

7524376

After Recording, Return To:
Bryce D. Panzer
BLACKBURN & STOLL, L.C.
77 West 200 South, Suite 400
Salt Lake City, Utah 84101

7524376
12/01/1999 02:25 PM 84.00
NANCY WORMAN
RECORDER, SALT LAKE COUNTY, UTAH
TRADE WEST DEVELOPMENT
8221 S 700 E
SANDY UT 84070
BY: SBM, DEPUTY - WI 17 P.

**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS of ASH BRIAR COVE, P.U.D.,**
a Planned Unit Development in
West Jordan, Utah

This Declaration is made and executed this day 22 of November, 1999, by
TRADE-WEST DEVELOPMENT CORPORATION, a Utah corporation, for itself, its
successors, grantees and assigns (hereinafter referred to as "Developer").

RECITALS

A. Developer is the record owner of the following described tract of land located in
West Jordan, Salt Lake County, Utah:

BEGINNING AT A POINT WHICH IS S 89°57'09" W, 1197.84 FEET
ALONG THE SECTION LINE AND N 0°02'51" W, 50.00 FEET FROM THE
SOUTHEAST CORNER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 1
WEST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE N
0°02'51" W, 689.35 FEET; THENCE S 89°57'09" W, 117.32 FEET;
THENCE N 0°18'19" E, 6.58 FEET; THENCE S 89°57'09" W, 231.75 FEET;
THENCE S 0°17'02" W 582.01 FEET; THENCE N 89°57'09" E, 93.49 FEET;
THENCE S 2°20'50" W, 114.03 FEET; THENCE N 89°57'09" E, 263.67
FEET TO THE POINT OF BEGINNING.

CONTAINS: 5.3514 ACRES, MORE OR LESS;

hereinafter, the "Tract." Developer desires to create on the Tract a planned unit development.

B. Developer desires to provide for preservation of the values and amenities in said
development and for the maintenance of the Common Areas to be located on the Tract. To
this end and for benefit of the Property and of the Owners thereof, Developer desires to
subject the Property to the covenants, conditions, restrictions, easements, charges, and liens
hereinafter set forth.

C. Developer deems it desirable, for the efficient preservation of the values and
amenities in the development, to create an entity which possesses the power to maintain and

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administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Developer has, in conjunction with recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, the Ash Briar Cove, P.U.D., Property Owners Association.

NOW, THEREFORE, for the foregoing purposes, Developer declares that the Property, as more particularly described in Recitals Paragraph A and Article II of this Declaration, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

I. DEFINITIONS

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

1.1 Declaration shall mean this Declaration of Covenants, Conditions, and Restrictions.

1.2 Plat shall mean the subdivision plat covering the Property, entitled "ASH BRIAR COVE, P.U.D.," executed and acknowledged by Developer on the ___ day of _____, 1999, prepared and certified by Ralph Goff and Associates (a duly registered Utah Land Surveyor, holding Certificate No. 144147), and filed for record in the office of the County Recorder of Salt Lake County, Utah, concurrently with the filing of this Declaration.

1.3 Property shall mean the entire tract of real property covered by the Plat, the legal description of which is set forth in Recitals Paragraph A of this Declaration, subject to the exclusions and reservations stated in Article II herein.

1.4 Lot shall mean any of the forty-two (42) separately numbered and individually described parcels of land as shown on the Plat.

1.5 Common Areas shall mean that part of the Property that is not included within the Lots, but including interior and incidental roadways, sidewalks, walkways, curbs, and landscaping within or adjacent to the Lots, together with all improvements other than utility lines which are now or hereafter constructed or located thereon, owned by the Association for the common use and enjoyment of the Owners. The Common Areas to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

All of the above-described Tract, less and excepting Lots 1 through 42, inclusive.

1.6 Residential Unit shall mean a structure or portion of a structure which is designed and intended for residential use, together with all improvements located on such Lot that are used or intended to be used in conjunction with such Residential Unit.

1.7 Owner shall mean the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.8 Association shall mean the Ash Briar Cove, P.U.D., Property Owners Association, a Utah nonprofit corporation, which has been incorporated or will be incorporated substantially contemporaneously with the recording of this Declaration.

1.9 Member shall mean every person who holds membership in the Association.

1.10 Mortgage shall mean both a first mortgage on any Lot and a first deed of trust on any Lot, and Mortgagee shall mean both a mortgagee under a first mortgage on any Lot and a beneficiary under a first deed of trust on any Lot.

II. PROPERTY DESCRIPTION

The Property that is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the real property described in Recitals Paragraph A of this Declaration (the "Tract"), subject to the following provisions:

2.1 Exclusion of Utilities Easements. There is excluded from the Property all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent they are located outside the Lots included within the Tract.

2.2 Reservation to Developer for Construction. There is reserved unto Developer, its employees, agents, and successors, such easements and rights of ingress and egress over, across, through, and under the Property, and any improvements now or hereafter constructed thereon as may be reasonably necessary for the Developer, its employees, agents and successors (in a manner not inconsistent with the provisions of this Declaration) to engage in construction upon or to improve the Common Areas with such structures and facilities (including, but not limited to parking areas, sidewalks, parking area and sidewalk lighting, and various landscaped areas) designed for the use and enjoyment of all the Members as Developer may reasonably determine to be appropriate. If, pursuant to this reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility

line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its terms, expire thirty (30) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

2.3 Right of Access for Maintenance. Each Lot is subject to a right of access reserved and/or granted in favor of the Association for maintenance and upkeep of any portion of any Lot which lies between the extremities of the Residential Unit situated thereon and the boundaries of the Lot. In addition, each Lot is subject to a right of access in favor of utility companies for maintenance of utilities, if any, located on or adjacent to the Lots.

2.4 Subject to Taxes, Instruments of Record. The Property subjected to this Declaration is subject to all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all instruments of record which affect the Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record.

III. MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Neither the issuance nor the holding of shares of stock shall be necessary to evidence membership in the Association.

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

(a) Class A. Class A Members shall be all Owners other than the Developer until the Class B membership ceases, at which time the Developer shall become a Class A Member with respect to any Lot or Lots that the Developer may own at that time or from time to time. Class A Members shall be entitled to one (1) vote for each Lot owned.

(b) Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

(1) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member; or

(2) On December 30, 2000.

IV. PROPERTY RIGHTS IN COMMON AREAS

4.1 Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any tenant, lessee, or contract purchaser that resides on such Member's Lot.

4.2 Transfer of Title. Developer agrees that it shall, at or prior to the time the first Lot is conveyed by Developer, convey to the Association title to the Common Areas free and clear of all liens (other than those matters identified in Article II above, including the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities, or for easements or rights of way reserved to the Developer or otherwise enforceable in law or equity).

4.3 Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of Salt Lake County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, and providing any other governmental or municipal service; and

(b) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership in which Members are present in person or by proxy and are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10), but not more than thirty (30), days prior to the meeting date.

(c) The right to the Developer, prior to conveyance of the Common Areas to the Association, and after said conveyance, the right of the Association to grant and reserve easements and right-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone and other utilities.

(d) The right of the Association to suspend the voting rights and right to use of any recreational facilities located in the Common Areas by an Owner for any period during which any assessment against the Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

4.4 Utility Easement. The Developer, for itself and its successors and assigns, including but not limited to the Association, hereby grants easements over, under, in, on and through the Common Area for the installation, construction, reconstruction, relocation, removal, maintenance, repair, operation and inspection of sewer, water, drainage, electric, gas and telephone facilities and wires, lines, cables, conduits, pipes and other necessary and proper attachments therewith, for the benefit of the Property or any part thereof, to the Developer, the Association, any federal, state or local authority, commission or agency having jurisdiction there over and any corporation, be it public, quasi-public or private, supplying or servicing such facilities.

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

Lot No. ___ contained within the ASH BRIAR COVE, P.U.D., as the same is identified in the Plat recorded in the office of the County Recorder of Salt Lake County, Utah, as Entry No. _____, in Book _____, at Page _____, and in the "Declaration of Covenants, Conditions, and Restrictions of the ASH BRIAR COVE, P.U.D." recorded in the office of the County Recorder of Salt Lake County, Utah, as Entry No. _____, in Book _____, at Page _____, TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions, and Restrictions.

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

V. ASSESSMENTS

5.1 Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article, together with all other fines, penalties, interest and costs of collection as described in this Declaration. All such amounts shall be, constitute, and remain: (i) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (ii) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot.

5.2 Purpose of Assessments. Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Property and for the improvement and maintenance of the Common Areas. The use made by

the Association of funds obtained from Assessments may include payment of the cost of: advertising for the common benefit of the Owners, taxes and insurance on the Common Areas, water, sewer, maintenance, repair, and improvements of the Common Areas; management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.

5.3 Initial Maximum Monthly Assessment; Increases. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be Thirty Dollars (\$30.00) per Lot (which is \$360.00 per annum). Assessments shall be paid to the Association by Owners on a monthly basis; however, the Trustees of the Association shall have the authority to collect the assessments on another periodic basis, such as quarterly, if it deems it advisable to do so.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased each year without a vote of the Members by an amount not more than 5% above the maximum monthly assessment for the previous year.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased more than 5% above the maximum monthly assessment for the previous year only if the increase is approved by sixty percent (60%) 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 setting forth the purpose of the meeting shall be sent to all Members at least ten (10), but not more than thirty (30), days prior to the meeting date.

(c) The Trustees of the Association may from time to time and in its discretion set the amount of the monthly assessment at any sum not in excess of the then applicable maximum amount. As provided in Article 5.6 below, the Trustees shall establish a landscape maintenance component of the monthly assessment, which shall be based upon the square footage of each Lot.

5.4 Special Assessments. In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (ii) the cost of any construction, reconstruction, or unexpectedly required repair or replacement of an improvement or of personal property upon the Common Areas. Any such special assessment must be assented to by sixty percent (60 %) 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 setting forth the purpose of the meeting shall be sent to all Members at least ten (10), but not more than thirty (30), days prior to the meeting date.

5.5 Quorum Requirements. Written notice of any meeting called for the purpose of taking any action on which a vote of the Members is authorized or required under this Declaration shall be sent to all Members at least ten (10), but not more than thirty (30), days prior to the meeting date. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present at the first meeting or any subsequent meeting, another meeting may be called, subject to the notice requirement set forth herein, at which a quorum shall be one-half ($\frac{1}{2}$) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

5.6 Uniform Rate of Assessment. Both monthly and special assessments shall be fixed at a uniform rate, as set forth herein. All costs, except landscape maintenance of the Lots (if such is provided), shall be allocated among the Owners on a per lot basis. Landscape maintenance of the Lots shall be allocated based on the square footage of each Lot. Any Owner may elect to exclude his fenced in back and side yards from the computation of the square footage of his Lot by signing a written agreement in a form approved by the Association under which the Owner assumes full responsibility for maintenance of his back and side yards.

5.7 Monthly Assessment Due Dates. The monthly and special assessments provided for herein shall commence as to all Lots on the first day of the second month following conveyance of the Common Areas to the Association. The Trustees of the Association shall fix the amount of the monthly assessment at least thirty (30) days in advance of the commencement date. At least fifteen (15) days prior to such commencement date, and at least fifteen (15) days prior to the effective date of any change in amount of the monthly assessment, the Association shall give each Owner written notice of the amount and first due date of the assessed concerned.

5.8 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot, the Association shall, for a reasonable charge, issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

5.9 Lien; Effect of Non-payment; Remedies. The monthly and special assessments, and all other charges to an Owner provided in this Declaration (including interest and costs of collection), shall be a charge on the Owner's Lot and shall be a continuing lien upon the Lot against which each such assessment or charge is made. The person who is the Owner of the Lot at the time the assessment falls due shall be and remain personally liable for payment. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at

the rate of ten percent (10%) per annum, and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. A suit to recover a money judgment against the Owner may be maintained without foreclosing or waiving the lien provided herein. Upon delinquency, the Association may record a notice of lien against the Lot. The Association may avail itself of any nonjudicial remedy then available under Utah law to foreclose or otherwise realize upon the lien, including the exercise of a private power of sale in accordance with the law governing the sale or foreclosure of deeds of trust. The Association shall be entitled to recover from the Owner, and the lien shall secure, the Association's reasonable attorney's fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

VI. OPERATION AND MAINTENANCE

6.1 Responsibility to Rebuild or Repair. Because the physical condition of each Residential Unit affects the value of every other Residential Unit, the Owner of each Unit shall maintain its Residential Unit in such a manner that it shall have the continued capacity to be used as a Residential Unit, and thus benefit the other Residential Units. The Owner shall not cause or permit to occur any damage, loss or injury to the Owners of the benefitted Residential Units or their tenants by or as a result of any act of negligence or any willful, wanton or reckless act on its part or on the part of its tenant with respect to the Owner's Residential Unit. Should any Residential Unit be damaged or destroyed by fire, flood, wind, snow or any other cause of whatever nature, the Owner shall cause the Residential Unit upon the Lot owned by him to be repaired or rebuilt. Such repair or rebuilding shall commence not later than ninety (90) days after the occurrence of the damage or destruction and shall be completed not later than one (1) year after such occurrence.

6.2 Liability for Physical Damage. Notwithstanding anything to the contrary contained in this Article VI, the Owner, in the course of building, rebuilding, repairing, maintaining or otherwise working or causing work to be done upon his Lot, shall be liable to the Owners of any adjacent Lots and to the Association with respect to the Common Areas for any physical damage to any other Lot or Residential Unit and for any physical damage to any Common Area. The Owner shall cause any such damage to be repaired and the Lot, Residential Unit or Common Area affected to be placed in the same state or condition that it was in prior to said damage. All such repairs shall be subject to the approval of the Trustees of the Association.

6.3 Maintenance of Residential Units. Each Residential Unit shall be maintained by the Owner thereof at his own cost and expense so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Residential Units. The Association shall have no obligation regarding maintenance or care of Residential Units.

6.4 Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional,

attractive, and generally in good condition and repair. In addition, the Association may provide for maintenance and upkeep of any portion of any Lot which lies between the extremities of the Residential Unit situated thereon and the boundaries of the Lot. A right of access to each Lot is reserved and/or granted to the Association for the purpose of providing such maintenance and upkeep.

6.5 Liability of Owner During Construction. The Owner, in the course of building, shall not be liable to the Owners of adjacent Lots affected by such work for any inconvenience, annoyance, or disturbance to such Owners by the performance of such work, unless occasioned by the negligence of the Owner of the improvement with respect to which the work in question was being performed, or the negligence of the Owner's agents, contractors or employees; however, the Owner of the Lot or Residential Unit with respect to which such work is being performed shall make all reasonable efforts to keep any such inconvenience, annoyance, disturbance, or loss of business to the minimum reasonably required by the work in question.

VII. INSURANCE

7.1 Casualty Insurance on Insurable Common Areas. The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurable replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable. The insurance coverage with respect to the Common Areas shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses and shall be paid from the assessments made by the Association.

7.2 Liability Insurance. The Association shall also maintain an insurance policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use, or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners, with such limits as may be determined by the Association. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

7.3 Other Insurance. The Association shall maintain a policy of fidelity insurance covering those employees hired by the Association to handle Association funds, in amounts as determined by the Trustees of the Association. The Association shall have the authority to

obtain and maintain other insurance, and shall maintain such insurance, such as worker's compensation insurance, if required by applicable law.

7.4 Miscellaneous Insurance Provisions. The Association shall have the authority to adjust losses. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees. Each policy of insurance obtained by the Association shall, if reasonably possible, provide: (i) a waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employee invitees, and tenants; (ii) that it cannot be canceled, suspended, or invalidated due to the conduct of any particular Owner or Owners; (iii) that it cannot be canceled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent, or employee of the Association without a prior written demand that the defect be cured; and (iv) that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

7.5 Owners' Insurance. In addition to coverage obtained by the Association, Owners of individual Lots shall obtain and maintain policies of fire and casualty insurance and a policy or policies covering against liability incident to the ownership of their separate Lots and improvements thereon. These policies shall contain all the provisions set forth above where possible and applicable.

VIII. USE RESTRICTIONS

8.1 Use of Common Areas. The Common Areas shall be used only in a manner consistent with the planned unit residential concept and with the use restrictions applicable to Lots and Residential Units.

8.2 Use of Lots and Residential Units. All Lots are intended to be improved with Residential Units and are restricted to such use. No Lot or Residential Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Residential Unit, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

8.3 Non-harmonious Use. No use or operation will be made, conducted or permitted on any Lot, or any portion of a Lot, which is obnoxious to or out of harmony with the residential use of all property in the Ash Briar Cove, P.U.D. Prohibited activities include, but are not limited to, the following: any public or private nuisance; any noise or sound that is objectionable due to its intermittent character, beat, frequency, shrillness or loudness; any obnoxious odor; any noxious, toxic, caustic or corrosive fuel or gas; any dust, dirt or fly ash in excessive quantities; any unusual fire explosion or other damaging or dangerous hazards; any assembly, manufacture or distillation operation; and the raising of animals except as generally permitted in residential developments in West Jordan and Salt Lake County, Utah.

8.4 Recreational Vehicles. No snowmobile, recreational equipment, trailer, camper, boat or truck larger than one (1) ton or any other similar equipment shall be permitted to remain upon any Lot, or any portion of a Lot, for more than a 24-hour period unless written approval is granted by the Association. The Association may levy a fine for any violation of this paragraph 8.4 of up to Fifty Dollars (\$50.00) for each day the violation continues.

8.5 On Street Parking. On street parking is intended for temporary visitors only. No motor vehicle, boat, recreational equipment, or any similar item may be parked, stored or left on or next to the streets in and around the Property for more than a six (6) hour period unless written approval is granted by the Association. The Association may levy a fine for any violation of this paragraph 8.5 of up to Fifty Dollars (\$50.00) for each day the violation continues.

8.6 Garages Required. Each home within the Ash Briar Cove PUD shall have, at a minimum, a two-car garage.

8.7 Use of Garage. Any garage constructed on a Lot is intended for the parking of motor vehicles. Although incidental storage in a garage otherwise used for the parking of motor vehicles is permitted, no garage may be used for storage to such an extent or in such manner that the storage prohibits or otherwise interferes with its primary use in the parking of motor vehicles. The Association may from time to time prescribe detailed rules regarding the use of garage space for storage. The Association may levy a fine for any violation of this paragraph 8.7 or the rules issued by the Association of up to Fifty Dollars (\$50.00) for each day the violation continues.

8.8 Height Limitation. No dwelling shall exceed the height limitations specified by West Jordan City at the time of recordation of the Ash Briar Cove final plat.

8.9 Dwelling Size. The minimum dwelling size shall be 1000 sq. ft. of finished floor area.

8.10 Landscaping. Fully landscaped yards shall be installed prior to occupancy of each Residential Unit. For Residential Units completed during winter months, a landscape bond shall be posted with West Jordan City prior to occupancy to assure landscape completion. Each home shall include one tree in the front yard. Deciduous trees shall be at least 1 ½ inches in caliper and coniferous trees shall be a minimum height of five (5) to six (6) feet.

8.11 Fencing. Fencing of individual Lots shall be restricted to the rear yard and side yard only. Fencing material shall be white vinyl, 20-year no maintenance and shall be solid with lattice atop, six-feet in total height.

8.12 Temporary Structures and Equipment. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out building shall be used on any Lot at

any time as a Residential Unit, either temporarily or permanently, unless approved in writing by the Association. No trailer, camper, boat, truck larger than one (1) ton, or similar equipment shall be permitted to remain upon any Lot, unless written approval is given by the Association; provided, however, that this sentence shall not apply to any Lot during the construction of a Residential Unit thereon, except as to any camper or boat.

8.13 Electronic Antennas. No television, radio or other electronic antenna shall be erected, constructed, placed or permitted to remain on any of the Lots unless and until the same shall have been approved in writing by the Association; provided, however, that the approval shall not be withheld unreasonably.

8.14 Exception for Developer. Notwithstanding the restrictions contained in this Article VIII, for the five (5) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Developer shall have the right to use any Residential Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvements of the Common Areas or improvement and/or sale of all Lots owned by Developer.

IX. ARCHITECTURAL CONTROL

9.1 Architectural Control Committee. The Trustees of the Association shall serve as the Architectural Control Committee, the function of which shall be to insure that all improvements and landscaping within the Property harmonize with the existing surroundings and structures.

9.2 Submission to Committee. No Residential Unit, accessory or addition to a Residential Unit, landscaping, sign or other improvement of a Lot shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Residential Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee, whose judgment shall be final in all cases.

9.3 Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures.

9.4 Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period, it shall be deemed to have approved the material submitted.

9.5 Building Materials. All Residential Units shall have masonry front and side elevations. Masonry shall consist of brick, stone, or stucco in any combination so as to comprise the building material for the complete front and side elevations. Rear elevations shall be masonry or vinyl siding.

9.6 No Liability for Damages. Neither the Committee nor the members of the Committee shall be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article IX.

9.7 Exception for Developer. The foregoing provisions of this Article IX shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Developer on any Lot or on any part of the Common Areas and which occurs at any time during the twenty (20) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

X. MISCELLANEOUS

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

10.2 Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners.

10.3 Amendment. Any amendment to this Declaration shall require: (i) the affirmative vote of at least two-thirds (2/3) of the Class A membership votes of Class A Members who are voting in person or by proxy at a meeting duly called for such purpose; and, so long as the Class B membership exists, (ii) the written consent of Developer. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all members at least ten (10), but not more than thirty (30), days prior to the meeting date. Any amendment authorized pursuant to this Declaration shall be accomplished through the recordation of an instrument executed by the Association (and by the Developer if the Class B membership then exists).

10.4 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction, the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such action or transaction from Members entitled to vote at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned.

10.5 Mortgage Protection. From and after the time that a Mortgagee makes written request to the Association therefor, the Association shall give written notice to such Mortgagee in the event an Owner neglects for a period of sixty (60) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

The lien for unpaid assessments provided for under Article V shall be subordinate to a Mortgage affecting a Lot, but only to the extent of assessments which become due prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure.

Unless all holders of Mortgages on the individual Lots have given their prior written approval, neither the Association nor any other party shall be entitled to:

- (a) Alter the provisions of Section 5.6 (pertaining to uniform rate of assessment);
- (b) Partition or subdivide any Lot or the Common Area or dedicate or transfer (pursuant to Section 4.3 (c)) all or any part of the Common Areas; or
- (c) By act or omission seek to abandon or materially alter the arrangement that is established by this Declaration.

So long as there is a Class B membership, the following actions will require the approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area (other than as described in this Declaration), and amendment of this Declaration.

10.6 Developer's Rights Assignable. The rights of Developer under this Declaration or in any way relating to the Property may be assigned. Upon assignment, references to the "Developer" contained herein shall refer to such assignee.

10.7 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. This Declaration shall be liberally construed to effect all of its purposes.

10.8 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants running with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Developer, all parties who hereafter acquire any interest in a Lot or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or

occupant of a Lot or Residential Unit shall comply with, and all interests in all Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

10.9 Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED the day and year first above written.

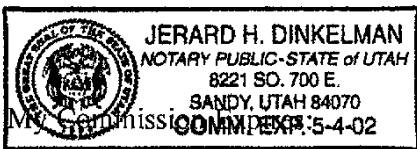
"DEVELOPER"

TRADE-WEST DEVELOPMENT CORPORATION, a Utah corporation

By [Signature]
Its [Signature]

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 22 day of NOVEMBER, 1999, by GREGORY L. HANSEN, as the PRESIDENT of Trade-West Development Corporation, a Utah corporation.



[Signature]
NOTARY PUBLIC
Residing at: _____

BK 8326 PG 7480

CONSENT OF MORTGAGEE

The undersigned, Academy Mortgage Corporation, the holder of a Trust Deed on the Property described in the foregoing instrument, hereby consents to the recording of this instrument and agrees that the lien of its Trust deed shall be subject to the terms hereof.

DATED this 18th day of November, 1999.

ACADEMY MORTGAGE CORPORATION

By [Signature]
Its Vice President

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 18th day of November, 1999, by Jon R. Bursener as the Vice President of Academy Mortgage Corporation, a Utah corporation.

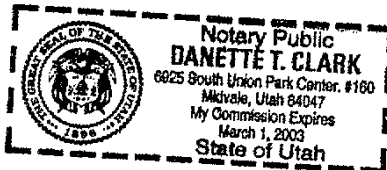
[Signature]

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

BDP\22609.001\CC&R'S.005



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