each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Committee the monthly and special common expense assessments described in this Declaration, together with 12% interest on any past due balance. Should any Unit Owner fail to pay when due his share of the Common Expenses, the Committee may enforce any remedy provided in the Laws or otherwise available for collection of delinquent Common Expense assessments. (In addition to other remedies, the delinquent common expenses shall become a lien on the unit attributable to the delinquent expenses as further described in Section 57-8-20, Utah Code Annotated, 1953). Regardless of the terms of any agreement to the contrary, 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 Owner of the Unit concerned or against the Unit itself. No owner may exempt himself or his lot from liability for payment of the assessments by waiver of his rights concerning its common areas or by abandonment of his lot. Any relief obtained, whether or not through foreclosure proceedings, shall include the Committee's costs and expenses, interest as provided herein and a reasonable attorney's fee. In the event of foreclosure, after institution of the action the Committee shall, without regard to the value of the Unit or the extent of the Owner's equity therein, be entitled to the appointment of a receiver to collect any income or rentals which may be produced by the Unit concerned.

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

(1) A policy or policies insuring the Committee, the Manager, and the Unit Owners against any liability incident to the ownership, use, or operation of the common areas which may arise among themselves, to the public, or to any invitees or tenants of the Development or of the Unit Owners. Limits of liability under such insurance shall be not less than \$500,000.00 for any one person injured, \$1,000,000.00 for all persons injured in any one accident, and \$20,000.00 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability-basis and shall provide a cross-liability

endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

The following additional provisions shall apply with respect to insurance:

- (a) In addition to the insurance described above, the Committee may secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with P.U.D. projects similar to the construction, nature, and use of this project.
- (b) All policies shall be written by a company holding a rating of "AA" 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, if reasonably possible, provide: A waiver of the insurer's subrogation rights with respect to the Committee, the Manager, the Unit Owners, and their respective servants, agents, guests, tenants, and invitees; That it cannot be cancelled, suspended, or invalidated due to the conduct of the Manager or of any member, officer, or employee of the Committee 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.
- (f) Living Units Not Insured by Association. The Committee shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any living unit and acts and events thereon. Accordingly, each Owner shall secure and keep in force at all times fire and extended coverage insurance which shall be at least equal to that commonly required by private institutional mortgage investors in the area in which the mortgaged premises are located. The policy shall provide, as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy. The amount of coverage shall be sufficient so that in the event of any damage or loss to the mortgaged premises of a type covered by the insurance, the insurance proceeds shall provide at least the lessor of; (i) compensation equal to the full amount of damage or loss, or (ii) compensation to the first mortgagee under the mortgage equal to the full amount of the unpaid principal balance

of the Mortgage Loan. However, the Committee may choose to obtain a master policy of insurance. If the Committee elects so to do, such policy shall be in an amount equal to full replacement value of all Living Units on the Lots with a co-insurance clause and each Owner of such Lots shall be designated as additional insureds. The costs of such insurance shall be part of the Common Expense Assessment for such Lot.

V. Damage to Project. In the event the Development improvements are destroyed or damaged to the extent of seventy-five percent (75%) or less of the value thereof, the Management Committee shall be responsible for repairing, rebuilding and/or restoring the same to the condition they were in immediately prior to such destruction or damage, and the Management Committee shall, in this connection, be entitled to use the proceeds of any and all insurance policies which it may have had in force on said premises as of the date of such destruction or damage. All of the Units shall be assessed and contributed any deficiency in direct relation to their respective percentage of undivided ownership interests in the Common Areas and Facilities. In the event the improvements of the Development are destroyed or damaged to the extent of more than seventy-five percent (75%) of the value thereof, the Unit Owners shall, at a meeting duly and regularly called by the Management Committee for that purpose, determine whether or not said premises should be rebuilt, repaired or disposed of. Unless owners representing not less than seventy-five percent (75%) of the undivided interests in the Common Areas and Facilities agree to the withdrawal of the Development from the provisions of the Law and to its subsequent disposal, the premises shall be repaired, rebuilt, or restored to the same condition as they were in immediately prior to said destruction or damage. In the event the cost of such repair, rebuilding or restoration shall exceed the amount realized by the Management Committee from the proceeds of any insurance policy or policies as above provided, the Unit Owners shall contribute to such cost in direct relation to their respective percentage of undivided ownership in the Common Areas and Facilities.

W. Mortgage Protection. In the event an Owner neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration, the Committee shall give written notice of such fact to the holder of any first mortgage (or trust deed) covering such Owner's Unit.

The lien for unpaid Common Expense assessments provided for under the Law and by this Declaration shall be subordinate to any first mortgage (or trust deed) affecting a Unit, but only to the extent of assessments which become due after the said first mortgage is recorded and prior to foreclosure of the mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure.

Unless all holders of first mortgages (or trust deeds) on the individual Units have given their prior written approval, neither the Committee nor the Owners shall be entitled to:

(a) Change the magnitude of the percentage of undivided ownership interest which is appurtenant to any Unit (except as provided in Paragraphs Y and EE below);

(b) Partition and subdivide any Unit or the Common Areas and Facilities; or

(c) By act or omission seek to abandon the Project (except as provided in the Laws and herein in the event of substantial damage to the Units and the Common Areas and Facilities).

X. Use Restrictions.

(1) Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units. No admission fees, charges for use, leases, or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas.

(2) Use of Lots and Living Units as Family Dwellings. All Lots are improved with Living Units and are restricted to such use. Each Lot has been or will be improved with a Living Unit, each to be used only as a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of the law, so as to create a nuisance or interfere with the rights of any Owner or in a way which would result in an increase of the costs of any insurance covering the Common Areas.

Bretner Estates is designed and intended to be for adult living. Neither the Units nor the common areas are designed to accommodate large families or children. Permanent residents of Bretner Estates shall be restricted and limited to families with no more than four (4) persons related by blood, marriage, or adoption and with no more than two children, which children shall be sixteen (16) years of age or older. This restriction is to be understood to limit the occupancy of each home to four (4) persons. A person shall be deemed a permanent resident for purposes of this section upon residing in the complex for a period of fourteen (14) days in any thirty (30) day period. Renters are considered to be permanent residents and are subject to these restrictions except that no more than two (2) renters shall occupy a unit at one time, without written consent from the Management Committee.

(3) Parking. One (1) parking pad is designated for each unit and is large enough to accommodate two (2) parked

automobiles per unit. No vehicles should be parked on the pads or on any other part of the project if such vehicles are not capable of being parked in their owner's garage. All vehicles should be parked in the garage when not in the process of being used or in eminent use.

(4) Fences. No fences will be allowed in the front yards or in side yards except as installed by Declarant, or approved by the Management Committee.

(5) Landscaping. Landscaping in front yards and back yards shall be maintained by the Management Committee unless otherwise agreed upon in writing by the Management Committee.

(6) Non-residential Use. No part of the Development shall be used for any commercial, manufacturing mercantile, storing, vending, (except as may be installed as a convenience by the Declarant or Association) or other such non-residential purposes. Declarant, its successors or assigns, may use the Development for a model home site display, and sales and construction office during the construction and sales period.

(7) Signs. No sign or billboard of any kind shall be displayed in the public view on any portion of the Development or any Lot advertising the property for sale or rent except signs used by Declarant, its successor or assigns, to advertise the property during construction and sales periods.

(8) Quiet Enjoyment. No noxious or offensive trade or activity shall be carried on upon any Lot or upon any part of the Development, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners of his respective Living Unit, lot or common areas or which shall in any way increase the rate of insurance.

(9) Temporary Structures, Equipment, Motor Vehicles, Etc. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out building shall be used on any lot at any time except as may be needed for construction purposes by the Declarant, except as otherwise provided herein. No trailer, boat, truck larger than 3/4 ton, or similar equipment shall be permitted to be parked on the Development unless written approval is given by the Board. Small boats and camp trailers or motor homes may be parked in the garage of its owner if it meets the requirements of Section X.(3). No motor vehicle whatsoever may be parked on the Development except on designated parking pads.

(10) Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that cats or other quiet household pets may be kept on the Lots