

SECOND RECORDING

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33310

Fidelity Land & Title Co.

NINA J. NIELSON
UTAH COUNTY PROSELYTIZER
PROPERTY

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FILED IN THE REQUEST OF
Fidelity Land & Title Co.

33310

1 DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS
 2 RESTRICTIONS, EASEMENTS, EQUITABLE SERVITUDES AND LIENS
 3 AND
 4 PROVISIONS RELATING TO THE MAINTENANCE OF ROADS,
 5 UTILITIES AND COMMON AREAS APPLYING TO
 6 KIRKLAND ESTATES PLANNED RESIDENTIAL UNIT DEVELOPMENT
 7 UTAH COUNTY, STATE OF UTAH

8 THIS DECLARATION is made on the date hereinafter set forth by
 9 LEE KIRK, ELNA DAWN CHUGG, and LARAE HAWKINS, hereinafter collec-
 10 tively referred to as "Declarant."

11 WHEREAS, Declarant is now the owner of certain real property
 12 in Utah County, Utah, described as follows:

13 The Southeast Quarter of the Southwest Quarter of Section 35,
 14 Township 5 South, Range 2 East, Salt Lake Base and Meridian.

15 WHEREAS, it is the intent of the Declarant to develop the
 16 said described land in an orderly program with all such land to be
 17 subject to the same provisions of declaration of protective cove-
 18 nants, conditions, restrictions, easements, equitable servitudes
 19 and liens and provisions for roads, utilities and common areas;
 20 and

21 WHEREAS, the Declarant desires to provide for the preserva-
 22 tion of the values and amenities in said community and for the
 23 maintenance of certain roadways, open spaces and other community
 24 and recreational facilities to be developed as a part of said
 25 community; and to this end, desires to subject the real property
 26 described herein to the covenants, restrictions, servitudes,
 27 easements, charges and liens, hereinafter set forth, each and all
 28 of which is and are for the benefit of said property and the
 29 subsequent owners thereof; and

30 WHEREAS, the Declarant has deemed it desirable, for the
 31 efficient preservation of the values and amenities in said
 32 community, to create an association to which will be delegated and
 assigned the powers and duties of maintaining and administering
 certain roadways, open spaces and other community and recreational
 facilities, administering and enforcing the within covenants and
 restrictions and disbursing the charges and assessments herein-
 after created; and

WHEREAS, there shall be formed Kirkland Estates Homeowners
 Association, Inc., as a nonprofit corporation without capital
 stock under the Laws of the State of Utah for the purposes of
 carrying out the powers and duties aforesaid.

NOW THEREFORE, the Declarant hereby declares that the real
 property described herein is and shall be held, conveyed, hypo-
 thecated or encumbered, sold, leased, rented, used, occupied and
 improved subject to the covenants, restrictions, uses, limita-
 tions, obligations, easements, equitable servitudes, charges and
 liens (hereinafter sometimes referred to as "covenants and
 restrictions") hereinafter set forth, all of which are declared
 and agreed to be in aid of a plan for improvement of said property,
 and shall be deemed to run with and bind the land and shall inure
 to the benefit of and be enforceable by the Declarant, its
 successors and assigns, and any person acquiring or owning an
 interest in said property and improvements, including, without
 limitation, any person, group of persons, corporation, trust or

ORIGINAL

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1 other legal entity, or any combination thereof, who holds such
2 interest solely as security for the performance of an obligation:

3 ARTICLE I

4 Section 1. Definitions. The following words, when used in this
5 Declaration, shall have the following meanings:

6 (a) "Association" shall mean and refer to Kirkland Estates
7 Homeowners Association, Inc., and its successors and assigns.

8 (b) "The Property" shall mean and refer to all real property
9 described herein and such additions thereto as may hereafter be
10 made pursuant to the provisions of Article II hereof.

11 (c) "Lot" shall mean and refer to all subdivided parcels or
12 property which are part of The Property, with the exception of the
13 Common Areas, and shall include each of the building sites,
14 whether designated for multiple-family townhomes or single-family
15 detached dwelling units as shown upon any recorded subdivision map
16 of The Property.

17 (d) "Dwelling" shall mean and refer to any building or
18 portion of a building situated upon The Property and designed or
19 intended for use and occupancy as a residence by a single family
20 and "Single-family Detached Dwelling" shall mean any Dwelling
21 which is not attached to at least one other Dwelling by a common
22 or party wall or walls, and/or roof and/or foundation and "Town-
23 home" shall mean and refer to a Dwelling attached to at least one
24 other Dwelling by a common or party wall, and/or roof and/or
25 foundation.

26 (e) "Owner" shall mean and refer to the record owner,
27 whether one or more persons or entitles, of the fee simple title
28 to any Lot situate on The Property, including contract sellers,
29 but excluding those having such interest solely as security for
30 the performance of an obligation.

31 (f) "Member" shall mean and refer to every person, group of
32 persons, corporation, trust or other legal entity, or any combina-
tion thereof, who holds any class of membership in the Associa-
tion.

(g) "Capital Improvement" shall include, but not necessarily
be limited to, streets, water systems, sewer systems, water meters
and structures and appurtenant facilities installed and intended
for use in common by the members.

(h) "Declarant" or "Developer" shall mean and refer to Lee
Kirk, Elna Dawn Chugg and LaRae Hawkins.

Whenever in this Declaration, any action is required to be
taken by a specified percentage of "each class of the then members"
of the Association, then such action shall be required to be taken
separately by the specified percentage of the then outstanding
Class A members of the Association and the specified percentage of
the then outstanding Class B members of the Association. Whenever
in this Declaration any action is required to be taken by a
specified percentage of the "then members" of the Association,
then such action shall be required to be taken by the specified
percentage of the then outstanding cumulative membership of the
Association.

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ARTICLE II

Section 1. Property Subject to Declaration. The real property which is, and shall be, held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration is located in Utah County, State of Utah, and is more particularly described in the Recitals to this Declaration, each of which are by this reference made a part hereof.

Any annexations made pursuant to this Article, or otherwise, shall be made by recording a Supplementary Declaration of Protective Covenants, Servitudes and Restrictions among the Records of the Office of the Recorder for Utah County, Utah, which Supplementary Declaration shall extend the scheme of the within Covenants and Restrictions to such annexed property. Such Supplementary Declaration may contain such complementary additions and modifications to the Covenants and Restrictions set forth in the within Declaration as may be necessary to reflect the different character or use of such annexed property provided, however, that in no event shall any such addition or modification be substantially inconsistent with the provisions of the within Declaration.

ARTICLE III

Section 1. Membership. The Association shall have two (2) classes of voting membership:

(a) Every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who is a record owner of a fee interest in any Lot which is a part of the premises described herein and which is or becomes subject by covenants of record to assessment by the Association, shall be a Class A member of the Association; provided, however, that any such person, group of persons, corporation, partnership, trust or other legal entity who holds such interest solely as security for the performance of an obligation shall not be a Class A member solely on account thereof. Each Class A member shall be entitled to one vote for each Lot in which such member holds the interest required for Class A membership.

(b) There shall be 125 Class B memberships, all of which shall be issued to the Declarant or its nominee or nominees. The Class B member shall be entitled to one vote for each Class B membership so held, provided, however, that each Class B membership shall lapse and become a nullity on the first to happen of the following events:

(i) thirty (30) days following the date upon which the total authorized, issued and outstanding Class A memberships equal 100; or

(ii) on January 1, 1989, or

(iii) upon surrender of said Class B memberships by the then holders thereof for cancellation on the books of the Association.

Upon the lapse and/or surrender of all of the Class B memberships, as provided for in this Article III, the Declarant shall be and thereafter remain a Class A member of the Association as to each and every Lot in which the Declarant holds the interest otherwise required for such Class A membership.

1 ARTICLE IV

2 Section 1. Member's Right of Enjoyment. Every member shall have
3 a right and easement of enjoyment in and to the common areas,
4 community facilities and recreational facilities and such easement
5 shall be appurtenant to and shall pass with the title to every Lot
6 subject to the following:

7 (a) the right of the Association, in accordance with its
8 Articles of Incorporation and By-Laws, with the consent of two-
9 thirds (2/3) of each class of the then members of the Association,
10 and after it acquires title to any portion of the land, to borrow
11 money for the purpose of improving the common areas, community
12 facilities and/or the recreational facilities in a manner designed
13 to promote the enjoyment and welfare of the members and in aid
14 thereof to mortgage said property; and

15 (b) the right of the Association, with the consent of two-
16 thirds (2/3) of each class of the then members of the Association,
17 to levy reasonable admission and other fees for the use of any
18 recreational facilities situated upon The Property by the members
19 of the Association and their families and/or guests; and

20 (c) the right of the Association to take such steps as are
21 reasonably necessary to protect the property of the Association
22 against mortgage default and/or foreclosures, provided, always,
23 however, that the same are in conformity with the other provisions
24 of this Declaration; and

25 (d) the right of the Association to limit the number of
26 guests of members to the use of any facilities which are developed
27 upon The Property; and

28 (e) the right of the Association to suspend the voting
29 rights and the rights to use of the common areas, community
30 facilities and/or recreational facilities (except for rights to
31 the use of streets, roadways and parking areas, which shall not
32 be subject to suspension for any reason) for any period during
which any assessment remains unpaid and for any period not to
exceed one hundred eighty (180) days for any infraction of any of
the published rules and regulations of the Association; and

(f) the right of the Association to dedicate or transfer all
or any part of the common areas, community facilities and/or the
recreational facilities to any public or municipal agency,
authority or utility for purposes consistent with the purpose of
this Declaration and subject to such conditions as may be agreed
to by the members; provided, however, that no such dedication or
transfer or determination as to the purposes or as to the condi-
tions thereof, shall be effective unless an instrument signed by
two-thirds (2/3) of each class of the then members of the Associa-
tion has been recorded, agreeing to such dedication, transfer,
purpose or conditions, and unless written notice of the proposed
agreement and action thereunder is sent to each member at least
sixty (60) days prior to the taking of any action; and

(g) the right of the Association, acting by and through its
Board of Directors, to grant rights-of-way and/or easements for
any public utility purpose to any municipal agency, public utility
or to the Declarant for the purpose of the installation and/or
construction and/or maintenance of public utilities to "Kirkland
Estates Planned Residential Unit Development", provided that no
such rights-of-way shall be permanently inconsistent with the

1 enjoyment of the common areas, community facilities, and/or the
2 recreational facilities by the members of the Association; and

3 (h) the right of the Declarant to retain title to The
4 Property or any portion thereof during the course of construction
5 and development of "Kirkland Estates Planned Residential Unit
6 Development" project, and to borrow money and mortgage, pledge and
7 encumber any portion thereof for the purpose of financing the
8 development and construction of the Dwellings, Common Areas,
9 Community Facilities, Recreational Facilities and any other improve-
10 ment to be installed upon the project and any expenses directly or
11 indirectly arising from the development or construction of the
12 project. The Declarant hereby covenants for itself, its successors
13 and assigns, that it will convey title to the Association to the
14 common areas, community facilities and recreational facilities
15 free and clear of all liens and encumbrances contracted for
16 construction of improvements thereon, said conveyance to be made
17 on or before January 1, 1989 or on the date of final completion of
18 work on "Kirkland Estates Planned Residential Unit Development"
19 project, whichever shall occur sooner.

20 Section 2. Delegation of Use. Any member may delegate, in
21 accordance with the provisions of the By-Laws of the Association
22 and such rules and regulations as may from time to time be
23 promulgated by the Association, his right of use and enjoyment to
24 the common areas and community facilities to the members of his
25 immediate family, his tenants and/or contract purchasers who
26 reside on The Property.

27 Section 3. Right of Inspection and Maintenance by Lindon City.
28 Lindon City, through its duly authorized employees and agents,
29 shall have the right at any time it sees fit, to inspect any part
30 or portion or thing connected in any way with any street, water
31 system, sewer system, or other common areas or community facilities
32 in "Kirkland Estates Planned Residential Unit Development." In
the event of failure by the Association, its successors or assigns
to maintain conditions in such facilities generally, on a standard
reasonably equivalent to that which is maintained in similar
facilities or areas owned by Lindon City; then and in that event,
Lindon City shall have a right, after ninety days written notice
to the Association to an easement to enter in and upon The
Property and to do any reasonably necessary work to maintain said
facilities and to charge the Association and the Association shall
have a duty to levy an assessment against the owners and their
property in conformity with the power and authority of the
Association and to pay any such charges to Lindon City.

33 ARTICLE V

34 Section 1. Annual Maintenance Assessments. Each person, group of
35 persons, corporation, partnership, trust or other legal entity, or
36 any combination thereof, who becomes an owner of a lot entitling
37 him to a Class A membership with The Property by acceptance of a
38 deed therefor, whether or not it shall be so expressed in any such
39 deed or other conveyance, shall be deemed to covenant and agree to
40 pay the Association, in advance, a monthly sum (hereinelsewhere
41 sometimes referred to as "maintenance assessments") equal to one-
42 twelfth (1/12) of the member's proportionate annual share of the
sum required by the Association, as estimated by its Board of
Trustees, to meet certain of its annual expenses, including, but
in no way limited to, the following:

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1 (a) the cost of all operating expenses of the common areas
2 and the services furnished to or in connection with the common
3 areas and community facilities, including charges by the Associa-
4 tion for services furnished by it; and

5 (b) the cost of necessary management and administration of
6 the common areas, including fees paid to any Management Agent; and

7 (c) the amount of all taxes and assessments levied against
8 the common areas; and

9 (d) the cost of fire and extended liability insurance on the
10 common areas and community facilities and the cost of such other
11 insurance as the Association may effect with respect to the common
12 areas; and

13 (e) the cost of garbage and trash collection and/or other
14 utilities and services which may be provided by the Association,
15 with respect to the common areas; and

16 (f) the cost of maintaining, replacing, repairing and land-
17 scaping the common areas (including, without limitation, the cost
18 of maintaining, replacing and repairing the streets, roadways, and
19 open areas with The Property), and such equipment as the Board of
20 Trustees shall determine to be necessary and proper in connection
21 therewith; and

22 (g) the cost of funding all reserves established by the
23 Association with respect to the common areas, including, when
24 appropriate, a general operating reserve and/or a reserve for
25 replacements.

26 The Board of Trustees shall determine the amount of the
27 maintenance assessments annually, but may do so at more frequent
28 intervals should circumstances so require. Upon resolution of the
29 Board of Trustees, installments of annual assessments may be
30 levied and collected on a quarterly, semi-annual or annual basis
31 rather than on the monthly basis hereinabove provided for. Any
32 Class A member may prepay one or more installments on any annual
maintenance assessment levied by the Association, withot premium
or penalty.

Section 2. Special Maintenance Assessments. In addition to the
regular maintenance assessments authorized by this Article, the
Association may levy in any assessment year, a special maintenance
assessment or assessments, applicable to that year only, for the
purpose of defraying, in whole or in part, the cost of any
construction or reconstruction, inordinate repair or replacement
of a described capital improvement located upon, or forming a part
of the common areas, including the necessary fixtures and personal
property related thereto, or for such other purpose as the Board
of Trustees may consider appropriate, provided that any such
assessment shall have the assent of the members representing two-
thirds (2/3) of both the then Class A members of the Association
and two-thirds (2/3) of the then Class B members of the Associa-
tion. A meeting of such members shall be duly called for this
purpose, written notice of which shall be sent to all such members
at least ten (10) days, but not more than thirty (30) days, in
advance of such meeting, which notice shall set forth the purposes
of the meeting.

Section 3. Reserve for Replacements. The Association shall
establish and maintain a reserve fund for replacements of the

1 common areas by the allocation and payment monthly to such reserve
2 fund of an amount to be designated from time to time by the Board
3 of Trustees. Such fund shall be conclusively deemed to be a
4 common expense of the Association and may be deposited in any
5 banking institution, the accounts of which are insured by any
6 State or by any agency of the United States of America or may, in
7 the discretion of the Board of Trustees, be invested in obliga-
8 tions of, or fully guaranteed as to principal by, the United
9 States of America. The reserve for replacements of the common
10 areas may be expended only for the purpose of effecting the
11 replacement of the common areas, major repairs to any streets or
12 roadways developed as a part of "Kirkland Estates Planned
13 Residential Unit Development," equipment replacement, and for
14 operating contingencies of a non-recurring nature. The propor-
15 tionate interest of any member in any such reserve for replace-
16 ments of the common areas shall be considered an appurtenance of
17 his lot and shall not be separately withdrawn, assigned or
18 transferred or otherwise separated from the lot to which it
19 appertains and shall be deemed to be transferred with such lot.

20 Section 4. Annual Maintenance Assessments. The maximum annual
21 maintenance assessment to which Class A membership is appurtenant
22 for each of the lots shall not exceed the sum of _____
23 Dollars (\$ _____) per month.

24 Section 5. Increase in Maximum Annual Maintenance Assessment.

25 (a) From and after January 1, 1981, the maximum annual
26 maintenance assessment for all Class A memberships hereinabove
27 provided for, may be increased by the Board of Trustees of the
28 Association, without a vote of the Class A membership, by an
29 amount equal to ten percent (10%) of the maximum annual assessment
30 for the preceding year.

31 (b) From and after January 1, 1981, the maximum annual
32 maintenance assessment for all Class A memberships hereinabove
provided for may be increased above that established by the
preceding paragraph by a vote of Class A members, as hereinafter
provided, for the next succeeding year thereafter and, at the end
of such year, for each succeeding year. Any change made pursuant
to this paragraph shall have the assent of two-thirds (2/3) of the
then Class A members of the Association and two-thirds (2/3) of
the then Class B members of the Association. A meeting of such
members shall be duly called for this purpose, written notice of
which shall be sent to all members at least ten (10) days, but not
more than thirty (30) days, in advance of such meeting, which
notice shall set forth the purpose of such meeting.

The Board of Trustees shall prepare, or cause the preparation
of, a separate annual operating budget for the common areas and
for exterior townhome maintenance to be carried out by the Associ-
ation. The Board of Trustees of the Association shall make
reasonable efforts to fix the amount of the annual maintenance
assessment against each lot for each assessment period and shall,
at that time, prepare a roster of the lots and the annual mainten-
ance assessments applicable thereto which shall be kept in the
office of the Association and shall be open to inspection by any
owner upon reasonable notice to the Board. Written notice of the
annual maintenance assessments shall thereupon be sent to the
Class A members. The omission of the Board of Trustees, before
the expiration of any assessment period, to fix the amount of the
annual maintenance assessment hereunder for that or the next
period, shall not be deemed a waiver or modification in any

1 respect of the provisions of this Article, or a release of any
2 Class A member from the obligation to pay the annual maintenance
3 assessment, or any installment thereof, for that or any subsequent
4 assessment period, but the annual maintenance assessment fixed for
5 the preceding period shall continue until a new maintenance assess-
6 ment is fixed. No Class A member may exempt himself from liability
7 for maintenance assessments or by abandonment of any lot belonging
8 to him avoid such assessment.

6 ARTICLE VI

7 Section 1. Non-Payment of Assessment. Any assessment levied
8 pursuant to this Declaration, or any installment thereof, which is
9 not paid on the date when due shall be delinquent and shall
10 together with interest thereon and the cost of collection thereof,
11 as hereinafter provided, thereupon become a continuing lien upon
12 the lot or lots belonging to the member against whom such assess-
13 ment is levied and shall bind such lot or lots in the hands of the
14 then owners and their successors, heirs, devisees, personal repre-
15 sentatives and assigns. The personal obligation of the member to
16 pay such assessment shall, however, remain his personal obligation
17 for the statutory period and a suit to recover a money judgment
18 for non-payment of any assessment levied pursuant to this Declara-
19 tion, or any installment thereof, may be maintained without fore-
20 closing or waiving the lien herein created to secure the same.

21 Any assessment levied pursuant to this Declaration, or any
22 installment thereof, which is not paid within ten (10) days after
23 it is due, upon resolution of the Board of Trustees, bear interest
24 at a rate not to exceed ten percent (10%) per annum, and may, by
25 resolution of the Board of Trustees, subject the member obligated
26 to pay the same to the payment of such penalty or "late charge" as
27 the Board may fix, and the Association may bring an action at law
28 against the member personally obligated to pay the same, or fore-
29 close the lien against the member's interest in the lot or lots
30 then belonging to said member in the manner now or hereafter
31 provided by law for the foreclosure of mortgages, deeds of trust
32 or other liens containing powers of sale on real property in the
State of Utah, and subject to the same requirements, both substan-
tive and procedural, or as may otherwise from time to time be
provided by law, in either of which events interest, costs and
reasonable attorney's fees shall be added to the amount of each
assessment. The Association shall notify the holder of the first
mortgage on any lot for which any assessment levied pursuant to
this Declaration becomes delinquent for a period in excess of
sixty (60) days and in any other case where the owner of such lot
is in default with respect to the performance of any other
obligation hereunder for a period in excess of sixty (60) days,
but any failure to give such notice shall not affect the validity
of the lien for any assessment levied pursuant to this Declaration
nor shall any such failure affect any of the priorities estab-
lished in this Article.

28 The Association shall take no action or foreclose the lien
29 herein provided as security for the payment of assessments, except
30 after mailing notice in writing to the holder of any first
31 mortgage on the lot or lots involved as shown upon the records of
32 the Recorder of Utah County, Utah.

31 In the event any proceeding to foreclose the lien for any
32 assessment due the Association pursuant to this Declaration is
commenced with respect to any lot or lots in the community, then

1 the owner of such lot or lots, upon resolution of the Board of
2 Trustees, may be required to pay a reasonable rental for such lot
3 or lots, and the Association shall be entitled to the appointment
4 of a receiver to collect the same.

5 The Board of Trustees may post a list of members who are
6 delinquent in the payment of any assessment or other fees which
7 may be due the Association, including any installment thereof
8 which becomes delinquent, in any prominent location upon "Kirkland
9 Estates Planned Residential Unit Development."

10 Section 2. Assessment Certificates. The Association shall, upon
11 demand at any time, furnish to any member liable for any assess-
12 ment levied pursuant to this Declaration (or any other party
13 legitimately interested in the same), a certificate in writing
14 signed by an officer of the Association, setting forth the status
15 of said assessment, i.e., whether the same is paid or unpaid.
16 Such certificate shall be conclusive evidence of the payment of
17 any assessment therein stated to have been paid. A charge not to
18 exceed Thirty Dollars (\$30.00) may be levied in advance by the
19 Association for each certificate so delivered.

20 Section 3. Acceleration of Installments. Upon default in the
21 payment of any one or more monthly installments of any assessment
22 levied pursuant to this Declaration, or any other installment
23 thereof, the entire balance of said assessment may be accelerated
24 at the option of the Board of Trustees and be declared due and
25 payable in full.

26 Section 4. Priority of Lien. The liens established by this
27 Declaration shall have preference over any other assessments,
28 liens, judgments or charges of whatever nature, except the
29 following:

30 (a) general and special assessments for real estate taxes on
31 the lot; and

32 (b) the liens of any deeds of trust, mortgage instruments or
encumbrances duly recorded on the lot prior to the assessment
thereon of the lien provided for in this Declaration or duly
recorded on said lot after receipt of a written statement from the
Board of Trustees reflecting that payments on said lien were
current as of the date of recordation of said deed of trust,
mortgage instrument or encumbrance.

Notwithstanding any other provisions hereof to the contrary,
the lien of any assessment levied pursuant to this Declaration
upon any lot shall be subordinate to, and shall in no way affect
the rights of the holder of any indebtedness secured by any
recorded first mortgage (meaning a mortgage with priority over
other mortgages) upon such interest made in good faith without
knowledge of any delinquency in payment of assessment, and for
value received, provided, however, that such subordination shall
apply only to assessments which have become due and payable prior
to a sale or transfer of such lot pursuant to a decree of fore-
closure, or any other proceeding in lieu of foreclosure. Such
sale or transfer shall not relieve the purchaser at such sale of
the lot from liability for any assessment thereafter becoming due,
nor from the lien of any such subsequent assessment, which said
lien, if any, claimed shall have the same effect and be enforced
in the same manner as provided herein.

1 No amendment to this Section shall affect the rights of the
2 holder of any such mortgage (or the indebtedness secured thereby)
3 recorded prior to recordation of such amendment unless the holder
thereof (or of the indebtedness secured thereby) shall join in the
execution of such amendment.

4 The Board of Trustees may, in its sole and absolute discre-
5 tion, extend the provisions of this Section to the holders of
6 mortgages (or the indebtedness secured thereby) not otherwise
entitled thereto.

6 Section 5. Additional Default. Any recorded first mortgage
7 secured on any lot shall provide that any default by the mortgagor
8 in the payment of any assessment levied pursuant to this Declara-
9 tion, or any installment thereof, shall likewise be a default in
10 such mortgage (or the indebtedness secured thereby); but a failure
11 to include such provision in any such mortgage shall not affect
the validity or priority thereof and the protection extended to
the holder of such mortgage (or the indebtedness secured thereby)
by reason of Section 4 of this Article shall not be altered,
modified or diminished by reason of such failure.

12 Section 6. Definition. As used in this Declaration, the term
13 "mortgagee" shall include deed of trust, and the term "holder" or
14 "mortgagor" shall include the party secured by any deed of trust
or any beneficiary thereof.

14 Section 7. Commencement of Annual Assessments. The annual
15 maintenance assessment for each Class A membership shall commence
16 on the date of a deed for the lot to which such membership is
17 appurtenant is delivered by the Declarant to the member. The
18 first monthly installment of each such annual assessment shall be
19 made for the balance of the month during which a deed for the lot
20 is delivered to the member and shall become due and payable and a
lien on the date a deed for the lot is delivered to the member.
Except as hereinelsewhere provided, the monthly installments of
each such annual assessment for any lot for any month after the
first month shall become due and payable and a lien on the first
day of each successive month.

21 Section 8. Assessment of Declarant. Anything in this Declaration
22 to the contrary notwithstanding, no lot held by the Declarant
23 shall be subject to assessment by the Association until the first
to happen of the following events:

24 (a) with respect to any lot held by the Declarant, thirty
25 (30) days following the issuance by the appropriate agency of Utah
County, Utah, a Certificate of Occupancy, or the like, for a
dwelling constructed upon such lot; or

26 (b) with respect to any lots then held by the Declarant,
27 sixty (60) days following the lapse of all of the Class B member-
ships.

28 Section 9. Exempt Property. No portion of the Common Areas,
29 Community or Recreational Facilities shall be subject to assess-
30 ment of any kind by the Association. No property dedicated to and
31 accepted by any local public authority shall be subject to assess-
32 ment of any kind by the Association. No property owned by a
charitable or non-profit organization exempt from taxation by the
laws of the State of Utah, provided the same is not devoted to
residential purposes, shall be subject to assessment of any kind
by the Association.

ARTICLE VII

1
2 Section 1. Architectural Control Committee. Except for original
3 construction and/or development by the Declarant, and except for
4 any improvements to any lot or to the common areas accomplished by
5 the Declarant concurrently with said construction and/or develop-
6 ment, and except for purposes of proper maintenance and repair, no
7 building, fence, wall or other improvements or structures shall be
8 commenced, directed, placed, moved, altered or maintained upon The
9 Property, nor shall any exterior addition to or change (including
10 any change of color) or other alteration thereupon be made until
11 the complete plans and specifications showing compliance with
applicable local ordinances and codes and the location, nature,
shape, height, material, color, type of construction and/or other
proposed form of change (including, without limitation, any other
information specified by the Architectural Control Committee)
shall have been submitted to and approved in writing as to safety,
harmony of external design, color and location in relation to
surrounding structures and topography and conformity with the
design concept for the community by the Architectural Control
Committee designated by the Board of Trustees.

12 Subject to the same limitations as hereinabove provided for,
13 it shall be prohibited to install, erect, attach, apply, paste,
14 hinge, screw, nail, build, alter, plant, remove or construct any
15 lighting, shades, screens, awnings, patio covers, decorations,
16 fences, hedges, landscaping features, wall, aerials, antennas,
17 radio or television broadcasting or receiving devices, slabs,
18 sidewalks, curbs, gutters, patios, balconies, porches, driveways,
19 walls or to make any change or otherwise alter (including any
20 alteration in color) in any manner whatsoever the exterior of any
21 improvements constructed upon any lot or upon any of the common
22 areas or to combine or otherwise join two or more dwellings, or to
23 partition the same after combination, or to remove or alter any
24 windows or exterior doors of any dwelling, or to make any change
25 or alteration within any dwelling which will alter the structural
integrity of the building or otherwise affect the property,
interest or welfare of any other lot owner, materially increase
the cost of operating or insuring any common areas or impair any
easement, until the complete plans and specifications showing the
location, nature, height, material color, type of construction
and/or any other proposed form of change (including, without
limitation, any other information specified by the Architectural
Control Committee) shall have been submitted to and approved in
writing as to safety, harmony of external design, color and
location in relation to surrounding structures and topography and
conformity with the design concept for "Kirkland Estates Planned
Residential Unit Development" by the Architectural Control
Committee designated by the Board of Trustees.

26 Section 2. Architectural Control Committee Operation. The Board
27 of Trustees shall appoint an Architectural Control Committee. The
28 Architectural Control Committee shall be composed of three (3) or
29 more natural persons designated from time to time by the Board of
30 Trustees of the Association and such persons shall serve at the
31 pleasure of the Board of Trustees. The affirmative vote of a
32 majority of the members of the Architectural Control Committee
shall be required in order to adopt or promulgate any rule or
regulation, or to make any finding, determination, ruling or
order, or to issue any permit, consent, authorization, approval or
the like pursuant to the authority contained in this Article. In
the event that the Board of Trustees shall fail to appoint the
Architectural Control Committee or until such time as it does so,

1 the Board of Trustees shall act as the Architectural Control
2 Committee.

3 Section 3. Approvals, etc. Upon approval by the Architectural
4 Control Committee of any plans and specifications submitted
5 pursuant to the provisions of this Article, a copy of such plans
6 and specifications, as approved, shall be deposited among the
7 permanent records of such Committee and a copy of such plans and
8 specifications bearing such approval, in writing, shall be
9 returned to the applicant submitting the same. In the event the
Architectural Control Committee fails to approve or disapprove any
plans and specifications which may be submitted to it pursuant to
the provisions of this Article within sixty (60) days after such
plans and specifications (and all other materials and information
required by the Architectural Control Committee) have been
submitted to it in writing, then approval will not be required
and this Article will be deemed to have been fully complied with.

10 Section 4. Limitations. Construction or alterations in accord-
11 ance with plans and specifications approved by the Architectural
12 Control Committee pursuant to the provisions of this Article shall
13 be commenced within six (6) months following the date upon which
14 the same are approved by the Architectural Control Committee
15 (whether by affirmative action or by forbearance from action, as
16 in Section 3 of this Article provided), and shall be substantially
17 completed within twelve (12) months following the date of commence-
18 ment, or within such other period as the Architectural Control
19 Committee shall specify in its approval. In the event construction
20 is not commenced within the period aforesaid, then approval of the
plans and specifications by the Architectural Control Committee
shall be conclusively deemed to have lapsed and compliance with
the provisions of this Article shall again be required. There
shall be no deviations from plans and specifications approved by
the Architectural Control Committee. Approval of any particular
plans and specifications or design shall not be construed as a
waiver of the right of the Architectural Control Committee to
disapprove such plans and specifications, or any elements or
features thereof, in the event such plans and specifications are
subsequently submitted for use in any other instance.

21 Section 5. Certificate of Compliance. Upon the completion of any
22 construction or alterations or other improvements or structure in
23 accordance with plans and specifications approved by the Archi-
24 tectural Control Committee in accordance with the provisions of
25 this Article, the Architectural Control Committee shall, at the
26 request of the owner thereof, issue a Certificate of Compliance
27 which shall be prima facie evidence that such construction,
alteration or other improvements referenced in such certificate
have been approved by the Architectural Control Committee and
constructed or installed in full compliance with the provisions of
this Article and with such other provisions and requirements of
the Declaration as may be applicable.

28 Section 6. Rules and Regulations, etc. The Architectural
29 Control Committee may from time to time adopt and promulgate such
30 rules and regulations regarding the form and content of plans and
31 specifications to be submitted for approval and may publish and/or
32 record such statements of policy, standards, guidelines and/or
establish such criteria relative to architectural styles or
details, lot coverage, colors, set-backs, materials or other
matters, as it may consider necessary or appropriate. No such
rules, regulations, statements, criteria or the like shall be
construed as a waiver of the provisions of this Article or any

1 other provision or requirement of this Declaration. If they incur
2 expenses in connection with review of plans, the Architectural
3 Control Committee may charge and collect a reasonable fee for the
4 examination of any plans and specifications submitted for approval
5 pursuant to the provisions of this Article. The decisions of the
6 Architectural Control Committee shall be final except that any
7 member who is aggrieved by any action or forbearance from action
8 by the Architectural Control Committee (or by any policy, standards
9 or guidelines established by the Architectural Control Committee)
10 may appeal the decision of the Architectural Control Committee to
11 the Board of Trustees and, upon the request of such member, shall
12 be entitled to a hearing before the Board of Trustees of the
13 Association.

8 Section 7. Prohibited Uses and Nuisances. Except for the
9 activities of the Declarant during original construction and/or
10 development, or except with the prior written approval of the
11 Architectural Control Committee, or as may be necessary in connec-
12 tion with reasonable and necessary repairs or maintenance to any
13 dwelling or upon the common areas:

11 (a) no noxious or offensive trade or activity shall be
12 carried on upon any lot or within any dwelling, nor shall anything
13 be done therein or thereon, which may be or become an annoyance or
14 nuisance to the neighborhood or other members. Without limiting
15 the generality of the foregoing, no speaker, horn, whistle, siren,
16 bell or other sound device, except such devices as may be used
17 exclusively for security purposes, shall be located, installed or
18 maintained upon the exterior of any dwelling or upon the exterior
19 of any other improvements.

16 (b) the maintenance, keeping, boarding and/or raising of
17 animals, livestock, or poultry of any kind, regardless of number,
18 shall be and is hereby prohibited on any lot or within any
19 dwelling, except that this shall not prohibit the keeping of dogs,
20 cats, and/or caged birds as domestic pets provided they are not
21 kept, bred or maintained for commercial purposes and provided,
22 further, that such domestic pets are not a source of annoyance or
23 nuisance to the neighborhood or other members. Pets shall be
24 attended at all times and shall be registered, licensed and
25 inoculated as may from time to time be required by law. Pets
26 shall not be permitted upon the common areas.

22 (c) no burning of any trash and no accumulation or storage
23 of litter, lumber, scrap metals, refuse, bulk materials, waste,
24 new or used building materials, or trash of any other kind shall
25 be permitted on any lot.

25 (d) except as hereinelsewhere provided, no junk vehicle,
26 commercial vehicle, trailer, truck, camper, camp truck, house
27 trailer, boat or other machinery or equipment of any kind or
28 character shall be kept upon The Property nor (except for bona
29 fide emergencies) shall the repair or extraordinary maintenance of
30 automobiles or other vehicles be carried out thereon. The
31 Association may, in the discretion of the Architectural Control
32 Committee, provide and maintain a suitable area designated for the
33 parking of such vehicles or the like.

30 (e) trash and garbage containers shall not be permitted to
31 remain in public view except on days of trash collection. No
32 incinerator shall be kept or maintained upon any lot. The
33 Association may regulate the use of trash containers by House
34 Rules.

1 (f) no lot shall be divided or subdivided and no portion of
2 any lot (other than the entire lot) shall be transferred or
3 conveyed for any purpose. No portion of any dwelling (other than
4 the entire dwelling) shall be leased. The provisions of this
5 subsection shall not apply to the Declarant and, further, the
6 provisions hereof shall not be construed to prohibit the granting
7 of any easement and/or right-of-way to any municipality, political
8 subdivision, public utility or other public body or authority, or
9 to the Association or to the Declarant, nor to prevent the Associ-
10 ation or Declarant from conveying to the owner of a lot a right-
11 of-way or easement for a patio or area for access and egress
12 immediately adjacent to such lot.

13 (g) except for hoses and the like which are reasonably
14 necessary in connection with normal lawn maintenance, no water
15 pipe, sewer pipe, gas pipe, drainage pipe, telephone line, elec-
16 trical line or cable, television cable or similar transmission
17 line, or the like shall be installed or maintained on any lot
18 above the surface of the ground.

19 (h) no lot shall be used for the purpose of boring, mining,
20 quarrying, exploring for or removing oil or other hydrocarbons,
21 minerals, gravel or earth.

22 (i) no trees measuring two (2) feet above the ground shall
23 be removed from any lot without written approval of the Associa-
24 tion acting through the Architectural Control Committee or duly
25 appointed subcommittee. The Architectural Control Committee may
26 from time to time adopt and promulgate such additional rules and
27 regulations regarding the preservation of trees and other natural
28 resources and wildlife as it may consider appropriate. No elm
29 trees shall be grown or maintained on The Property.

30 (j) no structure of a temporary character, and no trailer,
31 shack, barn, pen, run, stable, outdoor clothes dryer, shed, or
32 other buildings shall be erected, used or maintained on any lot at
any time.

(k) except for entrance signs, directional signs, signs for
traffic control or safety, community "theme areas" and such pro-
motional sign or signs as may be maintained by the Declarant or
the Association, no signs or advertising devices of any character
shall be erected, posted or displayed upon, in or about any lot or
dwelling.

(l) no structure, planting or other material other than
driveways or sidewalks shall be placed or permitted to remain upon
any lot which may damage or interfere with any easement for the
installation or maintenance of utilities, or which may change,
obstruct or retard direction or flow of any drainage channels.

(m) no outside television or radio aerial or antenna, or
other aerial or antenna or similar device, for reception or trans-
mission, extending in excess of twenty (20) feet from the roof of
any dwelling or having a diameter in excess of eight (8) feet,
shall be maintained upon any lot or dwelling.

(n) no building or structure shall be moved onto any lot
except during the original construction phases of the project.

(o) the drying of clothes shall be kept screened by adequate
fencing so as not to be seen from neighboring lots and streets.

1 (p) no vehicle shall be parked on streets or driveways so as
2 to obstruct ingress or egress by owners of lots, their families,
3 guests or invitees, except for the reasonable needs of emergency,
4 construction or service vehicles for a time limited to as briefly
5 as possible. For a period not to exceed forty-eight (48) hours,
6 family guests or invitees of owners may park their vehicles in the
7 guest parking areas provided on the plat of The Property. Guest
8 parking areas are not intended for use by owners for parking or
9 storing of boats, trailers, camping units or any personal
10 vehicles, and the Board of Trustees may insure the proper use of
11 such parking areas in such manner as it deems necessary.

12 (q) no spiritous, vinous or malt liquors or medicated
13 bitters capable of producing intoxication shall be sold or offered
14 for sale on any lot within the subdivision. Further, no lot, or
15 any part thereof, shall be used for vicious, illegal, or immoral
16 purposes, nor for any purpose in violation of the laws of the
17 State of Utah, the United States of America, or of police, health,
18 sanitary, building or fire code regulations relating to or affect-
19 ing the use or occupancy or possession of any of said lots.

20 (r) no freezer, refrigerator, washer, dryer or other house-
21 hold appliance shall be permitted on patios, carports or any
22 portion of the lot in such a position as to be visible from the
23 street.

24 (s) no window or door of any dwelling unit shall be covered
25 with metal foil or similar material.

26 (t) Maintenance, upkeep and repairs of the yard of any
27 dwelling shall be the sole responsibility of the individual lot
28 owner and not in any manner the responsibility of the Association.

29 (u) the digging of dirt or sand and/or its removal from any
30 lot is prohibited, except when necessary in connection with the
31 landscaping of a lot and during the original construction phases
32 of the project. No water drilling, refining or quarrying of any
kind is permitted upon The Property.

(v) the use of firearms, including air rifles, bows and
arrows, sling shots, or other dangerous devices is specifically
prohibited upon The Property.

(w) the premises of all lots shall be maintained in a clean,
orderly and sightly condition at all times.

(x) no motor driven vehicles, except maintenance vehicles,
may be operated on the walkways within the common areas.

(y) no member shall engage or direct any employee of the
Association on any private business of the member during the hours
such employee is employed by the Association, nor shall any member
direct, supervise or in any manner attempt to assert control over
any employee of the Association.

(z) no person shall operate any motor vehicle on The
Property without a valid Utah Operator's License.

(aa) all motor vehicles operated on The Property shall have
muffler systems which comply with the standards set forth by the
Utah Department of Motor Vehicles.

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1 (bb) no off-road motor vehicles (including, but not limited
2 to, dirt bikes, dune buggies and 4-wheel drive vehicles not
licensed for use upon the public highways) shall be operated on
The Property.

3 Section 8. Residential Use. All dwellings shall be used for
4 private residential purposes exclusively, and the owner's use of
5 each such lot shall not endanger the health or disturb the reason-
6 able enjoyment of any other owner or resident. The term "resi-
7 dential" as used herein, shall be held and construed to exclude
8 hospitals, clinics, mobile homes, hotels, motels, boarding houses,
commercial and professional uses, and all such uses are expressly
prohibited. Nothing contained in this Article, or elsewhere in
this Declaration, shall be construed to prohibit the Declarant
from the use of any lot or dwelling for promotional or display
purposes or as "model homes" or the like.

9 Section 9. Building Location. No building shall be located on
10 any lot nearer than twenty (20) feet to the front lot line. No
11 building shall be located nearer than ten (10) feet to an interior
lot line.

12 Section 10. Reconstruction Following Fire or Other Casualty. In
13 the event any dwelling is partially or totally destroyed by fire
14 or other casualty, then the owner of the same shall promptly
15 reconstrcut such dwelling at his own expense, or from insurance
16 proceeds to which he may have access, in accordance with the
original plans and specifications for the same (or as the same may
be modified with the written consent of the Architectural Control
Committee), and any failure promptly so to do shall be considered
a violation of the provisions of this Article.

17 Section 11. Enforcement - Right to Remove or Correct Violations.
18 In the event any violation or attempted violation of any of the
19 covenants or restrictions contained in this Article shall occur or
20 be maintained upon any lot, or in the event of any other conduct
21 in violation of any of the provisions and requirements of this
22 Article, then the same shall be considered to have been undertaken
23 in violation of this Article, and without the approval of the
24 Architectural Control Committee required herein, and, upon written
25 notice from the Architectural Control Committee, such violation
26 shall be promptly removed or abated. In the event the same is not
27 removed, or the violation is not otherwise terminated or abated,
28 within fifteen (15) days (or such shorter period as may be
29 required in any such notice) after notice of such violation is
30 delivered to the owner of the lot upon which such violation exists,
31 or to the member responsible for such violation if the same shall
32 be committed or attempted on premises other than the lot owned by
such member, then the Association shall have the right, through
its agents and employees (but only after a resolution of the
Architectural Control Committee) to enter upon such lot and to
take such steps as may be necessary to remove or otherwise termin-
ate or abate such violation and the cost thereof may be assessed
against the lot upon which such violation occurred and, when so
assessed, a statement for the amount thereof shall be rendered to
the owner of said lot at which time the assessment shall become
due and payable and a continuing lien upon such lot, and a binding
personal obligation of the owner of such lot, in all respects (and
subject to the same limitations) as provided in Article V of this
Declaration. The Association shall have the further right,
through its agents, employees or committees, to enter upon and
inspect any lot at any reasonable time for the purpose of
ascertaining whether any violation of the provisions of this

1 Article or any of the other provisions or requirements of this
2 Declaration, exist on such lot; and neither the Association nor
3 any such agent or employee shall be deemed to have committed a
trespass or other wrongful act by reason of such entry or inspec-
tion.

4
5 ARTICLE VIII

6 Section 1. Easements for Utilities and Related Purposes. The
7 Association is authorized and empowered to grant (and shall from
8 time to time grant) such licenses, easements and/or rights-of-way
9 over the common areas for sewer lines, water lines, electrical
10 cables, telephone cables, gas lines, storm drains, underground
11 conduits and/or such other purposes related to the provision of
public utilities to "Kirkland Estates Planned Residential Unit
Development" as may be considered necessary and appropriate by the
Board of Trustees for the orderly maintenance, preservation and
enjoyment of the common areas and community facilities and/or for
the preservation of the health, safety, convenience and/or welfare
of the owners of the lots.

12 Any and all streets, walkways, roadways, sidewalks and/or the
13 like, which are owned by the Association shall be subject to non-
14 exclusive easements for ingress, egress and regress for the
15 benefit of all members of the Association, the Declarant, their
16 respective heirs, personal representatives and assigns and all
17 other persons or other parties claiming under any of them.

18 There is hereby created a non-exclusive easement upon, across,
19 over and under all of The Property for ingress and egress, install-
20 ation, replacing, repairing and maintaining utilities, including,
21 but not limited to, water, sewer, telephone, electricity, gas and
22 television cables. By virtue of this easement, it shall be
23 expressly permissible for the utility companies to affix and
24 maintain pipes, wires, conduits or other service lines on, above,
25 across and under the roofs and exterior walls of the townhomes.
26 Notwithstanding anything to the contrary contained in this Section,
27 no sewer, electrical lines, water lines or other utilities may be
28 installed and/or relocated upon The Property until approved by the
29 Board of Trustees of the Association. In the event that any
30 utility company furnishing a service covered by the general ease-
31 ment hereinabove provided requests a specific easement by separate
32 recordable instrument, the Association shall have the right to
grant such easement upon said property without conflicting with
the terms hereof.

33 The Association shall supply and be responsible for all
34 utilities supplied to or used in connection with the common areas
35 and may supply water and sewer services to the dwelling units with
36 the cost thereof to be included in the annual maintenance assess-
37 ments. All other utilities supplied to the individual townhomes
38 or single-family detached dwelling units shall be metered
39 separately and individually as to the utility supplied to the
40 individual dwelling, and the owners thereof shall hold the
41 Association harmless from any obligation to make payments for the
42 use thereof.

43 The owners of the respective lots shall not be deemed to
44 separately own pipes, wires, conduits or other service lines
45 running through their proerty which are utilized for or serve
46 other lots, but each owner shall have an easement in and to the

1 aforesaid facilities as shall be necessary for the use, mainten-
2 ance and enjoyment of his lot.

3 Easements and alleys for the installation and maintenance of
4 utilities and drainage facilities are reserved as shown by the
5 Plat, and instruments recorded in the Office of the County
6 Recorder of Utah County, Utah, and by instruments that may here-
7 after be recorded in said office. Copies of these shall be kept
8 on file in the principal office of the Association. Right of use
for ingress and egress shall be had at all times over any dedi-
cated easement, and for the installation, operation, maintenance,
repair or removal of any utility, together with the right to
remove any obstruction that may be placed in such easement, that
would constitute interference with the use, maintenance, operation
or installation of such utility.

9 Section 2. House Rules, etc.. There shall be no violation of
10 any rules for the use of the common areas, community facilities or
11 recreational facilities or "house rules" or other community rules
12 and regulations not inconsistent with the provisions of this
13 Declaration which may from time to time be adopted by the Board of
14 Trustees of the Association and promulgated among the membership
by them in writing, and the Board of Trustees is hereby and
elsewhere in this Declaration authorized to adopt such rules.

14 ARTICLE IX

15 Section 1. Management Agent. The Board of Trustees may employ
16 for the Association, a professional management agent (the "Manage-
17 ment Agent") at a rate of compensation to be established by the
18 Board of Trustees of the Association to perform such duties and
19 services as the Board of Trustees shall authorize in writing,
20 including, without limitation:

21 (a) to establish (with the approval of the Board of Trustees
22 of the Association) and provide for the collection of the annual
23 maintenance assessments and the annual recreation assessments
24 provided for in this Declaration and to provide for the enforce-
25 ment of liens therefor in a manner consistent with law and the
26 provisions of this Declaration; and

27 (b) to provide for the care, upkeep, maintenance and
28 surveillance of the common areas, community facilities and recre-
29 ational facilities; and

30 (c) to designate, hire and/or dismiss such personnel as may
31 be required for the good working order, maintenance and efficient
32 operation of the common areas, community facilities and recrea-
tional facilities; and

33 (d) to promulgate (with the approval of the Board of
34 Trustees of the Association) and enforce such rules and regula-
35 tions and such restrictions or requirements, "house rules" or the
36 like as may be deemed proper respecting the use of the common
37 areas, community facilities and recreational facilities; and

38 (e) to provide such other services (including accounting
39 services) for the Association as may be consistent with law and
40 the provisions of this Declaration.

41 Section 2. Limitation of Liability. The Association shall not be
42 liable for any failure of any services to be obtained by the

1 Association or paid for out of the common expense funds, or for
2 injury or damage to person or property caused by the elements or
3 resulting from water which may leak or flow from any portion of
4 the common areas, community facilities or recreational facilities,
5 or from any wire, pipe, drain, conduit or the like. The Associa-
6 tion shall not be liable to any member for loss or damage, by
7 theft or otherwise, of articles which may be stored upon the
8 common areas, community facilities or recreational facilities. No
9 diminution or abatement of assessments, as hereinelsewhere pro-
10 vided for, shall be claimed or allowed for inconvenience or
11 discomfort arising from the making of repairs or improvements to
12 the common areas, community facilities or recreational facilities,
13 or from any action taken by the Association to comply with any law
14 or ordinance or with the order or directive of any municipal or
15 other governmental authority.

9
10 ARTICLE X

10 Section 1. Insurance. The Board of Trustees shall obtain and
11 maintain to the extent reasonably available, at least the
12 following:

12 (a) separate policies of casualty or physical damage
13 insurance in an amount equal to the full replacement value (i.e.
14 100% of "replacement cost" exclusive of land, foundation and
15 excavation), respectively, of the common areas and recreational
16 facilities (including all building service equipment and the like)
17 with an "agreed amount" endorsement, without deduction or allow-
18 ance for depreciation (as determined annually by the Board of
19 Trustees) with the assistance of the insurance company affording
20 such coverage, such coverage to afford protection against at least
21 the following:

18 (i) loss or damage by fire or other hazards covered by
19 the standard extended coverage endorsement;

20 (ii) such other risks as shall customarily be covered
21 with respect to property similar in construction, location
22 and use, including but not limited to, cost of demolition,
23 vandalism, malicious mischief, windstorm, water damage,
24 machinery explosion or damage, and such other insurance as
25 the Board of Trustees may from time to time determine; and

23 (b) separate policies of public liability insurance, each
24 with a "severability of interest" endorsement, in such amounts and
25 in such forms as may be considered appropriate by the Board of
26 Trustees, including, but not limited to, water damage, legal
27 liability, hired automobile, non-owned automobile, liability for
28 property of others, and any and all other liability incident to
29 the ownership and/or use of the common areas and recreational
30 facilities, respectively; and

28 (c) workmen's compensation insurance to the extent necessary
29 to comply with any applicable law; and

29 (d) a "Legal Expense Indemnity Endorsement", or its equiva-
30 lent, affording protection for the officers and directors of the
31 Association for expenses and fees incurred by any of them in
32 defending any suit or settling any claim, judgment or cause of
33 action to which any such officer or director shall have been made
34 a party by reason of his or her services as such; and

1 (e) such other policies of insurance, including insurance
2 for other risks of a similar or dissimilar nature and fidelity
3 coverage as required by Section _____ of Article _____ of the By-
Laws of the Association, as are or shall hereafter be considered
appropriate by the Board of Trustees.

4 Section 2. Limitations. Any insurance obtained pursuant to the
5 requirements of this Article shall be subject to the following
provisions:

6 (a) all policies shall be written with a company or
7 companies licensed to do business in the State of Utah and holding
a rating of "A + AAAA" or better in Best's Insurance Guide or
equivalent.

8 (b) exclusive authority to negotiate losses under said
9 policies shall be vested in the Board of Trustees or its
authorized representative.

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ARTICLE XI

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Section 1. Duration. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of recordation of this Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then owners of a majority of the lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. No such agreement to change shall be effective unless made and recorded sixty (60) days in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every member at least thirty (30) days in advance of any action taken.

Section 2. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the community of "Kirkland Estates Planned Residential Unit Development." Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages, or both, and against any lot to enforce the lien created hereby; and the failure or forbearance by the Association or the owner of any lot to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The provisions hereof may be enforced, without limitation, by the Association, by any owner or any mortgage of any lot which becomes subject to the provisions hereof and/or by any other person, firm, corporation or other legal entity who has any right to the use of any of the common areas, community facilities or recreational facilities owned by the Association, including, again without limitation, any person, firm, corporation or other legal entity who has any right to the use of any of the streets or roadways owned by the Association.

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There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages.

Section 3. Incorporation by Reference on Resale. In the event any owner sells or otherwise transfers any lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration.

Section 4. Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by ordinary mail, postage pre-paid, to the last known address of the person who appears as member or owner on the records of the Association at the time of such mailing.

Section 5. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any common area, community facility or recreational facility by any public or municipal agency, authority, or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of said common areas, community facilities, or recreational facilities.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

Section 7. Consents. Any other provision of this Declaration to the contrary notwithstanding, the Association shall not, without the prior written consent of all institutional first mortgagees of record:

- (a) abandon or terminate the Declaration; or
- (b) modify or amend any of the substantive provisions of the Declaration; or
- (c) substantially modify the method of determining and collecting maintenance assessments as provided in this Declaration; or
- (d) mortgage, partition, subdivide, transfer or otherwise dispose of any of the common areas, community facilities or recreational facilities.

Section 8. Definition. As used in this Article, the term "mortgagee" shall mean any mortgagee of a lot subject to this Declaration and shall not be limited to the institutional mortgagees, and the term "mortgage" shall include a deed of trust. As used generally in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, pension funds, real estate investment trusts, mortgage companies, the Declarant, FNMA, FHLMC, and any corporation, including a corporation of, or affiliated with the United States Government, or any agency thereof.

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