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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
THE TALL OAKS PLANNED RESIDENTIAL DEVELOPMENT
(Phase I)

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ASSOCIATED
RECORDERS
SALT LAKE COUNTY
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Kathleen K. Brown

Nov 6 3 31 PM '84

KATHLEEN BROWN
RECORDER
SALT LAKE COUNTY,
UTAH

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THE TALL OAKS
DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
THE TALL OAKS PLANNED RESIDENTIAL DEVELOPMENT
(Phase I)

THIS DECLARATION is made and executed this 1st day of January, 1984, by TALL OAKS, INC., a Utah corporation (hereinafter referred to as "Developer").

I. RECITALS:

A. Developer is the record owner of that certain tract of Property more particularly described in Article III of this Declaration. Developer desires to create on said Property a residential development with landscaped areas, open spaces, recreational areas and facilities and other Common Areas.

B. Developer desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, Developer desires to subject the Property described in Article III of this Declaration to the covenants, restrictions, easements, charges, and liens hereinafter set forth.

C. Developer deems it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Developer has, in conjunction with recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, THE TALL OAKS HOMEOWNERS ASSOCIATION.

D. Developer intends to create certain Recreational Areas and Facilities for the benefit both of Owners of Lots within the Property and of Owners of interests in other residential developments which Developer anticipates may in the future be created in the vicinity of the Property, either through expansion of this Project or by a separate declaration of conditions, covenants and restrictions, provided that such other residential developments are located within the Additional Land.

NOW, THEREFORE, for the foregoing purposes, Developer declares that the Property described in Article III of this Declaration is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

II. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated.

1. Declaration shall mean this Declaration of Covenants, Conditions and Restrictions.

2. Plat shall mean and refer to any plat of a planned unit development: (i) which covers a portion of the Entire Tract; (ii) which described or creates one or more Lots; (iii) on which or in an instrument recorded in conjunction therewith there is expressed the intent that the Subdivision created by the Plat shall comprise a part of the Development; and (iv) which is filed for record in the office of the County Recorder of Salt Lake County, Utah within ten (10) years after the date on which this Declaration is so filed. Being recorded concurrently with this Declaration is a subdivision plat of "The Tall Oaks, Phase I, a Planned Residential Unit Development",

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executed and acknowledged by Developer on October 18, 1984, prepared and certified by Lee E. Robinson, (a duly registered Utah Land Surveyor, holding Registration No. 4102), consisting of one sheet and filed for record in the office of the County Recorder of Salt Lake County, Utah on _____, in Book _____, Page _____, as Entry No. _____, creating separately numbered Lots. Said subdivision plat constitutes a Plat.

3. Property shall mean and refer to the entire tract of real property covered by the Plat, a description of which is set forth in Article III of this Declaration, and shall also mean, at any given time, to any land within the Entire Tract annexed as provided in Article III of this Declaration.

4. Lot shall mean and refer to one of the separately numbered and individually described plots of land within the Entire Tract: (i) which is intended to be owned individually, rather than by an association of Owners or in common by Owners of different Lots; and (ii) which is intended to be used as the site of multiple Living Units, whether the Living Unit(s) concerned are designed to be Owner-occupied or are designed to be rented to third parties.

5. Common Areas shall mean and refer to all property owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto. The initial Common Areas shall consist of all property described in Article III of this Declaration, save and excepting all Lots contained therein.

6. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

7. Owner or Lot Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee, or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

8. Association shall mean and refer to THE TALL OAKS HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation, which will own, operate and maintain the Common Areas within the Entire Tract.

9. Board shall mean and refer to the Board of Trustees of the Association.

10. Member shall mean and refer to every person who holds membership in the Association.

11. Additional Land shall, at any point in time, mean the land in Salt Lake County, Utah, described as follows:

See Exhibit "B" attached hereto and incorporated herein by this reference.

12. Entire Tract shall mean and refer to the following described tract of land situated in Salt Lake County, Utah, together with all appurtenances thereto:

See Exhibit "C" attached hereto and incorporated herein by this reference.

13. Parcel shall mean and refer to each portion of the Entire Tract which, within ten (10) years after the date on which the Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, is separately subjected to the terms of this Declaration with the intention that it shall thereby comprise a por-

tion of the Development. The real property described in Article III of this Declaration constitutes a Parcel.

14. Recreational Areas and Facilities or Recreational Areas shall mean and refer to all recreational areas and amenities provided by Developer but to be owned by the Association for the use and benefit of all Members who own Lots within the Development.

15. Tall Oaks Planned Unit Development or the Development, at any point in time, shall mean, refer to, and consist of all Recreational areas and all subdivisions then in existence.

16. Entire Project shall, at any point in time, mean, refer to, and consist of all subdivisions which are located within the Entire Tract.

17. Managing Agent shall mean and refer to any person or entity appointed or employed as the manager or managing agent by the Association.

18. Mortgage shall mean any first mortgage, first deed of trust or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed or deed of trust; and Mortgagee shall mean any first mortgagee and any trustee or beneficiary of a first trust deed or deed of trust.

19. Developer shall mean and refer to Tall Oaks, Inc., a Utah corporation, its successors and assigns.

III. PROPERTY DESCRIPTION AND ANNEXATION

1. Submission. The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property in Salt Lake County, State of Utah:

See Exhibit "A" attached hereto and incorporated herein by this reference

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent they are located outside the Lots included within the above-described tract.

RESERVING UNTO DEVELOPER, however, such easements and rights of ingress and egress over, across, through, and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Developer or for any assignee of Developer (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct a Living Unit on each and every Lot and to improve the Common Areas with such facilities (including, but not limited to, roads, walkways, and various landscaped areas) designed for the use and enjoyment of all Members as Developer may reasonably determine to be appropriate; (ii) to create and construct such Recreational Areas and Facilities as Developer or as such assignee may reasonably determine to be appropriate; and (iii) to develop and improve, as Developer or as such assignee may in its sole discretion determine to be appropriate, each and every portion of the Entire Tract, irrespective of whether or not the particular portion of such Entire Tract developed or improved is or is to be part of the Tall Oaks

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Planned Unit Development. If, pursuant to the foregoing reservations, the above-described tract or any improvement thereon is traversed, or partially occupied by a permanent improvement or utility line, a perpetual easement for each improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereto effected shall unless sooner terminated in accordance with their terms, expire ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record.

2. Annexation by Developer. Developer may from time to time expand the Property subject to this Declaration by the annexation of all or part of the lands constituting the Additional Land. The annexation of any such land shall become effective upon the recordation in the office of the County Recorder of Salt Lake County, Utah, of a supplemental declaration which (i) describes the land to be annexed or incorporates by reference the description contained in the Plat; (ii) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to this Declaration; and (iii) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Property and subject to the provisions of the Declaration and any amendment or supplement thereto.

3. Limitation on Annexation. Developer's right to annex land to the Property shall be subject to the following limitations:

a. The annexed land must be part of the land which is Additional Land as of the date of this Declaration.

b. Developer shall not effectuate any annexation of land which would cause the total number of Living Units existing on or planned for the Property to exceed 128.

c. Developer's right to annex land to the Property shall expire ten (10) years after this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

4. Annexation by the Association. Notwithstanding the limitations on annexation set forth in Section 3 of this Article, the Association may annex land to the Property by satisfying the requirements set forth in Section 2 of this Article and by obtaining approval of such annexation from (a) the owner or owners of the land to be annexed, and (b) 2/3 of the members of each class of the Association's voting membership. Nothing in this paragraph shall be construed to require any prior approval for, or to limit or prevent, any annexation performed by Developer pursuant to Section 2 of this Article so long as such annexation satisfies the limitations set forth in Section 3 of this Article.

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5. No Obligation to Annex or Develop. Developer has no obligation hereunder to annex any additional land to the Property or to develop or preserve any portion of Additional Land in any particular way or according to any particular time schedule. No land other than the Property as defined on the date hereof and land annexed thereto in accordance with the terms of this Article shall be deemed to be subject to this Declaration, whether or not shown on any subdivision plat filed by Developer or described or referred to in any documents executed or recorded by Developer.

IV. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

1. Membership. Every Owner upon acquiring title to a Lot shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association with respect to such Lot shall automatically cease and the successor Owner shall become a member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Lot.

2. Voting Rights. The Association shall have the following described two classes of voting membership:

Class A. Class A members shall be all Owners, but excluding the Developer until the Class B membership ceases. Class A members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held.

Class B. Developer shall be the sole Class B member. The Class B member shall be entitled to three (3) votes for each Lot which it owns. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

a. When the total number of votes held by all Class A members equals the total number of votes held by the Class B member; provided, however, that Class B membership shall be restored upon the annexation of additional Lots to the Property pursuant to Article III above, if and so long as the number of Class B votes after such annexation exceeds the number of Class A votes; or

b. The expiration of ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves, but in no event shall more than one Class A vote be cast with respect to any Lot. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Lot concerned unless an objection is made at the meeting by another Owner of the same Lot, in which event a majority in interest of the co-owners as shown on the record of ownership maintained by the Association shall be entitled to cast the vote.

4. Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to him of his Lot and shall file a copy of such conveyance document with the secretary of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage;

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and the secretary of the Association shall maintain all such information in the record of ownership.

V. DUTIES AND POWERS OF THE ASSOCIATION

1. Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

a. The Association shall accept all Owners as members of the Association.

b. The Association shall accept title to all Common Areas conveyed to it by Developer.

c. The Association shall maintain, repair, replace and landscape the Common Areas. In addition to maintenance upon the Common Areas, the Association shall provide exterior maintenance of Living Units upon each Lot which is subject to assessment hereunder as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a Lot or the exterior of the Living Units and other improvements thereof is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the Reimbursement Assessment to which such Lot is subject.

Notwithstanding anything to the contrary contained in this subsection (c), each Owner shall paint, repair, or otherwise maintain the interior of the masonry patio walls and all landscaping within the patio yard area, and maintain all mechanical devices, including but not limited to, gate openers, enclosure gates, intercoms, electrical and plumbing.

d. To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

e. The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

f. The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days' written notice thereof; and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. Any Managing Agent may be an independent contractor and not an agent or employee of the Association.

2. Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation, together with its general powers as a nonprofit corporation, and the

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power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

a. The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of Article IX of this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

b. In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Lots (to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon no less than ninety (90) days' written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or otherwise provide for:

i. Construction, maintenance, repair and landscaping of the Common Areas on such terms and conditions as the Board shall deem appropriate.

ii. Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Developer, the Association, the members of the Board and the Owners;

iii. Such utility services, including (without limitation) water, sewer, trash removal, electrical, telephone and gas services, as the Board may from time to time deem desirable;

iv. The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

v. Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and

vi. Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

c. The Board may delegate to the Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to exe-

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cute any contract binding on the Association for a sum in excess of One Thousand Dollars (\$1,000.00), nor the power to sell, convey, mortgage, or encumber any Common Areas.

3. Association Rules. The Board from time to time and subject to the provisions of this Declaration, may adopt, amend, repeal and enforce rules and regulations governing, among other things: (a) the use of the Common Areas; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals on the Property; and (e) other matters concerning the use and enjoyment of the Property and the conduct of residents.

4. Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee or the Managing Agent.

VI. ASSESSMENTS

1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the special and Reimbursement Assessments, annual and special assessments and his pro rata share of all taxes levied on the assets owned by the Association, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorneys fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Development. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvements of the Common Areas, establishment and funding of a reserve to cover major repair or replacement or improvements within the Common Areas; maintenance and repair of the exteriors of Living Units; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation. The Association shall maintain an adequate reserve fund or funds for maintenance and repairs and replacement of those elements of the Common Areas that must be replaced on a periodic basis.

3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$ 3,600.00, payable monthly.

a. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased effective January 1 of each year by the Board of Directors without a vote of the membership, provided that any such increase shall not be more than twenty percent (20%) of the previous year's assessment. Such monthly assessment shall continue in effect for the following twelve (12) months, which period shall be deemed to be the assessment period.

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b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum regular assessment may be increased by the Board of Directors in an amount greater than provided for in subsection (a) hereof for the next succeeding twelve (12) calendar months, and at the end of each such period, for each succeeding period of twelve (12) months, provided that any such change shall have the approval by vote or written assent of a majority of the voting power of the Association, which shall include a majority of the votes residing in Members other than the Developer, or if the two class voting structure is still in effect as provided herein and in the Bylaws, a majority of the votes of each class of Members. The limitations hereof shall not apply to any change in the maximum and basic amounts of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

c. After consideration of current maintenance costs and future needs of the Development, the maintenance assessment may be decreased by a vote of not less than two-thirds (2/3) of the Owners present, either in person or by proxy and entitled to vote at any duly constituted meeting for such purpose, together with the written consent of sixty-six and two-thirds percent (66 2/3%) of all persons or entities holding an obligation of the Owner of any Lot in the Development secured by a mortgage or deed of trust which is a first lien on the Lot or interest of such Owner and which was made in good faith and for value.

4. Special Assessments. From and after the date set under Section 8 of this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of the Common Areas. Any such special assessment must be assented to by a majority of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

5. Quorum Requirements. The quorum at any meeting required for any action authorized by Section 3 or 4 above shall be as follows: At the first meeting called, the presence of Owners or proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 3 and 4 above) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

6. Special Assessment on Specific Lot. In addition to the monthly assessment and any special assessment authorized pursuant to Section 4 above, the Board may levy at any time Special Assessments (a) on every Lot especially benefited by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on every Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 2(a) of Article V or other provisions of this Declaration. The aggregate amount of any such Special Assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a

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special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a special Assessment against the Lots benefited.

7. Uniform Rate of Assessment. All monthly and special assessments authorized by Section 3 or 4 above shall be fixed at a uniform rate for all Lots; provided, however, that until a Lot has been both fully improved with a Living Unit and occupied for the first time for residential purposes, the monthly assessment applicable to such Lot shall be $33 \frac{1}{3}$ of the monthly assessment which would otherwise apply to such Lot. In the event that, while the Class B membership exists, assessed fees collected by the Association fail to adequately meet Association expenses, then the Developer must pay sufficient capital up to the full assessed share applicable to the specific Lot; provided, however, that Developer shall not be obligated to contribute to any reservefund(s) which may be provided by the Association. No amendment of this Declaration changing the allocation ratio of such assessments shall be valid without the consent of the Owners of all Lots adversely affected.

8. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots as of the first day of the second month following the date that a sale by Developer of the Lot concerned is closed. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in the amount of the monthly assessments, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

9. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

10. Effect of Nonpayment -- Remedies. Any assessment (whether monthly, special or Reimbursement Assessment) not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on the affected Lot. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of one and one-half percent ($1 \frac{1}{2}\%$) per month; and the Association may bring an action against the Owner who is personally liable or may foreclose its lien against the Lot, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.

11. Subordination of Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any Mortgage to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or purchaser who comes into possession of a Lot by virtue of the foreclosure of such Mortgage or the exercise of a power of sale under such Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which accrues or becomes due prior to the time such holder or purchaser takes possession of such Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Lot from the lien of any assessment thereafter becoming due.

VII. PROPERTY RIGHTS AND CONVEYANCES

1. Easement Concerning Common Areas. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the

Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access, communication, utility, drainage and sewer purposes for which such easements are intended for use in common with others.

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

Lot No. _____ as identified in the Plat recorded in Book _____, Page _____, as Entry No. _____, contained within the Tall Oaks Planned Unit Development identified in the "Declaration of Covenants, Conditions, and Restrictions of Tall Oaks Planned Unit Development" recorded in the office of the Salt Lake County Recorder in Book _____, at Page _____. TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions and Restrictions.

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

3. Transfer of Title to Common Areas. Developer shall convey to the Association title to the various Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any nondelinquent assessments, charges, or taxes, imposed by governmental or quasi-governmental authorities), as each such Common Area is substantially completed.

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

a. The right of the Association to govern by rules and regulations the use of the Common Areas by the Owners so as to provide for the enjoyment of the Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Association to impose reasonable user charges for the use of facilities (other than open areas) within the Common Areas and reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas.

b. The right of the Association to suspend an Owner's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Owner's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Board;

c. The right of the City of Salt Lake, and any other governmental or quasi-governmental body having jurisdiction over the Property to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, transporting school children, and providing any other governmental or municipal

service; and

d. The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; provided that such dedication or transfer must first be assented to in writing by (i) all holders of first Mortgages secured by Lots and (ii) the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by Developer).

5. Reservation of Access and Utility Easements. Developer reserves easements for access, electrical, gas, communications, cable television and other utility purposes and sewer, drainage and water facilities (whether servicing the Property or other premises or both) over, under, along, across and through the Property, together with the right to grant to the County of Salt Lake or any other appropriate governmental agency or to any public utility or other corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights; provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof.

6. Easements for Encroachments. If any part of the Common Areas as improved by Developer now or hereafter encroaches upon any lot or if any structure constructed by Developer on any Lot now or hereafter encroaches upon any other Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Areas due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

7. Easements for Construction and Development Activities. Developer reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Living Units on Lots, (b) improvement of the Common Areas and construction, installation and maintenance thereof, roads, walkways, buildings, structures, landscaping and other facilities designed for the use and enjoyment of some or all of the Owners, (c) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roads, walkways and other facilities planned for dedication to appropriate governmental authorities, and (d) development, improvement, use and occupancy of all or any portion of the Additional Land, whether or not such land is intended to be made part of the Property. The reservations contained in this paragraph shall expire seven (7) years after the date on which this Declaration is filed for record in the Office of the County Recorder of Salt Lake County, Utah.

VIII. USE RESTRICTIONS

1. Use of Common Area. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units.

2. Use of Lots and Living Units. All Lots are intended to be improved with Living Units and are restricted to such use. No gainful occupation, profession, trade or other non-residential use shall

be conducted on any Lot or Living Unit. Each Living Unit shall be used only as a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

3. Recreational Vehicles. No boats, trailers, large trucks, and commercial vehicles belonging to Owners or other residents of the Property shall be parked within the Development, except temporary parking. No motor vehicle of any kind shall be repaired, constructed or reconstructed upon any Lot, street or other Common Areas, except that these restrictions shall not apply to emergency repairs to vehicles.

4. Pets. No animals other than household pets shall be kept or allowed on any Lot, in any Living Unit, or within any part of the Common Areas. Whenever a pet is allowed to leave a Lot, it shall be kept on a leash or in a cage. No animals may be bred for commercial purposes. No pets shall be allowed to make an unreasonable amount of noise or otherwise to become a nuisance. No exterior structure for the care, housing or confinement of any such pets shall be maintained. Any Owner or other resident within the Development who violates this Section shall be subject to such penalty or fines as the Board by resolution or regulation may provide.

5. Antennas. No antenna for radio or television reception, air conditioning unit or other appliance or apparatus, laundry, bedding, garment or other like item, shall be placed within the Common Areas, or outside of any Living Unit. No such item placed within any Living Unit shall be located so as to be readily visible from the Common Areas.

6. Common Areas. The Common Areas of the Development shall be improved and used only for the following purposes:

- a. Vehicular and pedestrian access to and from and movement within the Development, and space for temporary vehicular parking.
- b. Recreational use by Owners and occupants of Living Units and their guests.
- c. Beautification of the Development.
- d. Privacy for the Owners and occupants of Living Units.
- e. Such other uses as shall be determined from time to time by the Board for the benefit of members of the Association, following consultation with the Architectural Control Committee.

7. Insurance. No use shall be made of any Living Unit which shall cause the improvements within the Development or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be cancelled or suspended, or cause any company issuing such insurance to refuse renewal thereof. Each Owner shall be responsible for securing insurance presently known as homeowners special form coverage (Form 3, or better).

8. Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated or maintained in or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Living Unit or appurtenant structures.

9. Maintenance and Repair. No building or structure upon any Lot shall be permitted to fall into disrepair and, subject to the requirements herein as to approval by the Architectural Control Commit-

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tee, each such building or structure at all times shall be kept in good condition and adequately painted or otherwise finished. The Owner shall maintain or arrange for the maintenance by the Association of any private pool on such Owner's Lot.

10. Nuisances. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lot, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Lot Owners of the Development. No Living Unit or Lot shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other Living Units or Lots. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (except security devices used exclusively for security purposes) shall be located or placed on Lots or in Living Units.

11. Right of Entry. During reasonable hours, any member of the Architectural Control Committee or any member of the Board, or any officer or authorized representative of any of them, shall have the right to enter upon and inspect any building, site, Living Unit or Lot, and the improvements thereon, to ascertain whether or not the provisions of the restrictions contained in Article VIII and other rules and regulations of the Board or of the Association have been or are being complied with.

12. Signs. No signs whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot, except:

- a. Such signs as may be required by legal proceedings.
- b. Residential identification signs of a combined total face area of seventy-two (72) square inches or less for each Living Unit.
- c. A "For Sale" or "For Rent" sign, to the extent permitted by the Board.

13. Trash Containers and Collection. All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Insofar as possible, such containers shall be maintained so as not to be visible from neighboring Lots except to make them available for collection and then only for the shortest time necessary to effect such collection. Each Owner must at all times and at his expense provide garbage cans and plastic liners therefor.

14. Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:

- a. Developer, so long as it has any interest in any of the Property or any portion of the Additional Land;
- b. Any Owner; or
- c. The Association.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

15. Exception for Developer. Notwithstanding the restrictions contained in this Article VIII, for the ten (10) years following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Developer shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by the Developer.

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IX. ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three-member Committee the function of which shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed the Board itself shall perform the duties required of the Committee.

2. Submission to Committee. No Living Unit, accessory or addition to a Living Unit which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Living Unit, nor of the court enclosure, except as herein otherwise mentioned, shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee. No private swimming pool may be installed on any Lot in the Development without the written approval of the Architectural Control Committee or of the Board first had and obtained.

3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures.

4. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

5. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy unimproved portions of the Common Areas and of the Lots in the vicinity of the activity.

6. Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article IX.

7. Exception for Developer. The foregoing provisions of this Article IX shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Developer on any Lot or on any part of the Common Areas and which occurs at any time during the ten (10) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

8. Developer's Obligation. Developer hereby covenants in favor of each Owner that all Living Units erected by it and all improvements of the Common Areas accomplished by it in the Development (i) shall be architecturally compatible with respect to one another; and (ii) that on or before seven (7) years from the date on which

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this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah there shall be substantially completed and useable all Common Areas of the Development, all approximately in the locations shown on the Plat.

X. INSURANCE

1. Hazard Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide, a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the common property owned by the Association (including all building service equipment, if any, and the like) with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and, if required by any Mortgagee of any Lot, Demolition and Contingent Liability from Operation of Building Laws Endorsement, an Increased Cost of Construction Endorsement, an Earthquake Damage Endorsement, and such other endorsements as any first Mortgagee of a Lot shall reasonably require. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

a. loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

b. such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

2. Liability Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Association, the Board and the Managing Agent and employees of the Association against claims for bodily injury and property damage arising out of the conditions of the Common Areas or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried by properties of comparable character and usage in the County of Salt Lake nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The Policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The Policy shall provide that the Policy may not be cancelled by the insurer unless it gives at least 180 days' prior written notice thereof to the Board and every other person in interest who shall have requested in writing such notice of the insurer. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

3. Additional Insurance; Further General Requirements. The Board may also procure insurance which shall insure the Common Areas and the Association or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:

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a. a waiver of the insurer's right of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants;

b. that it cannot be cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners;

c. that it cannot be cancelled, suspended or invalidated due to the conduct of the Association without a prior written demand that the defect be cured; and

d. that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

4. Fidelity Coverage. If the Development contains or comes to contain more than thirty (30) Living Units, the Association shall maintain fidelity coverage to protect against dishonest acts on the part of officers, trustees, managing agents, directors and employees of the Association and all others (including volunteers) who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall:

a. name the Association as an obligee;

b. be written in an amount based upon the best business judgment of the Association and shall not be less than the estimated maximum of funds, including reserve funds in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months' assessment on all Lots plus reserve funds;

c. contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression; and

d. provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ninety (90) days' prior written notice to all first Mortgagees of Lots.

5. Review of Insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot and to the holder of any Mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner.

6. Lots and Living Units Not Insured by Association.

a. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot and acts and events thereon. Accordingly, Owners of Lots in the Development shall obtain fire, extended coverage and liability insurance to the full replacement value of all Living Units constructed on such Owner's Lot.

b. If the Living Units are to be insured under a blanket or master type casualty insurance policy maintained by the Association, which shall be permitted, then such policy shall insure the Living Units with fire and extended coverage for the full insurable value, with replacement cost coverage, and agreed value endorsement. Such policy shall also be obtained from a company or companies holding a financial rating at least equal to that mentioned for hazard and liability insurance carrier mentioned in Sections 1 and 2 of this Article X, and shall also contain such other coverage and endorsements as are customary for Living Units of the type in this Development in the

State of Utah and meet all other requirements as may be required from time to time by the Mortgagees or their designees.

XI. CONDEMNATION

If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Board and shall be used promptly by the Board to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Board which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Board shall reasonably determine; provided, however, that in the event of a taking in which any Lot is eliminated, the Board shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Lot in the Association and the Common Area to such Owner and any first Mortgagee of such lot, as their interests shall appear, after deducting the proportionate share of said Lot in the cost of debris removal.

XII. RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first mortgagees shall be in effect:

1. Preservation of Regulatory Structure and Insurance. Unless the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by Developer) and such Owners' first mortgagees, if any, shall have given their prior written approval, the Association shall not be entitled:

a. by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, the exterior maintenance of Living Units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns or plantings on the Property;

b. to fail to maintain fire and extended coverage on insurable portions of the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost; or

c. to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement, or reconstruction of improvements on the Common Areas.

This Section 1 may be amended as provided in Section 2 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

2. Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (i) all first mortgagees of Lots and (ii) the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by Developer) the Association shall not be entitled:

a. by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as hereinbefore reserved;

b. to change the ratio or method of determining the ob-

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ligations, assessments, dues or other charges which may be levied against a Lot or the Owner thereof.

This Section 2 may be amended as provided in Section 2 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

3. Notice of Matters Affecting Security. The Board shall give written notice to any first Mortgagee of a Lot requesting such notice whenever:

a. there is any default by the Owner of the Lot subject to the first Mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within sixty (60) days after default occurs; or

b. damage to the Common Areas from any one occurrence exceeds \$10,000.00; or

c. there is any condemnation or taking by eminent domain of the Lot subject to Mortgage or of the Common Areas; or

d. any of the following matters come up for consideration or effectuation by the Association:

i. abandonment or termination of the Development established by this Declaration;

ii. material amendment of the Declaration or the Articles or Bylaws of the Association; or

iii. any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

4. Notice of Meetings. The Board shall give to any first Mortgagee of a Lot requesting the same, notice of all meetings of the Association; and such first mortgagees shall have the right to designate in writing a representative to attend all such meetings.

5. Right to Examine Association Records. Any first Mortgagee shall have the same right to inspect the books and records of the Association and receive audited financial statements as the Owner of the Lot securing the Mortgage; provided, that the foregoing shall not be deemed to impose upon the Association any obligation to cause its financial statements to be audited.

6. Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Developer, for the Association as owner of the Common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

7. Exemption From Any Right of First Refusal. Any first Mortgagee who obtains title to the Lot subject to the first Mortgage pursuant to the remedies provided in the first mortgage, or by foreclosure of the first mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale shall be exempt from any "right of first refusal" which would otherwise affect the Lot.

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XIII. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or the President of the Association. Any notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Managing Agent or any member of the Architectural Control Committee, or the Board, as the case may be.

2. Amendment. Except as provided below or in Article XII, this Declaration may be amended by:

- a. the affirmative vote of a majority of the Owners; and
- b. the written consent of Developer, if such amendment is adopted at any time when Developer holds Class B membership in the Association; and
- c. the filing of an instrument for record in the office of the County Recorder of Salt Lake County, Utah, executed by any two officers of the Association and certifying that such amendment has been duly adopted by the affirmative vote of a majority of the Owners and, if required, has the written consent of Developer.

Until all portions of the Additional Land are annexed to the Property or until Developer's right to annex land to the Property otherwise terminates, Developer reserves the right to amend this Declaration insofar as it applies to any land annexed at or after the date of such amendment, provided that (a) any such amendment shall be set forth in a supplemental declaration annexing land to the Property, (b) no such amendment may affect the voting rights of Owners, and (c) no such amendment may decrease the proportionate share of Association assessments which would otherwise be payable by the owners of the annexed land. Developer may at any time amend this Declaration so as to limit, diminish or eliminate all or any of the reserved rights or benefits of Developer herein, provided that any such amendment shall be effective only after being filed of record in the office of the County Recorder of Salt Lake County, Utah.

3. Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of the Owners, whether present or represented by proxy at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 3:

a. All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.

b. The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed.

c. Except as provided in the following sentence, any change in ownership of a lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would increase the total number of Class A votes outstanding shall, however, be effective in that regard and shall

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entitle the new Owner to give or withhold his consent.

d. Unless the consent of all Owners whose memberships are appurtenant to the same Lot are secured, the consent of none of such Owners shall be effective.

4. Lease Provisions. Any Owner may lease his Lot; provided, however, that any lease agreement between a Lot Owner and a Lessee must be in writing and must provide, inter alia, that:

a. The terms of the Lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association; and

b. Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the Lease.

5. Developer's Rights Assignable. All or any portion of the rights of Developer under this Declaration or in any way relating to the Property may be assigned.

6. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

7. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Developer, all parties who hereafter acquire any interest in a Lot, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Living Unit shall comply with, and all interests in all Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

8. Duration. The covenants and restrictions of this Declaration shall remain in effect for a term of twenty (20) years from the date this Declaration is filed in the office of the County Recorder of Salt Lake County, Utah, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by an instrument filed in the office of the County Recorder, executed by any two (2) officers of the Association, certifying that the Owners of at least seventy-five percent (75%) of the Lots and their first mortgagees, if any, voted in favor of such termination.

9. Developer's Right to Amend. Until all portions of the Additional Land are included in the Development, or until the right to expand the Development through the annexation of all or part of the lands constituting the Additional Land terminates, whichever event first occurs, Developer shall have, and is hereby vested with, the right to unilaterally amend this Declaration as may be reasonably necessary or desirable; (a) to more accurately express the intent of any provisions of this Declaration in light of then existing circumstances or information; (b) to better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by this Declaration; or (c) to facilitate the practical, technical, administrative, or functional annexation of any undeveloped land to the Property.

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10. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Survey Map shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED by Developer on the day and year first above written.

TALL OAKS, INC.,
A Utah Corporation

BY: [Signature]
President

STATE OF UTAH)
 : ss.
County of Salt Lake)

On this 14th day of October, 1984, personally appeared before me Sylvia Eagar, who being by me duly sworn, did say that he is the President of TALL OAKS, INC., a Utah corporation, and that the foregoing Declaration was signed on behalf of said corporation by authority of a resolution of its Board of Directors, and he duly acknowledged to me that said corporation executed the same.

[Signature]
NOTARY PUBLIC
Residing at: SLC UT

My Commission Expires:
Nov. 7, 1984



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