

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS
AND RESTRICTIONS OF
ENGLISH OAKS
WASHINGTON CITY, UTAH**

WITNESSETH:

WHEREAS, Developer is the Owner or equitable Owner under certain contracts to purchase the real property described in Article II of the Declaration and desires to create thereon a Subdivision with permanent open spaces and other common facilities for the benefit of the said Subdivision; and

WHEREAS, this planned unit Development is established as a retirement community, to constitute housing for older persons.

WHEREAS, it is the desire and intention of the developer to construct townhomes and sell and convey the same to various purchasers.

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said Subdivision and for the maintenance of said open spaces and other common facilities, and, to this end, desires to subject the real property described in Article II together with such additions as may hereinafter be made thereto to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof; and

WHEREAS, Developer has deemed it desirable for the efficient preservation of the values and amenities in said subdivision to create an agency to which should be delegated and assigned the powers of maintaining and administering the subdivision properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has caused or will cause to be incorporated under the laws of the State of Utah, as a nonprofit corporation, English Oaks Property Owners Association, Inc., for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II, Section 2, hereof, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens (sometimes referred to as "covenants and restrictions:") hereafter set forth.

ARTICLE I

Definitions.

Section I. The following words when used in the Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association: shall mean and refer to English Oaks Property Owners Association, Inc., its successors and assigns.
- (b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration under the provisions of Article II hereof.
- (c) "Lot" shall mean and refer to any plot of land or unit containing not less than 2750 square feet and upon which is located utility hookups for water, sewer, electricity, which is intended for the living unit and recorded on any subdivision map of the properties with the exception of Common Properties hereafter defined.
- (d) "Limited Common" shall mean and refer to those areas of land shown on any recorded subdivision plat of the properties and is intended for the primary use of the owner of that lot and the limited and reasonable use of an adjacent lot owner to access his/her property and is subject to all easements for maintenance and repair etc.
- (e) "Common Properties" shall mean and refer to those non-exclusive areas of land shown on any recorded subdivision plat of the Properties and intended to be devoted to the common use and enjoyment of the Association, except portions designated as living units.
- (f) "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for the use and occupancy of a manager or residence by a property owner or renter as a single family dwelling.
- (g) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities of the fee simple title and the equitable owner, whether one or more persons or entities by virtue of a purchase contract to any Lot or Living Unit situated upon the Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee shall be considered an Owner only so long as the mortgagee continues its right to possession. The Developer shall be the Owner within the meaning of this paragraph of any Lot or Living Unit for which he is, at the date of execution of these covenants and restrictions, the equitable Owner of a contract for the purchase of any Lot or Living Unit and the contract seller for such contract shall not be deemed an Owner.
- (h) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article II, Section I, hereof.

ARTICLE II

Property subject to this Declaration and Additions thereto:

Section 1. Existing Property. The real property, including any permanent Living Unit located upon any Lot, which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Washington, Washington County, State of Utah, and is more particularly described in Exhibit "A" attached hereto, all of which real property shall hereinafter be referred to as "Existing Property."

Section 2. Annexation. From time to time the Developer may pursue additional phases of the development which will involve annexation of additional property, as may be purchased and

approved by appropriate public authority. At such time as any of said additional properties are subdivided as evidenced by a properly approved and recorded subdivision plat, the Developer may deem such additional properties to be included in the definitions of Article I, Section 1, subparagraphs (b), (c), and (d).

ARTICLE II

Membership and Voting Right in the Association.

Section 1. Membership. Every person or entity who is an owner as defined in Article I, Section 1, subparagraph (f) of any Lot shall be a member of the Association provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be those Owners as defined in Section 1, with the exception of the Developer. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 1. When more than one person holds such interest or interests in any Lot all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot. In the event such persons fail to agree then their vote shall be cast on a pro rata basis among the respective interests.

Class B. Class B members shall be the Developer. The Class B members shall be entitled to three votes for each Lot in which it holds the interest required for membership in Section 1, provided that the Class B membership shall cease and become converted to Class A membership on the happening of the following events, whichever occurs earlier:

(a) on the 1st of January 2009, however no annexation shall have less than 5 years from the date of annexation or

(b) at such earlier date as Developer in his discretion considers the development 95% or more completed or that it is in the best interest of the members and so notifies the Property Owners Association.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot in which it holds the interest required for Membership under Section 1.

ARTICLE IV

Property Rights in the Common Properties.

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3, every member shall have a right and easement of enjoyment in and to the common properties and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Properties. The Developer may retain the legal title to the

Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same, but, not withstanding any provisions herein, the Developer hereby covenants, for itself, its heirs and assigns, that it shall convey the Common Properties to the Association not later than the 1st day of January 2009, or at such earlier date in accordance with Article II, Section 2 (b). In any event, said conveyance shall be made free and clear of any mortgage or other encumbrance upon the Common Properties.

Section 3. Alienation of Common Properties. The Common Properties may not be alienated without the approval of all holders of first mortgage upon any of the properties subject to assessment.

Section 4. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Developer and the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties; and

(b) the right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and

(c) the right of the association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed sixty (60) days for an infraction of its published rules and regulations; and

(d) the right of the Association to charge reasonable admission and other fees for the use of Common Properties; and

(e) the right of the Association to adopt and establish, by resolution, rules designating certain areas of the development as adult only, and shall also be able to establish certain reasonable time periods for adult only use of the common facilities. The definition of a minor shall be one who has not graduated from High School or attained the chronological age of eighteen (18) years,

(f) the rights of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer determination as to purpose or as to the conditions thereof shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every member at least thirty (30) days in advance of any action taken.

Section 5. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Properties or facilities to those actually residing on the property whether they be member of his family, his tenants, or contract purchasers.

ARTICLE V

Covenants for Maintenance Assessments.

Section 1. Creation of the Lien and Personal Obligation of Assessment. The Developer for each Lot owned by him within the Properties hereby covenants and each owner of any Lot by acceptance of a Real Estate Purchase Agreement or a deed therefore whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association (1) regular assessment or charges; (2) special assessment for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The regular and special assessments, together with such interest thereon and the costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property (lot) against which such assessment is made.

Each assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person or persons who were the owners of such property (lot) at the time when the assessment fell due. The Association may elect from time to time any remedy with regards to the defaults by Owners without regard to any rule of law concerning the election of remedies.

Section 2. Purpose of Assessments. The assessment levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, aesthetics, and welfare of the residents in the Properties and in particular for the improvement, operation, and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties, perimeter subdivision fences, garbage collection, for the Properties as they become due, and at the option of the Association, of the additions thereto, and for the cost of labor, equipment, materials, utilities, property taxes, insurance, management, and supervision thereof.

Section 3. Regular Assessments. The regular monthly assessments shall be 100% of the actual estimated monthly costs of maintenance and operation of the Common Properties and other facilities and may include management fee together with amount necessary to pay into a reserve account for any increases or unexpected expenditures.

The Board of Directors of the Association may, after consideration of the current maintenance costs and future needs of the Association, provide for accumulation of reserves to meet projected needs.

Section 4. Special Assessments for Capital Improvements. In addition to the regular assessments authorized by Section 4 hereof, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of described capital improvements, including the necessary fixtures and personal property related thereto, provided that any such special assessment exceeding \$3,000 or improvement costs shall be by the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least ten (10) days in advance and shall set forth the purpose of the meeting.

Section 5. Assessment Period. The assessment period for regular assessments shall be one month. All regular assessments shall be fixed at a monthly rate and may be adjusted by the Board

of Directors in accordance with Section 8 to reflect current estimated costs of maintenance and operations. All assessments must be fixed at a uniform rate for all Lots.

Section 6. Date of Commencement of Regular Assessment. Due Dates. The regular assessments provided for herein shall commence on the date (which shall be the first day of a month) the month following the closing on the unit, to be the date of commencement. Developer's unsold and un-rented lots are exempt from assessment.

The regular assessment shall become due and payable on the first day of each month beginning on the month of the commencement date or such other date as fixed by the Board of Directors.

Section 7. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period, and shall, at that time, prepare a roster of the properties and assessments applicable thereto and keep books of account showing receipts and disbursements which shall be kept in the office of the Association and shall be open to inspection by the Owner at reasonable times.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

Section 8. Effect of Non-payment of Assessment: Their Personal Obligation of the Owner: The Lien: Remedies of Association. If the assessments are not paid on the date when due (being the date specified in Section 7, hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then existing Owner, his heirs, personal representatives and assigns. The personal obligation of the then existing Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in the title unless expressly assumed by them, in which case such obligation shall be joint and several.

If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may bring action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event a judgement is obtained, such judgement shall include interest on the assessment as above and reasonable attorney's fees to be fixed by the court, together with the costs of the action.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charge, and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common properties as defined in Article I, Section 1, hereof; (c) all properties temporarily exempted by a separate writing during the construction phase of development. (d) all properties held as class B by the Developer.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges, or liens.

ARTICLE VI

Easements.

Section 1. Easement for Repair and Maintenance. All lots with properties shall be subject to an easement favor of the Association and utility companies to permit reasonable egress and ingress over areas not occupied by residential pads for all reasonable maintenance purposes as provided herein.

ARTICLE VII

Prohibition and Controls.

Section 1. Architectural Control. No building, storage shed, fence, wall, accessory, canopies, or other structure shall be erected or maintained upon the properties, nor shall any exterior addition to or change or alteration or improvements herein be made. Provided however the Association may design and publish to the members such plans and specifications of walls, fences, and other structures, which would benefit the members and the subdivision as a whole, which the members at their expense may purchase or construct on their property in the manner to be prescribed by the Association.

Section 2. Landscaping Control. No Lot leveling, planting, landscaping, or gardens shall be commenced until a plan thereof has been approved by the Association or the Architectural Committee.

Section 3. No mobile homes, tent trailers, tents, or outdoor overnight camping will be allowed.

Section 4. Use of Lots. No more than one (1) Recreational Vehicle will be permitted upon any Lot in said subdivision.

No sign, temporary or permanent, as For Rent or For Sale signs shall be erected or installed, placed, permitted, or maintained on any Lot, except the name and Lot number of the Unit.

No laundry may be dried in any location on any Lot unless completely enclosed and screened from view from any other said Lot.

No Lot or Lots shall be re-subdivided except for the purpose of combining two or more lots into ONE.

No animals, fowl or reptiles shall be kept on the premises except household dog, cat, or pets owned by the Owner of the Lot on which they are kept. No animal shall be allowed OFF THE LOT OF THE OWNER EXCEPT ON A LEASH; and no dog, cat, or bird pet shall be kept on any Lot by anyone if, in the discretion of the Association, that pet is or becomes a nuisance, threat, or otherwise is objectionable to surrounding property owners.

All owners of pets shall be responsible for the clean up of said pet's waste.

No elevated tanks of any kind shall be erected, or placed, or permitted on any Lots.

No outdoor burning of trash or other debris shall be permitted. This shall not prohibit the

use of normal residential barbecue or other similar outside grill.

No noxious, offensive, or illegal activity shall be carried on upon any Lot. No Lot shall be used in whole or in part for the storage of rubbish, trash, used or new building materials, used or new metal, trucks, automobiles, or machine in whole or in parts. Bicycles, toys and other similar items shall not be left on Lots when not in use but shall be placed out of sight. No personal property, substance, thing, or material shall be kept on any Lot or any part thereof that will emit foul or noxious odors, or that will cause any noise that might disturb the peace and quiet of the surrounding property owners, or will cause the Lot or any part thereof to appear in an unclean or untidy condition.

Retirement Community This planned unit development is a retirement community, developed to provide housing for older persons. Each grantee of a deed for a Lot within the properties acknowledges by acceptance of that deed that this purpose of the development, and the facilities within the development designed for retirement, are a significant consideration in the purchase of the lot. A townhome must be occupied by at least one person over the age of fifty-five, or by the surviving spouse of a person over the age of fifty-five who has occupied the townhome, which surviving spouse continues to occupy the townhome; provided, however, that no surviving spouse may occupy a townhome under this provision if the occupancy would cause the number of townhomes occupied by persons over the age of fifty-five to fall below eighty percent of the total number of townhomes in the Properties.

Occupancy by Persons Under 18 prohibited A townhome may not be occupied by any person under the age of eighteen, unless that person is a visitor for a period which may not exceed seventeen (17) days per calendar month, for a total period not to exceed thirty (30) days in any calendar year, and such person only occupies the townhome concurrently with a person qualified to reside therein under the preceding section.

Section 6. Maintenance of Lots. It shall be the responsibility of the Manager to keep the Lot neat and clean, the lawn mowed, and the Lot landscaped in types of landscaping deemed reasonable and compatible so as not to destroy or impair the aesthetic qualities of English Oaks.

Section 7. Miscellaneous Prohibitions.

- (a) No cars are to be parked in the street.
- (b) **Repairing Cars.** No major repairing or overhauling of cars or trucks is permitted on the streets, driveways, or parking lots of the park.
- (c) **Additional Prohibitions.** Such other actions deemed from time to time by the Association to constitute a nuisance.

Section 8. Professional Management. The Association shall have the right to contract for services or transfer to any corporation, person or partnership, all of his rights and obligations hereunder, but upon such transfer and the assumption of such obligations by the transferee, the enforcement of covenants and obligations under this agreement shall remain the sole responsibility of the Association.

ARTICLE VIII

General Provisions.

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot and subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of ten (10) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 2. Amendment. The covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by the Developer or by not less than 67% of the Owners including both Class A and Class B voting if the Association has been formed to protect the retirement status of the Development or to comply with a law to keep this Declaration and the Development legal. Any amendment must be properly recorded in the records of Washington County Utah to become effective.

Section 3. Notices. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last know address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. In the event the Association or Owner recovers judgement against any person for a violation or threatened violation of any of the covenants herein, the Association or Owner shall also be entitled to recover from such person reasonable attorney's fees. The failure of the Association or 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.

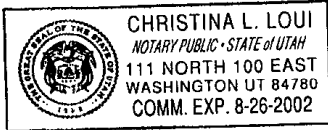
Section 5. Serviceability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provision which shall remain in full force and effect.

Declaration of Protective Covenants, Conditions and Restrictions of English Oaks, Washington City, Utah Submitted by English Oaks L.L.C.

[Handwritten Signature]
Kent A. Heideman
Manager/Member

STATE of UTAH)
) ss.
COUNTY of WASHINGTON)

On this 22 Day of September, 1999, before me personally appeared **Kent A. Heideman** whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he/she is a member/manager of **English Oaks LLC**, a Utah Limited Liability Company, and that the foregoing document was signed by him on behalf of that company by authority of its (Operating Agreement/Declaration of Member) and he acknowledge before me that the company executed the document and the document was the act of the company for its stated purpose.



[Handwritten Signature]
Notary Public
Address: Washington City, Utah
My Commission Expires: 8-26-2002

BURTON LAND SURVEYING
195 West Telegraph Street
Washington, Utah 84780
Tele: (435) 628-8272

September 17, 1999

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EXHIBIT A

LEGAL DESCRIPTION OF
ENGLISH OAKS ESTATES PHASE 1 P.U.D.

BEGINNING AT A POINT NORTH 89°58'56" EAST ALONG THE CENTER SECTION LINE 1352.48 FEET, AND NORTH 0°58'50" WEST 663.24 FEET, AND SOUTH 89°40'45" EAST 601.23 FEET FROM THE WEST 1/4 CORNER OF SECTION 13, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE & MERIDIAN, WASHINGTON COUNTY, UTAH; AND RUNNING THENCE SOUTH 89°40'45" EAST ALONG THE NORTH LINE OF KINGS ROW DEVELOPMENT A DISTANCE OF 711.16 FEET TO THE CENTER SECTION LINE; THENCE NORTH 0°17'10" WEST ALONG SAID CENTER SECTION LINE 980.09 FEET; THENCE NORTH 89°40'45" WEST 69.68 FEET; THENCE SOUTH 22°33'18" WEST 79.64 FEET TO A POINT ON A 50.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHWEST, THE RADIUS OF WHICH BEARS SOUTH 22°33'18" WEST FROM SAID POINT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 19.40 FEET; THENCE SOUTH 0°19'15" WEST 35.00 FEET; THENCE NORTH 89°40'45" WEST 55.16 FEET; THENCE SOUTH 0°17'10" EAST 70.00 FEET; THENCE NORTH 89°40'45" WEST 394.465 FEET; THENCE SOUTH 36°02'10" EAST 741.63 FEET; THENCE SOUTH 53°57'50" WEST 35.00 FEET; THENCE NORTH 89°40'45" WEST 97.27 FEET TO A POINT ON A 67.50 FOOT RADIUS CURVE CONCAVE TO THE SOUTHWEST, THE RADIUS OF WHICH BEARS SOUTH 82°44'04" WEST FROM SAID POINT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE 8.22 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 0°17'10" EAST 46.28 FEET; THENCE SOUTH 89°42'50" WEST 35.00 FEET; THENCE NORTH 0°17'10" WEST 46.28 FEET TO THE POINT OF A 32.50 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 13.32; THENCE SOUTH 89°42'50" WEST 307.12 FEET; THENCE SOUTH 0°17'10" EAST 55.58 FEET; THENCE SOUTH 89°42'50" WEST 35.00 FEET TO THE POINT OF A 15.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST, THE RADIUS OF WHICH BEARS SOUTH 89°42'50" WEST FROM SAID POINT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 23.72 FEET TO THE POINT OF TANGENCY; THENCE NORTH 89°40'45" WEST 54.84 FEET; THENCE SOUTH 0°17'10" EAST 117.03 FEET TO THE POINT OF BEGINNING.

CONTAINS 8.295 ACRES, MORE OR LESS.

Sept. 17, 1999
DATE:



A. Brent Burton

A. BRENT BURTON R.L.S.
UTAH LICENSE NO. 160267