

14340

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by E.J. SIMMONS, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of the certain property in the City of Provo County of Utah, State of Utah, which is shown on the official plat of "Willow Estates" Subdivision Plat A, as filed for record in the office of the County Recorder of Utah County, Utah, on August 7, 1972.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above, and any property hereafter annexed to this Declaration, shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and 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.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to "Willow Estates" Homeowners Association, a Utah, non-stock, non-profit cooperative corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as a security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the

Association, by annexation.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. In addition to Common Area which may be acquired in future annexations, the Common Area to be owned by the Association at the time of the conveyance of the first Lot by Declarant to an Owner, which Declarant shall convey to the Association prior to such time, but in any event within two (2) years from the date of this Declaration, is described as follows:

That certain real property situated in the City of Provo County of Utah State of Utah, which is shown as Plat A, Willow Estates Subdivision, as filed for record in the office of the County Recorder of Utah County, Utah on August 7, 1973, 1973.

Section 5. "Lot" shall mean and refer to each of the Lots shown upon the official plat of Willow Estates Subdivision Plat A, hereinbefore described, with the exception of the Common Area, and to each of the Lots shown upon the official plat of any subdivision of any of the Properties annexed to this Declaration with the exception of the Common Area. "Lot" shall include all improvements thereto.

Section 6. "Declarant" shall mean and refer to E. J. SIMMONS, his successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions.

(a) The right of the Association to regulate the use or enjoyment of the Common Area and to charge reasonable admission and

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other fees for the use of any recreational or other facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations after hearing by the Board of Directors of the Association;

(c) The right of the Association, which shall be subject to the written consent of Declarant until he has conveyed all Lots in the Properties and in annexed properties, to Owners, or upon the expiration of four (4) years from the date of recordation of this Declaration, whichever event first occurs, to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, exercising at least two-thirds (2/3) of the voting power of the membership. No such dedication or transfer shall be effective unless an instrument signed by members exercising at least two-thirds (2/3) of the total voting power, and the City of Provo, Utah for the purposes of protecting each Owners right of access from his Lot to a dedicated street and for purposes of maintaining the integrity of the residential community in the properties as it was presented to the City of Provo, Utah, agreeing to such dedication or transfer, has been recorded, and unless written notice of the proposed dedication or transfer and the terms of the proposed agreement relative thereto is sent or delivered to each member at least ninety (90) days in advance of any action taken to effect any such dedication or transfer. This foregoing provision of this subparagraph (c) shall not apply, and the consent of the members shall not be required, with respect to any utility easement or rights of way granted to any utility company or public authority or agency, as may be authorized

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by the Board of Directors, to provide water, or gas, or electricity, or telephone or television service, or for storm drains, or for sanitary sewer lines and appurtenances, to or for the Common Area, or Lots;

(d) The right of Declarant, prior to its grant of the Common Area to the Association, to grant in the Common Area, to utility companies or any public agency, easements and rights of way for water, electricity, gas, oil, sewer pipe lines, storm drains, telephone or television service or lines, together with all necessary poles or conduits for appurtenant service to the Properties, and to the Properties subject to annexation;

(e) Notwithstanding anything contained herein to the contrary, each Lot within the Properties perpetually, shall have access to a dedicated street and each Owner of each Lot shall perpetually have the appurtenant right to ingress and egress from his Lot to a dedicated public street, provided, where the Common Area is improved with private streets or driveways and walkways to a dedicated public street, then it is the duty of each Owner to use the same in exercising his right of ingress and egress from his Lot to such dedicated public street.

Section 2. Delegation of Use. Any Owner may delegate in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Upon the acquisition of any Common Area by the Association and thereafter, every Owner of a Lot in the subdivision first described in this Declaration and every Owner of a Lot in any subdivision of the Properties or of any part thereof, which is annexed to this Declaration under Article XIII hereof, shall be a member of the Association. Such membership shall be appurtenant

to and may not be separated from ownership of any Lot; an Owner of a Lot, shall automatically, upon becoming the Owner of same, be a member of the Association, and shall remain a member of the Association until such time as his ownership ceases for all Lots owned by him for any reason, at which time his membership in the Association shall automatically cease.

Section 2. Until the acquisition of a Common Area by the Association, its membership shall consist of its incorporators, each of which is entitled to one vote, but after the acquisition of such Common Area, the membership of the incorporators, cease, and the Association shall have only one class of voting membership consisting of the Owner or Owners of Lots. Every Owner shall be entitled to one vote for each Lot owned. When a Lot is owned by two or more persons, all such persons shall be members but they shall only be entitled to one vote for such Lot. Where a Lot is owned by two or more Owners, they shall designate and register with the secretary of the Association the name of the member who shall be entitled to cast the single vote for such Lot, in default of which one of the Owners may cast the vote for all Owners of the Lot, unless an Owner not joining in the vote cast, makes objection thereto at or before the time such vote is cast.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed, is deemed to covenant and agree to pay to the Association:

(1) annual assessments or charges plus assessments added thereto as is otherwise specifically provided for in this Declaration, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. All such assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien

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upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the properties, including in particular: (a) the operation of all recreational facilities located on the Common Area; (b) for maintenance of the Common Area and improvements thereto, including any repairs, replacements, or additions to it; (c) purchase and maintenance of personal property incidental to the use and enjoyment of the Common Area; and (d) to pay all realty taxes or other taxes assessed the Association, insurance premiums and other fees and expenses of the Association necessarily or incidentally related to any of the foregoing purposes or incurred in enforcing or attempting to enforce any of the terms of this Declaration. No Owner shall be relieved of an assessment or any part thereof by reason of his failure to use the Common Area or recreational facilities or for any other reason.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the first conveyance of a Lot by Declarant to an Owner, the maximum assessment shall be \_\_\_\_\_  
Thirty dollars per year (\$30.00)

(a) From and after January 1, of the year immediately following the first conveyance by Declarant of a Lot to an Owner the maximum annual assessment may be increased each year not more than three percent (3%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the first conveyance by Declarant of a Lot to an Owner, the maximum annual assessment may be increased above three percent (3%) by the vote or written assent of fifty-one percent (51%) of the members.

(c) The Board of Directors may fix or change the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, or of fixtures or personal property related thereto, provided that any such assessment shall have the vote or written assent of fifty-one percent (51%) of the members.

Section 5. Notice and Quorum for Any Action Authorized

Under Sections 3 and 4. Any action authorized under Sections 3 and 4 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one (51%) percent of the voting power of all members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

Section 6. Initial Assessment; Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots, exclusive of any property annexed to this Declaration, on the first day of the month next

following the first conveyance of a Lot from Declarant to an Owner. With respect to property annexed to this Declaration, the annual assessments provided for herein shall commence as to all Lots in such annexed property on the first day of the month next following the first conveyance of a Lot in such annexed property by Declarant to an Owner. Until the first conveyance of a Lot in the Properties by Declarant to an Owner or with respect to annexed property until the first conveyance of a Lot therein by Declarant to an Owner, Declarant shall be obligated, at its expense, for the upkeep and maintenance of the Common Area of such properties or annexed property and for the maintenance of the Lots and dwellings therein owned by Declarant.

The first annual assessment shall be adjusted according to the number of months remaining in the calendar year, commencing with the first day of the month the assessment commences, and each such annual assessment shall be paid in equal monthly installments, in advance, on the first day of each month. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessments shall be sent or delivered to every Owner subject thereto. The due dates of any special assessment shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 7. Added Assessments for Special Purposes.

The Board of Directors may make a special purpose assessment against any Lot and the Owner thereof for the cost and expenses, including a reasonable attorney's fee, incurred by the Association for the maintenance or repair of the exterior of such Owner's dwelling, the need for which was caused through the willfull or negligent act of the Owner, his family or guests or invitees, or in performing or enforcing



any responsibility or duty of such assessment, but such special purpose assessment shall be payable within fifteen (15) days after notice thereof to the Owner who is subject thereto, or at a later date as may be specified by the Board in making such special purpose assessment. Before making any such special purpose assessment, the Board shall give notice to the Owner of the proposed assessment and the reasons therefor, stating the time and place the Owner may appear before the Board to protest the proposed special assessment, which shall be at least ten (10) days but not more than thirty (30) days from the date of the notice of such proposed special purpose assessment to the Owner. If the Board determines that such proposed special purpose assessment shall be made after hearing the protest or if the Owner does not appear before the Board to make such protest, the Board determines if such proposed special purpose assessment shall be made and the amount thereof, not exceeding the amount stated in the notice to the Owner. Notice of the special purpose assessment, if any, shall then be given to the Owner and shall become delinquent if not paid by the Owner within fifteen (15) days after said notice or on a later date specified by the Board.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment payable in monthly or other installments becomes delinquent, the Board of Directors may, in any notice thereof recorded in the office of the County Recorder of Utah County, Utah, and sent or delivered to the Owner, declare the whole of said assessment to be due and payable thereby accelerating all installments thereafter becoming due under said assessment. Each delinquent assessment shall bear interest at the rate of six percent (6%) per annum from its due date and the accelerated assessment declared due and payable under a recorded notice shall bear interest at the rate of six percent (6%) per annum from the date of recordation of said notice. The Board of Directors of the Association, by its duly authorized officer or officers, may cause to be recorded in the

office of the County Recorder of Utah County, Utah : a notice of the delinquent assessments due the Association from any Owner, which shall state the amount due under the assessments and whether or not the whole has been declared due and payable and other authorized charges and interest, including a statement that a reasonable attorney's fees is payable as herein provided plus the costs of recording such notice, a description of the Lot against which the same has been assessed, the name of the record Owner thereof, that the notice constitutes a notice of a claim of lien established pursuant to the provisions of the Declaration. The attorney's fees shall be in the sum of Fifty Dollars (\$50.00) unless there is a court foreclosure in which event a reasonable attorney's fees shall be fixed by the Court. If all delinquent sums and charges, including attorney's fees, under the assessment, plus all installments become due after such notice, other than that portion of the assessment which would not then be due had no default occurred, is paid within thirty-five (35) days after the recording of said notice, or upon other satisfaction of said assessment and charges in connection with said notice, the Board shall cause to be recorded a further notice stating satisfaction and release of the lien for the assessments and charges satisfied, provided the Association may demand and receive from the Owner the cost of the recordation of such release before recording the same. All such notices shall be signed on behalf of the Association by an officer or officers authorized by the Board of Directors. The Association may bring an action at law against the Owner personally obligated to pay the assessment, or foreclose the lien or cause the Lot, subject to the lien for such assessment, to be sold by the Association, its attorney or other person authorized to make the sale, or pursue all such remedies without waiving the right to any of such remedies until the assessment, including all of the charges, have been fully paid and satisfied. The Association may cause the sale of such lot to be conducted in accordance with the provisions applicable to the exercise of powers

of sale in deeds of trust or in any other manner permitted by law. No suit for foreclosure of the lien or for exercise of the powers of sale to satisfy such lien may be commenced until thirty-five (35) days has elapsed from the date of the recordation of the notice of the delinquent assessment. The association shall have the power to bid for the Lot at any sale under exercise of the power of sale or at any foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

Section 9 Subordination of the Lien to a First Mortgage or Deed of Trust. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a first mortgage or first deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, including monthly installments of assessments thereafter becoming due; any notice recorded prior to such sale or transfer, accelerating monthly installments thereafter becoming due, shall have no force or effect and the monthly installments which would have otherwise become due and payable after such sale or transfer, but for the recording of such notice, shall become due as if no such notice had been recorded.

#### ARTICLE V

#### USE RESTRICTIONS AND MISCELLANEOUS COVENANTS

Section 1. Each Lot shall be occupied and used by the respective Owners only as a private dwelling for the Owner, his family, tenants and social guests and for no other purpose.

Section 2. No Owner or resident of the Properties shall post any advertisements or posters of any kind on the Properties, except a sign of customary and reasonable dimensions advertising his Lot for sale may be posted on such Lot.

Section 3. No dwelling or Lot shall be used in such manner as to obstruct or interfere with the enjoyment by residents of other Lots or dwellings or which will annoy them by unreasonable noises or otherwise, nor shall any nuisance or immoral or illegal activity be committed or permitted to occur on any Lot or on any part of the Common Area. No noxious or offensive activity shall be carried on.

Section 4. No articles of personal property nor any pets or animals belonging to or in the possession or control of any Owner, his family tenant, contract purchaser, or guest, shall be stored or kept in any part of the Common Area.

Section 5. No animals shall be raised, bred or kept in any dwelling or on any Lot, except for dogs, cats, or other household pets of the Owner, provided that they are not kept on any part of the Common Area or for any commercial purposes and shall not constitute a nuisance to others.

Section 6 Should the improvements on any Lot or Lots be damaged or destroyed by fire or other casualty, the Owner or Owners thereof shall cause the same to be repaired and restored substantially in accordance with the original plans and specifications therefor, or as approved by the Association. The repairs and restoration work shall be commenced within sixty (60) days after the happening of the destruction or damage and once commenced shall be pursued diligently

to completion and should the same not be timely commenced or carried toward completion with diligence, the Association may elect to repair and restoration on behalf of and at the cost of such Owner or Owners. Any amounts expended or incurred by the Association for such repair or restoration and not reimbursed to the Association by the Owner shall be assessed against said Lot or Lots proportionately based upon the nature and extent of the same as it affects the Lot of each Owner and such assessment shall constitute a lien on the Lot or Lots affected and the amount thereof shall be paid and enforced as a special purpose assessment as hereinbefore provided.

Section 7. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon any of the Properties, no shale oil wells, tanks, tunnels, or mineral excavations or shafts be permitted upon the surface of any of the Properties or within five hundred (500) feet below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil, or natural gas shall be erected, maintained or permitted upon any of the properties.

#### ARTICLE VI

##### RIGHTS OF USE BY DECLARANT

During the period of development of the Properties by Declarant, the Declarant and its contractors and subcontractors, and their respective agents and employees, shall be entitled to reasonable access, ingress and egress to and from the Lots owned by Declarant over the Common Area, as may be required in connection with said construction and may store such materials therefor as it may deem necessary on a construction site. Until all of the Lots have been sold, the Declarant may use and show one or more of the unsold, Lots and dwellings situated thereon, as a model of residential units, and sales office and may enter upon and show the Common Area and may maintain customary signs in connection with its sale of the Lots.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Merger or Consolidation. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, and which such merger or consolidation shall have the assent of two-thirds (2/3) of the entire membership, its properties, rights, and obligations may, by operation of law, or otherwise, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, or otherwise, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger or consolidation. The surviving or consolidated association may administer the covenants and restrictions, and shall have all the rights, duties and powers established by this Declaration with respect to the Properties.

No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the existing property except as hereinafter provided.

Section 2. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, and shall be entitled to a reasonable attorney's fee from the defaulting party to be fixed by the court in any such proceedings. Failure by the Association or by any Owner to enforce

any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration on the 3<sup>rd</sup> day of APRIL, 1973.

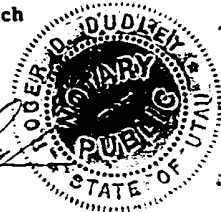
E.J. SIMMONS  
Declarant.

BY: *E.J. Simmons*

STATE OF UTAH )  
                  ) SS.  
COUNTY OF UTAH )

On this 3<sup>rd</sup> day of APRIL, 1973, before me, ROGER D. OUDLEY, a Notary Public in and for said County and State, personally appeared E.J. SIMMONS known to me to be one of the officers of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

*Roger D. Oudley*  
NOTARY PUBLIC



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RECORDED AT THE REQUEST OF  
*E. J. Simmons*  
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