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 THE TREES AT MURDOCH PL  
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 BY: ROJ, DEPUTY - WI 23 p.

DECLARATION OF  
 COVENANTS, CONDITIONS AND RESTRICTIONS  
 OF  
 THE TREES AT MURDOCH WOODS  
 (A Subdivision with a Private Road)

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
THE TREES AT MURDOCH WOODS

THIS DECLARATION made and executed this 3<sup>rd</sup> day of February, 2000, by William R. Murdoch, Arthel W. Murdoch, Charles Allan Wilson, Janet Lennox M. Wilson of the City of Holladay, State of Utah (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the record owner of that certain tract of property more particularly described in Exhibit A of this Declaration.

B. Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance. To this end, and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Paragraph II of this Declaration and the various Lots now or hereafter contained within the entire tract hereinafter described, to the covenants, restrictions, easements, charges, liens hereinafter set forth.

C. Declarant 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 Homeowner's Association Easements (H.O.A.E.), to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purposes has, in conjunction with recordation of this Declaration, caused or will cause to be created under the laws of the State of Utah, THE TREES AT MURDOCH WOODS HOMEOWNERS' ASSOCIATION.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property described in Article I hereof shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations, and lien hereinafter set forth.

I. DEFINITIONS

- 1.1. Association shall mean and refer to The Trees at Murdoch Woods Homeowners' Association.
- 1.2. Board shall mean and refer to the Board of Trustees of the Association as duly elected in accordance with the terms and conditions of the covenants, conditions and restrictions of the Association.
- 1.3. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.
- 1.4. Development shall at any point in time mean, refer to, and consist of the Subdivision then in existence.
- 1.5. Homeowners' and Utility Easement shall mean those areas designated on the Plat as the Homeowners' Association and utility Easement or H.O.A.E. This includes the private street, the landscaping and the large trees along the private street, the rock wall along 6200 South, the landscaping between the rock wall and the property line on 6200 South, and the rock wall and landscaping at the end of the private street. The Association has retained the easement to improve and control landscaping for the benefit of all Owners of Lots within the Subdivision. The H.O.A.E. shown on the plat adjacent to individual lot property lines is to prevent the removal of trees in this area without the approval of the Association. The cleaning and maintaining of H.O.A.E. adjacent to property lines is the responsibility of the individual lot owner where the H.O.A.E. occurs. The exception to this provision is the north property lines of lots 5, 6, and 7. No trees are to be removed in this 12'0" wide H.O.A.E.

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1.6. 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 or with respect to the Lot concerned which are used in connection with such residence.

1.7. Lot shall mean and refer to any one of the separately numbered and individually described plots of land described on a Plat: (a) which is intended to be owned individually, rather than by an association of Owners or in common by Owners of different lots; and (b) which is intended to be used as the site of a single Living Unit.

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

1.9. Mortgage shall mean any mortgage, 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.

1.10. Mortgagee shall mean any person named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.11. 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 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.

1.12. Parcel shall mean and refer to the Property which is subject to this Declaration, which 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 the Development. The real property described in Article II of this Declaration constitutes a Parcel.

1.13. Plat shall mean and refer to any subdivision plat, or any plat or map similar to any of the foregoing: (a) which covers the Property; (b) which describes or creates one or more Lots; (c) on which or is an instrument recorded in conjunction therewith there is expressed the intent that the Subdivision created by the Plat shall comprise the Development; and (d) which is filed for record in the office of the County Recorder of Salt Lake County, Utah. Recorded concurrently with this Declaration is a Subdivision Plat of The Trees at Murdoch Woods Subdivision, and executed and acknowledged by Declarant on the 3 day of February, 2000, and creating separately numbered Lots. Said subdivision plat constitutes a Plat.

1.14. Private Street shall mean and refer to the undedicated road within the Subdivision as designated upon a Plat which the Declarant has reserved as a right-of-way for ingress and egress for pedestrian and vehicular traffic for the use, in common, of Members.

1.15. Property shall mean and refer to all of the real property which is covered by a Plat.

1.16. Subdivision shall mean and refer to the entire residential development which is created and covered by a Plat.

## II. PROPERTY DESCRIPTION

2.1. 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 situated in Salt Lake County, State of Utah.

ALSO DESCRIBED AS FOLLOWS:

'Beginning at a point 957 feet S89°56'E and 27.51 feet North from the Southwest corner of Section 15, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence N2°20'E 12.50 feet; thence N89°56'W 15.58 feet to the Southeast corner of Quail Hollow P.U.D. according to the official plat thereof on file in the office of the Salt Lake County Recorder, as Entry No. 4690280 in Book 88-10 of plats, page 104; thence N2°50'E 618.88 feet along the Easterly line of said Quail Hollow to the Southerly line of Linden Circle Subdivision according to the official plat thereof on file in the office of the Salt Lake County Recorder, as Entry No. 2865716 in Book 76-10 of plats, page 218; thence N89°30'E along the South line of said Linden Circle Subdivision 8.25 feet; thence N3°06'E along the East line of said Linden Circle Subdivision 52.98 feet to the Southerly line of the Johnsonville Subdivision according to the official plat thereof on file in the office of the Salt Lake County Recorder, as Entry No. 1374373 in Book "0" of plats, page 17; thence East along the South line of said Johnsonville Subdivision 309.06 feet to the Southeast corner thereof; thence S3°06'W 4.67 feet to a fence line; thence S88°56'E along a fence line and fence line extended 128.96 feet to a block wall; thence S1°47'W 37.01 feet along said block wall line and line extended to the South side of a rock lined ditch; thence East 4.34 feet to a fence line extended; thence S4°25'28"W 270.63 feet along an old fence line and line extended; thence S4°12'21"W 234.50 feet along said line to the North line of the Nielsen property; thence West along said Nielsen property 140.46 feet to the Northwest corner thereof; thence S2°20'W 135.97 feet; thence West 283.50 feet to the point of beginning." 6.494 Acres. 9 lots.

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 that they are located outside the Lots included with the above-described tract; provided, however, that lines and systems specifically conveyed to the Association by Declarant shall not be included within this exclusion.

ALSO RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across and through and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or any assignee of Declarant (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 (ii) to improve, but not limited to, the street, the stone walls, lighting, and various landscaped areas, designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its 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 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.

### III. MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

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

Class A. Class A Members shall be all Owners other than the Declarant 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. In no event, however, shall more than one Class A vote exist with respect to any Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for Membership in the Association. The Class B Membership shall automatically cease and be converted to a 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; 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.

The Class B Membership shall be revived in the event that Additional Land is annexed as part of the Development and such annexation results in the addition of sufficient lots to give the Developer more votes, such Developer receiving three votes for each Lot, than the Class A Members who are to receive one vote for each Lot.

3.3. 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. 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 vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

3.4. 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. Each Owner shall file a copy of such conveyance document (or contract) with the secretary of the Association with a transfer fee of \$25.00, 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; and the secretary of the Association shall maintain all such information in the records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as a "Reimbursement Assessment" in accordance with the provisions of Section 5.5.

#### IV. PROPERTY RIGHTS IN HOMEOWNERS' ASSOCIATION EASEMENTS

4.1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment in and to the H.O.A.E. and the private street. 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 Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee or contract purchaser who resides on such Member's Lot.

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

Lot No. \_\_\_\_, contained within The Trees at Murdoch Woods Subdivision as the same is identified in the Plat recorded in Book \_\_\_\_, at Page \_\_\_\_, and in the "Declaration of Covenants, Conditions and Restrictions of The Trees at Murdoch Woods Subdivision" recorded in Book \_\_\_\_ at Page \_\_\_\_, of the official records of the Salt Lake County Recorder; TOGETHER WITH a right and easement of use and enjoyment in and to the Home Owners Association Easement and private street described and provided for in said Declaration of Covenants, Conditions and Restrictions and in the Record of Survey Map in the official record of the Salt Lake County Recorder.



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

4.3. Transfer of Title. Declarant agrees to convey to the Association title to the various Home Owners Association Easement free and clear of all liens, as each such Home Owners Association Easement is substantially completed.

4.4. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Home Owners Association Easement and private street shall be subject to the following:

(a) The right of the Architectural Control Committee to approve and designate the point of access from a Lot to the private street in accordance with the requirements of Article VIII;

(b) The right of the Association to dedicate or transfer all or any part of the Home Owners Association Easement, the private street, and any sewer, water and storm drain trunk lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by (i) all holders of first Mortgages secured by Lots and (ii) by two-thirds (2/3) of the vote of each class of membership, which Members, present in person or by proxy, are entitled to cast at a meeting duly called for that purpose after written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

## V. ASSESSMENTS

5.1. 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 monthly and special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. 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; and (b) the personal obligation of the person who is the Owner 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 concerning the Home Owners Association Easement 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.

5.2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of residents of the Property, including but not limited to the appearance and aesthetics of the Development. The use made by the Association funds obtained from assessments may include, but is not limited to, maintenance, repair and improvement of the Home Owners Association Easements; establishing and funding a reserve to cover major repair or replacement of improvements within the Home Owners Association Easements; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration.

5.3. Maximum Monthly Assessment. As of the date set under Section 5.7, each Lot shall be subject to a monthly assessment of not more than Fifty Dollars (\$50.00) excluding Declarant's lots 5 and 8 so long as current owners remain in possession of said lots. From and after July 1, 2000, the maximum monthly assessment may be increased or decreased so long as the change is assented to by not less than a majority of the Members other than the Declarant (or if the two class voting structure is still in effect as provided herein, a majority of the votes of each Class of Members), present in person or represented by proxy at a meeting duly called for such purposes. Written notice setting forth the purpose of the meeting shall be sent to all Members at least Ten (10) but not more than Thirty (30) days prior to the meeting date. The Board of Trustees of the Association may from time to time and in its discretion set the amount of the monthly assessment at any sum not in excess of the then applicable maximum amount.

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5.4. Special Assessments. From and after the date set under Section 5.7, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonable capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction or unexpectedly required repair or replacement in connection with the Home Owners Association Easements. Warranty period for all construction on the site continues for 1 year following construction completion. Any such special assessments must be assented to by not less than a majority of the Members other than the Declarant (or if the two class voting structure is still in effect as provided herein, a majority of the votes of each Class of Members), 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 the meeting shall be sent to all Members at least Ten (10) but not more than Thirty (30) days prior to the meeting date.

5.5. Reimbursement Assessment on Specific Lot. In addition to the monthly assessment and any special assessment authorized pursuant to Sections 5.3 and 5.4 above, the Board may levy at any time Special Assessments (a) on each Lot specifically benefited by any improvement to adjacent roads, planting areas or other portions of the Home Owners Association Easements made on the written request of the Owner of the Lot to be charged; (b) on each Lot the Owner or occupant of which shall cause any damage to the Home Owners Association Easements necessitating repairs; and (c) on each Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 3.4, Section 6.1(c), Section 6.2(a) or other provisions of this Declaration (all or part of the foregoing being sometimes referred to as "Reimbursement Assessment"). 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 attorney's fees, 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 special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefited.

5.6. Uniform Rate of Assessment. Except as provided in Section 5.5 above, monthly and special assessments shall be fixed at a uniform rate.

5.7. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the date a deed is delivered to the purchaser of a Lot, or if the sale is by way of a contract of sale, on the date the contract is executed by the parties thereto, or the date of occupancy agreement, or the date the Owner actually takes possession of a Lot, whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy as the case may be. At least fifteen (15) days prior to the effective date of any change in the amount of the monthly assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

5.8. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot the Association shall issue a certificate stating whether or not 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 in good faith rely thereon.

5.9. Effect of Non-Payment; Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection be, constitute and remain a continuing lien on the affected Lot; provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such assessments became due. If the assessment is not paid within sixty (60) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorneys' fees, court costs, and each and every expense incurred by the Association in enforcing its rights.

## VI. DUTIES AND POWERS OF THE ASSOCIATION

6.1. Duties of the Association. Without limiting any other duties which may be imposed upon the Association by 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 maintain, repair, and replace the lighting and all the landscaping on the north side of 6200 South between the curb and the wall, on each side of the private street until the adjacent lot is developed and the area between the curb and the rock wall at the North end of the private street, including but not limited to the maintenance of all exterior trees, shrubs, grass, private streets and other common improvements. Association shall have no obligation to perform any exterior maintenance and/or repair of any part of a Living Unit or any other landscaping installed by an Owner without the Association's express agreement to maintain such landscaping. The Association shall install a common electrical meter for the common landscape lighting. The common sprinkler irrigation system shall be metered from lot 8 until each lot is developed at which time the landscape adjacent to that lot shall be sprinkler irrigated by that lot and the cost of water and maintenance shall accrue to the subject lot.

c. The Association shall have the right, but shall not be obligated, to install, maintain and replace landscaping within the Homeowner's Association Easement. Each Owner of a Lot shall nevertheless have an obligation to provide adequate water to sustain all landscaping installed upon such Owner's Lot by the Association. The Declarant will install irrigation sprinkler lines on each side of the private street and the north side of 6200 South to the rock wall until such time as the property owners install their landscaping and sprinkler systems. The water lines installed by the Declarant will then be connected to each completed landscaped lot in the adjacent Home Owners Association Easement.

d. As provided in Section 7.13, each Owner shall have the obligation to provide exterior maintenance of his Living Unit including but not limited to painting, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, and landscaping installed by an Owner or his predecessor in title. Each Owner shall paint, repair, and otherwise maintain the exterior and interior of his Living Unit and shall maintain all mechanical devices, including but not limited to, appurtenant electrical, plumbing and heating, ventilating and air conditioning systems.

e. In the event that the need for maintenance or repair of the Home Owners Association Easement as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair (and administrative expenses equal to ten (10%) percent of such costs) shall be added to and become part of the Reimbursement Assessment (as set forth in Section 5.5) to which such Lot is subject.

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

g. The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing agent to manage and control the Home Owners Association Easement improvements, 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.

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6.2. Powers and Authority of the Association. The Association shall have all the powers set forth in this declaration and shall waive the 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 VII 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 Home Owners Association Easements (and exterior repairs of Living Units to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct, maintain and repair improvements or other work upon any of the Home Owners Association Easements, 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 Home Owners Association Easements 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 to otherwise provide for:

i. Construction, maintenance, repair and landscaping of the Home Owners Association Easements (and exterior repairs of Living Units upon Lots to the extent necessitated by the failure of Owners of such Lots) 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 Declarant, the Association, the members of the Board and the Owners;

iii. Such utility services, including (without limitation) water, sewer, trash removal, snow 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 by resolution or contract 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 execute 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 Home Owners Association Easements.

6.3. 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 Home Owners Association Easements; (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; (e) the use of Living Units for business or rental purposes; and (f) other

matters concerning the use and enjoyment of the Property and the conduct of residents. The Board may also adopt additional Architectural Guidelines for the construction of Living Units. Rules and Regulations and/or Architectural Guidelines adopted by the Board may be enforced in accordance with the provisions of Section 7.18.

6.4. 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.

6.5. Insurance. The Association shall secure and at all times maintain the following insurance coverage:

(a) Policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Home Owners Association Easements. The name of the insured under each such policy shall be in form and substance similar to: "The Trees at Murdoch Woods Homeowner's Association for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear".

(b) A policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Home Owners Association Easements which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$250,000 for any one person injured; \$1,000,000 for all persons injured in any one accident; and \$100,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced.

The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance described above, the Association shall secure and all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.

(2) All policies shall be written by a company holding a rating of "AA" or better from Best's Insurance Reports.

(3) The Association shall have the authority to adjust losses.

(4) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

(5) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, the Owner, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by Owners.

6.6. Quorum Requirements. The quorum required for any action by the Members hereunder, unless otherwise specifically set forth in this Declaration, shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called 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.

## VII. USE RESTRICTIONS

7.1. Use of the Home Owners Association Easements. The Home Owners Association Easements shall be used only in a manner consistent with its community nature and with the use restrictions applicable to Lots and Living Units.

7.2. Use of Lots and Living Units. All Lots are intended to be improved with Living Units and are restricted to such use. 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 Home Owners Association Easements.

### 7.3. Building Features and Materials.

(a) Building Location. Each building shall be located such that:

(i) No building on lots 1, 2, 3, 4, and 9 shall be located any nearer than 70 feet from the center line of the private street, side and rear yard requirements shall meet city standards. Lot 6 and 7, the set backs shall be 60' from the south side of the Hammerhead line, 25' from the east and west property lines and 40' from the north property line. But in no manner shall the structure interfere with the irrigation ditch. Piping of the ditch is not allowed. Requests for exceptions can be submitted to the Architectural Committee for review. Driveways across H.O.A.C.'s for dwellings shall be submitted for approval.

(ii) For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of a building.

(iii) Nothing herein shall be construed as permitting the construction of any building within the area of the Landscape Easement, except as provided in Section 7.4.

(b) Garages. Garages must be fully enclosed, accommodate a minimum of two cars, and be equipped with an automatic garage door opener and located on the side or rear of the dwelling. There will be no front accessible garages. Carports are not permitted. Grandfather exception on Lot 8.

(c) Exterior Building Wall Materials. Brick, stone, stucco and wood are permitted for the exteriors of Living Units and accessory buildings. The use of any other materials for such buildings shall require the prior approval of the Architectural Control Committee.

(d) Roof, Soffit and Facia. Roof, soffit and facia material shall be restricted to wood shingles, or shakes, slate, non-reflective metal, tile, architectural grade asphalt or fiberglass, and other materials approved by the Architectural Control Committee. The use, design and color of roof, soffit and facia materials is subject to the approval of the Architectural Control Committee. All roof metal including, but not limited to flashings, drip metal, valley metal, caps, stacks, vents and jacks must be colored or painted to match the roof color.

(e) Accessory Structures. Patio structures, trellises, sunshades, gazebos and any other appurtenant buildings shall be constructed of materials consistent with the colors, textures and materials approved for the dwelling and shall be integral to the architecture of the house and subject to the approval of the Architectural Control Committee.

(f) Chimneys. Chimneys of approved exterior materials may not exceed the height required by appropriate governmental agencies. Exposed metal flues are not acceptable, with the exception of copper.

(g) Mailboxes. Mailboxes shall be provided and maintained by each Owner. Mailbox location, height, design (supplied by The Trees at Murdoch Woods) and color shall be consistent throughout the subdivision and shall be subject to the approval of the United States Post Office.

(h) Fences and Walls. Fencing and walls shall be masonry, stone, or wrought iron (no chain link fences). Fences and walls are to be color coordinated with the approved dwelling colors. Fences shall not extend past the front face of a Living Unit. Fence design and location must be submitted to the Architectural Control Committee for approval.

(i) Paving. Driveway and other flat paved areas may be concrete, exposed aggregate concrete, stamped concrete, asphalt, quarry tile, brick or paving blocks. Gravel areas are not permitted.

(j) Solar Equipment. Solar panels shall not be installed or maintained on any Lot or Living Unit without the prior written approval of the Architectural Control Committee.

(k) Antennas. Satellite dish (small) antennas shall be allowed provided they are screened from view and their location is approved by the Architectural Control Committee.

(l) Skylights. Skylights are to be designed as an integral part of the roof. Skylight glazing may not be reflective. Skylight framing shall be copper or colored to match adjacent roofing materials.

(m) Pools, Spas, Fountains, Gamecourts. Pools, spas, fountains and gamecourts shall be approved by the Architectural Control Committee and shall be located to avoid impacting adjacent properties with light or sound. Pool heaters and pumps must be screened from view and sound insulated from neighboring houses. Nothing herein shall be construed as permitting the construction of skateboard areas and/or ramps, which structures shall be prohibited.

(n) Sheet Metal, Flashing and Vents. All sheet metal, flashing, vents and pipes must be colored to match the material to which they are attached or from which they project, with the exception of copper.

(o) Mechanical Equipment. All air conditioning and heating equipment must be screened from view and insulated for sound attenuation. Air conditioning units are not permitted on roofs or through windows. Swamp coolers shall not be permitted as a means of air conditioning a Living Unit or an accessory building or for any other purpose.

(p) Gas and Electric Meters. Meter locations are to be designed into the architecture of the dwelling and screened from view.

(q) Exterior Lighting. Each Lot Owner is required to use in the landscape plan in the front of the house a minimum of six (6) Westerfield Model No. F51341 fluorescent ground lights to provide site lighting. In addition to the foregoing, Owners shall be permitted to utilize accent and spot lights on their Living Units.

(r) Landscape Site Preparation Guidelines. All demolition, clearing, grubbing, stripping of soil, excavation, compaction and grading must be performed within the confines of a Lot.

(s) Site Grading. Except as set forth below, neither the Owner of a Lot nor any person or persons claiming under an Owner shall at any time raise, lower, or otherwise change the grade of any Lot or Lots or otherwise permit another to change such grade from the grade established by Declarant without permission of the Architectural Control Committee.

(t) City and Other Approval. Approval of any Living Unit or other improvements by the Architectural Control Committee does not waive the requirement for any other required public agency review or permit approval process. By approving plans, the Architectural Control Committee takes no responsibility for plan conformity to any other criteria other than the requirements of this Declaration and any Architectural Guidelines. Each Owner shall comply with all applicable City and County ordinances, rules and regulations.

7.4. Landscaping and Landscape Easement. Each Owner of a Lot shall be responsible for the installation and maintenance of landscaping in accordance with the provisions of this Section 7.4 and the other provisions of this Declaration.

(a) Each Owner of a Lot shall be required to submit a Landscape Plan, consistent with the requirements of this Section, to be approved by the Architectural Control Committee in accordance with the requirements of Article V.

(b) All trees, shrubs and other vegetation to be installed and maintained upon a Lot shall comply with the approved Landscape Plan and with the following criteria. The landscape plan prepared by a landscape architect must be submitted for approval by the Architectural Control Committee prior to application for a building permit. (3) sets of drawings must be submitted. Showing the plant material layout material list and the lighting design.

(c) Each Owner of a Lot shall be responsible at his own cost and expense to maintain and water all grass, trees, plants and other landscaping which naturally grows upon the Lot, which Declarant may have installed upon such Lot and the Home Owners Association Easements during development of the Subdivision or which have been installed by Owner (or his predecessor) after approval by the Architectural Control Committee in accordance with the requirements of this Section 7.4 or Article V. Owner of lot 1 shall provide water to plants on the south side of the south wall. The Association shall maintain the landscaping.

(d) The addition to, modification of, or removal of trees and other vegetation (excluding annuals), without the prior approval of the Architectural Control Committee shall be deemed a violation of the requirements of an Owner to maintain such Lot and the Architectural Control Committee shall have the right to require Owner to restore such Lot to its prior approved condition at the sole cost of Owner. In the event Owner fails to restore such area as required herein, the Association shall have the right to restore the same and the cost of such restoration together with administrative expenses equal to ten percent (10%) of such costs, shall be added to and become part of the Reimbursement Assessment (as set forth in Section 5.5) to which such Lot is subject.

(e) The provisions of this Section relating to the removal of trees and shrubs shall not be applicable or binding upon Declarant with respect to the initial clearing, grading and landscaping of the Property including the development of and the installations of utilities serving the Subdivision.

7.5. 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 not to exceed seventy-two (72) hours. No motor vehicle of any kind shall be repaired, constructed or reconstructed upon any Lot, Private Street or other H.O.A.E., except that these restrictions shall not apply to emergency repairs to vehicles. Any motor or recreational vehicle must be kept in an enclosed garage.

7.6. Pets. No animals other than small household pets shall be kept or allowed on any Lot, or within any part of the H.O.A.E. No pets shall be caged or housed outside the dwelling unit. 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 become a nuisance. Any Owner or other resident within the Development who violates this Section shall be subject to such penalties or fines as the Board by resolution or as regulation may provide.

7.7. Home Owner Association Easements. The H.O.A.E. 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. Beautification of the Development.
- c. Privacy for the Owners and occupants of Living Units.
- d. For the prevention, control, and cutting of trees and shrubs without the approval of the Architectural Control committee.

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7.8. 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 peril 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).

7.9. 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.

7.10. Maintenance and Repair. No Living Unit, building, structure (including interiors thereof), or landscaping upon any Lot shall be permitted to fall into disrepair and, subject to the requirements herein as to approval by the Architectural Control Committee, each such building, structure, or landscaping at all times shall be kept in good condition and as appropriate, adequately painted or otherwise finished by its Owner. Such obligation shall extend, but shall not be limited to, the painting, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces.

7.11. Nuisances. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. 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 any of the foregoing, no exterior speakers, bright lights, 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.

7.12. 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 or Lot, and the improvements thereof, to ascertain whether or not the provisions of this Declaration and the rules and regulations of the Board or of the Association have been or are being complied with.

7.13. 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. Construction identification signs of a combined total face area of two thousand three hundred four (2,304) square inches or less for each Living Unit.
- c. A "For Sale" sign, to the extent permitted by the Board.

7.14. Trash Containers and Collection. All garbage and trash shall be placed and kept in covered containers inside each residence or adjacent structure. Insofar as possible, such containers shall be maintained 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. Containers shall be of type approved and supplied by the County waste collection.

7.15. 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. Declarant, so long as it has any interest in any of the Property;
- 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.

7.16. Exception for Declarant. Notwithstanding the restrictions contained in this Article VI, 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, Declarant shall have the right to use any Lot or Living Unit owned by it, and any part of the Home Owners Association Easements reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Home Owners Association Easements or improvement and/or sale of all Lots owned by the Declarant.

## VIII. ARCHITECTURAL CONTROL

8.1. Architectural Control Committee. The Declarant shall initially assume the role of the Committee, the function of which shall be to ensure 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. The Declarant shall appoint a Committee after January 1, 2001.

8.2. Submission to Committee. No Living Unit, accessory building or structure or addition to a Living Unit and no landscape additions and changes shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Living Unit, nor of any court enclosure, except as herein otherwise mentioned, shall be performed, unless three (3) sets of preliminary plans and specifications therefor have first been submitted to and approved by the Committee. All such plans and specifications shall be consistent with Architectural Guidelines which shall be from time to time adopted by the Committee, and shall include, among other matters, (i) a plot plan showing contour lines, drainage and grading plan; (ii) drawings and specifications showing floor plans, elevations, and a sample of exterior materials and colors; (iii) working drawings; and (iv) construction specifications.

### 8.3 Procedure and Content of Drawings for Submittal

#### Preliminary plans

- First submittal must show general form and plan of the house. The drawings must be drawn by a professional and be of sufficient quality to communicate to the review committee the type and extent of exterior materials on all four sides of the house. The house must have the same appearance as to materials on all sides.
- The first submittal must include a board containing samples of all the proposed materials. The materials will be the exact color, pattern and texture to be used. Two boards will be prepared, one board stays with the H.O.A.C.
- Submit a \$300 check made out to The Trees at Murdoch Place Home Owners Association. Submittals will be delivered to Kevin Watts Architects, 5200 South Highland Drive Suite # 100, Salt Lake City, Utah.
- After an approved preliminary submission to the H.O.A.C. the Owner will prepare the final plans (construction).
- The specifications will show the manufacturers name or supplier for all exterior materials that were approved at the preliminary submittal stage.
- An approval letter from the Architectural Control Committee will be required to secure a Building Permit.
- Submit a set of Landscape Drawings prepared by a professional landscape architect. Show species, size and quantities of plant material proposed. The drawings will show proposed exterior materials, play areas, patios, drives, walks, pools, etc. Location of the minimum (6) exterior ground lights (Westerfield) will be shown.

8.4. 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 are in compliance with the requirements of this Declaration and conform to and harmonize with existing surroundings and structures and that such proposed improvements enhance the value and aesthetics of the Project. The color of each residence will be carefully reviewed and is subject to the approval of the Committee.

8.5. Approval Procedure. Any plans and specifications submitted to the Committee shall be submitted on a form provided by the Committee and in duplicate. A preliminary review of design drawings is recommended with a final review

to be made of working drawings. Upon completion of each review, one set of plans will be retained by the Committee and the remaining sets of plans will be returned to the Owner.

The following architectural review fees (made payable to the Association) are required with the submittal of plans and specifications: \$300.00 for architectural, landscaping, fencing and lighting drawings.

All plans and specifications shall be approved or disapproved by the Committee in writing within twenty-one (21) 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.

8.6. Bond/Security Deposit. The Architectural Control Committee will require that an Owner post a bond, cash security deposit or irrevocable letter of credit in a form satisfactory to the Architectural Review Committee, in an amount not to exceed \$3,000.00, in favor of the Association, as a condition to approving any proposed work or improvement. No person shall commence any work or improvement until any and all such bonds, security deposits and letters of credit have been properly posted with the Association.

The deposit is intended to assure the proper clean-up of dirt and debris and the repair of any damage to the landscaping, streets or other property within the Subdivision, caused by Owner or his agents in the construction of improvements.

8.7. Address for Submittal. Plans and specifications for the construction and installation of any and all improvements within The Trees at Murdoch Woods shall be submitted and approved by the Architectural Control Committee (prior to submittal to any required governmental agency) at the following address:

The Trees at Murdoch Woods Homeowners Association  
c/o Kevin Watts Architects  
5200 South Highland Drive, Suite 100  
Salt Lake City, Utah 84117

The Architectural Committee has the authority to change the address for the submittal of plans and specifications.

8.8. Construction. (a) Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion:

(i) The exterior construction of all structures on any Lot shall be completed within a period of eighteen (18) months following commencement of construction.

(ii) The front yard of each Lot shall be landscaped within a period of one (1) year following completion or occupancy of the Living Unit.

(iii) Side and rear yards shall be landscaped within a period of one (1) years following completion or occupancy of each dwelling.

If reasonably necessary to enable such improvement, construction, landscaping or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupancy of unimproved portions of the H.O.A.E. in the vicinity of the activity.

(b) Owners and builders shall clean up all trash and debris on the construction site at the end of each week and deposit the same in dumpsters provided by Owners and builders for such purposes. Such dumpsters shall be emptied to an approved dumping location off-site of the development as periodically required. Lightweight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials off the construction site. Owners are prohibited from dumping, burying or burning trash anywhere on the lot. During the construction period, each construction site shall be kept neat; building materials shall not be stored on public or private roads and/or open spaces.

Each property Owner shall be responsible for providing adequate sanitary facilities for his construction personnel.

8.9. 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 VIII.

8.10. Exception for Declarant. The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the H.O.A.E. and which occurs at any time during the seven (7) 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.

8.11. Declarant's Obligation. Declarant hereby covenants in favor of each Owner that all improvements of the H.O.A.E. be 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 this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, there shall be substantially completed and usable all H.O.A.E.'s of the Subdivision, all approximately in the locations shown on the Plat.

#### IX. RIGHTS OF FIRST MORTGAGEE

Notwithstanding anything to the contrary contained herein, the following provisions shall apply:

9.1. Notice of Default. In the event an Owner neglects for a period of thirty (30) days or more to cure any failure on his part to perform his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage covering such Owner's Lot.

9.2. Abandonment, Termination, Etc. Unless all of the holders of first mortgages on the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission or otherwise:

(a) To abandon or terminate the project or to abandon or terminate the arrangement which was established by the Declarant and the Plat of the Project:

(b) To partition or subdivide any Lot or the Common Areas:

(c) To abandon, partition, subdivide, encumber, sell, hypothecate, transfer or otherwise encumber all or any part of the H.O.A.E. except for the creating of easements and similar purposes consistent with the intended use of the H.O.A.E. or

(d) To use hazard insurance proceeds resulting from damage to any part of the development for any purposes other than the repair, replacement, or reconstruction of such improvements.

9.3. Notice of Substantial Damage or Destruction. The Association shall notify all institutional holders of any first mortgage lien or equivalent security interest on a Lot in writing in the event that there occurs any substantial damage to or destruction of any Living Unit or any part of the H.O.A.E. involving an amount in excess of, or reasonably estimated to be in excess of \$15,000. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction.

9.4. Condemnation or Eminent Domain Proceedings. The Association shall give written notice to all institutional holders of any first mortgage lien or equivalent security interest of any condemnation proceedings or proposed acquisition of a Living Unit or of any portion of the H.O.A.E. within ten (10) days after the Association learns of the same.

9.5. Hazard Policy to Include Standard Mortgagee Clause. Each hazard policy of the insurance shall include the standard mortgagee clause which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear, or shall be otherwise endorsed to fully protect the interest of mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each mortgagee at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

9.6. Rights Upon Foreclosure of Mortgage. The lien of the assessments provided in Section 1, Article V shall be subordinate to the lien of any First Mortgage upon such Lot; and the holder of a first mortgage (or deed of trust) on a Lot who comes into possession of the Lot by virtue of foreclosure of such first Mortgage, or in lieu of foreclosure obtains possession by deed or assignment, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Lots including the mortgage Lot.

9.7. Mortgagees' Rights Concerning Amendments. No material amendment to this Declaration, the By-Laws or the Articles of Incorporation of the Association shall be accomplished or effective unless at least two-thirds (2/3) of the mortgagees (based on one vote for each mortgagee) of the individual Lots have given their prior written approval to such amendment.

## X. MISCELLANEOUS

10.1. Notices. Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if mailed, postage prepaid, to the person who appears as a Member or Owner, at the latest address for such person appearing in the records of the Association at the time of mailing.

10.2. Amendment. Subject to the provisions of Section 2 of Article VIII of this Declaration any amendment hereto shall require (i) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes, which Members present in person or represent by proxy are entitled to cast at a meeting duly called for such purpose; and so long as the Class B membership exists, (ii) the written consent of the Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of the Class A Membership shall constitute a quorum. If the quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3), at which a quorum shall be one-half (1/2) 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. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the President or Vice President of the Association, and by the Declarant if the Class B Membership then exists, and shall also be approved by the Salt Lake County Attorney. In such instrument the President or Vice President of the Association shall certify that the vote required by this Section for amendment has occurred.

10.3. Consent in Lieu of Voting. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership considered. The following additional provisions shall govern any application of this Section 10.3:

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

(b) The total number of votes required for authorization or approval under this Section 3 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 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 otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

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

10.4. Lease Provision. Any Owner may lease his Lot and such buildings as are situated thereon; 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 the By-Laws; and

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

10.5. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the property may be assigned.

10.6. Dissolution. Subject to the restrictions set forth in Article IX of this Declaration pertaining to mortgagee protection, the Association may be dissolved by the affirmative assent in writing of two-thirds (2/3) of the votes of each class membership. Upon dissolution of the Association all of its assets (including the Common Areas) may be dedicated or transferred to an appropriate public agency or authority to be used for purposes similar to those provided for in the By-laws, the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a non profit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the H.O.A.E.'s, common access roadways, curbs, gutters and sidewalks on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth in Article V of this Declaration.

10.7. Declarant's Covenant to Construct H.O.A.E. Declarant hereby covenants to construct and complete all H.O.A.E. improvements and amenities indicated on the Plat within two (2) years of the filing of this Declaration in the office of the County Recorder of Salt Lake County, Utah.

10.8. Enforcement by The City of Holladay. If the Association fails to maintain the Common Areas, the common access roadways, along with the curbs, gutters and sidewalk, in good order and condition, Holladay City shall have the right, but not the obligation, upon giving the Association thirty (30) days notice in writing, to step in and do the necessary maintenance and management with the same right to lien the Lots and collect the costs thereof against the Owners as the Association has under this Declaration shall not affect the validity or enforceability of the remainder hereof.

10.9. 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, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

10.10. Reservation of Right to Buy. In the event that construction of a Living Unit is not commenced within five (5) years from the date of closing of a sale of a Lot by Declarant to an Owner and notwithstanding that such Lot may be owned by an Owner who did not purchase the Lot directly from Declarant, Declarant shall have the right to repurchase such Lot at the appraised value of the Lot as determined by Owner and Declarant in conjunction with a qualified appraisal. In the event that Declarant elects to repurchase a Lot pursuant to the provisions of this Section 10.10, Declarant shall give written notice of its election to the then Owner of such Lot and such repurchase shall be closed within sixty (60) days after the date of such notice at a location acceptable to Declarant. Declarant's right to repurchase any Lot within the Development

