

AMENDED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by Kinesava Development Corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Springdale, County of Washington, State of Utah, which is more particularly described as:

All recorded approved final plats of KINESAVA  
RESIDENTIAL PLANNED UNIT DEVELOPMENT as  
recorded in the office of Washington County Recorder.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to all recorded and existing 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" or "KHAI" shall mean and refer to KINESAVA HOMEOWNER ASSOCIATION INCORPORATED, 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 or Interest which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Common areas A1, A2, A3, A4, B1, B2, and B3, and Open Areas A and B, as shown on the Recorded "Plat A and Plat B - KINESAVA RESIDENTIAL PLANNED UNIT DEVELOPMENT"

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to KINESAVA DEVELOPMENT CORPORATION, its successors and assigns if such

successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Interest" shall mean and refer to an undivided interest in any Lot resulting from ownership in a condominium dwelling unit thereon.

## ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot or Interest, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities 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 to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposed and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2. Delecration of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property, provided that KHAI may assess a use fee for nonresident guest use of common amenities.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot or Interest 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 or Interest which is subject to assessment. Lots designated for multi-unit residential shall have one membership interest assigned until building construction is completed; Thereafter the number of membership Interests on a Lot shall be assigned to equal the number of dwelling units on that Lot.

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 or Interest owned. When more than one person holds an interest in any Lot or Interest, all such persons shall be members. The vote for such Lot or Interest shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect any Lot or Interest.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot or

Interest owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) whenever the total votes outstanding in the Class A membership first equal or exceed the total votes outstanding in the Class B membership, or
- (b) on December 31, 1998.

#### ARTICLE IV COVENANT FOR MAINTENANCE AND CAPITAL ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot or Interest owned within the Properties, hereby covenants, and each Owner of any Lot or Interest by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot or Interest to an Owner, the maximum annual assessment shall be Five Hundred dollars (\$500) per Lot or Interest.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot or Interest to an Owner, the maximum annual assessment may be increased each year not more than 3% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot or Interest to an Owner, the maximum annual assessment may be increased above 3% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized in Section 3 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 a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Special Assessments for Those Common Use Capital Improvements and/or Amenities Included by Reference in Lot Sales Agreements. In addition to the assessments authorized in Sections 3 & 4 above, the Association shall levy Special Assessments for the purpose of defraying the cost of purchase and/or construction of those special improvements and amenities described in the "Purchase Information, Acknowledgement, and Offer to Purchase" Agreement to be supplied to each prospective purchaser and incorporated herein by reference. These special assessments have NOT been funded or committed by the Declaration or by the Association, but are advisory only. The actual scheduling, purchase, or installation of any of these improvements shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3, 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute

a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and Interests and may be collected on a monthly basis.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots and Interests on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot or Interest at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot or Interest have been paid.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 6 percent per annum. The Association may bring an action



at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot or Interest.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot or Interest shall not affect the assessment lien. However, the sale or transfer of any Lot or Interest pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Interest from liability for any assessments thereafter becoming due or from the lien thereof.

Section-11. Exempt Property. All properties dedicated to, and accepted by, a local public authority shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE V ARCHITECTURAL CONTROL

Section 1. The association and/or any of its members or assigns desiring to construct any building, fence or other structure within or upon lands included as Lots or Interests in any plot of the Kinesava Residential Planned Unit Development, or upon lands held by Kinesava Homeowners Association, Inc., shall first submit plans, including exterior elevations to the Board of

Directors, or its designated committee or agent to demonstrate compliance with the general architectural standards set forth in the By-Laws of Kinesava Homeowners Association Incorporated.

Section 2. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and the Article will be deemed to have been fully complied with.

## ARTICLE VI EXTERIOR MAINTENANCE

In the event an Owner of any Lot or Interest in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot or Interest and the exterior of the buildings

and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

#### ARTICLE VII SALES AND NOTICES OF INTENT TO SELL

All properties or interest offered for sale and/or sold by any members shall be subject to the provisions set forth by The Association in its Articles of Incorporation and in its Bylaws, and shall include an offering of right of first refusal to the Association and each of its members at the same terms as the intended sale.

#### ARTICLE VIII RULES & STANDARD OF CONDUCT

The Board of Directors shall be empowered to establish and amend from time to time "Rules and Standards of Conduct" for the Association and its members and their guests.

#### ARTICLE IX 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

wise 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 ninety percent (90%) of the Lot or Interest Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot or Interest Owners. Any amendment must be recorded.

Section 4. Staged Developments of Kinesava RPUD. Additional land within areas described in approved preliminary plats of the land records of the Town of Springdale may be annexed by the Declarant without the consent of members within 20 years of the date of this instrument, provided the Springdale Planning Commission determines that the annexation is in accord with the Town Councils general plan heretofore approved by them.

Section 5. Annexation. Additional residential property and Common Area, over and above that designated by the Approved Preliminary Plat of Kinesava RPUD approved by the Springdale Town Planning Commission on October 3, 1986., may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this day of 19\_.

Declarant

BY:

STATE OF  
COUNTY OF

on the            day of                            19            personally

appeared before me Charles Y. Warner, signer of the above and foregoing instrument, who duly acknowledged to me that he is President of Kinesava Development Corporation, and that he executed the same, on behalf of the Corporation.

Notary Public

My Commission Expires:

Residing at: