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Upon recording, please mail to:

Read R. Hellewell, Esq.  
Kirtan & McConkie  
60 East South Temple, Suite 1800  
Salt Lake City, Utah 84111-1004

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
FOREST HEIGHTS SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as the "Declaration"), is made as of this 6<sup>th</sup> day of July, 1999, by **KWH, L.L.C.**, a Utah limited liability company, (collectively the "Declarant"), with reference to the following facts:

WHEREAS, Declarant is the developer of that certain parcel of real property known as Forest Heights Subdivision (the "Subdivision"), whose subdivision plat was recorded on the 29th day of April, 1999, as Entry No. 1508865, in Book 2490, at Page 421 of the official records in the office of the county recorder for Davis County, State of Utah. Forest Heights Subdivision is located in Davis County, State of Utah, and is more particularly described on *Exhibit "A"* which is attached hereto and incorporated herein by reference.

WHEREAS, all lots in the Subdivision excepting Lot 7 (and a portion of Lot 3, previously conveyed to the Owner of Lot 7) are a part of and are governed by this Declaration.

WHEREAS, the Declarant desires to develop a residential subdivision of distinctive and individual character and for the benefit of all owners within the Subdivision, intends to provide for the preservation of such character, and

WHEREAS, the Declarant intends to sell the individual lots which comprise the Property described above and the Declarant desires to subject each respective lot to a general plan of improvement which will include certain restrictions, conditions, covenants, and agreements, as hereinafter set forth for the benefit of the Subdivision, and

NOW, THEREFORE, the Declarant declares that the Property shall be held, sold, conveyed, leased, occupied, resided upon and hypothecated subject to the following covenants, conditions and restrictions; which covenants, conditions and restrictions shall run with the land, are established for the purpose of protecting and preserving the value of each and every part of the Property, and which shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof;

08-246-6001 to 0006

ARTICLE I  
DEFINITIONS

Section 1.1: "Association" shall mean the Forest Heights Home Owners Association, comprised of each respective Owner of a Lot in the Subdivision. Decisions by the Association shall be made by a vote of a majority of those Owners present at a duly called meeting of the Association. No vote shall be taken, however, without a quorum of the Owners present, comprised of a majority of the Owners of Lots in the subdivision. One vote shall be allotted to the Owner of each of the seven (7) lots in the Subdivision. No dues shall be assessed to individual members of the Association, unless otherwise decided by the members of the Association.

Section 1.2: "City" shall mean the City of Farmington, Utah.

Section 1.3: "Committee" shall mean the Architectural Control Committee, as such Committee is further described in Article IV hereof.

Section 1.4: "Declarant" shall mean KWH, L.L.C., a Utah limited liability company and its successor(s) and/or assign(s).

Section 1.5: "Family" shall mean a group of natural persons related to each other by blood or legally related to each other by marriage or adoption.

Section 1.6: "Improvement" shall mean any structure, Residence, building, Landscaping, garage, accessory building, fence, wall, non-living or living screen, or other structure of Landscaping, or other meaningful addition or alteration constructed or added to a Lot.

Section 1.7: "Landscaping" shall mean lawn, shrubs, flowers, trees and natural foliage located or placed upon a Lot.

Section 1.8: "Lot" shall mean any individual parcel shown upon the Map of the Subdivision, which may be legally conveyed by reference only to the number of such Lot designated on the Map.

Section 1.9: "Map" shall mean the official subdivision plat map recorded April 29, 1999, as Entry No. 1508865 in Book 2490 at Page 421 of the official records in the office of the Davis County Recorder, State of Utah, as the same may be amended from time to time.

Section 1.10: "Mortgage" shall mean any instrument creating a lien with respect to a Lot including a mortgage, deed of trust or any similar security agreement.

Section 1.11: "Mortgagee" shall mean the holder of the obligation secured by a Mortgage.

Section 1.12: "Owner" shall mean the recorded owner of a fee simple title to any Lot which is a part of the Subdivision. In the event that more than one party shall be the record Owners of a Lot, then for all purposes under this Declaration, all such parties shall be required to act jointly as the Owner of such Lot.

Section 1.13: "Property" shall mean all the real property described on *Exhibit "A"*, consisting of all Lots of the Subdivision.

Section 1.14: "Residence" shall mean a single building designed and constructed for residential occupancy to be occupied by a Family.

Section 1.15: "Street" shall mean all streets dedicated to Farmington City.

## ARTICLE II PURPOSE

Section 2.1: Purpose of Declaration. The purpose of this Declaration is to insure the use of the Property for attractive residential purposes, to prevent nuisances, to prevent the impairment of the attractiveness of the Property, and to maintain the desired tone of the Subdivision, and thereby to secure to each Owner the full benefit, enjoyment and value of their home, with no greater restriction on the free and undisturbed use of their site than is necessary to insure the same advantages to the other Owners.

## ARTICLE III GENERAL RESTRICTIONS AND REQUIREMENTS

Section 3.1: Land Use and Building Type. Each Lot shall be used exclusively for the construction and occupancy of a Residence to be occupied by a Family and related Landscaping and other incidental and related Improvements. Except as may be specifically provided in Article III hereof, no building shall be erected, altered, placed or permitted to remain on any Lot other than (1) one single Family dwelling with enclosed, attached garage for at least two cars.

Section 3.2: Subdivision of Lot. No Lot may be divided, subdivided or separated into smaller parcels unless approved in writing by (1) the Committee, which approval may be withheld in the Committee's sole discretion, but if granted, shall be granted in accordance with this Declaration, and (2) by Farmington City.

Section 3.3: Residence Size and Materials. No structure shall be constructed upon any Lot unless and until the final plans and specifications for such structure shall have been submitted to and approved by the Committee. No single story Residence shall be constructed, altered, placed or permitted to remain on any Lot unless the main floor area, exclusive of basement, open porches and garages, is 1,800 square feet or greater. No multi-story residence shall be constructed, altered, placed or permitted to remain on any Lot unless the main floor, exclusive of basements, open porches and garages, is a total of 1,600 square feet or greater and

the upper level is a total of 600 square feet or greater. Garages shall be enclosed, and shall be large enough for at least two cars. No artificial stone (other than artificial stone approved by the Committee) and no logs may be used in the exterior construction of a Residence. The Architectural Control Committee may approve a home of a size smaller than as provided in this paragraph only where, after considering all relevant factors, it is determined to be clearly unreasonable, under the given circumstances, to require the larger sized home.

The exterior of all Residences must be constructed of brick, stucco and/or natural stone or artificial stone approved by the Committee, with no more than one-half (1/2) stucco allowed. Aluminum soffits and fascia trim will be allowed. No wood or vinyl siding materials shall be allowed on the exterior of any Residence unless previously approved in writing by the Committee. All exterior materials must be approved in writing by the Committee prior to commencement of construction.

Roof surfaces shall be wood or dura-ridge architectural shingles or certain types of metal as approved by the Committee, concrete or bar tile, unless specific, written approval of the Committee is received for the use of other roofing materials. Colors of exterior materials shall be earth tones, grays, or as otherwise approved by the Committee. Care should be given that each Residence complement those around it, and not detract in design, quality or appearance. All final decisions with respect to these enumerated standards and their application to a particular proposed structure in the Subdivision shall be made by the Committee.

Section 3.4: Building Location. No walls or foundation of a Residence or other structure shall be located on any Lot nearer to the front lot line or nearer to the other lot lines than the minimum building set-back required by Farmington City Ordinances in effect on the date set forth above. No variance shall be allowed from said Ordinances unless the Committee shall first approve in writing any such requested variance, which approval may be withheld in the Committee's sole discretion. The site plan showing the proposed location of all improvements to be constructed upon a Lot shall be submitted to and approved by the Committee prior to the commencement of any construction.

Section 3.5: Construction and Landscaping: Time Restrictions. The exterior constructions of all residences or other structures shall be completed in a good and workmanlike manner within a period of eighteen (18) months following commencement of construction. The front and side yards of each Lot shall be landscaped with at least a sprinkling system and grass lawn, as appropriate, within a period of twelve (12) months following substantial completion or occupancy of each residence, whichever shall occur first. Rear yards shall be landscaped, with at least a sprinkling system and grass lawn, as appropriate, within a period of eighteen (18) months following completion or occupancy of each residence, whichever shall occur first. The Committee may consider any special circumstances and allow exceptions to these requirements, in its sole discretion.

Each Owner must, at all times after an Owner's purchase of a Lot, take reasonable steps to minimize and/or eliminate weed growth on the Owner's Lot until such time as construction is completed and the Lot is landscaped.

The time periods set forth in this paragraph may, in the sole discretion of the Committee, be extended by that period of time during which access to the Lot is restricted by reason of weather, seasonal conditions and/or soil conditions which would prohibit such performance.

**Section 3.6: Utility Lines.** All utility lines shall be installed underground. All connection fees and other charges for utilities shall be paid by each individual Owner.

**Section 3.7: Governmental Regulations.** All applicable governmental rules, regulations, and ordinances of the City, Davis County or otherwise, must be complied with regarding activities within the Subdivision. When a subject is covered both by this Declaration and a governmental rule, restriction or ordinance, the more restrictive requirement shall be met.

**Section 3.8: Fire Protection.** Each Residence shall have installed surrounding it a sprinkler system for fire protection which may also be used for irrigation. All residents shall strictly comply with all state and city ordinances pertaining to fire hazard control. All stacks and chimneys from fireplaces in which combustibles, other than natural gas, are burned shall be fitted with spark arresters. There shall be no exterior fires whatsoever except fires contained within appropriate receptacles in compliance with City ordinances.

**Section 3.9: Nuisances, Unreasonable Annoyance and Noxious Activities.** No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an unreasonable annoyance, nuisance or danger to the Subdivision. Except for legitimate construction and maintenance purposes, no excessively loud noises shall be permitted in the Subdivision. Without limiting the generality of the foregoing, no rubbish or debris of any kind shall be placed or permitted to accumulate upon any property within the Subdivision and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of the foregoing, the Owners shall not allow any builder, contractor, or subcontractor to wash any cement truck or cement mixer or to dump or deposit any asphalt, concrete or other construction materials or debris which are not part of the Improvements to a Lot upon any part of the Property. An Owner shall be directly responsible for any violation of this Declaration of Covenants, Conditions and Restrictions or damage to any of the Property by or caused by the Owner's builder(s), contractor(s), or subcontractor(s). The "Deposit" referred to in Section 4.2 hereof may be retained by the Committee in accordance with Section 4.2 for any such violation or damage. Nothing contained herein or in Section 4.2 shall limit the amount of damages for which an Owner may be liable. The foregoing to the contrary notwithstanding, an Owner or the Owner's contractor may, during the period of construction as specified in Section 3.5 above, place and maintain upon a Lot no more than one (1) dumpster and one (1) portable toilet facility.

Section 3.10: Signs. No signs, posters, displays or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any Lot without the express written approval having been first obtained from the Association; provided, however, that the restrictions of this paragraph shall not apply to any sign or notice seven square feet or smaller in size which states that the premises are for rent or sale. The Association may cause all unauthorized signs to be removed. This section shall not apply to (1) any signs used by Declarant or its agents in connection with the original construction and sale of the Lots or (2) signs used by a builder, up to ten (10) square feet or smaller in size, to advertise the improvement or lot and to designate a particular identity of the construction project.

Section 3.11: Antennas. All television and radio antennas, satellite dishes or other electronic reception devices shall be completely erected, constructed and placed within the enclosed area of the Residence or garage on the Lot, or located and screened so as to not be visible from the Street or an adjacent Lot. The Committee, in its sole discretion, may allow exceptions to these requirements. Exceptions must first be expressly approved in writing by the Committee. Any other term or condition hereof to the contrary notwithstanding, no commercial, ham radio, citizens band or radio antenna or other similar electronic receiving or sending device shall be permitted which shall interfere with the peace and quiet enjoyment of any neighboring Owner's premises or home entertainment facilities or equipment.

Section 3.12: Animals. No horses, cows, pigs, sheep, fowl, livestock or animals, other than ordinary household pets which do not constitute a nuisance, shall be allowed within the Property. Dogs and cats belonging to owners, occupants or their licensees or invitees within the Property must be kept within an enclosure (or on a leash being held by a person capable of controlling the animal). The enclosure must be maintained such that the animal cannot escape therefrom. Any such contained enclosure areas must be cleaned on a regular basis to minimize odors and maintain a clean appearance. In no case may any household pet or other animal kept at or around the Residence be allowed to create a nuisance for neighboring Lot owners due to noise, odors or otherwise. Any other term or condition hereof to the contrary notwithstanding, an Owner may not keep or maintain more than two (2) dogs and two (2) cats on a Lot at any time.

Section 3.13: Unsightly Articles. No unsightly articles shall be permitted to remain so as to be visible from adjoining property. Without limiting the generality of the foregoing, trailers, mobile homes, trucks other than pickups, boats, tractors, vehicles other than automobiles, campers, snowmobiles, snow removal equipment and garden or maintenance equipment shall be kept at all times, except when in actual use, in an enclosed structure or screened from view; refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view; service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view; and no lumber, grass, shrub or tree clippings or plant waste, metals, construction materials, loose asphalt or concrete, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any property except within an enclosed structure or appropriately screened from view. All exposed metal flues, vents, ventilators, or other metallic rooftop protrusions shall be positioned on the back slope of

the roof and shall be coated or painted with tones which complement surrounding structures. Existing trees and grass on a Lot shall be continuously watered and maintained by the Owner until the Improvements on the Lot are constructed. Dead trees shall be removed by the Owner.

Section 3.14: Temporary Structures, etc. No structure of a temporary character, or trailer, mobile home, camper, tent, shack, garage or other outbuilding shall be used on any Lot at any time as a residence on more than a temporary basis (two to three days ), nor shall said structures be permitted on said property at any time, except as permitted under Sections 3.9 and 3.13 above. No old or secondhand structures shall be moved onto any of said lots, it being the intention hereof that all dwellings and other buildings be erected on said lots, or within said subdivision, shall be new construction of first class quality, workmanship and material.

Section 3.15: Non-Residential Uses Prohibited. No part of the Property shall be used for any commercial, manufacturing, mercantile, vending or other such non-residential purposes, provided however, that professional and administrative occupations may be carried on within the Residence so long as there exists no external evidence thereof. The Declarant, its successors or assigns may use the Property for a model home site, display and sales office during the construction and sales period.

Section 3.16: Drilling Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any Lot nor shall oil wells, tunnels, mineral excavations or shafts be permitted. No derrick or other structure designed for use in drilling for oil or natural gas or water shall be erected, maintained or permitted upon any Lot.

Section 3.17: Fences and Walls, Hedges and Screens. No fences, or non-living screens shall be constructed on any Lot without prior written approval having been obtained from the Committee. The Committee, in its sole discretion, may govern the height, placement, and type of materials of any fence upon any Lot in the Subdivision.

Cement, block or other solid walls or fences and/or non-living screens are prohibited entirely in front yards except at the entrance to the Subdivision, as approved in writing by the Committee. No hedges, shrubs or other living Landscaping or screen of any kind shall be erected so as to constitute a hazard for vehicular traffic, pedestrians, children, etc., particularly near the entrances to (a) driveway(s) onto a Lot. Any solid hedge within twenty (20) feet of the front lot line shall be trimmed to a maximum height of three (3) feet.

Back yard fences are allowed in the Subdivision, but shall extend no further along the Lot line, or otherwise, toward the front of the Lot than even with the front setback of the residence.

All fencing, walls, hedges, etc. shall be maintained in a first-class and slightly manner. An Owner removing or replacing any fence, wall or other landscaping improvement affecting an adjoining Owner's Lot shall, at all times, install and maintain bracing to maintain such adjoining Owner's fencing or other improvements that may be adversely affected.

Section 3.18: Landscaping and Parking Strip. Only such natural foliage shall be removed from each Lot as is necessary for clearing the driveway, excavation for the foundation of the Residence or other approved structures, and for lawn and patio areas or other amenities which have been approved in advance by the Committee. Any other term or provision of this Declaration to the contrary notwithstanding, no Owner or contractor or agent of any Owner or contractor shall remove any of the existing trees from any Lot (other than trees which the Committee has allowed to be removed in connection with the approval of an Owner's plans, pursuant to the previous sentence) unless the Owner has first obtained the written consent of the Committee for such removal which consent may be withheld in the Committee's sole discretion. In the event that an Owner, or contractor or agent of any Owner or contractor shall remove any tree from a Lot without first obtaining the written consent of the Committee, the Association shall be entitled to require the Owner to replace any and all trees removed with the same species, age, and height of tree or trees as the tree or trees removed, which remedy shall be in addition to all other rights and remedies of the Association as set forth in this Declaration.

All front yards, side yards and rear yards shall be landscaped. The use of sodded landscaping berms and trees is encouraged in front yard landscaping. However, those portions of rear or side yards which are located on or within natural, wooded hillsides or areas may be maintained with the natural vegetation and trees, consistent with the stated spirit and intent of this Declaration. The parking strip between curb and sidewalk, where applicable, shall be maintained by each Lot Owner in a uniform manner with other parking strips in the subdivision. Only sod and approved trees shall be permitted in the parking strip. In the event that the Committee shall elect to allow trees to be planted in the parking strips, the Committee may specify the type, number, size, and placement of trees in the parking strips and may, in its sole discretion, require the owners to plant such trees at the time or times specified by the Committee. All trees shall be planted and maintained at the Owners' expense. The Committee may also, in its sole discretion, elect not to allow the planting of trees in the parking strips. Each Lot shall be landscaped and maintained in such a manner so as to prevent any erosion thereof or drainage upon adjacent streets or adjoining Property.

Section 3.19: Exterior Lighting. All exterior lighting which is detached from a dwelling (except for low voltage landscaping lighting) or lighting that is designed to illuminate areas other than the dwelling and immediately surrounding areas must be expressly approved in writing by the Committee prior to installation.

Section 3.20: Environmental Concerns. If required by the City, all site plans submitted in accordance with Section 3.4 hereof shall address soils, seismic conditions, re-vegetation of natural areas (indicating areas where natural vegetation is to be removed and plans for the replanting of those areas), and grading of the site, including cuts and fills.

Section 3.21: Overnight Parking. No vehicles of any kind, including but not limited to , automobiles, trucks, buses, tractor trailers, camping vehicles, boats, boat trailers, snowmobiles, mobile homes, two and three wheeled motor vehicles, or other wheeled vehicles shall be



permitted to be parked on any street within the Subdivision between the hours of 2:00 a.m. and 6:00 a.m. of any morning.

**Section 3.22: Maintenance and Repair of Buildings.** The Owners shall, at all times, maintain all buildings and other improvements on their property in a first-class condition. No improvement within the Subdivision shall be permitted to fall into disrepair.

**Section 3.23: Improvements and Alterations.** There shall be no excavation or construction or alteration which in any way alters the exterior appearance of any improvement within the Subdivision nor removal of any improvement in the Subdivision (other than repairs or rebuilding) without the prior approval of the Committee pursuant to Article IV hereof. Nothing contained herein shall prevent the Declarant from completing excavation, grading and construction of improvements to any property within the Subdivision owned by Declarant, or to alter the foregoing or to construct such additional improvements as Declarant deems advisable in the course of development of the Subdivision so long as any Lot remains unsold.

**Section 3.24: Motorcycles and ATV's.** All motorcycles, trail bikes, three-wheel, four-wheel and other ATV's, automobiles, and other two or four-wheel drive recreational-type vehicles are to be operated only on driveways and streets within the Subdivision. The use of such vehicles on unoccupied Lots or other areas of the Subdivision is expressly prohibited.

**Section 3.25: Deviations.** Deviations from the standards set forth in this Declaration will be allowed only upon written approval by the Committee for good cause shown.

**Section 3.26: Exception for Lot 7 as Modified.** Lot 7 of the Subdivision is owned by Glen W. Howard and Beverly June Howard, trustees under the Glen W. Howard Family Trust, dated September 1, 1987 (the "Trust"). A portion of Lot 3 adjacent to Lot 7 was also conveyed to the Trust by the Declarant. Lot 7 and the portion of Lot 3 conveyed to the Trust are excepted from the Declaration.

#### ARTICLE IV ARCHITECTURAL CONTROL COMMITTEE

**Section 4.1: Committee Appointment and Composition.** The Committee shall consist of three(3) or more members, one of whom need not be a Lot Owner within the Subdivision. The Committee shall act by a majority consent of the members of the Committee. The original members of the Committee shall be Rockie Dustin, Kent Forsgren, and David Dixon. The Committee shall also consist of such others as may be appointed by said original members from time to time. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of a member of the Committee, the remaining members shall have full authority to designate a successor. Notwithstanding anything to the contrary which may appear elsewhere herein, the Committee members shall be appointed only by the Declarant or its successor, which, at its option, may temporarily delegate or forever assign such powers and

responsibilities or other powers and responsibilities given to it by this Declaration, to an assignee. Such assignment shall be express and in writing and until such assignment, the assignee shall not possess any powers or responsibilities with respect to such Committee. No Committee member shall be entitled to any compensation for services performed pursuant to this Declaration. However, the Committee may, at its discretion, employ a professional architect, engineer, attorney, or other consultant or professional, which professional may be a member of the Committee, to assist it in its functions, and a reasonable fee (to be established by the Committee) may be charged to the Lot Owner(s), as applicable, for such services, in which event the provisions of Article VI shall be applicable. No member of the Committee shall be liable to any person for any action or actions or decisions made or any failure to act or failure to make any decision or decisions as a member of said Committee. The Association and the Owners shall indemnify and hold the Committee members harmless from any and all such actions, decisions or failures of action or decision.

**Section 4.2: Scope of Committee Responsibility.** Any plans and specifications for the construction or addition of an Improvement upon a Lot within the Subdivision by the Owner thereof must be submitted to the Committee for approval at least thirty (30) days prior to commencing construction. No Improvement shall be commenced, erected, placed or meaningfully altered on any Lot until the plans, specifications and plot plans showing (1) the location on the Lot and nature of such proposed Improvement, (2) all drives, walkways, patios, barbecues, outbuildings, swimming pools, tennis or other sport courts and similar improvements, the dimensions of all such improvements and distances between the proposed Improvement and the Lot boundaries and other Improvements on the Lot, (3) elevation of sewer as it relates to Residence elevation; (4) finish grading plans; (5) complete set of architectural documents, and (6) complete set of all exterior colors in the form of samples or color chips, with detailed information as to the location of the color and types of all exterior building materials have been submitted to and specifically approved in writing by the Committee. In making its determination, the Committee may consider such factors as (but not limited to) the quality of workmanship and materials, design, harmony of external design with existing project structures, location with respect to topography and finish grade elevation, preservation and enhancement of the natural beauty of the area, and safety. Any subsequent changes, improvements, or alterations in such plans must be submitted to the Committee for written approval. Some or all of the requirements of this Section may be waived by the Committee, in the Committee's sole discretion, upon request of the Owner, with respect to the Committee's consideration of the approval of a particular Improvement.

The Committee may condition such approval on the Lot Owner depositing cash in the sum of One Thousand Five Hundred Dollars (\$1,500.00) with the Committee (the "Deposit"), Five Hundred Dollars (\$500.00) of which shall constitute a non-refundable fee for the estimated costs of professionals, e.g. architects and engineers, to review the designs and plans submitted by the Owner; and the remainder of the Deposit for the purpose of insuring that the Lot Owner (1) fulfills his responsibility to keep his Lot in a condition so as to prevent the rubbish and debris which accumulates during the construction and/or landscaping process from blowing or collecting on neighboring Lots and streets in the Subdivision, (2) reasonably cleans up his or her

Lot at or near the completion of the construction and/or landscaping process and (3) complies in all respects with the terms and conditions of this Declaration of Covenants, Conditions and Restrictions. The Deposit may be required by the Committee prior to the commencement of construction by an Owner, or at any time thereafter. If the Lot Owner fails in any of these responsibilities, One Thousand Dollars (\$1,000.00) of the Deposit may be retained by the Committee as security for the performance of the Owner's obligations hereunder or as liquidated damages. Additionally, if any such failure is not remedied by the Owner within fourteen (14) days after written notice thereof, the Committee may remedy such condition itself and in connection therewith, it may have reasonable access to the Lot and shall charge the Lot Owner for the cost of the remedy, in which event the provisions of Article VI shall be applicable. Upon the completion of the construction of the residence, and the landscaping of the Lot, in a satisfactory manner, One Thousand Dollars (\$1,000.00) of the Deposit shall be returned to the Lot Owner by the Committee. The Committee may change the amount of the Deposit at any time or from time-to-time hereafter in order to allow for increasing costs and for inflation.

Section 4.3: Process of Approval. Plans and re-submittals thereof shall be approved, disapproved or otherwise acted upon in writing by the Committee within thirty (30) days after their submission to the Committee. Owners are strongly encouraged to submit preliminary drawings or plans to the Committee as early as possible in order to allow the Committee extra time to evaluate the proposed construction and to avoid unnecessary delays in the approval process. All plans and specifications and other materials shall be submitted in duplicate. One (1) set shall be returned to the Lot Owner. Any plans and specifications shall be approved or disapproved by a writing signed by at least two (2) members of the Committee. The Committee shall attempt to either approve or disapprove all plans and resubmittals within thirty (30) days of their submission. Failure of the Committee to respond to a submittal or re-submittal of plans or materials within sixty (60) days of their submission or re-submission shall be deemed to be an approval of plans as submitted or re-submitted by the Owner.

If, after such plans and specifications have been approved, the Improvements are altered, erected, or maintained upon the Lot otherwise than as approved by the Committee, such alteration, erection and maintenance shall be deemed to have been undertaken without the approval of the Committee having been obtained as required by this Declaration and the Committee shall have the right to a temporary or permanent injunction or such other equitable relief as may be appropriate to cause the Owner constructing such improvement to immediately cease all such construction and/or to remove any and all such improvements. After the expiration of one (1) year from the date of completion of any improvement, said improvement shall, in favor of purchasers and encumbrancers in good faith and for value, be deemed to comply with all of the provisions hereof unless a notice of such non-compliance or non-completion, executed by two or more member(s) of the Committee shall appear of record in the office of the County Recorder, or legal proceeding shall have been instituted to enforce compliance with these provisions. The approval of the Committee of any plans or specifications submitted for approval as herein specified for use on any Lot and/or Residence shall not be deemed to be a waiver by the Committee of its right to object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are

embodied in any subsequent plans and specifications submitted for approval as herein provided for use on other Lots or Residences. Upon approval of the Committee acting in accordance with the provision of this Declaration, it shall be conclusively presumed that the location and size of any improvement does not violate the provisions of this Declaration. Until later published, the address of the Committee may be obtained by contacting Rockie Dustin, Telephone No. 801-328-1188.

**Section 4.4: Termination of Committee.** Upon the occurrence of the completion of the construction of a Residence and the Landscaping upon each Lot, the Committee shall meet in order to determine whether its continued existence is advisable under the circumstances. In the event that the Committee shall elect to continue in existence, it shall so continue until dissolved by a majority vote of the Committee. In the event that the Committee shall elect to dissolve, any and all rights, duties and/or responsibilities of the Committee shall at that time automatically become the rights, duties and/or responsibilities of the Association without the necessity of the filing of any amendment to this Declaration or other action.

## ARTICLE V

### EASEMENTS, HILLSIDE DISTURBANCE AND FLOOD CONTROL

**Section 5.1: Utility Easements.** Easements for installations and maintenance of drainage facilities and public utilities are hereby reserved over ten (10) feet of the front, rear and one side of each Lot, and as otherwise identified on the Map of the Subdivision. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. However, the Committee may, in its sole discretion, approve a structure within the easements such as a fence, wall, landscaping, driveway or off-street parking area. It is expressly understood, however, that any such Improvement shall be constructed at the Owner's or the easement holder's sole risk, as the case may be, and as provided in the easement document(s), of having the Improvement partially or wholly removed, dismantled, taken out, or destroyed where necessary because of drainage or public utility servicing, installation, alteration or maintenance. The easement areas within each Lot and all Improvements in such areas shall be maintained continuously by the Owner of the Lot, except for those improvements which a public authority or utility company is responsible to maintain.

**Section 5.2: Grading Approval.** All persons erecting or constructing improvements on any Lot shall comply with the Farmington City Hillside Ordinance requiring, among other things, that grading and vegetation plans be approved by the City Engineer before building permits are issued. Any disturbance of a hillside is controlled by the City.

**Section 5.3: Flood Control Responsibility.** Construction of berms, channels or other flood control facilities is the sole responsibility of the Lot Owner and shall be done in accordance with the flood control district plans approved by the City and/or Davis Country Flood Control.

Such construction shall commence at the time the Lot is graded or otherwise altered from its natural state.

## ARTICLE VI VIOLATIONS AND POWERS OF ENFORCEMENT

**Section 6.1: The Association's Powers of Enforcement.** Enforcement shall be accomplished by any lawful means, including proceeding at law or in equity against any person or persons violating or attempting to violate any provision herein, either to restrain violation or recover damages. In the event a legal action is instituted by the Association to enforce compliance with or due to a breach of any of the provisions of this Declaration, the party found to have violated any provision(s) of this Declaration shall be liable to the prevailing party for the prevailing party's legal costs and expenses, including a reasonable attorney's fee. Notwithstanding the foregoing, no liability of any nature shall attach to the Association, or any member thereof, in acting in good faith pursuant to the provisions of this Declaration.

If after fourteen (14) days written notice, an Owner fails to remedy a violation (the "Defaulting Lot Owner"), another Owner and/or the Association may (in addition to other lawful remedies available to it) cause such violation or condition to be remedied and the costs thereof shall be charged to the Defaulting Lot Owner in which event such costs shall be deemed a special assessment to such Defaulting Lot Owner and shall attach as a lien to the Defaulting Lot Owner's Lot, and shall be subject to levy, enforcement and collection by the other Owner, and/or the Association, in accordance with the assessment lien procedure provided for in Section 6.2 of this Article VI.

Failure to comply with any of the provisions of this Declaration or regulations adopted pursuant thereto shall be grounds for relief which may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof, which relief may be sought and liberally construed to effectuate its purpose. Any violation of this Declaration shall be deemed to be a nuisance or unreasonable annoyance. Failure to enforce any provisions hereof on one or more occasions shall not constitute a waiver of the right to enforce said provision or any other provisions hereof.

**Section 6.2: Lien For Assessments.** All sums assessed to an Owner pursuant to this Declaration, together with interest thereon at the legal rate of interest from the date of assessment until paid, before or after judgment, shall be secured by a lien on such Lot and the improvements thereon, in favor of the Association. To evidence a lien for sums assessed pursuant to this Declaration, the Association shall prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Such notice shall be signed by a duly authorized representative of the Association and shall be recorded in the office of the county recorder for Davis County, State of Utah. Such lien may be enforced by sale or foreclosure of the Lot encumbered by the lien at a foreclosure sale conducted by the Association and generally in accordance with the provisions of

Utah law applicable to the exercise of powers of sale or foreclosure under deeds of trust or mortgages or in any manner permitted by Utah law. In any such sale or foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including, without limitation, attorneys' fees and costs, court costs, and the costs of architects, engineers and other experts or expert witnesses incurred in the original action or on appeal or in court, and such costs and expenses shall be secured by the lien herein provided whether or not same shall be specifically set forth therein.

**Section 6.3: Additional Enforcement Rights.** Additionally and after reasonable notice in writing, an Owner not at the time in default hereunder, the Association, or the Declarant, shall have the option of bringing an action for damages, specific performance, or injunctive relief against any defaulting Owner, and in addition may sue to have enjoined any violation of this Declaration. Any judgment shall include an award of the legal costs and expenses, including reasonable attorneys' fees and other costs and expenses as enumerated above, entered against the losing party and in favor of the prevailing party. Each remedy provided in this Declaration shall be cumulative and not exclusive or exhaustive. Suit to recover a money judgment may be maintained without foreclosure or waiving the lien securing the same.

**Section 6.4: Rights of Entry.** The Association shall have a limited right of entry in and upon all Lots and the exterior of all Residences for the purpose of taking whatever corrective action it deems necessary or proper. Nothing in this Section or Article shall in any manner limit the right of the Owner to exclusive control over the interior of his or her Residence.

**Section 6.5: Committee and/or Declarant Authority.** The Committee and/or Declarant shall have the right to enforce any applicable provision hereof in the same manner provided to the Association.

## ARTICLE VII DURATION AND AMENDMENT

**Section 7.1: Duration.** This Declaration shall continue in full force and effect for a period of fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a declaration of termination is recorded with the County Recorder of Davis County, meeting the requirements of an amendment to this Declaration as set forth in Section 7.2 of this Article. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Lot from membership in the Association as long as this Declaration shall continue in full force and effect.

**Section 7.2: Amendment.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association either in writing or at a duly called meeting for such purpose.

No amendment to this Declaration shall be effective unless approved in writing by the Owners of not less than four (4) of the Lots in the Subdivision at the time of such amendment, including Lots which may be owned by the Declarant.

Notwithstanding the forgoing, Declarant may at any time amend this Declaration to qualify the Subdivision with lending institutions and until the close of the escrow established for the sale by Declarant of its last Lot in the Subdivision, Declarant shall have the sole right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification. The "close of escrow" shall be deemed to be the date upon which a deed conveying the Lot is recorded.

## ARTICLE VIII MISCELLANEOUS

Section 8.1: Severability. Invalidation of any one of these covenants, or any portion thereof by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.

Section 8.2: Singular Includes Plural. Whenever the context of the Declaration requires the same, the singular shall include the plural, and the masculine shall include the feminine.

Section 8.3: Covenants, Etc. Shall Run With the Land. All of the limitations, restriction, easements, conditions and covenants herein shall run with the land and shall be binding on and for the benefit of all the Property and all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each Owner and are imposed upon the Property as a servitude in favor of each parcel thereof as the dominant estate or estates.

Section 8.4: Limitation on Liability. Neither the Declarant, its assignee, delegatee, the Committee or the Association shall be liable to any other person for any action or failure to act hereunder where such action or failure to act was in good faith.

Section 8.5: Paragraph Headings. The headings which precede the paragraphs and sub-paragraphs of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed.

Section 8.6: Foreclosure. Should any Mortgage be foreclosed on the Property, then the title acquired by such foreclosure and the person or persons who thereupon and thereafter become the owner or owners of such Property, shall be subject to and bound by all the restrictions enumerated herein.

Section 8.7: Effective Date. This Declaration and any amendment(s) or supplement(s) thereto shall take effect upon its (their) being filed for record in the Office of the County Recorder of Davis County, Utah.

IN WITNESS WHEREOF, the Declarant has executed this instrument the day and year first hereinabove written.

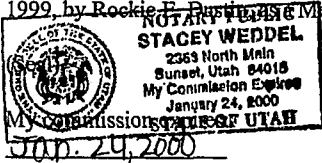
KWH, L.L.C.,  
a Utah Limited Liability Company

By: Robin E. [Signature]  
Its Member

By: Kent B. Forsgren  
Its Member

STATE OF UTAH )  
 ) :SS.  
COUNTY OF DAVIS )

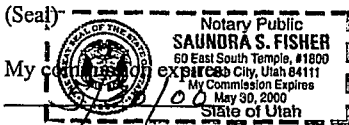
The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of July, 1999, by Robin E. Forsgren Member of KWH, L.L.C., a Utah Limited Liability Company.



[Signature]  
Notary Public  
Residing at: Farmington, Utah

STATE OF UTAH )  
 ) :SS.  
COUNTY OF DAVIS )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of July, 1999, by Kent B. Forsgren, as a Member of KWH, L.L.C., a Utah Limited Liability Company.



Sandra S. Fisher  
Notary Public  
Residing at: Salt Lake Co, Utah



## CONSENT AND SUBORDINATION OF INTEREST

The undersigned, holder of the beneficial interest under that certain Trust Deed dated December, 1997 and recorded December 31, 1997 as Entry No. 1371718, in Book 2223, at Page 1012, do hereby subordinate our interest in the Trust Deed to this Declaration of Covenants, Conditions, and Restrictions (The "Declaration") and agree that the Declaration shall remain in full force and effect at all times hereafter and shall not be affected by a foreclosure of the Trust Deed, whether judicial or non-judicial. Note that Lot # 7 in the Forest Heights Subdivision is exempt from the Declaration of Covenants, Conditions and Restrictions for the Forest Heights Subdivision.

Glen W. Howard

Glen W. Howard

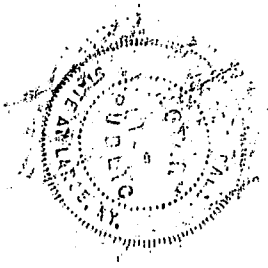
Beverly June Howard

Beverly June Howard

Glen W. Howard, Trustee  
under the Glen W. Howard Trust

Glen W. Howard, Trustee under the Glen W.  
Howard Family Trust dated September 1, 1987

Beverly June Howard, Trustee  
under the Glen W. Howard Trust

Beverly June Howard, Trustee under the Glen W.  
Howard Family Trust dated September 1, 1987

Paula Belle N.P.  
12-18-2001

STATE OF Kentucky )  
COUNTY OF McCreary ) :SS

E 1532111 B 2532 P 1116

The foregoing instrument was acknowledged before me this 10 day of July, 1999, by Glen W. Howard and Beverly June Howard, who acknowledged to me that they executed the same.

My commission expires:  
12-18-2001

David Ball  
Notary Public  
Residing at: Whitley City Ky

STATE OF Kentucky )  
COUNTY OF McCreary ) :SS

The foregoing instrument was acknowledged before me this 10 day of July, 1999, by Glen W. Howard and Beverly June Howard, Trustees under the Glen W. Howard Family Trust, dated September 1, 1987, who acknowledged to me that said Trust executed the same.

My commission expires:  
12-18-2001

David Ball  
Notary Public  
Residing at: Whitley City Ky

**EXHIBIT "A"**

**E 1532111 B 2532 P 1117**

Real property located in Davis County, Utah described as:

*Lots 1, 2, 4, 5, and 6, Forest Heights Subdivision, Farmington City, Davis County, Utah, according to the official plat thereof.*

*Lot No. 3 of the Forest Heights Subdivision located in the Northeast Quarter of Section 13, Township 3 North, Range 1 West, Salt Lake Base and Meridian, Farmington City, Davis County, Utah.*

*Less and excepting therefrom a portion of Lot No. 3 of the Forest Heights Subdivision more particularly described as follows:*

*Beginning at a point which lies North 00°41'07" West along the East section line at the NE Corner of Section 13, Township 3 North, Range 1 West, Salt Lake Base and Meridian, Farmington City, Davis County, Utah, 245.20 feet, and South 89°18'21" West 331.00 feet said point lies on the Westerly boundary line of the Forest Heights Subdivision, running thence along said boundary North 00°41'07" West 58.98 feet; thence North 89°18'53" East 52.96 feet; thence South 41°13'57" West 79.27 feet to the point of beginning.*