

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,  
AND  
OCCUPANCY AND MANAGEMENT AGREEMENT  
HOLLADAY VILLA APARTMENT HOMES

2270 64800 No.  
Oct 17

This Declaration and Agreement made in Salt Lake County, State of Utah, this 9th day of October, 1962, by and between Holladay Villa, Inc., a Utah Corporation, hereinafter called "DECLARANT", and HOLLADAY VILLA MANAGEMENT CORPORATION, a Utah Corporation, hereinafter called "MANAGEMENT", and the respective owners of the Holladay Villa Apartment Homes, each of whom acknowledges and agrees to abide by these covenants, conditions and restrictions, and Occupancy and Management Agreement by accepting a deed to a particular apartment hereinafter called "OWNER."

## WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the vicinity of 2276 East 48th South Street in Salt Lake County, State of Utah, and more particularly described as follows:

Beginning at a point which is south 21.94 feet and west 99.28 feet from the North 1/4 Corner of Section 10, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence S 45° 30' E 68.0 feet; thence S 53° 33' 50" E 156.46 feet; thence S 52° 30' E 78.87 feet; thence S 52° 30' W 279.90 feet; thence N 47° 44' 20" W 82.01 feet; thence N 34° 14' 07" W 239.18 feet; thence N 59° 31' 56" E 209.38 feet to the point of beginning.

AND WHEREAS Declarant has built and is building an apartment home project on the above described property, hereinafter called "Subject property," and it is the desire and intention of the Declarant to sell said property and to impose on it mutual beneficial covenants, conditions and restrictions under a general plan or scheme of improvement, for the benefit of all lands within the subject property and for the benefit of all owners of said lands, and

WHEREAS, Declarant desires to appoint Management as its exclusive agent to manage all of the apartment homes to be built and sold by Declarant, and

WHEREAS, Declarant desires to establish and maintain a cooperative condominium apartment project to be known as HOLLADAY VILLA APARTMENT HOMES to be operated on a first class cooperative ownership plan;

NOW THEREFORE, in consideration of the sum of one dollar (\$1.00), in hand paid by each of the parties hereto, to each of the others, receipt of which is hereby acknowledged, and other valuable consideration; and the covenants, restrictions and agreements hereinafter contained to be kept, it is hereby stated and agreed as follows, to-wit:

The parties agree that all of the subject property described above is held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of the subject property and every part thereof. All the covenants, conditions and restrictions shall run with the land and shall inure to and pass with said property and each and every portion thereof, and shall apply to and be binding upon the successive successors in interest and upon any parties having or acquiring any right, title or interest in the subject property or any part thereof, and said covenants, conditions and restrictions, and each of them, is imposed upon said property as a servitude in favor thereof and each and every portion thereof as the dominant tenement or tenements, as follows:

Declarant hereby appoints Holladay Villa Management Corporation as the exclusive management agent to manage all of the above described property together with improvements, including common areas, buildings, roadways, sidewalks, parking areas, carports, storage areas, landscaped areas, recreation areas, including swimming pool, pitch and putt golf course, and to make such reasonable rules and regulations with respect to the use thereof as it may deem necessary. Holladay Villa Management Corporation agrees to assume the management upon the terms hereinbefore and hereinafter mentioned.

Management shall cause its Board of Directors to name two persons and the owners of apartment units in the Holladay Villa Apartment Homes Project shall select from their number three persons, which said five persons shall together serve as a Management Committee, hereinafter called "COMMITTEE," Committee shall make all reasonable rules and regulations pertaining to the management of the Holladay Villa Apartment Homes, and will appoint a Resident Manager who shall conduct the day-to-day operation of the Holladay Villa Apartment Homes.

ARTICLE I.  
DEFINITIONS

Certain terms as used in this Declaration and Agreement shall be defined as follows, unless the context clearly indicates a different meaning therefor:

1. "DECLARATION AND AGREEMENT": This Declaration of Covenants, Conditions and Restrictions, and Occupancy and Management Agreement as the same may be amended, changed, or modified from time to time.
2. "DECLARANT": Holladay Villa Inc., a Utah Corporation, builder and seller of the Holladay Villa Apartment Homes.
3. "MANAGEMENT": Holladay Villa Management Corporation, a Utah Corporation, established to act as the exclusive management agent for the Holladay Villa Apartment Homes.
4. "COMMITTEE": The Management Committee, with powers as hereinbefore and hereinafter provided.
5. "APARTMENT HOME": A private apartment residence, containing kitchen, bath facilities, and living quarters which shall be constructed within a unit as defined below, in accordance with the record of survey map and building specifications, Holladay Villa Apartment Homes, dated October \_\_, 1962, Recorded October \_\_, 1962 as entry No. 111220, Salt Lake County Recorder's Office. Each apartment home shall be a part of a building structure containing other apartment homes alongside.
6. "UNIT": An area of air space, not including the ground underneath, around which air space an apartment home, as defined above, shall have been constructed. Each unit shall include the interior decorated or finished surfaces of the ceilings, floors and walls thereof, and all of the area encompassed therein, plus the doors, windows and fireplaces, including the flues and chimneys thereof, but the following areas shall not be deemed to be part of any unit: Bearing walls, perimeter walls, roofs, foundations, columns, girders, all utility lines to the outlet, conduits, wiring ducts, pipes and flues. The term "unit" when used herein shall refer to an interest in real property to which an owner may hold title in fee.
7. "COMMON AREAS AND FACILITIES": All areas and facilities within the subject property which shall not be considered a part, and included within the definition of, any unit as defined above, including specifically all land within subject property, all items excluded from the definition of "unit" in 6 above, private roadways, drives, sidewalks, sewers, electrical, water, gas and telephone services, foundations, roofs, walls, and fixtures (excluding the parts thereof expressly made a part of units as defined above), carports, and parking areas, storage lockers, planted and landscaped area, sprinkling systems, open spaces, and such community facilities which are presently or shall in the future be constructed and set aside for the benefit and enjoyment of all unit owners, including but not limited to recreation areas, swimming pool and cabana, pitch and putt golf course, and other facilities of like nature.
8. "OWNER": The record owner of any unit or units in the Holladay Villa Apartment Homes project as shown on the records of the County Recorder of Salt Lake County, State of Utah, including Declarant insofar as the Declarant holds record title to any portion of the subject property; the owner of each unit shall also own an undivided interest in the common area as herein defined.
9. "APPROVALS AND CONSENTS": Approval, consent, authorization or permission shall mean an approval, consent, authorization or permission in writing.
10. "PERSON": A "person" shall include a natural person, a partnership, an association and a corporation unless the context indicates a contrary meaning.
11. "OCCUPANT": Any owner of a unit located on subject property, or any person residing permanently therein other than Declarant and Committee. Occupants must be at least twelve years of age.

## ARTICLE II.

Management hereby covenants with the Owner as follows:

FIRST: Management shall keep in good order, condition and repair all the common areas and facilities including the foundations, sidewalks, gardens, walls (except interior surfaces of ceilings, floors and walls of apartments, unless repairs thereto are necessitated by the act or negligence of Management or the failure of Management to make repairs for which it is otherwise responsible), supports, beams, roofs, gutters, fences, vents, pumps and tanks, and all pipes and conduits for carrying water and electricity through the buildings, swimming pool and cabana, pitch and putt golf course, carports and parking areas, storage lockers, and private roadways and drives together with all plumbing and heating and other apparatus intended for the general service of the development, except as hereinafter provided, it being agreed that the Owner will give Management

prompt notice of any accident or defect known to the Owner and requiring repairs to be made, and that Management's obligations are subject to the provisions of Paragraph SEVENTEENTH of Article III hereof. All such repairs required to be made by Management shall be at the expense of Management unless the same shall have been rendered necessary by the act, negligence, or carelessness of the Owner, or any of the Owner's family, guests, employees or tenants, in which case the expense is to be borne by the Owner. Management shall repair any damage to the apartment units that may be caused by the Management complying with or failing to comply with its obligations, under this Paragraph First.

SECOND: Management shall maintain and manage the buildings, gardens, planted and landscaped areas, sprinkling system, carports and parking areas, roadways, storage lockers, pitch and putt golf course, and swimming pool and cabana in a first class manner and shall keep the common areas clean and properly lighted, and shall provide the number of attendants requisite in the judgment of the Committee for the proper care and service of the buildings and other areas listed above, and shall provide the apartment units with a sufficient supply of water and gas. The Owner shall pay for the other utilities.

The covenants by Management herein contained are subject, however, to the discretionary power of the Committee to prescribe the manner of maintaining and operating the buildings, and subject to the further proviso that there shall be no diminution or abatement of the management assessments or other compensation for the failure by the Management to perform any service or obligation, or for interruption or curtailment of service, when such failure, interruption or curtailment shall be due to accident or to alterations or repairs desirable or necessary to be made, or to inability or difficulty in securing supplies or labor, or to some cause not gross negligence on the part of Management; and all of the covenants by Management in this instrument contained are also subject to the provisions of paragraph SEVENTEENTH of Article III hereof.

THIRD: Management shall insure and keep insured all the buildings and improvements erected on the subject property and all fixtures and personal property owned by the apartment owners as tenants in common for the interest of all Owners and their mortgagees, as their interests may appear, in an amount which shall be equal to their maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the Committee against loss or damage from fire and hazards covered by a standard extended coverage endorsement and other casualty and the Owners against public liability and such other insurance as the Committee may deem advisable. Such insurance shall be taken out in the name of the Management for the benefit of all the Owners and their mortgagees as their interest may appear, and in the event of damage or destruction of property, real or personal, covered by such insurance, to use the proceeds to repair and replace the same, and shall pay any balance remaining to the Owners and their mortgagees as their interest may appear. In the event the proceeds are insufficient to repair or replace loss or damage, to levy an assessment in proportionate amounts as to each apartment to cover the deficiency. The Owner is responsible for the insurance of his own personal property within his own unit.

FOURTH: Management shall keep complete and correct books of account, which shall be open to inspection by the Owner, or a duly authorized representative of the Owner, at such reasonable times as may be fixed by the Committee. Management shall also, as of the end of each calendar year, furnish to the Owner a statement of the income and disbursements of Management for such year, on which statement there shall be indicated the amount paid by the Owner during such year which has been used by Management for the payment of real estate taxes; and also a copy of the Owner's budget which in the judgment of the Committee may be required by Management for the ensuing year.

FIFTH: All apartment units in the Holladay Villa Apartment Homes project shall be subject to this Declaration and Agreement, including those units owned by the Declarant and Management will not make or consent to any change or alteration in the terms or conditions of this Declaration and Agreement unless such change or alteration shall have been approved by the Owners of at least two-thirds of the apartment units in the Holladay Villa Apartment Homes project at that time. Any such approval shall be evidenced by written consent, or by affirmative vote taken at a meeting of the Owners called for such purpose.

SIXTH: The Owner, upon paying the management assessments and performing the Covenants and complying with the conditions on the part of the Owner to be performed, as herein set forth, shall at all times quietly have, hold, and enjoy the apartment without any let, suit, trouble or hinderance from Management.

## ARTICLE III

The Owner hereby covenants with Management as follows:

FIRST: The Owner shall pay Management his pro rata portion of the cash requirements deemed necessary by the Committee to manage and operate the Holladay Villa Apartment Homes, upon the terms, at the times, and in the manner herein provided without any deduction on account of any set-off or claim which the Owner may have against Management, and if the Owner shall fail to pay any installment within one month from the time when the same becomes due, the Owner shall pay interest thereon at the rate of seven per cent per annum from the date when such installment shall become due to the date of the payment thereof.

The cash requirements above referred to for each year, or portion of year, are hereby defined, and shall be deemed to be such aggregate sum as the Committee from time to time shall determine, in its judgment, is to be paid by all the Owners of Holladay Villa Apartment Homes then in existence to enable Management to pay all estimated expenses and outlays of Management to the close of such year, growing out of or connected with the maintenance and operation of such land and buildings and improvements, which sum may include, among other things, cost of management, taxes, special assessments, fire, casualty, and public liability insurance premiums, common lighting and heating, and pool expenses, landscaping and care of grounds, repairs and renovations, garbage collections, wages, water charges, legal and accounting fees, management fees, expenses and liabilities incurred by Management under or by reason of this Declaration and Agreement, the payment of any deficit remaining from a previous period, the creation of a reasonable contingency, or other reserve or surplus fund, as well as all other costs and expenses relating to the Holladay Villa Apartment Homes. The Committee may, from time to time, up to the close of the year for which such cash requirements have been so fixed or determined, increase or diminish the amount previously fixed or determined for such year. The Committee may include in the cash requirements for any year any liabilities or items of expense which accrued or became payable in a previous year, or which might have been included in the cash requirements for a previous year, but were not included therein; and also any sums which the Committee may deem necessary or prudent to provide as a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

The pro rata portion payable by the Owner in and for each year or portion of year shall be a sum within the limits and on the conditions hereinabove provided bearing to the aggregate amount of such cash requirements for such year, or portion of year, determined as aforesaid, the same ratio as that which the percentage of undivided interest in the subject property as specified in the Owner's Deed bears to the aggregate of the percentages of undivided interest in the subject property as specified in all of the deeds to apartment units in the Holladay Villa Apartment Homes which have been recorded at the time of the fixing and determination of such cash requirements, and such assessments, together with any additional sums accruing under this Declaration and Agreement shall be payable monthly in advance, or in such payments or installments as shall be required by the Committee, and at such times as shall be provided by the Committee.

The Committee shall have discretionary power to prescribe the manner of maintaining and operating the Holladay Villa Apartment Homes, and to determine the cash requirements of Management to be paid as aforesaid by the Owners under this Declaration and Agreement. Every such reasonable determination by the Committee, within the bounds of this Declaration and Agreement, shall be final and conclusive as to the Owners, and any expenditures made by Management under the direction or with the approval of the Committee, within the bounds of this Declaration and Agreement, shall, as against the Owner be deemed necessary and properly made for such purpose.

The power and authority to determine and establish the amount and require payment of the management assessments above provided for, shall be possessed by the Committee and shall not pass to any receiver, trustee or creditor of Management, or to any other person or corporation except that in case of default for a period of more than 30 days in the payment of any amounts owing to Prudential Federal Savings and Loan Association, Mortgagee, or its successors or assigns, on the mortgage which presently exists or which may hereafter exist on the premises covered by this Declaration and Agreement, all parties to this Declaration and Agreement hereby agree that said Prudential Federal Savings and Loan Association as mortgagee, shall have the power and authority of the management Committee to manage the Holladay Villa Apartment Homes according to the provisions of this Declaration and Agreement, including the right to determine and establish the amount and require payment of the management assessments above provided for until such time as said deficiency is eliminated.

SECOND: In the event of Management's taking possession of the apartment unit either by summary proceedings, action of ejection or otherwise, because of default by the Owner in the payment of any management assessments, or in the payment of any part of the same, or on the termination of the Owner's right of occupancy, pursuant to a notice given, as provided in Article IV

hereof, upon the happenings of any event specified in subsections (a), (b), (c), (d), and (f), of Paragraph FIRST of Article IV, the Owner shall continue to remain liable hereunder and Management may at its option, from time to time, lease the apartment as the agent of the Owner, and may grant concessions in its discretion. If Management leases the apartment as agent for the Owner, it shall, after reimbursing itself for its expenses in connection therewith, including a reasonable amount for decorations, alterations and repairs in and to the premises, apply the remaining avails of such lease against the Owner's continuing obligations hereunder. An accounting to the Owner shall be made on the date a new conveyance to a previously approved new occupant is entered into for the apartment, for the surplus, if any, and if at any time or from time to time, there shall be a deficiency between the avails of such lease, if any and the Owner's continuing obligations hereunder, the Owner agrees to pay the same from time to time immediately upon demand, provided, however, that the Owner shall be under no further liability for sums, accruing after the date as of which a new conveyance to a previously approved occupant becomes effective.

If the Owner shall at any time lease the apartment, and shall default for a period of one month in the payment of any management assessments, Management may at its option, so long as such default shall continue, demand and receive from any tenant of the Owner occupying the apartment the rent due or becoming due from such tenants to the Owner up to an amount sufficient to pay all sums due from the Owner to Management, and any such payment of such rent to Management shall be sufficient payment and discharge of such tenant as between such tenant and the Owner to the extent of the amount so paid.

**THIRD:** The omission of the Committee, before the expiration of any year, to fix the management assessment hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the covenants, conditions or restrictions of this Declaration and Agreement, or a release of the Owner from the obligation to pay the management assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment shall be fixed.

**FOURTH:** Management may from time to time establish such reasonable house rules as the Committee may deem necessary for the management and control of the Holladay Villa Apartment Homes and may also from time to time alter, amend and repeal such rules, and when a copy thereof has been furnished to the Owner, they shall be taken to be a part hereof, and the Owner shall obey all such rules, and see that they are faithfully observed by the family, guests, employees, and tenants of the Owner, but Management shall not be responsible to the Owner for the non-observance or violation of such rules by any Owner or person other than employees of Management.

**FIFTH:** The Owner shall not, without the written consent of the Committee, occupy or use the apartment, or permit the same or any part thereof to be occupied, or used for any purpose other than as a private dwelling apartment home for the Owner, the family, employees and servants of the Owner. The Owner shall not permit or suffer anything to be done or kept in the apartment which will increase the rate of fire insurance on the building or contents thereof, or which will interfere with the rights of other Owners, or annoy such Owners by unreasonable noises or otherwise. The Owner will comply with all the requirements of the Board of Health and other governmental authorities, and with all laws, ordinances, rules and regulations with respect to the occupancy or use of the apartment, and if, by reason of the occupancy or use of the apartment by the Owner, the rate of fire insurance on the building or its contents shall be increased, the Owner shall become personally liable for the additional insurance premiums upon all policies covering the building, and Management shall have the right to collect the same, when charged to the Owner, as additional management assessments for the apartment.

**SIXTH:** The Owner shall not sell or lease this apartment unit, and such sale or lease shall be void unless the purchaser or tenant be first approved by the Committee. The Committee shall act upon all applications for approval of a sale or lease within 30 days after such applications have been filed with the Committee, and any application not acted upon within said time shall be deemed to have been approved by the Committee. The Committee shall be given notice in writing of any intended sale or lease. Whenever the Owner applies to the Committee for approval of a sale or lease the Committee may require that the Owner shall deliver to the Committee a copy of the contract of sale of which approval is requested. No such sale or lease shall take effect for any purpose, unless and until all of the following requirements have been completed and satisfied.

1. An agreement by the purchaser or tenant assuming and agreeing to perform and comply with all the covenants and conditions of this Declaration and Agreement, to be performed or complied with by the Owner on and after the effective date of said sale or lease, must be executed and acknowledged by the purchaser or tenant, and delivered to the Committee.

2. All management assessments and other charges due from the Owner must be paid to Management.

3. A written consent to such sale or lease must be signed by the Committee. The Committee shall not unreasonably withhold the consent provided for in this paragraph to such a sale or lease.

Whenever the Owner shall, under the provisions of this Declaration and Agreement, be permitted to sell, and shall so sell the same, and the purchaser shall assume all the unfulfilled obligations of the Owner hereunder, the Owner shall have no further liability on any of the covenants of this Declaration and Agreement to be thereafter performed.

No executor, administrator, personal representative or successor of the Owner or trustee, or receiver of the property of the Owner, or anyone to whom the interest of the Owner hereunder shall pass by law, shall be entrusted to sell or lease this apartment, or any part thereof except upon compliance with the requirements of this Paragraph SIXTH. The character of and restrictions upon the occupancy of the apartment and upon its sale or lease, as hereinbefore expressed, restricted, and limited, are an especial consideration and inducement for the granting of this Declaration and Agreement by Management to the Owner; and in the event of a violation by the Owner of the restrictions and covenants herein contained in respect to sale or lease this Declaration and Agreement may be terminated, as it applies to said Owner, at the option of Management as hereinafter provided and Management may cease performance of its covenants contained in Article II of this Declaration and Agreement and may restrain and prevent the occupancy of the apartment by anyone other than the Owner.

No demand or acceptance of management assessments from any purchaser or lessee hereof shall constitute or be deemed to constitute a consent to or approval of any sale or lease.

If the Owner of any apartment unit shall fail or refuse to comply with the requirements of this paragraph the Committee shall have the option to purchase or lease said unit upon the same terms and conditions as said unit is or was offered or leased or ownership was transferred or contracted to be transferred to the prospective lessee or transferee; such right or option shall be exercised within 60 days after actual notice to the Committee of the proposed lease or transfer or within 15 days after the prospective lessee or transferee shall take possession of any unit, whichever is later. Any attempted lease or transfer of ownership inconsistent with the exercise of said option by the Committee shall be void as against the Committee and the Committee shall be empowered to set aside any attempted sale or lease by an appropriate judicial proceeding; it is expressly provided that the right of option herein provided for shall not be the exclusive remedy to compel compliance with this section and that any remedies mentioned in Article IV shall also be available to the Committee.

SEVENTH: No Owner, as a tenant in common of the common area, shall seek a judicial partition of said common area during the life of the buildings located on subject property; in the event that any Owner of any unit may be permitted a judicial partition notwithstanding the provisions of this section, Management and all other Owners shall have an easement through the common area for ingress and egress, maintenance of utility lines, and for the exercise of any powers granted to the Committee in connection with the management and control of the common area for the benefit of the remaining Owners of units.

EIGHTH: The Owner shall at the Owner's own expense, keep the interior of the apartment and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of the apartment. Except to the extent that Management is protected by insurance against such injury, the Owner shall repair all injury to the building caused by the act, negligence or carelessness of the Owner or that of any lessee or any member of the Owner's family or of the family of any lessee or of any guest, employee or agent of the Owner of his lessee and all such repairs, redecorating, painting and varnishing shall be of a quality and kind equal to the original work. In addition to decorating and keeping the interior of the apartment in good repair, the Owner shall be responsible for the maintenance or replacement of any plumbing fixtures, lighting fixtures, refrigerators, air conditioning equipment, dishwashers, disposals, or ranges that may be in, or connected with, the apartment. Management shall not be held answerable for any repairs in or to the apartment and in case of the refusal or neglect of the Owner, during ten days after notice in writing from Management, to make such repairs or to restore the apartment to good condition, such repairs and restoration may be made by Management, which shall have the right, by its officers or authorized agents, to enter the apartment for that purpose and to collect the cost of such repairs or restoration as an additional management assessment for the apartment.

The owner shall be entitled to the exclusive use and possession of the patio areas attached to his unit and shall be responsible for the maintenance and upkeep of said patio areas.

**NINTH:** The Owner shall not, without first obtaining written consent of Management (which consent shall not be unreasonably withheld), make or permit to be made any structural alteration, improvement or addition in or to the apartment or patio areas or in or to the exterior of the building. The Owner shall not paint or decorate any portion of the exterior of the building in which his unit is located.

**TENTH:** This Declaration and Agreement is subject to any mortgages which may now or hereafter affect the same. This clause shall be self operating and no further instrument of subordination shall be required by any mortgagee. In confirmation of such subordination the Owner shall execute promptly any certificate that Management may request. Owner hereby constitutes and appoints Management the Owner's attorney in fact to execute any such certificate or certificates for and on behalf of the Owner. All parties to this Declaration and Agreement consent and agree that the grantor's interest in this Declaration and Agreement may be assigned to Prudential Federal Savings and Loan Association, its successors or assigns, as additional security on its mortgage. The Owner or subsequent purchaser may hereafter mortgage his apartment interest provided that such mortgage is consistent with the terms of this Declaration and Agreement and does not have the effect of altering any of the provisions and covenants herein contained: provided further that any such mortgage shall be subject to the prior and superior lien of any unreleased blanket mortgage heretofore or hereafter made or given by grantor, its successors or assigns.

**ELEVENTH:** In case there shall be filed a notice of mechanic's lien against the building, for or purporting to be for, labor or material alleged to have been furnished or delivered at the building or the apartment to or for the Owner, or anyone claiming under the Owner, the Owner shall forthwith cause such lien to be discharged by payment, bonding or otherwise, and, if the Owner shall fail to cause such lien to be discharged within five days after notice from Management, then Management may cause such lien to be discharged by payment, bonding or otherwise, without investigation as to the validity thereof or of any offsets or defenses thereto, and shall have the right to collect, as an additional management assessment, an amount so paid and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees and disbursements, together with interest thereon from the time or times of payment.

**TWELFTH:** The Owner shall always in good faith endeavor to observe and promote the cooperative purposes for the accomplishment of which the Holladay Villa Apartment Homes project has been built.

**THIRTEENTH:** Management and its agents shall be permitted to visit and examine the apartment at any reasonable hour of the day, and workmen may enter at any time, when authorized by Management or Management's agents, to make or facilitate repairs in any part of the building and to remove such portions of the wall, floors and ceilings of the apartment as may be required for the purpose of making such repairs, but Management shall at its own cost and expense thereafter restore the apartment to its proper and usual condition. If the Owner shall not be personally present to open and permit an entry into the apartment at any time when for any reason an entry thereto shall be necessary or permissible hereunder, Management, or Management's agents may forcibly enter the apartment without rendering Management or such agents liable to any claim or cause of action for damages by reason thereof (if during such entry the Management shall accord reasonable care to the Owner's property), and without in any manner affecting the obligations and covenants of this agreement, and the right and authority hereby reserved do not impose nor does Management assume by reason thereof, any responsibility or liability whatsoever for the care or supervision of the apartment or any of the pipes, fixtures, appliances or appurtenances therein contained or therewith in any manner connected except as may be herein specifically provided.

**FOURTEENTH:** The failure of Management to insist in any one or more instances, upon a strict performance of any of the terms, covenants, conditions or restrictions of this Declaration and Agreement, or to exercise any right or option herein contained, or to serve any notice or to institute any action or summary proceeding, or otherwise act as though this Declaration and Agreement had expired pursuant to the provisions of Article IV hereof, shall not be construed as a waiver or a relinquishment for the future, of such covenant or option or right thereafter to serve notice to have the Declaration and Agreement expire under the provisions of said Article IV, but such covenant or option or right shall continue and remain in full force and effect. The receipt by Management of management assessments, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by Management of

any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Committee, and even though a consent to lease be given, no further lease shall be made without express consent in writing given as hereinabove provided.

**FIFTEENTH:** Any notice by Management to the Owner shall be deemed to be duly given, and any demand by Management upon the Owner shall be deemed to have been duly made if enclosed in a post paid envelope addressed to the Owner at his apartment mailing address at Holladay Villa Apartment Homes in Salt Lake County, Utah, or such other address as may be designated by the Owner, and mailed by registered mail in any general or branch post office. Any notice by the Owner or Management shall be deemed to be duly given, and any demand by the Owner upon Management shall be deemed to have been duly made, if enclosed in a post paid envelope addressed to Holladay Villa Management Corporation at 2276 East 48th South, Salt Lake City, Utah, or such other address as may be designated by Management, and mailed by registered mail in any general or branch post office.

**SIXTEENTH:** If the Owner shall at any time be in default hereunder, or if Management shall institute an action or summary proceeding against the Owner based upon such default, the Owner will reimburse Management for the expense of attorneys' fees and disbursements thereby incurred by the Owner so far as the same are reasonable in amount and Management shall have the right to collect the same as an additional management assessment.

**SEVENTEENTH:** Management shall not be liable for any failure of water supply or other service to be supplied by Management hereunder, or for injury or damage to person or property caused by the elements or by another Owner or person in the building, or resulting from electricity, water, rain or snow which may leak or flow from outside or from any part of the building, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place, unless caused by or due to the negligence of Management. Management shall not be liable for interference with light or other incorporeal hereditaments by anybody other than Management. Management shall not be responsible for any damage to any automobile or other vehicle left in the care of any employee of Management by the Owner, and the Owner hereby agrees to hold Management harmless for any liability arising from any injury to person or property caused by or with such automobile or other vehicle while in the care of such employee. Management shall not be responsible for any package or article left with or entrusted to any employee of Management, or for loss of any property within or without the apartment by theft or otherwise. If Management shall furnish to the Owner any storage space or any other facility outside of the apartment, the same shall be deemed to be furnished gratuitously by Management, and if any person shall use the same, such use shall be entirely at the risk of such person, and Management shall not be liable for any loss of property therein, or for any damage or injury whatever to person or property therein or in connection therewith. No diminution or abatement of management assessments, or other compensation shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the building or to its equipment or appliances or from any action taken to comply with any law, ordinance or orders of a governmental authority.

**EIGHTEENTH:** (a) In the event that all buildings located on the subject property shall be destroyed, or that substantially all buildings shall be destroyed, so as to impair substantially the value of the remaining buildings on the subject property, by an act of God or by any other cause which is not covered by insurance, the fee title to all units shall automatically revert to Management as trustee for all the Owners, immediately upon the happening of the destruction, and all restrictions, limitations, conditions and covenants contained in this Declaration and Agreement shall determine so that Management shall hold title to the subject property in fee simple, subject to none of the provisions of this Declaration and Agreement except those provisions contained in this Paragraph

**EIGHTEENTH:** Management shall hold title to the subject property solely as a trustee for the Owners of the units, including mortgagees and trustees and beneficiaries of trust deeds executed in good faith for value, who owned the units on the subject property prior to the destruction. Management as trustee shall, as soon as possible, sell the subject property. The proceeds of said sale, plus any amounts remaining in any reserve funds maintained by Management, shall be divided among the Owners in proportion to the interest of each Owner in the common area prior to the destruction. There shall be deducted from the amount paid to each Owner any amount owing to Management by said Owner at the time of the destruction. In the case of a mortgagee or trustee or beneficiary of a trust deed given in good faith for value, Management shall first discharge the indebtedness to said mortgagee or trustee or beneficiary of a trust deed, then pay the remaining proceeds, if any, to the Owner.

(b) In the event that all buildings located on subject property shall be destroyed, or that substantially all buildings shall be destroyed, so as to impair substantially the value of the remaining buildings, and said loss shall be covered by insurance, the fee title to all units shall determine as in the case of a non-insured risk, unless within three months of the destruction the Owners of all



units, by a 2/3 majority, decide to rebuild and replace the buildings destroyed, and to apply the insurance proceeds for said purpose; in the event such a decision to rebuild is not made within the designated time, the fee title to all units shall revert to Management, subject to the same provisions as in the case of the non insured risk as provided in Paragraph EIGHTEENTH, Sub-division (a) above.

(c) If a part of the buildings, containing one or more units, located on subject property is destroyed, in such a manner that the value of the remaining buildings is not substantially impaired, the fee title to such units shall not determine, and Management shall be obligated to replace and restore the common area and units so as to restore the common area and units in the same condition as said common area and units existed prior to the destruction out of any insurance proceeds received; in the event of a noninsured risk, or if the insurance proceeds are insufficient to replace and restore the common area, Management shall either replace and restore the common area and units as they existed prior to the destruction at no expense to the unit Owner other than any expense said Owner may be required to pay as an Owner of the common area in a pro rata assessment for rebuilding, or within three months of the destruction, purchase the unit from the unit Owner at a reasonable value of said unit prior to the destruction.

#### ARTICLE IV.

It is hereby mutually agreed as follows:

FIRST: If, upon or at any time after, the happening of any of the events mentioned in subdivisions (a) to (g) inclusive of this Paragraph FIRST, Management shall give to the Owner a notice saying that this Declaration and Agreement will, as it applies to said Owner, expire on a date at least fifteen days thereafter, this Declaration and Agreement shall expire on the date so fixed in such notice, and the rights, title and interest of the Owner hereunder shall thereupon wholly cease and expire, and the Owner shall thereupon quit and surrender the apartment to Management, it being the intention of the parties hereto to create hereby a conditional limitation, and thereupon Management shall have the right to re-enter the apartment and to remove all persons and property therefrom either by summary dispossession proceedings, or by any suitable action or proceeding at law or in equity, or by force or otherwise, and no liability whatsoever shall attach to Management by reason of the exercise of the right of entry, possession and removal herein granted and reserved.

(a) If at any time during the existence of this Declaration and Agreement (1) the Owner shall be adjudged a bankrupt under the laws of the United States; or (2) a receiver of all the property of the Owner shall be appointed under any provision of the laws of the state of Utah, or under any statute of the United States, or any statute of any state of the United States and the order appointing such receiver shall not be vacated within thirty days; or (3) such Owner shall make a general assignment for the benefit of creditors; or (4) this Declaration and Agreement shall pass by operation of law or otherwise to anyone other than the original authorized Owner or a person to whom such Owner has sold the apartment in the manner herein permitted but this subsection (4) shall not be applicable if the Declaration and Agreement shall evolve upon the executors or administrators of the Owner.

(b) If at any time there be a sale or lease hereunder, without full compliance with the requirements of Paragraph SIXTH of Article III hereof.

(c) If the Owner shall be in default for a period of one month in the payment of any management assessments or additional management assessment or of any installment thereof hereinbefore provided for and shall then fail to cure such default within fifteen days after written notice thereof shall have been given by Management.

(d) If the Owner shall default in the performance of any covenant or provision hereof, other than the covenant to pay management assessments, for thirty days after written notice of such default shall have been given by Management.

(e) If at any time Management shall determine, upon the affirmative vote of two-thirds of its full Board of Directors and two thirds of the Owners vote in writing, to terminate this Declaration and Agreement.

(f) If at any time the Committee shall determine, and three fourths of the Owners shall agree in writing, that because of objectionable conduct on the part of the Owner, or a person dwelling in or visiting the apartment, the occupancy of the Owner is undesirable. Repeatedly to violate or disregard the house rules hereafter established in accordance with the provisions of this Declaration and Agreement, or to permit or tolerate a person of dissolute, loose, or immoral character to enter or remain in the building or the apartment, shall be deemed to be objectionable conduct.

(g) If at any time the building or a substantial portion thereof shall be taken by condemnation proceedings.

**SECOND:** The Owner hereby expressly waives any and all rights of redemption in case the Owner shall be dispossessed by judgment or warrant of any court or judge. The words "enter" and "entry" as used in this Declaration and Agreement are not restricted to their technical legal meaning. In the event of a breach or threatened breach by the Owner of any of the covenants or provisions hereof, Management shall have the right of injunction, and the right to invoke any remedy allowed at law or in equity, as if entry, summary proceedings, and other remedies were not herein provided for.

**THIRD:** Upon the termination of this Declaration and Agreement under the provisions of subdivisions (a), (b), (c), (d) or (f) of Paragraph FIRST of this article, the Owner shall remain liable as provided in Paragraph SECOND of Article III of this Declaration and Agreement. Upon the termination of this Declaration and Agreement, under the provisions of subdivisions (e) or (g) of Paragraph FIRST of this article, the Owner shall be and remain liable to pay all management assessments, additional management assessments and other charges due or accrued and to perform all covenants and agreements of the Owner up to the date of such termination, and on or before such termination Owner shall vacate the apartment and surrender possession thereof to Management or its assigns and upon demand of Management or its assigns shall execute, acknowledge and deliver to Management or its assigns any instrument which may be reasonably required for surrendering a ll estate and interest of the Owner in the apartment unit, the building of which it is a part or in the common area and other improvements in the Holladay Villa Apartment Homes project.

**FOURTH:** Upon the termination of this Declaration and Agreement as it applies to a particular Owner under the subdivisions (a), (b), (c), (d), and (f) of Paragraph FIRST of this article, the Owner shall surrender to Management the deed to the apartment unit owned by the Owner. Whether or not the deed is surrendered, Management may transact a new sale of the apartment unit as soon as a purchaser can be found. Upon the completion of a new sale this Declaration and Agreement shall be automatically cancelled and declared void as it applies to such previous Owner. Management shall apply the proceeds of the sale towards payment of the Owner's indebtedness hereunder, including interest, attorneys' fees, and Owners' expenses incurred by Management, and if the proceeds are sufficient to pay the same Management shall, upon compliance by the Owner with the provisions of this paragraph, pay over any surplus to Owner, but if insufficient the Owner shall be liable for the balance of the indebtedness. Upon the issuance of any such new deed to a new Owner by Management, the Owner's continuing liability hereunder shall cease and the Owner shall only be liable for management assessments and expenses accrued to that time.

#### ARTICLE V.

It is further mutually agreed as follows:

**FIRST:** The references herein to Management shall be deemed to include its successors and assigns, and references herein to the Owners shall be deemed to include the executors, administrators, legal representatives, legatees, distributees and assigns of the Owner; and the Covenants herein contained shall apply to, bind and inure to the benefit of Management and its successors and assigns, and the Owner and the executors and administrators, legal representatives, legatees, distributees, and assigns of the Owner, except as hereinbefore stated.

All present or future Owners, tenants, future tenants, or any other person that might use the facilities of the project in any manner, are subject to the provisions of this Declaration and Agreement and the mere acquisition or rental of any of the apartment units of the project or the mere act of occupancy of any of said units shall signify that the provisions of this declaration are accepted and ratified.

**SECOND:** No Owner of an apartment unit may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his apartment unit.

**THIRD:** The undivided interest in the common areas and facilities shall not be separated from the unit to which it appertains and shall be deemed conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

**FOURTH:** If more than one person is named as Owner hereunder, Management may require the signatures of all such persons in connection with any notice to be given or action to be taken by the Owner hereunder, including, without limiting the generality of the foregoing,

any request for consent to sell or lease. Each person named as Owner shall be fully liable for all of the Owner's obligations hereunder. Any notice by Management to any person named as Owner shall be sufficient, and shall have the same force and effect as though given to all persons named as Owner.

FIFTH: If any clause or provision herein contained shall be adjudged invalid, the same shall not affect the validity of any other clause or provision of this agreement, or construe any cause of action in favor of either party as against the other. In the event that it is judicially determined that a particular provision of this Declaration and Agreement violates the rule against perpetuities, the period specified in that provision shall not become invalid but instead shall be reduced to the maximum period allowed by law.

SIXTH: The provisions of this Agreement cannot be changed orally.

IN WITNESS WHEREOF: Holladay Villa Inc. has caused its corporate seal to be hereto affixed and this instrument to be signed by its president; Holladay Villa Management Corporation has caused its corporate seal to be hereto affixed and this instrument to be signed by its president, the day and year first above written.

HOLLADAY VILLA, INC.

By Howard Ricks  
President

Attest: Howard L. Ricks  
Secretary

HOLLADAY VILLA MANAGEMENT CORPORATION

By Howard Ricks  
President

Attest: Howard L. Ricks  
Secretary

STATE OF UTAH )  
COUNTY OF SALT LAKE )<sup>SS</sup>

On the 9th day of October A. D. 1962, personally appeared before me, Howard Ricks and Howard L. Ricks, who being by me duly sworn, did say, each for himself, that he, the said Howard Ricks is the president, and he, the said Howard L. Ricks is the secretary of Holladay Villa, Inc., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and the said Howard Ricks and Howard L. Ricks each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.



Mary Wight  
Notary Public

My commission expires March 30, 1965

STATE OF UTAH )  
COUNTY OF SALT LAKE )<sup>SS</sup>

On the 9th day of October A. D. 1962, personally appeared before me, Howard Ricks, and Howard L. Ricks, who being duly sworn did say, each for himself that he, the said Howard Ricks, is president, and he, the said Howard L. Ricks, is the secretary of Holladay Villa Management Corporation, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said Howard Ricks and Howard L. Ricks each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.



Mary Wight  
Notary Public

My Commission Expires March 30, 1965