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REQUEST: KAREN WILLIAMS

FOURTH
AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
WILLOWBEND WEST SUBDIVISION
A RESIDENTIAL PLANNED UNIT DEVELOPMENT

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FOURTH
AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
WILLOWBEND WEST SUBDIVISION
A RESIDENTIAL PLANNED UNIT DEVELOPMENT

THIS FOURTH AMENDED AND RESTATED DECLARATION is made and executed this 26th day of MAY, 2004, by Willowbend West Homeowners Association, Inc., a nonprofit corporation, organized under the laws of the State of Utah, hereinafter referred to as Declarant.

Recitals:

- A. Declarant is a record owner of that certain tract of Property more particularly described in Article II of this Declaration (the "Property"). Declarant desires to create on said Property a "residential development" with open spaces and other Common Areas. The Original Developer has recorded a Declaration of Covenants, Conditions and Restrictions of Willowbend West Subdivision on February 17, 1982, as Entry No. 188660, in Book M212, at page 286-315 ("Original Declaration"), and an Amended and Restated Declaration of Conditions and Restrictions of Willowbend West Subdivision on July 15, 1982, as Entry No. 193627, in Book M226, at Page 129-156 ("Amended and Restated Declaration"), and a Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Willowbend West Subdivision on December 30, 1982, as Entry No. 199851, in Book M244, at Page 142-170 ("Second Amended and Restated Declaration"), and a Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of Willowbend West Subdivision on April 4, 1983, as Entry No. 204170, in Book M256, at Page 240-268 ("Third Amended and Restated Declaration"), all in the office of the County Recorder, Summit County, Utah.
- B. Declarant desires to provide for preservation of the values and amenities in said development and for the maintenance of the Common Areas. For the benefit of the Property and of the owners thereof, Declarant desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.
- C. Declarant was created for the efficient preservation of the values and amenities in the development, 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.

- D. Declarant desires to amend and restate in its entirety all prior Amended and Restated Declaration's and to supercede in their entirety the prior recorded documents referenced in Paragraph A hereinabove, except as to the initial effective date of the establishment of the Subdivision (as hereinafter defined). Pursuant to Section XVI, Sections 3 and 4 of the Third Amended and Restated Declaration, Declarant has obtained the requisite written consent of Members of the Association to amend the Declaration.
- E. Declarant is the successor nonprofit corporation (homeowners association) of this property. The first having been Willowbend West Association of Unit Owners, a Utah nonprofit corporation; and the second being Willowbend West Homeowners Association, Inc. the successor corporation.

NOW, THEREFORE, for the foregoing purposes, Declarant declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth, which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

I. DEFINITIONS

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

1. Declaration shall mean and refer to this Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions.
2. Plat shall mean and refer to the subdivision plat of Willowbend West Subdivision, a Residential Planned Unit Development, executed and acknowledged by the original Developer on the 26th day of January, 1981, prepared by The Consortium, Inc. and certified by Steven L. Youngberg, a duly registered land surveyor holding Certificate No. 4503, and filed for record in the office of the County Recorder of Summit County, Utah, on February 17, 1982, as Entry No. 188659. The above referenced Plat is incorporated by reference herein.
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 II of this Declaration.
4. Lot shall mean and refer to any of the 26 separately numbered and individually described lots shown on the Plat.

5. Common Areas shall mean and refer to the parts of the Property owned or to be owned by the Association, which shall be all of the Property which is not included within the Lots, including all improvements other than utility lines now or hereafter constructed or located thereon which do not serve the Common Areas exclusively.
6. Unit shall mean and refer to a structure which is designed and intended for ownership and use as a permanent single-family residence, together with all improvements located on the same numbered Lot which are used in conjunction with such residence. There are three different types of Units, a Model A Unit containing three bedrooms, three baths and a loft, a Model B Unit containing three bedrooms and two and one-half baths and a Model C Unit containing three bedrooms and two and one-half baths. The term Unit can also mean the combined Lot and structure built on said Lot.
7. Owner shall mean and refer to the person, persons, or other legal entity, who is the owner of record (in the office of the County Recorder of Summit County, Utah) of a fee or an undivided fee interest in a Lot and the corresponding Unit. 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 Willowbend West Homeowners Association, Inc., a Utah nonprofit corporation.
9. Member shall mean and refer to every person who holds membership in the Association.
10. Board shall mean the Board of Directors elected by the Association pursuant to Section X of this Declaration.
11. Subdivision shall mean and refer to Willowbend West Subdivision, a Residential Planned Unit Development.

II. PROPERTY DESCRIPTION

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 Summit County, State of Utah:

BEGINNING at a point N 89°15'54" E, 2960.86 feet along the section line and North, 581.12 feet from the Southwest Corner of Section 30 Township 1 South, Range 4 East, Salt Lake Base & Meridian; and thence running

North, 85.00 feet; thence N 22°00'00" E, 106.00 feet; thence N 6°00'00" E 264.08 feet to a point on a 387.55 foot radius curve to the left (radius point bears N 7°09'01" W), said point also being on the Southern boundary of Silver Springs Plat 1A and on the centerline of Willow Creek Road; thence Northeasterly along said curve 235.79 feet; thence leaving the boundary of said Plat 1A S 42°00'34" E, 142.40 feet to a point on a 210.45 foot radius curve to the right (radius point bears S 47°59'26" W); thence Southeasterly along said curve 210.78 feet; thence S 15°22'33" W, 150.71 feet to a point on a 550.00 foot radius curve to the left (radius point bears S 74°07'27" E); thence Southeasterly along said curve 96.41 feet; thence West, 363.02 feet to the point of BEGINNING.

Said property is more particularly described on the Plat.

III. MEMBERSHIP, VOTING RIGHTS AND MULTIPLE OWNERSHIP INTERESTS

1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Unit in which the Owner has the necessary interest, and shall not be separated from the Unit to which it appertains.
2. Voting Rights. At any meeting of the Association, each Owner shall be entitled to one vote for each Unit owned. If there is more than one Owner with respect to a particular Unit, any or all of such Owners may attend any meeting of the Association but it shall be necessary for all such Owners present, by proxy or by written ballot, to act unanimously in order to cast the votes appertaining to their Unit.
3. Multiple Ownership Interests. In the event there is more than one Owner of a Unit, the vote(s) relating to such Unit 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, by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the Unit. 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.

IV. FORM OF TITLE

1. Easement of Enjoyment. Each Owner shall have a 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 Unit 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 in or occupies such Owner's Unit.

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

"Lot NO. _____ contained within the Willowbend West Subdivision, a Residential Planned Unit Development, as the same is identified in the Plat recorded as Entry No. 188659 and in the "Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions of Willowbend West Subdivision, a Residential Planned Unit Development," both references to the Official Records of Summit County, Utah.

TOGETHER WITH a non-exclusive right and easement of use and enjoyment in and to the Common Areas described, and as provided for, subject to such Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions.

TOGETHER WITH an easement for the continuance of all encroachments by the Lot on any adjoining Lots or Common Areas now existing as a result of construction of a Unit on the Lot, or which may come into existence as a result of settling or shifting of the Unit."

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 Unit.

3. **Limitation on Easement.** A 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 suspend a Owner's voting rights for any period during which an assessment on such Owner's Unit remains unpaid and for a period exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Association;
- (b) The right of the Association to impose reasonable limitations and use restrictions on the number of guests per Owner who at any given time are permitted to use the Common Areas or that portion of a Lot that lies outside of a Unit;
- (c) The right of Summit County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway or open area contained within the Property for purposes of

providing police and fire protection, transporting school children and providing any other governmental or municipal, service;

- (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. Any such dedication or transfer must, however, be assented to by 51% of the vote of Owners present, by proxy or by written ballot are entitled to Cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date; and
- (e) Easements for utility lines and equipment required and other services for the Units and/or Common Areas.

V. ASSESSMENTS

1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Unit, be deemed to covenant and agree to pay to the Association the common and the 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: (i) a charge and continuing lien upon the Unit with respect to which such assessment is made; and (ii) the personal obligation of the person who is the Owner of the Unit at the time the assessment falls due. No Owner may exempt himself or his interest in a Unit from liability for payment or assessments by waiver of his rights concerning the Common Areas or by abandonment of his Unit.
2. Purpose of Assessments. Common assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of residents of the Property and for the improvement and maintenance of the Common Areas. 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 improvement of the exteriors of Units and of those portions of Lots not occupied by Units; management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; utility charges for Common Areas and non-separately metered utility charges; dues and assessment to the Silver Springs Master Association; 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.
3. Maximum Common Assessment. The common assessment may be increased or decreased annually by not more than 10% of the current assessment by the

without Owners approval. If otherwise, the common assessment may be increased or decreased, so long as the change is assented to by 51% of the votes which Owners present, or represented by proxy or by written ballot are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date. Notwithstanding the foregoing, any increase in the common assessment attributable to an actual increase in real property taxes, water user fees, master association fees, insurance, or other special user fees shall not require the approval of the Owners.

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 common assessments; or
 - (b) the cost of any construction, reconstruction or unexpectedly required repair or replacement of an improvement or of personal property upon the Common Areas. Any such special assessment must be assented to by 51% of the votes of the membership, which Owners present, or represented by proxy or by written ballot are entitled to cast at a meeting duly called for that purpose. Written notice setting forth the purpose of the 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 required for any action authorized by Section 3 or 4 above shall be as follows: At the first meeting called the presence of Owners present, or by proxies or by written ballot entitled to cast 51% of all the votes residing in Owners 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 Sections 3 and 4) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. Such subsequent meeting shall be held within forty-five (45) days following the immediately preceding meeting.
6. **Uniform Rate of Assessment.** Both common and special assessments shall be fixed at a uniform rate for all Units.
7. **Common Assessment Due Dates.** The common assessments provided for herein shall commence as to all Units on the first day of the month. At least fifteen (15) days prior to the effective date of any change in amount of the common assessment the Association shall give each Owner written notice of the amount and first due date of the assessment concerned. Owners shall pay the assessments in monthly installments, one installment due the first day of each calendar month.

8. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Unit, the Association shall issue a certificate stating whether or not all assessments with respect to such Unit 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.
9. Effect of Nonpayment - Remedies. Any assessment not paid when due, together with the hereinafter provided for interest and costs of collection, shall be, constitute and remain a continuing lien on the Unit. The person, persons or other legal entity who is the Owner of the Unit at the time the assessment falls due shall be and remain personally liable for payment. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within ten (10) days after the date on which it becomes due the amount thereof shall bear interest from the date of delinquency at the rate of 18% per annum from the date such assessment becomes due until paid. In addition, such assessment shall be subject to a penalty for late payment of Three Dollars (\$3.00) per day from the date the assessment is due until paid. The Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Unit in the manner provided for mortgages, deeds of trust or other liens or otherwise as provided by law. Any judgment obtained by the Association shall include reasonable attorneys' fees, court costs and each and every other reasonable expense incurred by the Association in enforcing its rights.
10. Liens as a Result of Non Payment of Assessments.
- (1) Every Owner shall pay the common and special assessments for their Unit. Payment shall be in the amounts and at the times determined by the Association in accordance with the terms of the Declaration.
- (2) (a) An assessment levied against each Unit is a debt of the Owner at the time the assessment is made and is collectible as such.
- (b) The Association is entitled to recover all expenses incurred by the Association in collecting any unpaid assessment, including reasonable attorneys' fees, whether an action is brought against an Owner, or whether a suit to foreclose the lien upon the unit is instituted.
- (3) Suit to recover a money judgment for any unpaid assessment is maintainable without foreclosing or waiving the lien securing it. The prevailing party in the action is entitled to recover its costs of suit and reasonable attorneys' fees.
- (4) (a) If any Owner fails or refuses to pay an assessment when due, that amount constitutes a lien on the interest of the Owner in the property, and upon the recording of notice of lien by the Association it is a lien upon the Owner's

interest in the property prior to all other liens and encumbrances, recorded or unrecorded, except:

- (i) tax and special assessment liens on the unit in favor of any assessing unit or special improvement district; and
- (ii) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

(b) The lien for nonpayment of an assessment may be enforced by sale or foreclosure of the Owner's interest by the Association. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law.

(c) In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings and reasonable attorneys' fees. In the case of foreclosure, the Owner shall pay a reasonable rental for the unit, and the plaintiff in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security.

(d) The Association may bid in the unit at foreclosure or other sale and hold, lease, mortgage, or convey the unit.

(5) (a) If the Owner of a Unit who is leasing the Unit fails to pay any assessment for a period of more than 60 days after it is due and payable, the Association, may demand the tenant to pay to the Association all future lease payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid.

(b) The Association must give the Owner written notice of its intent to demand full payment from the tenant. This notice shall:

- (i) provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within 15 days;
- (ii) state the amount of the assessment due, including any interest or late payment fee;
- (iii) state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and
- (iv) provide the requirements and rights described in Subsections (5)(b) through (f).

(c) If the Owner fails to pay the amount of the assessment due by the date specified in the notice, the Association may deliver written notice to the tenant,

that demands future payments due to the owner be paid to the association pursuant to Subsection (5)(d). A copy of the notice must be mailed to the Owner. The notice provided to the tenant must state:

- (i) that due to the Owner's failure to pay the assessment within the time period allowed, the Owner has been notified of the Association's intent to collect all lease payments due to the Association pursuant to Subsection (5)(a);
- (ii) that until notification by the Association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the Owner are to be paid to the Association; and
- (iii) payment by the tenant to the Association in compliance with this Subsection (5) will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection (5) suit or other action may not be initiated by the Owner against the tenant for failure to pay.

(d) All funds paid to the Association pursuant to Subsection (5)(c) shall be deposited in a separate account and disbursed to the Association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the Owner within five business days of payment in full to the association.

(e) Within five business days of payment in full of the assessment, including any interest or late payment fee, the Association must notify the tenant in writing that future lease payments are no longer due to the Association. A copy of this notification must be mailed to the Owner.

(f) As used in this Subsection (5), "lease" or "leasing" means regular, exclusive occupancy of a unit by any person or persons, other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

(6) (a) The Association shall, upon the written request of any Owner and upon payment of a reasonable fee not to exceed \$10, issue a written statement indicating any unpaid assessments with respect to the unit covered by the request. This written statement of unpaid assessments is conclusive upon the remaining Owners and upon the Association in favor of all persons who rely on the written statement in good faith.

(b) Unless the Association complies with the request for a statement of any unpaid assessments within ten days, all unpaid assessments which became due prior to the date the request was made are subordinate to the lien held by the person requesting the statement.

(7) Any encumbrancer holding a lien on a Unit may pay any unpaid assessment due with respect to the Unit. Upon payment, the encumbrancer has a lien on the Unit for the amounts paid.

(8) Remedies provided in this section, by law, or in equity are not considered to be mutually exclusive.

VI. OPERATION AND MAINTENANCE

1. Maintenance of Units. Each Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of the other Units or Common Areas. The Association shall have no obligation regarding maintenance or care of the interior of Units.
2. Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas, as may be necessary or desirable to keep them safe, clean, functional, attractive and generally in good condition and repair. In addition, the Association shall provide for maintenance and upkeep of any portion of a Lot which lies between the extremities of the Unit situated thereon and the boundaries of the Lot.
3. Utilities. The Association shall pay for all utility services furnished to the Common Areas.
4. Manager. The Association may carry out through a Property Manager any of its functions which are properly the subject of delegation and shall employ a Property Manager pursuant to a written management agreement which shall carry out the duties and obligations of the Association to the Owners. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Property for the benefit of the Association and the Owners and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

VII. INSURANCE

1. Association to Obtain Insurance. The Association shall obtain and maintain at all times insurance of the type and kind as provided herein and including insurance for such other risks of a similar or dissimilar nature as are or shall hereafter customarily be covered with respect to other properties similar to the Property in construction, design and use. The Association shall make every reasonable effort to obtain insurance with the following provisions or endorsements:

- (a) Exclusive authority to adjust losses shall be vested in the Association as insurance trustee;
 - (b) The insurance coverage shall not be brought into contribution with insurance purchased by individual Owners or their respective mortgagees;
 - (c) Each Owner may obtain additional insurance covering his real property interest at his own expense;
 - (d) The insurer waives its right of subrogation as to any claims against each Owner;
 - (e) The insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of any one or more individual Owners or their respective tenants, employees, agents, contractors or guests; and
 - (f) The insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of any officer or employee of the Association or its employees, agents or contractors, without prior demand in writing that the Association cure the defect, and then only if the defect is not cured within fifteen (15) days after receipt of said demand by the Association.
2. **Common Area Insurance.** The Association, for the benefit of the Common Areas and the Owners, shall maintain a policy or policies of casualty and multi-risk "all peril" insurance on the Common Areas, with the provisions and endorsements as set forth in Paragraph 1 above, if obtainable, and with extended coverage endorsements for the full insurable replacement value of the common personal property and fixtures, payable to the Association as insurance trustee to be disbursed in accordance with the terms of this Declaration. The limits and coverage of said insurance shall be reviewed at least annually by the Association's Board of Directors. Said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees, if any, of each Unit. Insurance of the Common Areas shall be a common expense assessed to all Owners.
3. **Liability Insurance.** The Association shall obtain a policy or policies of insurance insuring the Association, its officers, directors and employees and the Owners and their respective tenants, servants, agents or guests against any liability to the public or to the Owners, members of the households of Owners and their respective invitees or tenants arising out of and incident to the ownership and/or use of the Common Areas, including the personal liability exposure of the Owners incident to the ownership and/or use of the Common Areas. Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) for any one person injured in any one occurrence, and shall not be less than Three Hundred Thousand Dollars (\$300,000) for property damage in each occurrence.

The limits in coverage of said liability policy or policies shall be reviewed at least annually by the Association's Board of Directors and increased or decreased at its discretion, provided that such limits shall not fall below the minimums specified in this paragraph. Said policy or policies shall be issued on a comprehensive liability basis and if possible shall provide cross-liability endorsements for possible claims of any one or more or group of insured's against any one or more or group of insured's without prejudice to the right of a named insured under the policies to maintain an action against another named insured. In addition, the liability insurance must provide the following:

- (a) All Owners as a class are to be named as additional insured's in a policy issued to the Association.
 - (b) The insurer waives its right to subrogation under the policy against any Owner or member of Owner's household.
 - (c) No act or omission by an Owner, unless acting within the scope of his or her authority on behalf of the Association, will void the policy or operate as a condition to recovery under the policy by any other person.
4. **Unit Insurance.** Each Owner of a Unit shall maintain a multiple peril type policy covering his Unit providing as a minimum fire and extended coverage in an amount equal to 100% of the replacement cost of the Unit. Said insurance shall contain a provision or endorsement to the effect that the insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of the Owner or because of a failure to pay the premium, without prior notice in writing to the Association. After receipt of said notice, the Association shall have fifteen (15) days to pay any delinquent premium or cause any condition to be corrected which would otherwise result in the cancellation or suspension of the insurance.

VIII. DESTRUCTION OR DAMAGE

1. **Damage or Destruction of Common Areas.** In the event that the Common Area and/or other improvements thereon are damaged or destroyed by fire or other casualty or disaster, such Common Area and/or other improvements shall be promptly repaired, restored or reconstructed to the extent required to restore then to substantially the same condition in which they existed prior to the occurrence of the damage or destruction. Such repairs, restoration or reconstruction shall be paid for out of any insurance proceeds received on account of the damage or destruction; provided, however, that if the insurance proceeds are not sufficient for such purpose the deficiency shall be paid as a common expense or assessed and paid as a special assessment.

IX. USE RESTRICTIONS

1. **Units and Common Areas.** The Units and Common Areas, except as otherwise permitted in writing by the Association, shall be used in accordance with the following restrictions:
 - (a) No noxious or offensive activity shall be carried on in or upon any part of the Property nor shall anything be done or placed in or upon any part of the Property which is or may become a nuisance or may cause embarrassment, disturbance or annoyance to Owners.
 - (b) No activities shall be conducted, nor improvements constructed, in or upon any part of the Property which are or may become unsafe or hazardous to any person or property.
 - (c) No signs, flags or advertising devices of any nature, including, without limitation, commercial, political, informational or directional signs or devices, shall be erected or maintained on any part of the Property, without the prior inspection and written approval of the Association, except as may be necessary temporarily to caution or warn of danger.
 - (d) No animals, birds, fish or pets of any kind shall be raised, bred or kept on any Lot or in the Common Areas.
 - (e) The draperies, shades and other interior window coverings in Units shall present a pleasant appearance from the outside of the building.
 - (f) The Units and Common Areas or portions thereof may not be divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to tenancy in common).
 - (g) No Owners shall, without the prior written consent of the Association, make or permit to be made any structural alteration, improvement or addition on or to his Unit without the prior written consent of the Association, do any act that would impair the structural soundness or integrity of the Units or the safety of property or impair any easement or hereditament appurtenant to the Property.
 - (h) There shall be no obstruction of the Common Areas by any Owner. Owners shall neither store nor leave any of their property on the Common Areas or their own Lots, except with the prior consent of the Association.
 - (i) All vehicles shall be parked only in those areas designated for such parking by the written rules & regulations of the Association.

- (j) Nothing shall be done or kept in any Unit or on the Common Areas or any part thereof which would result in cancellation of the insurance on the Property or any part thereof, or increase the rate of insurance on the Property or any part thereof over what the Association, but for or such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept in any Unit or on the Common Areas or any part thereof which would be in violation of any statute or rule, ordinance, regulation, or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest, lessee, licensee or invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his guests, lessees, licensees or invitees.
- (k) No owner shall violate the Rules and Regulations for the use of Units and Common Areas as adopted from time to time by the Association.

X. BOARD OF DIRECTORS

1. **Board of Directors.** The Association shall be managed by a duly elected Board of Directors of between 3 – 7 odd numbered persons for 2 year terms as more particularly set forth in the bylaws of the Association.
2. **Power and Authority.**
 - (a.) The Board of Directors shall have the authority to manage the affairs of the Association as defined and authorized under these Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions, under the bylaws, and as provided by relevant statutes of the State of Utah.
 - (b.) Additional powers and authority shall include, but not be limited to: adopting written rules & regulations, employing managers or other independent contractors or employees, calling for and conducting an annual meeting of the membership, fixing & spending both annual & special assessments, taking whatever legal action it deems necessary to carry out its duties, and, for cause, overturning or correcting any decision of any committee or manager.
3. **Meetings & Quorum.** The Board of Directors shall meet at least annually, at the time and place scheduled for the general membership annual meeting and at any other specially called meeting of The Board of Directors as provided by the bylaws. A necessary quorum for the conducting of business shall be 51% of the members of The Board of Directors.

XI. ARCHITECTURAL CONTROL COMMITTEE

1. Architectural Control Committee. The Board of Directors of the Association shall appoint a three to five member Committee, the function of which shall be, to ensure that all Units, improvements and landscaping within the Property harmonize with existing surroundings and structures. If such a Committee is not appointed, or the Committee does not perform its duties, the Board of Directors itself shall perform the duties required of the Committee.
2. Submission to Committee. No addition to a Unit which is visible from the Common Areas, fence, wall structure, or other improvement which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting or refurbishing of the exterior of any Unit shall be performed, unless complete plans and specifications therefore have first been submitted to and approved by the Architectural Control Committee as to kind, shape, height, materials, location and harmony of external design in relation to surrounding structures and topography.
3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to ensure that all improvements, construction, landscaping and alterations on Units conform to, harmonize with, & maintain parity with existing surroundings and structures.
4. Approval Procedure.
 - (a) The Owner shall submit a written request with two complete sets of Plans and Specifications to the Architectural Control Committee.
 - (b) The Architectural Control Committee shall submit one of the set of plans to the Board within 5 days after submission.
 - (c) The Committee shall present a written statement to the Board indicating their approval or disapproval of the request within 30 days after submission. In the event the Committee fails to take any action within the 30 day period, the decision shall default to the Board, who will have 15 days to make a decision.
 - (d) The Board may overturn the decision of the Architectural Control Committee within 15 days of that decision.
 - (e) If the Architectural Control Committee or the Board does not make a decision within 45 days of the original submission, the submission shall be deemed to have been approved as presented.

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 portions of the Common Areas in the vicinity of the activity.
6. No 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.

XII. PARTY WALLS

1. General Principles. Each wall constructed as part of the original construction of the Units which is located on a boundary line common to two Units shall constitute a party wall. Except as herein modified and expanded, all legal and equitable principles relating to party walls shall govern and apply to such walls.
2. Maintenance. The cost of reasonable maintenance and repair of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. Costs associated with maintenance or repairs benefiting only one Owner (such as interior painting or redecorating) shall be borne solely by the Owner benefited.
3. Destruction. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it. Any Owner thereafter making use of the wall shall contribute to the cost of restoration in proportion to such use; provided, however that the foregoing portion of this sentence shall not prejudice or limit any Owner's right to obtain a larger contribution under any legal or equitable principle regarding liability for negligent or willful acts or omissions.

XIII. ENCROACHMENTS

If any portion of a Unit originally constructed or later modified encroaches upon the Common Area, or if Common Area improvements encroach upon an adjoining Unit, there shall exist an easement for such encroachment.

XIV. EXTERIOR MAINTENANCE

In addition to maintenance of the Common Areas, the Association shall provide exterior maintenance upon each Unit which is subject to assessment hereunder as follows: paint, repair, replacement and care of roofs, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance & repair shall not include glass surfaces or lower decks.

In the event that the need for maintenance or repair of a Unit or the improvements thereon 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 Unit needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Unit is subject.

XV. 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 mailed postage prepaid to the person who appears as a Owner, at the latest address for such person appearing in the records of the Association at the time of mailing.
2. **Rules and Regulations.** The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to regulate the use of the Common Areas, to aid the Association in carrying out any of its functions or to ensure that the Property is maintained and used in a manner consistent with the interests of the Owners.
3. **Amendment.** Any amendment to this Declaration shall require: (i) the affirmative vote of at least 51% of all membership votes which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Owners 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 Owners or of proxies entitled to cast 51% of all the votes residing in Owners 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 requirement set forth in the foregoing portion of this Section 3) 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. Any amendment authorized pursuant to this section shall be accomplished through the recordation of an instrument executed by the Association. In such instrument an officer or director of the Association shall certify that the vote required by this section for amendment has occurred.
4. **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 of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining after the meeting, consents in writing to such transaction from Owners entitled to cast at least 51% of all membership votes.

- (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the meeting than an original vote was required.
 - (b) Any change in ownership of a Unit which occurs after the initial meeting and while the consents in lieu of a vote are being obtained shall not be considered or taken into account for any purpose.
5. **Mortgagee Protection.** In the event an Owner neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage (or trust deed) covering such Owner's Unit who has given notice to the Association requesting notification.
- The lien for unpaid assessments provided for under Article V shall be subordinate to any first mortgage (or trust deed) affecting a Unit, but only to the extent of assessments which become due prior to foreclosure of the mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure.
- Unless all holders of first mortgages (or trust deeds) on the Units have given their prior written approval, neither the Association nor any other party shall be entitled to:
- (a) Alter the provisions of Section 6, of Article V hereof (pertaining to uniform rate of assessment);
 - (b) Partition or subdivide any Unit or the Common Areas or dedicate or transfer (pursuant to Section 4(d) of Article IV hereof) all or any part of the Common Areas; or
 - (c) By act or omission seek to abandon or materially alter the arrangement which is established by this Declaration.
6. **Interpretation.** The caption which precedes 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 part thereof 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. This Declaration shall be liberally construed to affect all of its purposes.
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 Declarant, all

parties who hereafter acquire any interest in a Unit or in the Common Areas and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units 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 such interest in a Unit or in the Common Area, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

8. **Enforcement.** Each Owner, guests of an Owner, lessors of an Owner, and persons under Owner's control, shall strictly comply with the provisions of the Declaration, the bylaws, the rules and regulations and decisions issued pursuant thereto. Failure to so comply shall be grounds for:

(a) an action to recover sums due for damages or injunctive relief or both, maintainable by the Board of Directors or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or

(b) the Board of Directors to impose monetary penalties, temporary suspensions of an Owner's rights to the use of a Unit or use of the Common Areas, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing that complies with the due process requirements of applicable state and federal law. The Board of Directors shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Board of Directors. However, the Board of Directors shall not have the power to cause forfeiture or abridgement of an Owner's right to the full use and enjoyment of his Unit on account of a failure by the Owner to comply with provisions of the governing instruments or duly enacted rules of the Property unless the loss or forfeiture is the result of the Judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments levied by the Association. The Board of Directors may delegate to the managing company the power and authority to carry out the provisions of this section.

9. **Effective Date.** This Fourth Amended and Restated Declaration and any amendment hereof shall relate back to and be effective from the date the Declaration of Covenants, Conditions and Restrictions of Willowbend West Subdivision, a Residential Planned Unit Development, was first filed for record in the office of the County Recorder of Summit County, Utah.

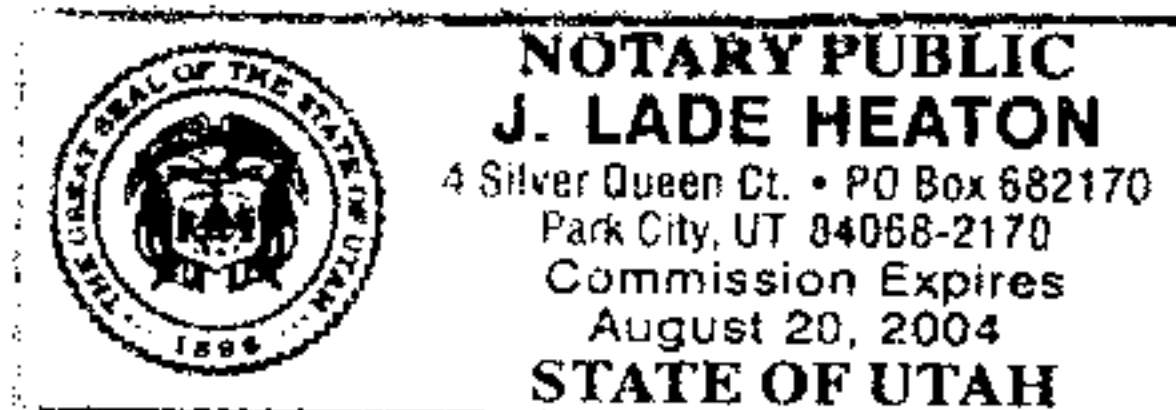
EXECUTED the day and year first above written.

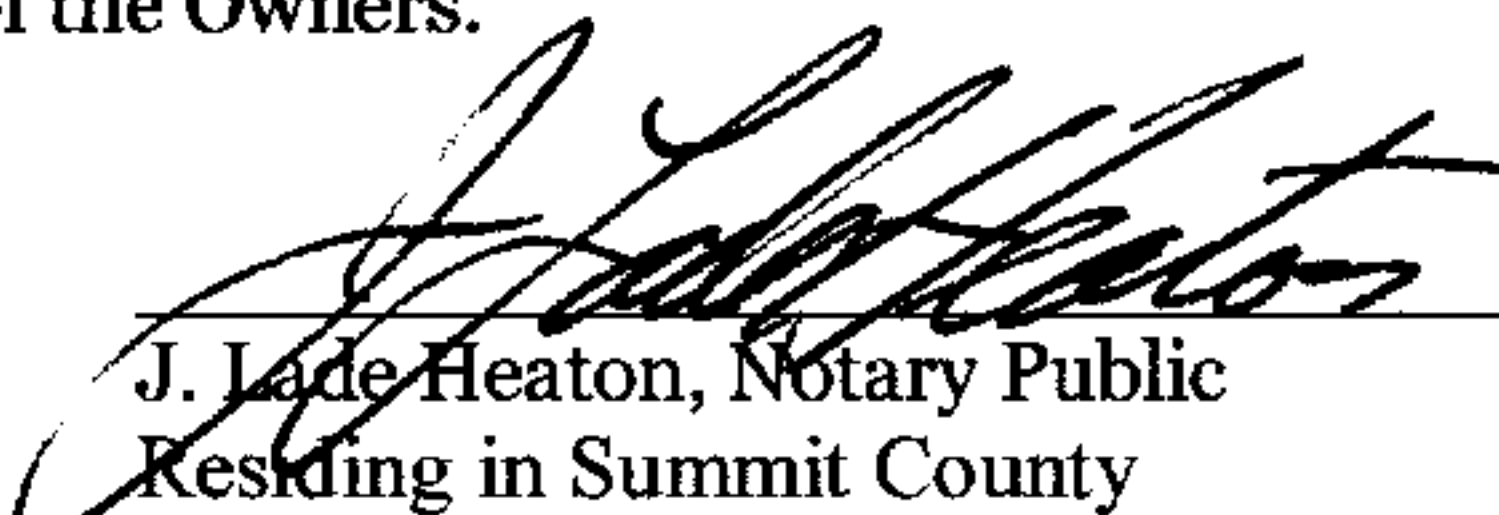
DECLARANT:
WILLOWBEND WEST HOMEOWNERS ASSOCIATION, INC.

By 
Mark Rasmussen, President

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On this 26th day of May, 2004, personally appeared before me Mark Rasmussen, President of WILLOWBEND WEST HOMEOWNERS ASSOCIATION, INC., a Utah Nonprofit Corporation, who being by me duly sworn did say that the foregoing Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions of Willowbend West Subdivision, a Residential Planned Unit Development, was signed by him after this Declaration was voted on favorably by at a majority of the Owners.




J. Lade Heaton, Notary Public
Residing in Summit County

My commission Expires:
August 20, 2004