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AFTER RECORDING PLEASE RETURN TO:

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DECLARATION OF CONDOMINIUM
(Including Association Bylaws)

HOLLADAY GARDENS
A Condominium Project

City of Holladay, Salt Lake County, Utah

THIS DECLARATION OF CONDOMINIUM is made this 26 day of October 2006, by Holladay Gardens, L.L.C., a Utah limited liability company (the "Declarant") pursuant to the provisions of Sections 57-8-1 *et seq.* of the *Utah Code* (1933), as amended, known as the Condominium Ownership Act (the "Act").

RECITALS:

- A. Declarant is the record owner of that certain Tract of land more particularly described in ARTICLE II hereof,
- B. Declarant has constructed, or is in the process of constructing, upon such Tract the Condominium Project, including Units and other improvements in accordance with the plans and drawings reflected in the Record of Survey Map.
- C. Declarant desires, by recording this Declaration and the Record of Survey Map in the Public Records, to submit such Tract and all improvements constructed thereon to the provisions of the Act as a Condominium Project to be known as Holladay Gardens.
- D. Declarant intends to sell to various purchasers fee title to the individual Units contained in the Project, together with an undivided percentage interest in and to the Common Areas and Facilities appurtenant to such Units, subject to the covenants, conditions, restrictions, reservations, and easements herein set forth.

NOW, THEREFORE, pursuant to the foregoing purposes, Declarant hereby declares as follows:

ARTICLE I DEFINITIONS

When used in this Declaration (including that portion hereof captioned "Recitals") each of the following terms used shall have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act:

Act shall mean and refer to the Condominium Ownership Act, Title 57, Chapter 8. *Utah Code* (1953), as the same may be amended from time to time, including any successor statutory provisions thereof.

Assessment shall mean the amount which is to be levied and assessed against each Owner and the Owner's Unit and paid to the Association for Association expenses, whether Annual, Special or Specific Assessments (as later defined).

Association of Unit Owners or **Association** shall mean and refer to the Unit Owners within the Project acting as a group in accordance with this Declaration and the Act.

Building or **Buildings** shall mean and refer to a structure or structures containing Units and comprising a part of the Project.

Bylaws shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in ARTICLES XI, XII and XIII (as authorized by the Act).

Common Areas or **Common Areas and Facilities** shall mean, refer to and include:

(a) The real property and interests in real property which this Declaration submits to the provisions of the Act, including the entirety of the Tract and any landscaping, sidewalks, walkways, stairs and landings, fencing, parking areas, private drives or roadways, elevators, hallways, fire exits, garbage receptacles, and exterior Building surfaces, but excluding all Condominium Units as herein defined:

(b) Those Common Areas and Facilities specifically set forth and designated as such on the Map;

(c) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management, including any central services such as power, water, gas and light; and

(d) All Common Areas and Facilities and all Limited Common Areas and Facilities as defined in the Act, whether or not expressly listed herein or on the Map; and

(e) Excluded from common areas are any and all areas located on the roof, including walkways, gardens, and the third floor Units' individual entrances, exits, balconies, and porches.

Common Assessment shall mean the charge by the Master Association against each Owner and the Owner's Unit to pay the Master Association's common expenses, including repair, maintenance and management of the Common Elements.

Common Elements shall mean the real property and improvements, recreational amenities and the like owned and managed by the Master Association for the use, benefit and enjoyment of the total membership of the Master Association, including the Owners within the Project.

Common Expenses shall mean and refer to all items and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration and such Rules and Regulations and other determinations and agreements pertaining to the Condominium Project as the Management Committee or the Association may from time to time adopt.

Condominium Project or **Project** shall mean and refer to Holladay Gardens as the same shall exist at any time.

DRC shall mean the Design Review Committee referred to in ARTICLE VII hereof.

Declarant shall mean Holladay Gardens, L.L.C., a Utah limited liability company, its successors and assigns, if any, as owner and developer of the Project.

Declaration shall mean and refer to this Declaration of Condominium pertaining to the Project as such Declaration may hereafter be supplemented or amended in accordance with the Act and the provisions hereof. Any ambiguities, omissions, and/or conflicts herein shall be construed to comply with the provisions of the Act.

Limited Common Areas and Facilities or **Limited Common Areas** shall mean and refer to those Common Areas designated in this Declaration or the Act or shown on the Map as reserved for the exclusive use of a certain Unit or Units to the exclusion of other Units.

Management Committee or **Committee** shall mean and refer to the Committee as provided in the Declaration charged with and having the responsibility and authority to administer the Project on behalf of the Association of Unit Owners and to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the Property. Notwithstanding the foregoing, the initial Management Committee shall consist of Portfolio Investments, LLC, a Utah limited liability company.

(a) Initial Management Committee shall mean Portfolio Investments, LLC, a Utah limited liability company, which shall remain as the Management Committee until the conveyance of the final Condominium, notwithstanding any term to the contrary.

Manager shall mean any person or entity appointed or employed as a Manager by the Committee.

Master Association shall mean Holladay Gardens Master Owners Association, a Utah nonprofit corporation, in which each Owner holds an appurtenant Membership in addition to

appurtenant membership in the Association.

Master Association Assessment shall mean the charge against each Owner and the Owner's Unit levied by the Master Association for the uses and purposes set forth in, and pursuant to the provisions of, the Master Declaration.

Master Declaration shall mean the Master Declaration of Covenants, Conditions and Restrictions and Reservations of Easements for Holladay Gardens.

Master Project shall mean the Holladay Gardens residential community located in the City of Holladay, Salt Lake County, Utah.

Mortgage shall mean a recorded mortgage or deed of trust encumbering a Unit; and **Mortgagee** shall mean the mortgagee or beneficiary named in a Mortgage.

Owner or Unit Owner shall mean and refer to the person or persons owning record title to a Condominium Unit. The Declarant shall be deemed to be the Owner of all completed but unsold Units. In the event a Unit is the subject of an executory contract of sale, the buyer shall, unless the seller and the buyer have otherwise agreed and have informed the Committee in writing of such agreement, also be considered the Unit Owner for all purposes.

Public Records shall mean and refer to the Office of the Salt Lake County Recorder, Salt Lake City, Utah.

Record of Survey Map, Survey Map or Map shall mean and refer to the Record of Survey Map recorded concurrently herewith in the Public Records entitled **Plat "A", Holladay Gardens, Holladay City, Salt Lake County, Utah**, executed and acknowledged by Declarant, consisting of two sheets prepared by LEI engineers, a Utah Registered Land Surveyor holding Certificate No. 363351, as said Map may hereafter be modified or amended in accordance with law.

Rules and Regulations shall mean and refer to those Rules and Regulations authorized to be promulgated to Unit Owners from time to time by the Management Committee pursuant to Section 11.09.

Specific Assessment shall mean a charge against a particular Owner or the Owner's Unit in compliance with the provisions of this Declaration, the Master Declaration, the Bylaws or Rules and Regulations of the Association, or any other charge designated as a Specific Assessment in this Declaration, the Master Declaration, the Bylaws, or Rules and Regulations of the Association, together with costs, interest, attorneys fees, and other charges payable by such Owner pursuant to the provisions of this Declaration.

Tract shall mean and refer to the real property described in Section 2.01, which ARTICLE II of this Declaration submits to the Act.

Unit or Condominium Unit shall mean and refer to any one of the separately numbered and individually described residential living units in the Project as designated on the Map and intended for independent use as defined in the Act, together with the undivided interest in and to the Common Areas and Facilities appertaining to that Unit: and shall include anything located within or without said Unit but designated and designed to serve only that Unit, such as built-ins, appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, but specifically excluding the exterior walls and surfaces of Buildings and Units, interior common or party walls, floor joists, foundations and roofs. Fixtures and the like shall also be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim consisting of, among other things and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installation constituting part of a particular Unit or serving only that Unit, and any structural members of any other property of any kind, including fixtures and appliances within any Unit which are not removable without jeopardizing the soundness, safety or usefulness of the remainder of the Building within which the Unit is situated, shall be considered part of the Unit.

Unit Number shall mean and refer to the number, letter or combination thereof which designates a Unit on the Map.

ARTICLE II

SUBMISSION OF THE PROJECT AND ANNEXATION

2.01 **Submission, Description, and Reservations.** Declarant hereby submits to the provisions of the Act the following described real property situated in the City of Holladay, Salt Lake County, Utah.

Attached Hereto as "Exhibit I"

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

RESERVING UNTO DECLARANT, however such easements and rights of ingress and egress over, across, through, and under the above-described Tract and any improvements (excluding Buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete the Buildings and Units and all of the other improvements described in this Declaration or in the Record of Survey Map recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; and (ii) to improve portions of such property with such other or additional improvements, facilities, or landscaping designed for the use

and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, such real property 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 reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire 10 years after the date on which this Declaration is recorded in the Public Records. Nothing in this instrument shall limit the right of Grantor to complete construction of improvements to the common elements and to units owned by Grantor, or to alter the foregoing or to construct such additional improvements as Grantor deems advisable prior to completion of the entire development.

ALL OF THE FOREGOING 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 mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described real property or any portion thereof, including, without limitation, any mortgage (and nothing in this paragraph shall be deemed to modify or amend such mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Record of Survey Map or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the said real property at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities; **AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS, AND RESTRICTIONS CONTAINED IN THIS DECLARATION AND IN THE MASTER DECLARATION.**

2.02 Division into Condominium Units, Minimum and Maximum Ownership Interests. The Project is hereby divided into 10 Condominium Units as set forth on the Map, each such Condominium Unit consisting of a Unit and an appurtenant undivided but equal interest in and to the Common Areas and Facilities. Such Units comprise the minimum anticipated number of Units in the Project and give each Owner a maximum 1/10th or ten percent (10%) undivided interest in the Common Areas and Facilities.

2.03 Title to the Common Areas. The Declarant, its successors and assigns, will convey fee simple title to the Common Areas and Limited Common Areas to the Association, free and clear of all encumbrances and liens, only after the conveyance of the final Condominium, subject to covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration, easements and right of way of record, and a covenant by the Association to maintain the Common Areas in good repair and condition at all times and to operate the same at its own expense in accordance with high standards, which covenants shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns.

ARTICLE III

IMPROVEMENTS

3.01 Improvements. The improvements included in the Project are now or will be located on the Tract and all of such improvements are described on the Map, including the number of Units

which are to be contained in the Buildings which comprise a part of such improvements, the dimensions of the Units, and other significant facts relating to such Buildings, Units and Common Areas and Facilities.

3.02 Description of Buildings, Parking and Storage Units. There will initially be one Building containing 10 Units, with four on the first floor, four on the second floor, and two on the third floor. A central Limited Common Area hallway on each floor, with a stairway and elevator at one end, provides access to each of the Units on that floor. The construction consists of stucco and brick over wood frame, and asphalt shingle roof. Each Unit is basically of the same size and configuration. Each Unit in the Project has an appurtenant Limited Common Area storage closet assigned to it as reflected on the Map.

3.03 Description and Legal Status of Units. Each Unit has one level with two bedrooms and two bathrooms, a study, a kitchen, and a living and dining area. The Map shows the Unit Number of each Unit, its location and dimensions from which its areas may be determined, the Limited Common Areas, if any, which are reserved for its use, and the Common Areas of the Project. Each Unit shall be legally designated and described by a Unit Number.

3.04 Common and Limited Common Areas. The Common and Limited Common Areas contained in the Project are defined in Article I hereof and described and identified on the Map. The Common Areas will consist of, but not be limited to, private streets or driveways, parking areas, sidewalks, fencing, trails, and landscaped areas throughout the Project. Neither the ownership of undivided interests in and to the Common Areas nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which they appertain, and even though not specifically mentioned in the instrument of conveyance, such percentage of undivided interest and such right of exclusive use shall automatically accompany the conveyance of the Unit to which they relate.

3.05 Conveyance Description of a Unit. Each conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the Unit Number shown on the Map with the appropriate reference to the Map and to this Declaration, as each shall appear in the Public Records and in substantially the following form:

Unit ____ contained within Plat “____” **Holladay Gardens** as the same is identified in the Record of Survey Map therefor recorded in Salt Lake County, Utah as Entry _____ (as said Record of Survey Map may have heretofore been amended) and in the Declaration of Condominium (Including Association Bylaws) of Holladay Gardens recorded in Utah County, Utah as Entry _____, Pages(s) _____ (as said Declaration may have heretofore been amended), TOGETHER WITH the undivided ownership interest in and to the Common Areas and Facilities which is appurtenant to said Unit as more particularly described in said Declaration (as said Declaration may have heretofore been amended or supplemented).

Such description will be construed to describe the Unit, together with an equal undivided ownership interest in and to the Common Areas and Facilities as the same are established and identified in the Declaration and on the Map, and to incorporate all the rights incident to ownership of a Unit and all

the limitations of such ownership as described in this Declaration. Each such conveyance shall be subject to all of the provisions of the Declaration.

ARTICLE IV

NATURE AND INCIDENTS OF OWNERSHIP

4.01 **Holding Title.** Title to a Unit shall be in fee simple and may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common. An Owner's right to sell or otherwise convey title to such Owner's Unit shall not be subject to any right of first refusal or similar restrictions in favor of Declarant or the Association.

4.02 **No Separation.** No part of a Unit, nor any part of the legal rights comprising ownership of a Unit, may be separated from any other part thereof during the period of condominium ownership described herein, so that each Unit, the undivided interest in and to the Common Areas appurtenant to such Unit, and the exclusive right to use and occupy the Limited Common Areas appurtenant to such Unit, shall always be conveyed, devised, encumbered, and otherwise effected only together and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance or other disposition of a Unit or any part thereof, shall constitute a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration.

4.03 **Membership in Association.** Each Unit Owner shall be a member of the Association of Unit Owners. Membership in the Association shall be mandatory, shall be appurtenant to, and shall not be separated from the Unit to which it appertains.

4.04 **Undivided Interest in Common Areas.** Each Unit Owner shall have, for each Unit owned, an equal, undivided ownership interest in and to the Common Areas as set forth in Section 2.02.

4.05 **No Partition.** The Common Areas and Facilities shall be owned in common by all the Owners of Units and no Unit Owner may bring action for partition thereof.

4.06 **Use of Common Areas and Limited Common Areas.** Subject to the limitations contained in this Declaration, each Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas and shall have the exclusive right to use and enjoy the Limited Common Areas which appertain to his Unit as designated herein or on the Map or inferred by the Act.

4.07 **Duty of Owner to Pay Taxes on Unit Owned.** It is understood that under the Act each Unit (and its percentage of undivided interest in and to the Common Areas) in the Project is subject to separate assessment and taxation of each taxing authority or special district which has such jurisdiction over the Project for all types of taxes and assessments authorized by law, and that as a result thereof no taxes will be assessed or levied against the Project as such. Accordingly, each Unit Owner will pay and discharge any and all property taxes and assessments which may be assessed against such Owner relative to his Condominium Unit.

4.08 **Assessments and Rules Observance.** Each Unit Owner is responsible for the prompt payment of any Assessments and charges levied by the Association as set forth in this Declaration, and for the observance of the Rules and Regulations promulgated by the Management Committee. Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interest; in his Unit to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration following such transfer.

4.09 **Unit Maintenance.** Each Owner shall at his own cost and expense maintain, repair, paint, repaint, tile, paper or otherwise finish and decorate the interior walls and trim the interior surfaces of the walls, ceilings, floors, and windows and doors forming the boundaries of his Unit and all walls, ceilings, floors, windows and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in, or connected with his Unit.

4.10 **Maintenance of Limited Common Areas,** Each Owner shall keep the Limited Common Areas designed for use in connection with his Unit in a clean, sanitary and attractive condition at all times notwithstanding any duty or obligation of the Committee, acting for the Association, to maintain and repair Common and Limited Common Areas pursuant to the provisions of ARTICLE XI.

ARTICLE V EASEMENTS

5.01 **Encroachment.** If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance for the same, shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either in the Common Areas or the Units. Encroachments referred to herein include, but are limited to, encroachments caused by error in the original construction of the Buildings on the Tract, by error in the Map, by settling, raising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

5.02 **Repair of Common Areas.** If any of the Common Areas are or may be located within any of the Units or may be conveniently accessible only through the Units, the Owners of the other Units shall have the irrevocable right, to be exercised by the Committee as their agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or another Unit or Units. The Committee shall also have such rights independent of the agency relationship. Damage to the interior of any part of the Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common

Areas or as a result of emergency repairs within another Unit at the instance of the Committee or of Unit Owners, shall be an expense of all the Unit Owners and assessed proportionately; provided, that if such damage is the result of negligence of the Owner of the Unit, members of his family, his or their guests or invitees, then such Owner shall be financially responsible for all such damage. Amounts owing by Owners pursuant hereto shall be collected by the Committee by Specific Assessment pursuant to this Declaration.

5.03 Management Committee. The Management Committee shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

5.04 Utility Services. There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all public utilities, including but not limited to, water, sewer, gas, telephone, electricity, and other utility services.

5.05 Right of Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and to any Limited Common Area designated for use in connection with his Unit, and each Owner shall have the right to the horizontal, vertical and lateral support of his and any adjoining Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

5.06 Common Elements. As a member of the Master Association, each Unit Owner has nonexclusive rights to the use, benefit and enjoyment of the Master Association's Common Elements (not to be confused with the Project's Common Areas), subject to the provisions of the Master Declaration.

ARTICLE VI RULES AND RESTRICTIONS

6.01 Restrictions Concerning Common Areas. There shall be no obstructions of the Common Areas by the Owners, their tenants, guests or invitees. The Management Committee may, by Rules and Regulations, prohibit or limit the use of the Common Areas and Facilities as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Management Committee, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas except upon consent of the Management Committee.

6.02 Residential Use. The Tract is zoned RM, and is restricted to uses permitted by Holladay City zoning ordinances and conditional use permit #05-2-10, approved by Holladay City 2/21/06. Each unit within the project is restricted to single family residential use pursuant to applicable Holladay City zoning ordinances. The term "residential" as used herein shall be held and construed to exclude individual room letting or boarding and commercial and professional uses which are not the subject of a permit granted by Holladay City pursuant to its then current home occupation ordinance. Each Unit and Owner is subject to the uses and restrictions imposed by such zoning (including any parking restrictions) as well as to those set forth in Section 6.03.

6.03 General Master Project Restrictions. In order to avoid repetition of detailed provisions of general application to the Project as one of several Neighborhoods within the Master Project, ARTICLE 7 of the Master Declaration entitled "Restrictions on all Property", is hereby incorporated herein by reference in its entirety (as it may hereafter be amended) to the extent that the provisions thereof apply to the Project.

6.04 Leasing Restrictions. No lease of any Unit shall be for less than the whole thereof nor for an initial term of less than one year. All leases shall be subject to the provisions of this Declaration whether or not stated therein.

6.05 Condominium Exteriors. No Unit within the Project shall contain any window-mount evaporative coolers or air conditioners. No other devices, appliances, or items may be mounted on the exterior of a condominium, including but not limited to, wind chimes, weather vanes, and Satellite dishes.

6.06 Declarant's Right to Sell Units. Notwithstanding anything contained herein to the contrary, until Declarant has completed and sold all of the Units within the Project, the Unit Owners who have purchased Units from Declarant shall not interfere with the completion of the contemplated improvements and sale of the remaining Units. Declarant may make such use of the unsold Units and the Common Areas as may facilitate such completion and sale, including but not limited to, the maintenance of the sales office, the showing of the Units, and the display of signs.

6.07 Signs. No signs or other advertising shall be displayed which are visible from the exterior of any Unit or on the Common Areas, including "For Sale" signs, except in conformity with the Rules and Regulations promulgated by the Management Committee.

6.08 Parking. The parking of recreational vehicles or boats or anything other than operational passenger vehicles within the Project is prohibited. Parking is limited to 2 spaces per Unit. Those 2 spaces will be assigned by the Association's Management Committee. Parking is limited to the garage, and areas specifically designated for parking by the Association's Management Committee. Sidewalks, however, shall not be blocked. Street Parking is not allowed. Parking in the parking stalls is limited to those areas approved by the Management Committee and shall not be allowed for a period exceeding 24 hours, except as otherwise approved herein. The Management Committee has the authority to enforce this provision, including but not limited to the removal of any owner's vehicle, at the owner's sole cost. No maintenance or repair of automobiles shall be permitted or allowed in the driveway.

6.09 Personal Conduct. In consideration of the other Unit Owners, noise of any sort must be kept to reasonable minimums between the hours of 10 p.m. and 8 a.m. Exceptions may be made for repair and maintenance on a Unit, moving in and out, and reasonable emergencies. No noise of any sort between the hours of 10 p.m. and 8 a.m. may extend beyond the walls of any individual Unit. The Common Areas, and the buildings surrounding them, may be used by the Owners between 8:00 a.m. and 9:00 p.m. weekdays, and 8:00 a.m. and 11:00 p.m. Holidays or weekends. The activities of Owners and their guests, must not disturb or endanger other owners. This includes lewd, loud or aggressive behavior, noise, or recklessness.

6.10 **Visible Areas.** Visible areas of Units, including but not limited to, balconies, must be kept clean and clear. Exception will be made for outdoor furniture, for outdoor potted plants in the balcony or entranceway, for potted plants hanging from the window ledge, and for two working vehicles in the parking areas. Nothing else may be placed in any visible area.

6.11 **Flammable Materials and Chemicals.** Gas, Kerosene, and other flammable substances are not permitted and may not be stored in Condominiums or common areas, with the exception of Propane, if applicable, in an approved cylinder used for personal or community outdoor cooking and stored outdoors. Propane tanks will be turned off at the tank valve when not in use and stored in a fashion that will prevent damage to the valve. Explosive, noxious, or otherwise dangerous or illegal substance are not allowed anywhere on the property.

6.12 **Aesthetics.** Common and Limited Common areas around the Condominiums are to be kept free of debris and personal property. Refuse containers will not be left out of doors. Window screens will be maintained in good conditions. Any interior improvements must be authorized and approved by the Management Committee prior to their commencement.

6.13 **Pest Control.** The Management Committee shall retain the services of a professional and licensed pest control service, such service to include regular and recurring preventative service. In the interest of Holladay Gardens, owners must make their condominiums available for needed services.

6.14 **Animals.** Animals are to be kept on leashes at all times in common areas. Not more than two animals shall be permitted inside a townhouse at the same time. No animal shall exceed 10 pounds in weight. In no event shall an animal be allowed outside of the townhouse. In the event an animal creates a nuisance (e.g. barking, odor, not cleaning up after pet, etc.) one initial warning will be given to the owner, in writing. Should the nuisance continue after the initial warning, a \$100 fine per occurrence will be charged to the townhouse owner. If there are more than four (4) occurrences of nuisance in a 12 month period, the owner will be required to permanently remove the animal(s) from the premises.

6.15 **Fire Alarms.** Fire alarms will be tested quarterly and all owners shall cooperate with the testing of the fire alarms. Owners shall be given at least 24 hours notice prior to testing the fire alarms. The notice will be proper if posted in a location to be determined by the Management Committee. Tests conducted on the fire alarms shall be conducted at reasonable times.

6.16 **Holiday Lights.** Religious or holiday exterior (and interior visible from outside) decorations/lighting are allowed for three weeks prior to and one week after the subject event. All electrical devices must be UL listed and may not be hardwired or affixed to the exterior of the Condominium.

6.17 **Satellite Dishes.** No Satellite dishes of any size may be mounted on the exterior of a condominium, including, but not limited to, porches, balconies, and window ledges.

6.18 **Enforcement.** In the event an owner violates the restrictions as set forth in this Article, as amended, the Management Committee may provide one initial written warning to the owner. Should the violation continue after the initial warning, a \$100 fine per violation shall be

charged to the townhouse owner for every month the violation continues. If the violation continues for a period of three (3) months, the Management Committee may correct the violation and collect the cost of correction from the Owner.

ARTICLE VII

DESIGN REVIEW

7.01 **General.** All matters of Design Review within the Project shall be governed by the provisions of ARTICLE 6 of the Master Declaration entitled "Design Review" which is hereby incorporated herein by reference in order to avoid the repetition of detailed provisions of general application to the Project as one of several Neighborhoods within the Master Project.

7.02 **Design Review Committee ("DRC").** The Management Committee shall appoint a three-member committee to function as the DRC for the Project and to ensure that all construction of improvements, remodeling (including exterior repainting unless the same color as the original), and landscaping conforms to the Design Guidelines as defined in said ARTICLE 6 of the Master Declaration. If the DRC is not so appointed, then three members of the Management Committee shall perform the duties required of the DRC.

7.03 **Declarant's Obligation.** Declarant hereby covenants in favor of each Owner (a) that all Buildings and Units to be erected by it and all improvements of the Common Areas to be accomplished by it in the Project will be architecturally compatible with respect to one another; and (b) that on the date on which this Declaration is recorded in the Public Records, the 10 Units and the Common Areas of the Project will be located approximately in the locations shown on the Record of Survey Map.

ARTICLE VIII

INSURANCE

8.01 **Insurance and Bonds.** The Management Committee shall secure or cause to be secured and maintained at all times the following insurance and bond coverage with respect to the Project:

(a) A policy or policies of fire and casualty insurance with extended coverage endorsement, for the full insurable replacement value of the entire Project, **including the Units but not the contents thereof.** Such policy or policies shall be made payable to the Committee and all persons holding an interest in the Project or any of the Units, as their interests may appear.

(b) An appropriate fidelity bond coverage for any person or entity handling funds of the Management Committee, including, but not limited to, employees of a professional manager, if any, the amount of such coverage to be not less than the estimated maximum of funds, including reserves, in the custody of such person or entity at any given time during the bond term, all as determined by the Management Committee, but in no event less than a sum equal to three months' aggregate Annual

Assessments on all Units, plus reserve funds.

(c) A policy or policies insuring the Committee, the Manager, and the Unit Owners against any liability incident to the ownership, use or operation of the Project, or of any Unit, which may arise among themselves, to the public, and to any invitees or tenants of the Project or of the Unit Owners. Limits of liability under such insurance shall not be less than \$300,000 for any person injured, \$1,000,000 for all persons injured in any one accident, and \$1,000,000 for property damage resulting from one occurrence. 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.

8.02 Additional Insurance Provisions. The following additional provisions shall apply with respect to insurance:

(a) In addition to the insurance described above, the Committee shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with condominium projects similar to the Project in construction, nature and use.

(b) The Committee shall have the authority to adjust losses.

(c) Insurance secured and maintained by the Committee shall not be brought into contribution with insurance held by the individual Unit Owners or their Mortgagees.

(d) Each policy of insurance obtained by the Committee shall, if possible, provide: A waiver of the insurer's subrogation rights with respect to the Committee, the Manager, the Unit Owners, and their respective servants, agents, and guests; that it cannot be cancelled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Committee or of the Manager without prior written demand that the defect be cured; and that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners.

(e) Any Unit Owner may obtain additional insurance at his own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Committee. Any Unit Owner who individually obtains insurance covering any portion of the Project (other than for Unit contents) shall supply the Committee with a copy of his policy within 30 days after he acquires such insurance.

(f) All insurance required to be maintained hereunder by the Committee shall be procured from a company or companies authorized to do business in the State of Utah and which hold a financial rating of Class A or better from Best's Key Rating Guide.

(g) Notwithstanding anything herein contained to the contrary, insurance coverages must be in such amounts and meet other requirements of the Federal National Mortgage Association and the Department of Veterans Affairs if Units in the Project are sold and qualified through FHA or VA mortgage loan guaranties.

8.03 **Unit Owners Contents Policies.** Each Unit Owner shall be responsible to purchase and maintain in force a condominium owner contents policy (State Farm H06 or equivalent) (the "contents policy"). All claims for damage to a Unit must first be submitted by the Owner to his insurer on his contents policy. The Committee will not be required to file claims on its Condominium Project policy for any damage that either should or would have been covered under an Owner's contents policy.

ARTICLE IX DAMAGE, DESTRUCTION AND RESTORATION

In the event of damage to or destruction of part or all of the improvements in the Condominium Project, the following procedures shall apply:

(a) If proceeds of the insurance maintained by the Management Committee are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out as quickly as possible.

(b) If less than seventy-five percent (75%) of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out, and, upon approval of at least 50 percent (50%) of the affected Unit Owners all affected Owners shall be assessed equally for any deficiency through Special Assessments.

(c) If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if the Unit Owners within one hundred (100) days after the destruction or damage by a vote of at least seventy-five percent (75%) elect to repair or reconstruct the affected improvements, restoration and assessment therefore shall be accomplished in the manner directed under subsection (b), above.

(d) If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if the Unit Owners do not, within one hundred (100) days after the destruction or damage and by a vote of at least seventy-five percent (75%), elect to repair or reconstruct the affected improvements, the Management Committee shall promptly record in the Public Records a notice setting forth such facts. Upon the recording of such notice, the provisions of Section 57-8-31 (1) through (4) of the Act shall apply and govern the rights of all parties having an interest in the Project or any of the Units.

(e) Any reconstruction or repair which is required to be carried out by this Article shall be accomplished at the instance and direction of the Management Committee. Any determination which is required to be made by this Article regarding the extent of the damage to or destruction of Project improvements, shall be made by three qualified appraisers selected by

the Management Committee. The decision of any two such appraisers shall be conclusive.

ARTICLE X

MORTGAGES AND MORTGAGEE PROTECTION

10.01 **Notice of Mortgage.** Any Owner who mortgages his Unit shall furnish the Committee the name and address for such Mortgagee, and the Committee shall maintain such information in a book entitled "Mortgages of Units." The Committee shall report to such Mortgagee any unpaid Assessments due from the Owner of such Unit at the same time as the Committee makes demand on the Owner thereof for payment of such Assessment. Each Mortgagee shall also be entitled to written notification from the Committee of any other default by its Owner-Mortgagor in the performance of such Owner's obligations under the term and provisions of this Declaration which shall not have been cured within 30 days after written notice to such Owner-Mortgagor by the Committee specifying such default.

10.02 **Right to Examine.** A Mortgagee shall have the right to examine the books and records of the Association and Committee upon request and to require annual reports of the financial status of the Association.

10.03 **Notice of Damage.** In the event of substantial damage to or destruction of any Unit or any part of the Common Areas, the Mortgagee of any Unit shall be entitled to timely written notice of any such damage or destruction. No Owner or other party shall be entitled to priority over such Mortgagee with respect to the distribution to such Unit of any insurance proceeds.

10.04 **Notice or Default.** Any Mortgagee is entitled to written notification from the Management Committee of any default by the Owner of such Unit in the performance of any obligation under the Declaration which is not cured within 30 days.

10.05 **Effect of Foreclosure on Liens.** Each Mortgagee of a Unit who comes into possession of such Unit by virtue of foreclosure of the Mortgage thereon, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any unpaid claims or assessments and charges against the Unit which accrued prior to the time such holder comes into possession of the Unit, except for claims for a pro-rated share of such assessments or charges resulting from a pro-rated reallocation of such assessments or charges to all Units in the Project, including the Mortgaged Unit.

10.06 **General Mortgagee Protection.** Unless at least seventy-five percent (75%) of the Mortgagees (based on one vote for each Mortgage owned) of Units have given their prior written approval, neither the Management Committee nor the Association of Unit Owners shall:

- (a) By act or omission, seek to abandon or terminate the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;
- (b) Change the pro-rata interest or obligations of any Unit for (i) purposes of levying

Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or (ii) determining the pro-rata share of ownership of each Unit in the Common Areas:

(c) Make any material amendment to the Declaration or to the Bylaws of the Association including but not limited to, any amendment which would change the percentage interest of the Unit Owners in the Common Areas;

(d) By act or omission, seek to amend, partition, subdivide, encumber, sell, or transfer the Common Areas, The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas of the Project, shall not be deemed a transfer within the meaning of the Section; or

(e) Use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by the Act in cases of substantial loss to the Units and/or the Common Areas of the Project.

10.07 Condemnation Proceedings. If any Condominium or portion thereof or the Common areas or any portion thereof is made the subject matter of any condemnation proceeding by a condemning authority, the institutional holder of any first mortgage on a Condominium will be provided timely written notice of any such proceeding or proposed acquisition, and no Owner or other party shall have priority over such institution holder with respect to the distribution of the proceeds of any award or settlement.

ASSOCIATION BYLAWS

PURSUANT TO SECTION 57-8-15 OF THE ACT, THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES XI, XII, AND XIII. THE MISCELLANEOUS PROVISIONS OF ARTICLE XIV OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE BYLAWS PROVISIONS AND THE OTHER PROVISIONS OF THIS DECLARATION.

ARTICLE XI

BYLAWS – MANAGEMENT COMMITTEE

11.01 **Status and General Authority.** Except as otherwise herein provided, the Condominium Project shall be managed operated, and maintained by the Management Committee as agent for the Association of Unit Owners. The Committee shall, in connection with its exercise of any of the powers hereinafter provided, constitute a legal entity capable of dealing in the Association's name. The Management Committee shall have, and is hereby granted, the following authority and powers:

- (a) The authority without the vote or consent of the Unit Owners or of any other person, except for Mortgagees if required by the terms of their Mortgage, to grant or create on such reasonable terms as it deems advisable, utility and similar easements over, under, across, and through the Common Areas and Facilities;
- (b) The authority to execute and record, on behalf of all Unit Owners, any amendments to the Declaration or the Map which have been approved by the vote or consent of Unit Owners necessary to authorize such amendments as set forth in Section 14.04 of the Declaration;
- (c) The power to sue and be sued;
- (d) The authority to enter into contracts relating to the Common Areas and other matters over which it has jurisdiction, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the agreement has been obtained;
- (e) The power and authority to convey or transfer any interest in real property, so long as the vote or consent necessary under the circumstances has been obtained, including that of any Mortgagee if required by the terms of its Mortgage;
- (f) The power and authority to purchase, or otherwise acquire, and accept title to, any interest in real property so long as such action has been authorized by any vote or consent which is necessary under the circumstances;
- (g) The authority to promulgate such reasonable Rules and Regulations, and establish such procedures as may be necessary or desirable, to aid the Committee in carrying out its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners; and

(h) The power and authority to perform any other acts and to enter into any other transactions, subject to the rights of the Management Committee, which may be reasonably necessary for the Management Committee to perform its functions as agent for the Unit Owners. Any instrument executed by the Management Committee relating to the Common Areas of the Project that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon such instrument.

11.02 Composition of Committee: Declarant Control. Until the happening of the first of the following two events, the Management Committee shall be composed of three members, who need not be Owners, selected solely by Declarant:

(a) The expiration of 120 days following the conveyance of title to Units representing ninety percent (90%) of the total outstanding Association votes: or

(b) The expiration of five years after the first conveyance of title to any Unit purchaser.

Provided, however, that Declarant may waive such right, in whole or in part at any time prior to the occurrence of either or both of the aforesaid events by (1) notifying Unit Owners in writing of such waiver, and (ii) filing in the Public Records a written notice of waiver of such right, whereupon Unit Owners shall promptly hold a meeting to elect a new Management Committee, it being established hereby that the control of the Unit Owners in the Management Committee shall automatically vest 60 days following the date such waiver is recorded by Declarant. In the event a Committee seat which was filled by an appointee of or by Declarant becomes vacant, Declarant has the right to select a replacement member to sit on the Committee for the balance of the term associated with the vacated seat. In all other cases of vacancy the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected.

11.03 Management Committee: Owner Control (Composition, Election, Vacancies). Subject to the provisions of Section 11.02, above, the Committee shall be composed of three (3) members, one to be elected to a three-year term, one to a two-year term and one to a one-year term. At the expiration of the initial term of office of each respective Committee Member, his successor shall be elected to serve a term of three (3) years. Members shall serve on the Committee until their successors are elected and hold their first meeting. Committee members must be Owners, spouses, or agents of Owners, or if not, then officers, directors, agents or employees of non-individual Owners designated by appropriate written document as determined by the Committee. Vacancies in the Committee membership may be filled by appointment by the remaining members or member of the Committee and said appointees shall serve until the next annual meeting when their successors (appointees may succeed themselves) shall be elected for the unexpired term of the member they were appointed to replace.

11.04 Rights and Duties. The Management Committee, subject to the rights and duties of the Unit Owners, the Declaration, and the Bylaws, shall be responsible for the general management and administration of the Project. It is understood that the Committee has the obligation to maintain

the Common Areas. However, and notwithstanding anything contained herein to the contrary, in the event of the failure or refusal of the Committee to maintain all the Common Areas of this Project, as contemplated in this Declaration, then the Unit Owners shall maintain the same.

11.05 **Maintenance.** In connection with its duty to maintain Common Areas and Facilities, the Committee will provide maintenance upon the exterior of each Building and Unit and the Common Areas as follows: Paint, repair, replacement, and care for roofs, gutters, downspouts, fencing, exterior building surfaces and Common Area hallways, stairways and landings, elevators, trash receptacles, fire exits, trees, shrubs, grass, walks, walkways, parking areas and any other exterior improvements except Unit glass surfaces.

11.06 **Right of Delegation to Manager.** The Management Committee may carry out any of its functions which are capable of delegation through a Manager. The Manager so engaged shall be responsible for managing the Common Areas and shall, to the extent permitted by law and the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. Any such management agreement shall be terminable for cause upon 30 days notice and may run for a reasonable period of from one to three years, renewable by consent of the Association and the Committee. A management agreement negotiated by Declarant shall not exceed two years' duration.

11.07 **Payment for Services, Etc.** The Management Committee may obtain and pay for the services of such personnel as the Management Committee shall determine to be necessary or desirable for the proper operation of its function in the Project, including the enforcement of this Declaration. The Committee may also hire other persons to furnish snow removal, ground maintenance and other common services to the Project.

11.08 **Personal Property Ownership and Use.** The Management Committee may acquire and hold for the use and the benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in and to the Common Areas and transferable only with the transfer of a Unit. Such interest shall not be transferable except with the transfer of a Condominium. The transfer of a Condominium shall transfer the ownership of the transferor's beneficial interest in such property without reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners.

11.09 **Rules and Regulations.** The Management Committee may make reasonable Rules and Regulations governing the operation and use of the Common Areas and of other matters over which it has jurisdiction, which Rules and Regulations shall be consistent with the rights and duties established in this Declaration. The Management Committee may suspend any Owner's voting rights at any meeting of Unit Owners or for periods during which such Owner fails to comply with such Rules and Regulations, or with any other obligations under this Declaration. The Management Committee may also impose Assessments against any owner for noncompliance with such Rules and Regulations, take judicial action against any owner to enforce compliance with such Rules and Regulations or other obligations or to obtain damages for noncompliance, all to the extent provided by law.

11.10 **Limitation of Liability.** No member of the Management Committee acting in good faith shall be personally liable to any Unit Owner, guest, lessee or any other person for any error or omissions of the Association, its representatives and employees, the Management Committee, any sub-committees of the Committee or the Manager. The actions of the Management Committee are to be "transparent" in nature.

11.11 **Capital Improvements.** The Management Committee shall make no structural alterations, capital additions to, or capital improvements of the Common Areas without the prior approval of the Unit Owners holding at least sixty percent (60%) of the voting power.

11.12 **Extended Rights.** The Management Committee may exercise any other right or privilege given to it expressly by the Declaration, these bylaws or by law and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

11.13 **Design Review.** The Management Committee shall act in matters pertaining to Design Review pursuant to ARTICLE VII.

11.14 **Master Association Board.** There shall be elected from among the members of the Management Committee elected pursuant to Section 11.03, one Committee member who shall serve as a Trustee on the Board of Trustees of the Master Association pursuant to the Articles and Bylaws thereof.

11.15 **Indemnification of Management Committee.** Each member of the Management Committee shall be indemnified and held harmless by the Unit Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorneys fees reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Committee.

11.16 **Committee Meetings, Quorum and Committee Action.** The Management Committee will conduct regularly scheduled and special Committee meetings to conduct the Association's business. Committee meetings will normally be announced in advance and will be open to members, except when discussing confidential personnel or member issues. The Management Committee shall establish its rules for Committee meetings, whether regular or special. A majority of current Committee members shall constitute a quorum. The action of a majority of those Committee members attending a meeting at which a quorum is present shall be sufficient to constitute the action of the Committee. Action by consent shall require the unanimous written consent of all current Committee members. Summary minutes of Committee meetings will be published.

11.17 **Avoiding Conflicts of Interest.** Conflicts of interest will be avoided, and when there may be a question, the Management Committee will notify the Owners, who may approve or disapprove by action at a properly called Association meeting, or do nothing. The interest of The Brooks and the Condominium owners is paramount. Committee members may not use their position for personal gain and will view all decisions in favor of the whole. Committee members

may not receive, as a result of their Committee positions, favors or personal benefit from employees, vendors, suppliers, contractors or other sources.

11.18 **Association Records.** The books and records of the association shall be secured in a manner determined by the Management Committee. Members may examine the books upon written request at no expense to the Association and at a mutually agreeable time and at such place as the Treasurer may designate. Other records are available in the same fashion through the Association Secretary.

11.19 **Removal of Members.** At any regular or special meeting duly called, any one or more of the Committee Members may be removed with or without cause by a majority of the Owners, and a successor may then and there be elected to fill the vacancy thus created. Any Committee Member whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting. Notwithstanding the foregoing, the Initial Management Committee, as defined in the Restated Declaration of Covenants, Conditions & Restrictions of The Brooks, shall remain and not be removed pursuant to this Section until the conveyance of the final Condominium.

ARTICLE XII

BYLAWS - ASSOCIATION VOTING, MEETINGS AND OFFICERS

12.01 **Voting.** There shall be one vote, for each Unit as reflected on a recorded Map, for as many candidates or committee memberships as there are seats on the Committee to be filled.

12.02 **Multiple Ownership.** If a Unit has more than one Owner, the vote relating to such Unit shall be exercised as such Owners may determine among themselves, but in no event shall more than the total vote attributable to such Unit be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such co-owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the applicable Unit unless an objection is made at the meeting or in writing by another co-owner of the same unit, in which event no vote will be counted with respect to such Unit except to determine the presence or absence of a quorum.

12.03 **Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Management Committee in its notice therefor.

12.04 **Annual Meetings.** Annual meetings of the Members of the Association shall be held each year beginning in the year 2006, on such month, day and time as is set forth in the notice therefore; provided, that after the first such annual meeting, a month other than the month of the initial meeting may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected members of the Management Committee, as needed, pursuant to the provisions of Section 11.03 of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before such meeting. In

case of vacancy, the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected.

12.05 **Special Meetings.** The President shall call a special meeting of the Owners as directed by a resolution of the Management Committee or on a petition signed by Owners holding at least thirty percent (30%) of the total votes of the Association having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice therefore unless consented to by a majority of Unit Owners present, either in person or by proxy.

12.06 **Notice of Meetings.** The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least 10, but not more than 20, days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

12.07 **Quorum.** Except as provided in Section 13.10, Owners present, in person or by proxy, at any meeting of Members duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Members collectively be entitled to cast at least a forty percent (40%) of the total Association votes eligible to vote.

12.08 **Adjourned Meetings.** If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than 48 hours nor more than 45 days from the time the original meeting was called, at which time the requirements for a quorum shall be reduced by one-half that required at the immediately preceding meeting.

12.09 **Officers.** The Association shall have a President, a Vice President and a Secretary/Treasurer all of whom shall be elected by and from the Management Committee. The Committee may appoint an Assistant Secretary and an Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Management Committee in an organizational meeting of the Committee immediately following each annual meeting of Members at which the new Management Committee has been elected.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Management Committee. The President shall have all of the general powers and duties that are usually vested in the office of president of a similar type association. Decisions and/or actions of the President of the Association may be appealed to the Management Committee.

(b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President is able to act, the Management Committee shall appoint some other member of the Committee to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed by the Management Committee.

(c) **Secretary.** The Secretary shall keep the minutes of all meetings of the Management Committee and the minutes of all meetings of the Association. The Secretary shall have charge of

such books and records as the Management Committee may direct and shall, in general, perform all duties incident to the office of secretary of a similar type association.

(d) **Treasurer.** The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Management Committee.

ARTICLE XIII

BYLAWS – ASSESSMENTS

13.01 **Agreement to Pay Assessments.** Each Owner of a Unit, by the acceptance of a deed or contract therefore, whether or not it be so expressed in the deed or contract, shall be deemed to covenant and agree with the Association, all other Unit Owners and with the Management Committee to pay to the Association the Annual and any Special Assessments and Specific Assessments described in this ARTICLE XIII, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Unit with respect to which the Assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Unit at the time the Assessment falls due. No Unit Owner may exempt himself or his Unit from liability for payment of Assessments by waiver of his rights in the Common Areas or by abandonment of his Unit. In a voluntary conveyance of a Unit, the Grantee shall be jointly and severally liable with the Grantor for all unpaid Assessments, late payment fees, interests and costs of collection, including reasonable attorneys fees, which shall be a charge on the Unit at the time of the conveyance, without prejudice to the Grantee's right to recover from the Grantor the amounts paid by the Grantee therefor.

13.02 **Purpose of Assessments.** Assessments levied by the Management Committee for the Association shall be used exclusively for the purpose of promoting the Project, the interests of the Owners therein, paying costs properly incurred by the Association or Management Committee, and maintenance, operation and carrying of the Common Areas. The use made of funds obtained from Assessments may include, but shall not be limited to, payment of the cost of insurance premiums on policies required of the Association hereunder; the lighting, heating, air conditioning, and power used in the common areas; garbage removal; maintenance, repair, and improvement of the Common Areas; taxes or Special Assessments, if any, levied by governmental authorities; payment of any basic coverage cable TV providing coverage availability to each Unit in the Project; establishment and funding of a reserve to cover major repair or replacement of improvements within or deemed to be Common Areas; and any expense necessary or desirable to enable the Management Committee to perform or fulfill its obligations, functions or purposes pursuant to this Declaration, the Bylaws or Rules and Regulations.

13.03 **Annual Assessments.** Annual Assessments shall be computed and assessed against all Units in the Project based upon advance estimates of the Committee's cash requirements to provide for payment of common costs as set forth in Section 13.02, which costs shall be apportioned among the Units in proportion to their respective undivided interests in and to the Common Areas. Separate utility meters will be kept to aid in recording and computing assessments for utility expenses in the

common areas. However, for purposes of such apportionment, Declarant shall be deemed to own the undivided interest in the Common Areas based only upon Units which have been completed and used by Declarant for residential purposes or as models for marketing purposes, or fully completed (carpeted and painted) but not yet conveyed by Declarant to third party grantees.

13.04 **Annual Budget.** Annual Assessments shall be determined on the basis of a fiscal year ending December 31; provided the first fiscal year shall begin on the date of recordation of this Declaration in the Public Records. On or before December 15 of each fiscal year the Committee shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. The operating budget for the first fiscal year shall be prepared and furnished to each Owner within 30 days of such Owner's initial purchase. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessments for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

13.05 **Notice and Payment of Annual Assessments.** Except with respect to the fiscal period ending _____, 2007, the Association shall notify each Owner as to the amount of the Annual Assessment against his Unit on or before December 15 of the year preceding the year for which such Annual Assessment is made. Each Annual Assessment shall be payable in 12 equal monthly installments. One such installment due on the first day of each calendar month during the fiscal year to which the Assessment relates; provided, however, the Annual Assessments for the fiscal period ending _____, 2007, shall be based upon such portion of the calendar year 2007 as follows the date of recordation of the Declaration in the Public Records and shall be payable in such installments and at such times as the Management Committee, in its sole discretion may determine. The failure of the Committee to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such Assessment or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date 15 days after notice of such Assessment shall have been given to the Owner in the manner provided in Section 14.01. Delinquency in paying assessments must be avoided in fairness to all. The Management Committee will remain proactive in collections and use all available resources to that end. In addition to interest, there will be an administrative fee for late payments as set by the Committee, of \$20.00 for the first ten (10) days of delinquency and an additional \$25 every thirty (30) days thereafter or fifteen percent (15%) whichever is greater.

13.06 **Initial and Transfer Fees.** In addition, each Owner (other than Declarant), shall be required to prepay at the time of purchase of his Unit, **whether as a first time or subsequent Owner**, a sum equal to three times the then monthly installment of the Annual Assessment, which sum shall be in addition to any proration of Assessment which may be due for the month in which such purchase takes place. Such fees shall become part of the Association's general fund to be utilized as necessary.

13.07 **Maximum Annual Assessment.** Until January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum Annual Assessment shall not exceed the amount per Unit that is determined by the Committee pursuant to Section 13.04. From and after January 1 of the calendar year immediately following the conveyance of the first Unit to an

Owner, the maximum Annual Assessment may be increased each calendar year thereafter by not more than fifteen percent (15%) above the maximum Annual Assessment for the previous year without the vote of Owners entitled to cast a majority of the Association votes.

13.08 Special Assessments. The Association may levy Special Assessments for the purpose of defraying, in whole or in part (a) any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of amenities, infrastructure or improvements within the Common Areas. Any such Special Assessment shall be apportioned among and assessed to all Units in the same manner as Annual Assessments. Special Assessments must be assented to by at least sixty percent (60%) of the total Association votes, which Owners present in person or represented by proxy must be entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least 10 not more than 30 days prior to the meeting date.

13.09 Uniform Rate of Assessment. All Annual and Special Assessments authorized by Sections 13.03 and 13.08, respectively, shall be fixed at a uniform rate for all Units; provided, however, that until a Unit has been both fully improved (including carpet and paint) and occupied for the first time for residential or model purposes, the Annual and Special Assessments applicable to such Unit shall not be due and payable. During the period of time that Declarant controls Management Committee, if Assessments collected fail to adequately meet the common expenses, then Declarant shall pay any shortfall.

13.10 Quorum Requirements. The quorum at any Member meeting required for any action authorized by Section 13.08, above, shall be as follows: At the first meeting called, the presence of Owners or proxies entitled to cast sixty percent (60%) of the total Association votes eligible to vote shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 13.08, above) at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held less than 48 hours nor more than 45 days following the immediately preceding meeting.

13.11 Specific Assessment. In addition to the Annual Assessment and any Special Assessment authorized pursuant to Sections 13.03 and 13.08, above, the Committee may levy at any time Specific Assessments (a) on every Unit especially benefitted by any improvement made on the written request of the Owner of the Unit to be charged; (b) on every Unit the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on every Unit to which the Committee shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration. The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs, and shall be allocated among the affected Units according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such Assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Committee, it shall not give rise to a Specific Assessment against the Units benefitted.

13.12 **Master Association Assessments.** Pursuant to the Master Declaration, all lots and Units within the Master Project, including those Units within the Project, are assessable for certain purposes as set forth therein. The Master Association may require that the Association or the Committee collect any of such Master Association charges (except Specific Assessments) as a matter of convenience and remit the sums assessed by the Master Association to it as directed.

13.13 **Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Unit and upon the payment of a reasonable fee to the Committee to cover administrative costs, the Committee shall issue a certificate stating whether or not payments of all Assessments respecting such Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

13.14 **Effect of Nonpayment: Remedies.** Any Assessment (whether Annual, Special or Specific) not received within 10 days of the date on which it or any installment thereof becomes due shall be subject to a late charge not to exceed five percent (5%) thereof, which, together with interest and costs of collection, shall be, constitute, and remain a continuing lien on the affected Unit. If any Assessment is not received within 10 days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of one percent (1%) per month; and the Committee, on behalf of the Association, may bring an action against the Owner who is personally liable therefore or may foreclose its lien against the Unit pursuant to the provisions of the Utah Code, 1953, as amended, applicable to the exercise of powers of sale in deeds of trust, by foreclosure as a mortgage or in any other manner permitted by law. Any judgment obtained in connection with the collection of delinquent Assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Committee in enforcing the Association's rights. Failure of the Committee to promptly enforce any remedy granted pursuant to this Section 13.14 shall not be deemed a waiver of any such rights.

13.15 **Subordination of Lien to First Mortgages.** The lien of the Assessments provided herein shall be subordinate to the lien of any first Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender, and the holder of any such Mortgage or purchaser who comes into possession of or becomes the Owner of a Unit by virtue of the foreclosure of such first Mortgage or the exercise of a power of sale under such first Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any Assessment installment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Unit; provided, that to the extent there are any proceeds of the sale on foreclosure of such first Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such first Mortgage, the lien shall apply to such excess. No sale or transfer of a Unit in connection with any foreclosure of a first Mortgage shall relieve any Unit From the lien of any Assessment installment thereafter becoming due.

13.16 **No Abatement.** No diminution or abatement of any Assessments under the Declaration shall be claimed or allowed for inconvenience, annoyance or discomfort arising from (a) any construction (or lack of construction) within the Project; (b) the making of (or failure to make) any

repairs or improvements to or the maintenance of any Common Areas of the Project, or any part thereof; or (c) from any action taken to comply with the provision of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

ARTICLE XIV

GENERAL PROVISIONS

14.01 **Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner at the latest address for such person, as reflected in the records of the Management Committee at the time of delivery or mailing. Any notice or service of process required or permitted to be given to the Association or the Committee, shall be made in writing and shall be mailed, first class postage prepaid, to 3115 East Lion Lane, Salt Lake City, Utah, 84121, Attn: Portfolio Investments HOA. The Management Committee hereby reserves the right to change the notice requirement by sending written notice of the change to each owner. Any notice required or permitted to be given to the DRC may be given by delivering or mailing the same to the Manager or any member of the DRC.

14.02 **Agent for Service of Process.** Mark T. Morley, whose address is 21 East 300 North, Spanish Fork, Utah, 84660, is designated initially as the person to receive service of process in cases authorized by the Act; provided, however, that the Management Committee shall have the right to appoint a successor agent for service of process who shall be a resident of Utah. The name and address of such successor shall be specified by an appropriate notice filed in the Public Records.

14.03 **Party Walls.** Each wall which is built as a part of the original construction of the Units within the Project and placed on the dividing line between Units shall constitute a party wall, and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

14.04 **Amendment.** Notwithstanding the reservation of the unilateral right to amend by the Declarant, when Condominiums representing fifty-one percent (51%) of the Undivided Ownership Interest in the Project have been sold or the expiration of five (5) years after the first conveyance of title to any Condominium purchased, whichever comes first, a vote of at least seventy percent (70%) of the undivided ownership interest in the Common Areas and Facilities shall be required to amend the Declaration or the Record of Survey Map. Any amendment so authorized shall be accomplished through the recordation of any instrument executed by the Management Committee. In such instrument, the Management Committee shall certify that the vote required by this Paragraph for Amendment has occurred. No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant.

14.05 **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 or

number of votes outstanding in the Association or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 14.05;

(a) All necessary consents must be obtained prior to the expiration of 90 days after the first consent is given by any Owner;

(b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed;

(c) Any change in ownership of a Unit which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose; and

(d) Unless the consent of all Owners whose ownership rights are appurtenant to the same Unit are secured, the consent of none of such Owners shall be effective.

14.06 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Tract or Project may be assigned.

14.07 Interpretation. The captions pertaining to the ARTICLE and Section numbers 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, 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, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, Construction and enforcement of this Declaration.

14.08 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who heretofore acquired or hereafter acquire any interest in a Unit, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any Rules and Regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

14.09 Enforcement. In the event an owner violates the restrictions as set forth in the Declaration, as amended, the Management Committee may provide one initial written warning to the owner. Should the violation continue after the initial warning, a \$100 fine per violation shall be charged to the townhouse owner for every month the violation continues. If the violation continues for a period of three (3) months, the Management Committee may correct the violation and collect the cost of correction from the Owner. The Association, any Owner or any Mortgagee shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with or to obtain redress for violation of this Declaration. The

prevailing party in an action for the interpretation of, the enforcement of or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.


14.10 **Right of Entry.** The Property Manager shall maintain current keys for entry into each and every Condominium to be used for emergency access only. The Property Manager shall maintain current keys for entry into all other Facilities.

14.11 **Duration/Termination.** This Declaration shall remain in effect until such time as there is recorded in the Public Records, following the approval of the applicable municipality authorizing such termination, an instrument of termination which is executed by seventy-five percent (75%) of the total outstanding votes of the Association, plus the Mortgagee of each and every Unit.

14.12 **Effective Date.** This Declaration and any amendment hereto, shall take effect upon its being filed for record in the Public Records.

Executed by Declarant on the day and year first above written.

Holladay Gardens, L.L.C.

By: 
COREY M. BRAND
MANAGING MEMBER.

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

The within instrument was acknowledged before me this 27 day of Nov, 2006, by
Corey Matthew
Brand in the capacity indicated.



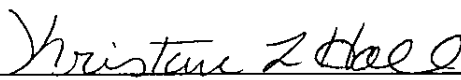

NOTARY PUBLIC

Exhibit I

Holladay Gardens Plat Legal Description

A parcel of land lying in the Northeast Quarter of Section 9, Township 2 South, Range 1 East, Salt Lake Base & Meridian (Basis of bearing being South 89°12'30" East 770.16 feet (Measured) 770.27 feet (Record) between two found street centerline monuments lying East of the property)

Beginning at a point on the South right-of-way line of Murray Holladay Road, said point lies South 00°17'41" West 598.49 feet along the West line of the Northeast Quarter of said Section 9 from the North Quarter Corner of said Section 9, said point being a point on the arc of a 1677.02-foot radius curve to the left (Bearing to Center being North 20°17'26" East); and running thence Southeasterly 110.81 feet along the arc of said curve and along said right-of-way line through a central angle of 03°47'09" (Chord Bearing and Distance being South 71°36'09" East 110.79 feet) to a point on the arc of a 20.07-foot radius non-tangent curve to the right (Bearing to Center being South 51°48'27" West); thence Southeasterly 15.47 feet along the arc of said curve through a central angle of 44°10'06" (Chord Bearing and Distance being South 16°06'30" East 15.09 feet); thence South 06°33'20" West 10.09 feet; thence South 60°00'00" East 21.46 feet; thence South 06°20'00" West 82.79 feet; thence North 78°33'00" West 261.23 feet; thence North 13°59'58" East 146.96 feet to a point on the South right-of-way line of Murray Holladay Road, said point also being a point on the arc of a 1677.02-foot radius non-tangent curve to the left (Bearing to Center being North 24°05'12" East); thence Southeasterly 111.11 feet along the arc of said curve and along said right-of-way line through a central angle of 03°47'46" (Chord Bearing and Distance being South 67°48'41" East 111.09 feet) to the Point of Beginning.

Contains 31,258.78 Sq. Ft., 0.72 acres