

12123

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS

FOR

COTTAGES ON THE GREEN

THIS DECLARATION, made on this 30<sup>th</sup> day of JANUARY, 1985 by THE MONTERRA GROUP, INC.

RECORDED IN THE COUNTY OF SALT LAKE COUNTY, UTAH

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RECORDED IN THE COUNTY OF WESTERN STATES TITLE CO.

12123

RECITALS:

A. Declarant is the owner of certain property in the County of Utah, State of Utah, which is more particularly described in Schedule I attached hereto and by this reference made a part hereof, entitled "Real Property Description of Cottages on the Green".

B. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the real property described in Schedule I and in the additional schedules which may be annexed hereto pursuant to the provisions of this Declaration to create a non-profit corporation under the Non-Profit Corporation and Cooperative Association Act to which should be delegated and assigned the powers of owning, maintaining and administering the Common Area and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created.

C. Declarant will or has caused such Corporation, the Members of which shall be the respective Owners of Lots in the Properties, and Owners of the Lots in the real property annexed pursuant to this Declaration, to be formed for the purpose of exercising the functions aforesaid.

D. Declarant will develop and convey all of the Properties (as hereinafter defined), pursuant to a general plan for all of the Properties and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the properties as hereinafter set forth. Declarant may execute, acknowledge and record a Supplemental Declaration affecting solely a "Phase" (and as such term is hereinafter defined), so long as Declarant owns all of the real property to be affected by such Supplemental Declaration. Such Supplemental Declaration shall not conflict with the provisions of this Declaration, but may impose further conditions, covenants and restrictions for the operation, protection and maintenance of the Subdivision.

E. Declarant hereby declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Properties, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successors in interest and be binding upon Declarant, its successors in interest and each Owner and his respective successors in interest; and may be enforced by any Owner and his successors in interest, and by the Association.

Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Declarant's rights to complete development of the Properties and construction of improvements thereon, nor Declarant's rights to maintain model homes, construction, sales or leasing offices or similar facilities on any property in the Properties owned by Declarant or the Association, nor Declarants' right to post signs incidental to construction, sales or leasing.

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only to the extent that insurance proceeds are received in compensation for such loss.

**Section 5. Liability Insurance.** The Association shall obtain comprehensive public liability insurance, including medical payments, liquor liability insurance and malicious mischief, in the amount of \$1,000,000 per occurrence for personal injury and/or property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of negligent acts of the Association or other lot owners. Such insurance must include other coverage in kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use.

(a) **Minimum Financial Rating of Carrier.** Each hazard insurance policy must be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better. Hazard insurance policies are also acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policy holder's rating of at least A. Each carrier must be specifically licensed or authorized by law to transact business within the state or territory where the Mortgaged Premises are located.

(b) **No Assessments.** Policies are unacceptable where: (1) under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against any Lot Owner or any first mortgagee, its successors or assigns, including, but not limited to, Federal Home Loan Mortgage Corp; or (2) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent any first mortgagee, its successors or assigns, including, but not limited to, Federal Home Mortgage Corp. or the Borrower from collecting insurance proceeds.

(c) **Other Requirements.** All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Mortgaged Premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first mortgagee (or trustee) named at least ten days in advance of the effective date of any reduction in or cancellation of the policy.

**Section 6. Fidelity Coverage.** The Association shall obtain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the Lot Owners. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

**Section 7. Other Insurance and General.** The Association may also obtain, through the Board, Workmens Compensation Insurance and other liability insurance as it may deem desirable insuring each Lot Owner and the Association, the Board of Directors and the Manager from liability in connection with the Common Area, the premiums for which are Common Expenses included in the Common Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of a Lot Owner because of the negligent acts of the Association or other Dwelling Unit Owners.

## ARTICLE I

### Definitions

Section 1. "Architectural Committee" shall mean the committee created pursuant to Article VIII hereof.

Section 2. "Articles" shall mean the Articles of Incorporation of the Association which have been filed in the office of the Secretary of the State of Utah, a true copy of which is attached hereto, marked as Schedule II, and incorporated herein by reference, which Articles may be amended from time to time.

Section 3. "Common Assessment" shall mean the charge against each Owner and his Lot, representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Properties, which are to be paid uniformly and equally by each Owner to the Association, as provided herein.

Section 4. "Special Assessments" shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

Section 5. "Reconstruction Assessments" shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Association for reconstruction of any portion or portions of the Improvements on the common area pursuant to the provisions of this Declaration.

Section 6. "Capital Improvement Assessments" shall mean a charge against each Owner and his Lot, representing a portion of the costs to the Association for the installation or construction of any improvement on any portion of the common area which the Association may from time to time authorize.

Section 7. "Association" shall mean COTTAGES ON THE GREEN, a corporation formed under the Non-Profit Corporation and Cooperative Association Act, its successors and assigns. Articles of Incorporation are attached hereto as Schedule II.

Section 8. "Beneficiary" shall mean a mortgagee under a mortgage or a beneficiary or holder under a deed of trust, as the case may be, and the assignees of such mortgagee, beneficiary or holder.

Section 9. "Board" shall mean the Board of Directors of the Association, elected in accordance with the By-Laws of the Association. The term "Directors" shall be synonymous with the term "Trustees" as used in the Non-Profit Corporation Act and Corporate Association Articles.

Section 10. "By-Laws" shall mean the By-Laws of the Association, which have been or shall be adopted by the Board substantially in the form of Schedule III attached hereto and incorporated herein by reference, as such By-Laws may be amended from time to time.

Section 11. "Common Area" shall mean all the real property and improvements, including without limitation, any recreation facilities, landscaped areas and private roadways and walkways which are owned by the Association for the common use and enjoyment of all the Owners. The common area to be so owned by the Association at the time of the conveyance of the first lot shall also include the property described as common area on the map attached hereto, by this reference made a part hereof, entitled Common Area. Additional common area might be transferred to the Association in the future pursuant to the terms of Article XV. The common area located within any future subdivision or portion thereof, shall be conveyed, lien free, to the Association prior to the sale of the first Lot in that phase, or portion thereof, to the public.

Section 12. "Common Expenses" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Area (including unpaid special assessments, reconstruction assessments and capital improvement assessments), including

those costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities, gardening and other services benefiting the common area, and all recreational facilities thereon; the costs of fire, casualty and liability insurance covering the properties; and the costs of bonding of the members of the management body; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties, or portions thereof; and the costs of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of all of the Owners.

Section 13. "Declarant" shall mean and refer to THE MONTERRA GROUP, INC. , its successors and assigns, so long as Declarant assigns such rights of Declarant hereunder to any such person by an express written assignment.

Section 14. "Declaration" shall mean this instrument as it may be amended from time to time.

Section 15. "Deed of Trust" shall mean and refer to a mortgage or a deed of trust, as the case may be.

Section 16. "Dwelling Unit" shall mean and refer to a building located on a lot designed and intended for use and occupancy as a residence by a single family.

Section 17. "Family" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, of (2) a group or not more than three (3) persons not all so related, inclusive of their domestic servants, who maintain a common household in a residence on a Lot.

Section 18. "Improvement" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to buildings, out-buildings, walkways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screen walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs and exterior air conditioning equipment.

Section 19. "Properties" shall mean and refer to all of the real property described in Schedule I of the Recitals of this Declaration, together with such portion of the real property described in any additional Schedules hereto attached with respect to which a Notice of Addition of Territory has been recorded subjecting it to this Declaration and to the jurisdiction of the Association as provided herein. (See Schedule I, Phase I, attached)

Section 20. "Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article VI hereof.

Section 21. "Lot" shall mean and refer to any residential lot or parcel of land shown upon any recorded subdivision plat of this planned unit development, with the exception of the common area.

Section 22. "Manager" shall mean the person, firm or corporation appointed by the Association hereunder or its agents and delegated certain duties, powers or functions of the Association.

Section 23. "Member" shall mean any person or entity holding a membership in the Association as provided herein.

Section 24. "Mortgage" , "Mortgagee" shall mean any mortgage or deed of trust or other conveyance of a lot to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used herein

shall be synonymous with the term "Mortgage". The term "Mortgagee" shall mean a person or entity

to whom a mortgage is made and shall include the beneficiary of a deed of trust; "Mortgagor" shall mean a person or entity who mortgages his or its property to another (i.e. the maker of a mortgage), and shall be synonymous with the term "Mortgagor", and the term "Beneficiary" shall be synonymous with the term "Mortgagee"

Section 25. "Notice and Hearing" shall mean written notice and a public hearing before a tribunal appointed by the Board, at which the Owner concerned shall have an opportunity to be heard in person or by counsel at Owner's expense, in the manner further provided in the By-Laws.

Section 26. "Owner" shall mean and refer to the person or persons or other legal entity or entities, including Declarant, holding fee simple interest of record to any Lot which is a part of the Properties, including sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation. For purposes of Article X only, unless the context otherwise requires, Owner shall also include the family, invitees, licensees and Lessees of any Owner.

Section 27. "Person" shall mean a natural individual or any other entity with the legal right to hold title to real property.

Section 28. "Record, Recorded, Filed and Recordation" shall mean, with respect to any document, the recordation of such document in the Office of the County Recorder.

Section 29. "Structural Maintenance Areas" shall mean, as the same may from time to time exist, the exterior surfaces of all residential structures, the exterior roofing material of the structures, exterior lighting fixtures attached to the structures and the private patio area.

Section 30. "Phase" shall mean a parcel of real property which has been divided or separated into lots, shown on a recorded subdivision map.

Section 31. "Supplemental Declaration" shall mean any declaration of covenants, conditions and restrictions which may be recorded by Declarant pursuant to Article XV of this Declaration.

Section 32. "Map" shall mean a drawing of a parcel of property which has been divided or separated into lots including the recorded map of COTTAGES ON THE GREEN attached hereto and any subsequent phases recorded by it. (Schedule IV attached)

The foregoing definitions shall be applicable to this Declaration and to any Notice of Addition of Territory or Declaration Amendment.

## ARTICLE II

### Owners' Property Rights

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

- (a) The right of Declarant to annex additional common area thereto pursuant to the terms of Article XV.
- (b) The right of the Association to reasonably limit the number of guests of owners using the common area facilities.
- (c) The right of the Association to establish uniform rules and regulations pertaining to the use of the common area and the recreational facilities thereof, if any, including, but not limited to, the right and obligation of the Association to enforce all parking restrictions within the Common Areas as set forth in Section 3

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of Article II herein.

(d) The right of the Association to charge uniform and reasonable admission and other fees for the use of the recreational facilities, if any, situated upon a portion of the common area; provided, however, that none of the common area facilities, recreational facilities, parking spaces or other amenities in the Properties shall be leased to the Owners.

(e) The right of the Association in accordance with its Articles of Incorporation, By-Laws and this Declaration, with the vote of or written assent of two-thirds (2/3) of each class of members (excluding therefrom the voting power of Declarant), to borrow money for the purpose of improving the common area and facilities and in aid thereof, and, subject to the provisions of Article XIV of this Declaration, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such Mortgagee shall be subordinated to the rights of Owners.

(f) Except for the right of ingress and egress to the owners' property, the Association shall have the right to suspend the voting rights and right to use the common area facilities by an Owner for any period during which any assessment against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association provided that any suspension of such voting rights or the right to use of the common area and common area facilities, shall be made only by the Board of Directors of the Association, after notice and an opportunity for a hearing as provided in the By-Laws of the Association.

(g) Subject to the provisions of Article XIV of this Declaration, the right of the Association to dedicate, release, alienate or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication, release, alienation or transfer shall be effective, unless an instrument signed by Members entitled to cast two-thirds (2/3) of the voting power of the Class A Members (excluding the voting power of Declarant), agreeing to such dedication, release, alienation or transfer has been recorded.

(h) The right of the Declarant (and its sales agents, customers and representatives) to the non-exclusive use of the common area and the facilities thereof, without charge, for sales, display, access, ingress, egress and exhibit purposes, which right Declarant hereby reserves; provided, however, that such use shall not be for a period of more than seven (7) years after the date of recording this Declaration and upon the vote of fifty-one (51%) percent of the Class A Members, this term may be extended for an additional period of time.

(i) The right of the Association (by action of the Board) to reconstruct, replace or refinish any improvement or portion thereof upon the common area, in accordance with the original design, finish or standard of construction of such improvement, or of the general improvements within the Properties, as the case may be; and not in accordance with such original design, finish or

standard of construction only with the vote or written consent of the Owners holding seventy-five (75%) percent of the voting power of the Association.

(j) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the common area.

**Section 2. Delegation of Use.** Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside in his dwelling unit, subject to reasonable regulation by the Board.

**Section 3. Easements for Parking.** Temporary guest or recreational parking shall be permitted within the common area only within spaces and areas clearly marked for this purpose. Spaces shall be shown by signs or markings on the paved area. The Association, through its officers, committees and agents is hereby empowered to establish "parking" and "no parking" areas within the common area, as well as to enforce these parking limitations by all means lawful for such enforcement including the removal of any violating vehicle by those so empowered.

**Section 4. Easements for Vehicular Traffic.** In addition to the general easements for use of the common area reserved herein, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties that each and every Owner shall have a non-exclusive easement appurtenant for vehicular traffic over all private streets within the Properties, subject to the parking provisions set forth in Section 3 of Article II hereof. Declarant reserves the right to grant similar easements to Owners of Property in subdivisions annexed hereto pursuant to Article XV.

**Section 5. Easements - Public Service Use - Repairs.** In addition to the foregoing easements over the common area, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within this planned unit development, easements for city, county and federal public services, including but not limited to, the right of the police to enter upon any part of the common area for the purpose of enforcing the law. The Declarant and the Association further reserve an easement to make all necessary repairs to the exterior portions of all buildings and dwellings located in the development whether such buildings and dwellings are in or outside of the Common Area and whether said buildings are privately owned by individuals or owned by the Association or the Declarant.

**Section 6. Waiver of Use.** No owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot or any property in the Properties.

**Section 7. Title to the Common Area.** The Declarant hereby covenants for itself, its successors and assigns that it will convey fee simple title to the common area described in Article I, Section 11 of this Declaration to the Association free and clear of all encumbrances and liens, except easements, conditions and reservations set forth in this Declaration. Said conveyance shall be made prior to the conveyance of the first Lot to a purchaser from Declarant. Declarant shall similarly convey the common area of any property annexed hereto.

**Section 8. Taxes.** Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot not under common ownership, or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against his own Lot and interest, if any, in the Common Area.

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### ARTICLE III

#### Membership in Association

**Section 1. Membership.** Every owner of a Lot shall be a member of the Association, and no Owner shall have more than one membership in the Association. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner, and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot. Ownership of such Lot shall be the sole qualification for membership in the Association.

**Section 2. Transfer.** The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class "A" Member who has sold his Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser the right to exercise the contract seller's membership rights on seller's behalf.

Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Lot until fee title to the Lot sold is transferred. In the event the Owner of any Lot shall fail or refuse to transfer the membership registered in his name to the purchaser of such Lot upon transfer of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association. The Board of Directors shall have the right to charge a reasonable Special Assessment against any Owner, and his Lot, equal to the cost to the Association of effectuating any such transfer of his membership upon the books of the Association.

### ARTICLE IV

#### Voting Rights

**Section 1. Classes of Voting Membership.** The Association shall have two (2) classes of voting membership as follows:

**Class A.** Class A Members shall originally be all Owners with the exception of the Declarant for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for each Lot owned. Declarant shall become a Class A Member with regard to Lots owned by Declarant upon conversion of Declarant's Class B Membership as provided below. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised in accordance with Article IV, Section 2 of this Declaration, and in no event shall more than one (1) vote be cast with respect to any Lot.

**Class B.** The Class B Member shall be the Declarant and it shall be entitled to three (3) votes for each Lot owned by Declarant. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earliest:

- (a) When the total votes outstanding in the Class A membership, inclusive of votes attributable to any property annexed to the Properties, equals the total votes outstanding in the Class B membership; or
- (b) Three (3) years from the date of recording this Declaration; or
- (c) On voluntary cancellation of Class B membership by Declarant.



Section 2. Vote Distribution. Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot, ("co-owner"), all such co-owners shall be members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the Class A vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligation imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or by the By-Laws of the Association, shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles of Incorporation and By-Laws of the Association.

## ARTICLE V

### Duties and Powers of Association

The Association, acting through the Board of Directors, shall have the power and duty to:

(a) Maintain, repair and otherwise manage the common area and all facilities, and replace those elements of common area that must be replaced on a periodic basis, including the improvements and landscaping thereon in accordance with the provisions of Article VI of this Declaration.

(b) Maintain all private streets within this planned unit development, including cleaning and periodic resurfacing.

(c) Maintaining all private sewer systems within the common area.

(d) Grant easements, rights of way, or strips of land, where necessary, for utilities and sewer facilities over the common area to serve the common area and the Lots.

(e) Maintain such policy or policies of insurance as may be permitted or allowed in this Declaration and the By-Laws attached hereto as Schedule III.

(f) Employ or contract with a professional manager to perform all or any part of the duties and responsibilities of the Association, and shall have the power to delegate its powers to committees, officers and employees. Any such agreement shall be for a term not in excess of three (3) years, subject to cancellation by either party without cause or payment of a termination fee upon ninety (90) days or less written notice.

(g) Enter upon any Lot or premise for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any exterior portion of any building or Lot, whether common property or privately owned, as authorized and required by this Declaration.

(See easement reserved for said purposes, supra Article II Section 5.)

(h) Any and all additional power required to accomplish the duties and functions provided for in this Declaration.

## ARTICLE VI

### Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Properties hereby covenants, and each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual common assessments for common expenses, (2) capital improvements assessments, (3) special assessments, and (4) reconstruction assessments; such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be charged on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. Subject to provisions of this Declaration protecting first mortgagees, the personal obligation for delinquent assessments shall pass to the successors in interest of such owner. The Board of Directors shall establish no fewer than two (2) such separate accounts into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. Each of the Association's Maintenance Funds shall include: (1) an Operating Fund for current expenses of the Association, and (2) a Common Area Reserve Fund for replacements, painting and repairs (which would not reasonably be expected to recur on an annual or less frequent basis) of the common area facilities to the extent necessary under the provisions of this Declaration. The Board of Directors shall not commingle any amounts deposited into any of the Associations Maintenance Funds with one another.

Section 2. Purpose of Common Assessments. The Assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Owners and for the improvement and maintenance of the Common Area and of the dwelling units situated upon the Lots in the Properties as provided herein. The assessments shall also be for an adequate reserve to be used as appropriate for maintenance repairs and replacements of those elements of the common property that must be replaced on a periodic basis. However, disbursements from the Common Area Reserve Fund shall be made by the Board of Directors only for the specific purposes specified in this Article VI. Disbursements from the Operating Fund shall be made by the Board of Directors for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Common Area Reserve Fund are to be used. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any Assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Properties. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Association, so long as the amounts deposited into any such Fund are earmarked for specified purposes authorized by this Declaration.

Section 3. Damage to Common Area by Owners. The Foregoing maintenance, repairs or replacements within the Common Area arising out of or caused by the willful or negligent act of the Owner, his family, guests or invitees shall be done at said Owner's expense or a Special Assessment therefor shall be made against his Lot; provided, however, that the liability of an individual Owner for such damage to the Common Area shall not be absolute, but shall only be that for which the Owner is legally responsible under State Law.

Section 4. Basis of Maximum Common Assessment. Until January 1st of the year immediately following the conveyance of the first improved Lot in the Properties to an Owner, the maximum Common Assessment under Article VI shall be Six Hundred Sixty Dollars (\$660.00) per Lot per year.

- (a) From and after January 1st of the year immediately following the conveyance of the first improved Lot to an Owner, the maximum annual Common Assessment may be increased by the Board effective January 1st of each year not more than the greater of (1)

twenty percent (20%), or (2) the percentage by which the U.S. Bureau of Labor Statistics for the area, all items Consumer Price Index has increased as of the date of increase over the level of said index as of the date the Common Assessment was last established, above the maximum annual common assessment for the previous year, without a vote of the membership.

(b) From and after January 1st of the year immediately following the conveyance of the first improved Lot to an Owner, the maximum annual Common Assessment may be increased above the greater of (1) twenty percent (20%), or (2) said percentage by which said Index has so increased, by the vote or written assent of fifty-one percent (51%) of each Class of Members.

(c) The Board of Directors may fix an annual Common Assessment at an amount not in excess of the maximum.

**Section 5. Capital Improvement and Reconstruction Assessments.**

In addition to the Common Assessments authorized above, the Board of Directors of the Association may levy, in any assessment year, a Capital Improvement Assessment or Reconstruction Assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the common area, including fixtures and personal property related thereto; provided that any such assessment in excess of Two Thousand Dollars (\$2,000.00) shall have the vote or written assent of a majority of the votes of Members who are subject to such assessments, excluding therefrom the votes of Declarant.

**Section 6. Notice and Quorum for Authorizing an Action Under Sections 4 and 5.** Written notice of any meeting called for the purpose of taking any action by the Members authorized under Sections 4 and 5 shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the Association. No such subsequent meeting shall be held more than thirty days following the preceding meeting.

**Section 7. Equal Rate of Assessment.** Common Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VI must be fixed at an equal rate for all Lots within the Properties; provided, however, that the Association may, subject to the provisions of Section 3 of this Article, levy Special Assessments against selected owners who have caused the Association to incur special expenses due to wilful or negligent acts of said Owners, their guests or agent.

All Common Assessments shall be collected on a regular basis by the Board of Directors at such frequency as the Board shall determine.

**Section 8. Date of Commencement of Common Assessments: Due Date.** All assessments provided for herein shall be made in regular monthly installments after the assessment is made. The annual Common Assessment for each phase of development within the Properties shall commence as to all Lots within such phase of development, as provided for herein, on the first day of the month following the conveyance of the Common Area within the phase. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the By-Laws. The Board of Directors shall fix the amount of the annual Common Assessment against each Lot at least thirty (30) days in advance of each Common Assessment period. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner subject thereto, at least thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the

assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

The Board of Directors shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from the Common Area Reserve Fund and the Operating Fund, and shall cause to be distributed a copy of each such statement to each member, and to each first Mortgagee who has filed a written request for copies of the same with the Board of Directors, in the manner provided in the By-Laws of the Association. At least sixty (60) days prior to the beginning of each fiscal year, the Board of Directors shall prepare and distribute to the membership of the Association, a written, itemized estimate (budget) of the expenses to be incurred by the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into the Common Area Reserve Fund, less any expected income and accounting for any surplus from the prior year's respective Association Maintenance Fund.)

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Association's Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Common Area Reserve Fund, the Operating Fund and any other Association Maintenance Funds established by the Association. If the estimated sums prove inadequate for any reason, including non-payment of any Owner's annual Common Assessments, the Board may, at any time, levy supplemental Common Assessments subject to provisions of Section 4 of this Article for any of the Association's Maintenance Funds which shall be assessed equally against the Owner of each Lot in the Properties.

Each annual Common Assessment may be paid by the Owner to the Association in one check or payment or in separate checks, as payments attributable to deposits into specified Maintenance Funds. In the event that any installment of a Common Assessment payment is less than the amount assessed and the payment does not specify the Association Maintenance Fund of Funds into which it should be deposited, the receipt by the Association from the Owner shall be credited in order of priority first to the Operating Fund, until that portion of the Common Assessment has been satisfied, and second to the Common Area Reserve Fund.

At the end of any fiscal year of the Association, the Owners may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for the operation of the Properties, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Common Assessments. Notwithstanding anything contained in the Articles or By-Laws to the contrary, if prior to dissolution of the Association the Association has not obtained tax exempt status from both the Federal and State government, then upon such dissolution of the Association, any amounts remaining in the Common Area Reserve Funds shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective contributions.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments herein:

- (a) All Properties dedicated to and accepted by a local public authority; and
- (b) The Common Area.

No other property shall be exempt from assessment.

## ARTICLE VII

### Effect of Non-Payment of Assessments

#### Remedies of the Association

Section 1. Effect of Non-Payment of Assessments: Remedies of the Association. Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from

the due date of such installment at the rate of twelve percent (12%) per annum. If any installment of an assessment is not paid within thirty (30) days after it is due, the Owner responsible therefor may be required further by the Board of Directors to pay a late charge of Five Dollars (\$5.00) or five percent (5%) of the amount of the delinquent installment, whichever is greater. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his Lot. If any installment of a Common Assessment is not paid within thirty (30) days after its due date, the Board shall mail an acceleration notice to the Owner and to each first Mortgagee of a Lot which has requested a copy of the notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Common Assessment for the then current fiscal year and sale of the Lot. The notice shall further inform the Owner of his right to cure after acceleration and to bring a court action to assert the non-existence of a default or any other defense of the Owner to acceleration and sale. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the annual Common Assessment to be immediately due and payable without further demand and may enforce the collection of the full Common Assessment and all charges thereon in any manner authorized by law and this Declaration.

**Section 2. Notice of Assessment.** No action shall be brought to enforce any assessment lien herein, unless at least thirty (30) days has expired following the date a Notice of Assessment is deposited in the United States Mail, certified or registered, postage prepaid, to the Owner of the Lot, and a copy thereof has been recorded by the Association in the office of the County Recorder in which the Properties are located; said Notice of Assessment must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at twelve percent (12%) per annum, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant. Such Notice of Assessment shall be signed and acknowledged by an officer of the Association, and said lien shall be prior to any declaration of homestead recorded after the date on which this Declaration is recorded. The lien shall continue until fully paid or otherwise satisfied.

**Section 3. Foreclosure Sale.** Any such sale provided for above may be conducted by the Board of Directors, its attorneys or other persons authorized by the Board in accordance with the provisions of the Utah Code Annotated 1953, as amended, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by laws. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

**Section 4. Curing of Default.** Upon the timely curing of any default for which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the default Owner of a fee, to be determined by the Association, but not to exceed Fifty Dollars (\$50.00), to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed Ten Dollars (\$10.00).

**Section 5. Cumulative Remedies.** The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

**Section 6. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (meaning any recorded mortgage with first priority or seniority over other mortgages) made in good faith and for value and recorded prior to

the date on which the assessment came due. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or deed in lieu thereof, shall extinguish the lien of such assessments as to installments which became due prior to such sale or transfer. However, no sale or transfer shall relieve such Lot from liability for any installments or assessments thereafter becoming due or from the lien thereof.

## ARTICLE VIII

### Architectural control

Section 1. Members of Committee. The Architectural Committee, sometimes referred to in this Declaration as the "Committee", shall consist of representatives of Declarant.

Section 2. Review of Proposed Construction. Subject to Article X, Section 12, of this Declaration, no exterior of any building, privacy fence, wall, patio cover, or other structure shall be commenced, painted, or erected upon the Properties, nor shall any exterior addition to or change or alteration therein be made by any individual Lot Owner; all such changes shall be made by the Architectural Committee.

Section 3. Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 8 hereof. In the absence of such designation, the vote of any two (2) members of the Committee taken without a meeting, shall constitute an act of the Committee.

Section 4. No Waiver of Future Approvals. The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

Section 5. Compensation of Members. The Members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 6. Inspection of Work. The Committee shall be responsible for inspection of all work and correction of defects therein if there be any.

Section 7. Non-Liability of Committee Members. Neither the Committee nor any member thereof, nor its duly authorized Committee representative shall be liable to the Association or to any Lot Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the wilful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes, excepting that the Committee hereby waives the non-liability provision of this paragraph to the extent necessary to obtain insurance as provided for in Article XIII hereof.

Section 8. Variance. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any supplemental declaration, including restrictions upon height, size, floor area or place of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require.

Such variances must be evidenced in writing, must be signed by at least two (2) members of the Board of Adjustment of COTTAGES ON THE GREEN. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and lot set-back lines or requirements imposed by any governmental or municipal authority.

## ARTICLE IX

### Maintenance and Repair Obligations

Section 1. Structural Maintenance Areas. No improvement, excavation or work which in any way alters the Structural Maintenance Areas from their natural or existing state on the date any such area is conveyed by Declarant to a purchaser of a Lot shall be made or done by any person other than the Association or its authorized agents.

Section 2. Maintenance Obligations of Owners. It shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Architectural Committee approval, to maintain, repair, replace and restore all areas subject to his exclusive control in a neat, sanitary and attractive condition. Areas subject to the exclusive control of the Owner shall be deemed to include, but not be limited to, all Structural Maintenance Areas. In the event that any Owner shall permit any Improvement, which is the responsibility of such owner to maintain, to fall into disrepair or to be maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Architectural Committee shall have the right, but not the duty, upon fifteen (15) days prior notice to the Owners of such Lot, to correct such condition and to enter upon such Owners' Lot to make such repairs or to perform such maintenance and the cost thereof shall be charged to the Owner. Said cost shall be a Special Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration. The Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board of Directors, to the amounts payable by each Owner as Common Assessments.

Section 3. Maintenance Obligations of Association. The Association shall maintain, or provide for the maintenance of all of the Common Area and all improvements thereon, including recreational facilities, if any, in good order and repair, and shall likewise provide for painting, minor repair, and replacement as necessary of the commonly metered utilities, and any and all utility laterals and buildings. In addition, the Association shall also provide necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which is in the Common Area at the time it is conveyed to the Association and also on Owners' Lots up to the foundation lines of the residential dwelling with the exception of any plants and vegetation occurring within the boundaries of private patios which shall be the Owner's responsibility to maintain. The Association shall further maintain, reconstruct, replace and refinish any paved surfaces in the Common Area, and shall maintain and provide snow removal on entry walks and driveways. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board of Directors of the Association shall determine in their judgment to be appropriate.

Section 4. Damage and Destruction Affecting Residences--Duty to Rebuild. If all or any portion of any Lot or Dwelling Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Lot or Dwelling Unit to rebuild, repair or reconstruct said residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

Section 5. Time Limitation. The Owner or Owners of any damaged residence shall be obligated to proceed with all due diligence hereunder and shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after damage occurs, unless prevented by causes beyond their reasonable control. All reconstruction shall be totally

controlled and supervised by the Committee.

## ARTICLE X

### Use Restrictions

All real property within the Properties shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant in Section 12 hereof:

Section 1. Single Family Residence. Subject to Section 3 of this Article X, each Lot shall be used as a residence for a single family and for no other purpose.

Section 2. Business or Commercial Activity. Subject to Section 3 of this Article X, no part of the Properties shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes; except Declarant, its successors or assigns, may use any portion of the Properties for a model home site, and display and sales office during the construction and sales period in accordance with Article II, Section 1(h), of this Declaration, and excepting professional and administrative occupations without external evidence thereof, for so long as such occupations are in conformance with Highland City Ordinances and are merely incidental to the use of the Dwelling Unit as a residential home.

Section 3. Real Estate Business. No Dwelling Unit, Lot, Improvement, or portion of the Common Area shall be used in the conduct of any real estate business, gainful occupation, profession, trade office or other non-residential activity; PROVIDED, HOWEVER, that Declarant, or its designees, shall have the non-exclusive right, subject to the provisions of Article II, Section 1(h), of this Declaration, to use without additional cost the portions of any recreational building constructed on the Common Area for purposes of sales of Lots within the Properties, provided that such use does not unreasonably interfere with the use of any recreation facilities by the members of the Association. Furthermore, as to any Lots owned by Declarant, Declarant shall have the unrestricted right to maintain model homes thereon for sales purposes.

Section 4. Nuisances. No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area, nor shall anything be done therein which may be or become an unreasonable annoyance or nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the Properties, and the Board of Directors shall have the right to determine in accordance with the By-Laws if any noise, odor or activity producing any such noise, odor or interference constitutes a nuisance. Without limiting generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smokey vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Owner in the Properties, shall be located, used or placed on any portion of the Properties, or exposed to the view of other Owners without the prior written approval of the Architectural Committee.

Section 5. Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Properties or any Lot, without the prior written consent of the Architectural Committee, except one sign for each Dwelling Unit, of not more than three (3) feet by two (2) feet, plain white with black block letters, advertising the property for sale or rent, or except signs, regardless of size, used by Declarant, its successors or assigns, to advertise the Properties during construction and sale period. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the requirements of the Highland City ordinances.

Section 6. Parking and Vehicular Restrictions. No Owner of a Lot shall park, store or keep any vehicle except wholly within the parking area designed therefor, and any inoperable vehicle shall be stored only in enclosed garages. No Owner shall park, store or keep on any property or street (public or private) within the Properties any large commercial-type vehicle (dump truck, cement-mixer truck, oil or gas truck, delivery truck and any other vehicular equipment, mobile or otherwise, deemed



to be a nuisance by the Board), any recreational vehicle (camper unit, motor home, truck trailer, boat, mobile home or other similar vehicle), upon any uncovered parking space, so as to be visible from anywhere in the Properties, except as otherwise provided by the Board. The above excludes camper trucks up to and including three-quarter (3/4) ton when used for everyday-type transportation and subject to approval by the Board of Directors. No Owner of a Lot shall conduct major repairs or major restorations of any motor vehicle, boat, trailer, aircraft, or other vehicle upon any portion of any Lot or upon the Common Area.

**Section 7. Animal Restriction.** No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area, except usual and ordinary dogs, cats, fish, birds and other household pets may be kept on Lots subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for commercial purposes, or in unreasonable quantities. As used in this Declaration "unreasonable quantities" shall ordinarily mean more than two (2) pets per household, provided, however, that the Association (or the Architectural Committee or such other person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board of Directors, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed patio or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Architectural Committee. Should any animal belonging to an Owner be found unattended out of the enclosure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant (for so long as it owns any interest in the Properties) or a person designated by Declarant to do so, to a pound under the jurisdiction of the local municipality in which the Properties are situated and subject to the laws and rules governing said pound, or to a comparable animal shelter. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or by members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Common Area.

**Section 8. Trash.** No rubbish, trash or garbage or other waste material shall be kept or permitted upon any Lot or Common Area, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor and fire pits in the patios designed in such a manner that they do not create a fire hazard. No clothing or household fabrics shall be hung, dried or aired in such a way in the Properties as to be visible to other property, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Properties except within an enclosed structure or appropriately screened from view.

**Section 10. Temporary Buildings.** No outbuildings, basement, tent, shack, shed or other temporary building or improvement of any kind shall be placed upon any portion of the Properties either temporarily or permanently. No garage, trailer, camper, motor home or recreational vehicle shall be used as a residence in the Properties, either temporarily or permanently.

**Section 11. Common Area Facilities.** Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Association.

**Section 12. Declarant Exemption.** Declarant or its successors or assigns may undertake the work of constructing Dwelling Units and developing all of the Lots included within the Properties and any annexation thereto. The Completion of that work and sale, rental and other disposal of Dwelling Units is essential to the establishment and welfare of said property as a residential community. As used in this Section and its sub-paragraphs, the words "its successors or assigns" specifically do not include purchasers of Lots improved with completed Dwelling Units. In order

that said work may be completed and the Properties be established as a fully occupied residential community as rapidly as possible, no Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing, on any Lot owned by Declarant, whatever they determine to be necessary or advisable in connection with the completion of said work, including without limitation the alteration of its construction plans and designs as Declarant deems advisable in the course of development; or

(b) Prevent Declarant, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining on any Lot, or portion thereof, owned or controlled by Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing the Properties as a residential community and disposing of the same in Lots by sale, lease or otherwise; or

(c) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from conducting on any Lot, or any portion thereof, owned or controlled by Declarant, or its successors or assigns, its business of developing, subdividing, grading and constructing Dwelling Units and other improvements in the Properties as a residential community and of disposing of Dwelling Units thereon by sale, lease or otherwise; or

(d) Prevent Declarant, its successors or assigns, or its contractors or subcontractors, from maintaining such sign or signs on any Lot owned by or controlled by it as may be necessary in connection with the sale, lease or other marketing of Lots and Dwelling Units in the Properties; or

(e) Prevent Declarant, at any time prior to acquisition of title to a Lot in a Phase by a purchaser from Declarant, to establish on that phase additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Properties. Declarant shall repair at his own cost or expense any damage caused by Declarant to the Common Area as well as such damages caused by Declarant to the common area as well as such damages caused to Lots or property still under Declarant's control.

**Section 13. Outside Installations.** No radio station or shortwave operators of any kind shall operate from any Lot or Dwelling Unit unless approved by the Board of Directors. Exterior radio antenna, television antenna, or other antenna may be erected or maintained in the Properties, subject to the approval of the Architectural Committee.

**Section 14. Insurance Rates.** Nothing shall be done or kept in the Properties which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

**Section 15. Drilling.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels or mineral excavations of shafts be permitted upon the surface of any Lot or within five hundred (500) feet below the surface of the Properties. No derrick or other structure designed for use in boring of water, oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 16. Further Subdivision. No owner shall further partition or subdivide his Lot; provided, however, that this provision shall not be construed to limit the right of an Owner (1) to rent or lease all or any portion of his Lot by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (2) to sell his Lot; or (3) to transfer or sell any Lot to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be subject in all respects to the provisions of this Declaration and By-Laws of the Association, and any failure by the Lessee of such Lot to comply with the terms of this Declaration or the By-Laws of the Association shall constitute a default under the lease.

Section 17. Drainage. There shall be no interference with the established drainage pattern over any Subdivision within the Properties. For the purposes hereof, "established" drainage is defined as the drainage which exists at the time the overall grading of any Subdivision is completed by Declarant, or that which is shown on any plans approved by the Architectural Committee, which may include drainage from the Common Area over any Lot or Lots in the Properties.

Section 18. Water Supply System. No individual water supply, sewage disposal system, or water softener system shall be permitted on any Lot in the Properties unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of Utah State Health Department, the Architectural Committee, and all other applicable governmental authorities.

#### ARTICLE XI

##### Privacy Fences

Section 1. Non-Party Fences. Each privacy fence which is built as part of the original construction upon the Properties shall be placed on the Lots of the respective Owners, rather than in the Common Area. The Association shall be responsible for reasonable maintenance thereof, as provided herein. Such fences shall not be considered to be Party Fences. The Lot Owners shall be prohibited from making any changes in the original privacy fences and from building new or additional fences.

#### ARTICLE XII

##### Damage or Destruction to Common Area

Damage to or destruction of all or any portion of the Common Area shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

- (a) In the event of damage or destruction to the Common Area, the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed.
- (b) If the insurance proceeds are insufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment equally against each of the Lot Owners in accordance with the provisions of Article VI, Section 5, of this Declaration.
- (c) Each Owner shall be liable to the Association for any damage to the Common Area not fully covered by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or his family and guests, both minor and adult. Notwithstanding the foregoing, the Association reserves the right

to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted with such joint owners to the contrary. The cost of correcting such damage shall be a Special Assessment against the Lot and may be collected as provided herein for the collection of Common Assessments.

### ARTICLE XIII

#### Insurance

Section 1. Common Area. The Association shall keep all buildings, improvements, fixtures, and all other insurable property of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and shall obtain insurance against such other hazards and casualties as the members of the Association deem desirable, including extended coverage for not less than 100% of the replacement cost of insurable common property. The Association may also insure any other property whether real or personal owned hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association for the benefit of the home owners. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

Section 2. Insurance Obligations of Owners. Subject to the requirements of any mortgage institution, each Owner shall insure his entire Dwelling Unit, including the structural portions of the Dwelling Unit, against loss or damage by fire or by any other casualty, under the standard form of extended endorsement and broad form now in the State of Utah or under such other insurance as may be required by any Mortgage of the residence. All such insurance shall be for the full replacement value of the Dwelling Unit.

Each non-participating Owner shall, within thirty (30) day after recordation of the conveyance of his Lot from Declarant and thereafter at least ten (10) more days prior to the expiration, termination, cancellation or modification of any existing policy, furnish to the Association duplicate copies of policies or certificates thereof, showing that such insurance is currently in force certified by the insurance company or by its duly authorized agent. All such policies shall contain a provision that the same shall not be cancelled or terminated except upon at least thirty (30) days written notice to the Association.

Section 3. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area facilities, or other Improvements in the Properties insured by the Association, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article XII of this Declaration. If such insurance proceeds are insufficient to cover the costs of such repair or replacement of the property damaged or destroyed, the Association may make Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Lot Owners, in accordance with the provisions of Article VI, Section 5, of this Declaration. In the event of total destruction of all of the Improvements in the Properties, the proceeds of the the insurance carried by the Association shall be divided proportionately among the Lot Owners, such proportion based upon the original base sales price of each improved lot at the time it was initially sold by Declarant, provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Lot is so encumbered.

Section 4. Waiver of Subrogation. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Manager, Declarant, and the agents and employees of each of the foregoing with respect to negligence or of breach of any agreement by said persons, but

only to the extent the insurance proceeds are received in compensation for such loss.

Section 5. Liability Insurance. The Association shall obtain comprehensive public liability insurance including medical payments, liquor liability insurance and malicious mischief, in the amount of \$1,000,000 per occurrence for personal injury and/or property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of negligent acts of the Association or other lot owners. Such insurance must include other coverage in kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use.

(a) Minimum Financial Rating of Carrier. Each hazard insurance policy must be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better. Hazard insurance policies are also acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policy holder's rating of at least A. Each carrier must be specifically licensed or authorized by law to conduct business within the state or territory where the Mortgaged Premises are located.

(b) No Assessments. Policies are unacceptable where: (1) under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against any Lot Owner or any first mortgagee, its successors or assigns, including, but not limited to, Federal Home Loan Mortgage Corp; or (2) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent any first mortgagee, its successors or assigns, including, but not limited to, Federal Home Mortgage Corp. or the Borrower from collecting insurance proceeds.

(c) Other Requirements. All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Mortgaged Premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first mortgagee (or trustee) named at least ten days in advance of the effective date of any reduction in or cancellation of the policy.

Section 6. Fidelity Coverage. The Association shall obtain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the Lot Owners. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

Section 7. Other Insurance and General. The Association may also obtain, through the Board, Workmen's Compensation Insurance and other liability insurance as it may deem desirable insuring each Lot Owner and the Association, the Board of Directors and the Manager from liability in connection with the Common Area, the premiums for which are Common Expenses included in the Common Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of a Lot Owner because of the negligent acts of the Association or other Dwelling Unit Owners.

All policies shall be reviewed at least annually by the Board of Directors and the limits increased at its discretion.

Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability and bonds and other insurance meeting the requirements for planned unit developments established by Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), and the Federal Home Loan Mortgage Corp (FHLMC), so long as there are any mortgages on any of the properties.

#### ARTICLE XIV

##### Mortgage Protection Clause

Notwithstanding any and all provisions hereof to the contrary, in order to induce the Federal Home Loan Mortgage Corp. (FHLMC), the Government National Mortgage Association (GNMA) and the Federal National Mortgage Association (FNMA) to participate in the financing of the sale of Lots within the Properties, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

(a) Each first Mortgagee of a Mortgage encumbering any Lots, at his written request, is entitled to written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation of the Association or the By-Laws of the Association, which default is not cured within thirty days after the Association learns of such default.

(b) Each Owner, including every first Mortgagee of a Mortgage encumbering any Lot which obtains title to such Lot pursuant to the remedies provided in such Mortgage, or by foreclosure of such Mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal".

(1) Any right of first refusal contained in the planned unit development constituent documents, or hereinafter added shall not impair the rights of a first mortgagee to (i) foreclose or take title to any Lot pursuant to the remedies provided in the mortgage, or (ii) accept a deed or an assignment in lieu of foreclosure in the event of default by a mortgagor, or (iii) interfere with the subsequent sale or lease of a unit so acquired by the mortgagee.

(2) Any first mortgagee, first mortgage purchaser, successor or assigns, that obtains title to any Lot pursuant to the remedies provided in the mortgage or foreclosure of the mortgage, or pursuant to a deed given in lieu of foreclosure, will not be liable for such unit's unpaid dues or charges which accrue prior to the acquisition of title to such unit by the mortgagee.

(c) Each first Mortgagee of a Mortgage encumbering any Lot, or any first mortgage purchaser, successor or assigns, and any Owner of a Lot, or such first Mortgagee, its purchaser, successor or assigns, that obtains title to such Lot pursuant to the remedies provided in a Mortgage or by foreclosure of a Mortgage or by deed in lieu of foreclosure, shall not be liable for and shall take title to such Lot free and clear of any claims of unpaid assessments or

charges against such Lot which accrued prior to the acquisition of title to such Lot by the Mortgagee.

(d) Unless at least one hundred percent (100%) of the first Mortgagees (based upon one vote for each Mortgage owned) of the individual units have given their prior written approval, the Association shall not be entitled to:

(1) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned, directly or indirectly, by such Association for the benefit of the units in the Association. This provision shall include, but not be limited to, the Common Area. (The granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the Association shall not be deemed a transfer within the meaning of this clause);

(2) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner;

(3) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of a Lot or Dwelling Unit, the exterior maintenance of a Dwelling Unit, the maintenance of the common property walks or common fences and driveways, or the upkeep of lawns and plantings in the Association;

(4) fail to maintain fire and extended coverage on insurable common property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(5) use hazard insurance proceeds for losses to any common property for other than the repair, replacement or reconstruction of such common property.

(e) First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any common property located within the Common Area, and said mortgagee may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property within the Common Area and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement is reflected in an agreement in favor of all first mortgagees, duly executed by the Association, and an original or certified copy of such agreement is possessed by the Seiler, and said Association shall provide any first mortgagee, upon request, with such a written agreement entitling any first mortgagee to reimbursement as provided in this sub-paragraph.

(f) No provision contained in this declaration or in the Articles of Incorporation or By-Laws of the Association or in any other declaration that the Association shall hereinafter make shall give a Lot Owner, or any other party priority over any rights of the first mortgagee pursuant to its mortgage in the case of a

distribution to such Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of common property.

(g) First mortgagees shall have the right to examine the books and records of the Association during normal business hours.

(h) All first Mortgagees shall be given (i) thirty days written notice prior to the effective date of any proposed material amendment to this Declaration or the Articles of Incorporation or By-laws of the Association and prior to the effective date of any termination of an agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties; and (ii) immediate notice following any damage to the Common Area whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000) and as soon as the Board learns of any threatened condemnation proceedings or proposed acquisition of any portion of the Properties.

(i) Homeowners Association dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the property in the Common Area that must be replaced on a periodic basis and are payable in regular installments rather than by specific assessment.

(j) A first mortgagee, upon request, is entitled to written notification from the homeowners association of any default in the performance by the individual association Lot Owner of any obligation under the Association's constituent document which is not cured within sixty (60) days.

(k) Any agreement for professional management of the Association, or any other contract providing for services of the developer, sponsor, or builder, may not exceed three years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

(l) In addition to the foregoing, the Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the AHLMC, the FNMA or the GNMA or any similar entity so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities for first Mortgages encumbering Lots with Dwellings Units thereon. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential Mortgage borrowers and potential sellers of their Dwelling Units if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

(m) Neither this article XIV, nor article XIII, nor article VII, Section 6, of this Declaration shall be amended without the approval of one hundred percent (100%) of the first mortgagees.

#### ARTICLE XV

##### Annexation of Additional Property

Additional real property may be annexed to the real property described in Schedule I



attached hereto and such additional real property may become subject to this Declaration by any of the methods set forth hereinafter:

Section 1 (a) Additions by Developer. If Declarant, its successors or assigns, shall develop, or cause to be developed, additional real property (Annexed Property) within the area located in the County of Utah, State of Utah, which is more particularly described in Schedule I, which is attached hereto and is by this reference incorporated herein, Declarant or its successors or assigns shall have the right from time to time to add such Annexed Property or any portion or portions thereof to the Properties and to bring such Annexed Property within the general plan and scheme of this Declaration without the approval of the Association, its Board of Directors, or Members; provided that such a right of Declarant and its successors and assigns shall terminate five (5) years from date of recording this Declaration.

(b) There may be condominium-type ownership of the Units in the development on said Annexed Property, provided such ownership does not violate any state laws or ordinances or cause any party of the project to be in violation of the seller's guidelines adopted and published from time to time by the Federal Home Loan Mortgage Corporation.

(c) For so long as and provided the Federal Housing Administration (FHA) or the Veterans Administration (VA) are insuring or guaranteeing loans on any portion of the Properties, or have agreed to insure or guarantee loans on any portion of the Properties, then a condition precedent to such annexation shall be that the FHA or VA determine that the annexation is in accordance with the general plan heretofore approved by them. As each subdivision is developed, Declarant may, with respect thereto, record a Supplemental Declaration which may supplement this Declaration with such additional covenants, conditions, restrictions, reservations and easements as Declarant may deem appropriate for that subdivision.

Section 2. Other Additions. In addition to the provisions for annexation specified in Section 1 above, additional real property may be annexed to the Properties and brought within the general plan and scheme of this Declaration upon the approval by vote or written consent of members entitled to exercise no less than two-thirds (2/3) of the voting power of the Class A Members, excluding the vote of the Declarant.

Section 3. Title to Common Area. At the time of annexation of any additional property to the Properties described in Schedule I, whether such annexation was accomplished by either method set forth in Section 1 or 2 above, title to the Common Area, if any, within said Annexed Property shall be conveyed to the Association, free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants, conditions and restrictions then of record, including those set forth in the Declaration.

Section 4. Notice of Addition of Territory. The additions authorized under Section 1 and 2 of this Article XV shall be made by filing of record a Notice of Addition of Territory, or other similar instrument (which Notice or instrument may contain the Supplemental Declaration, if any, affecting each Subdivision), with respect to the additional property which shall be executed by Declarant of the Owner thereof and shall extend the general plan and scheme of this Declaration to such Annexed Property. The filing of record of said Notice of Addition shall constitute and effectuate the annexation of the Annexed Property described therein, and thereupon said Annexed Property shall become and constitute a part of the Properties, become subject to this Declaration and encompassed within the general plan and scheme of covenants, conditions, restrictions, reservation of easements and equitable servitudes contained herein, and become subject to the functions, powers and jurisdiction of the Association; and the Owner of Lots in said Annexed Property shall automatically become Members of the Association. Such Notice of Addition may contain such additions and modifications of the covenants, conditions and restrictions, reservation of easements and equitable servitudes contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexed Property, or as Declarant may deem appropriate in the development of plan and scheme of this Declaration. In no event, however, shall such Notice of Addition revoke, modify or add to the covenants, conditions, restrictions, reservations of easements, or equitable servitudes established by this Declaration as the same shall pertain to the real property originally covered by this Declaration. No addition of territory shall substantially increase assessments or substantially increase the burden upon the Common Area

Facilities.

Section 5. Deannexation. Declarant may delete all or a portion of a Phase of Annexed Property from coverage of this Declaration and the jurisdiction of the Association, so long as Declarant is the Owner of all such Phase previously added to the Properties and provided that a Notice of Deletion of Territory is recorded in the Office of the Utah County Recorder in the same manner as the applicable Notice of Addition was recorded. Provided, however, that consent in writing is first had and obtained from any mortgagee of any such annexed property of any lending institution who has issued a commitment for a loan in connection with any such annexed property.

Section 6. FHA/VA Approval. As long as there is a Class B membership, and provided that they are insuring and guaranteeing loans or have issued commitments to insure or guarantee loans, on a portion of the Properties, the following actions will require the approval of the FHA or the VA; annexation or deannexation of additional properties, dedication of Common Area, and amendment or termination of this Declaration.

## ARTICLE XVI

### General Provisions

Section 1. Enforcement. This Declaration, the Articles of Incorporation and the By-Laws may be enforced by the Association as follows:

- (a) Breach of any of the covenants contained in the Declaration or the By-laws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by an Owner, by the Association or the successors-in-interest of the Association. Any judgement rendered in any action or proceeding pursuant hereto shall include a sum for attorney's fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.
- (b) The result of every act or omission whereby any of the covenants contained in this Declaration or the By-Laws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interest.
- (c) The remedies herein provided by breach of the covenants contained in this Declaration or in the By-Laws shall be deemed cumulative and none of such remedies shall be deemed exclusive.
- (d) The failure of the Association to enforce any of the covenants contained in this Declaration or in the By-Laws shall not constitute a waiver of the right to enforce the same thereafter.
- (e) A breach of the covenants, conditions or restriction contained in this Declaration or in the By-Laws shall not affect or impair the lien or charge of any bonafide first Mortgage made in good faith and for value on any residential Lot or the improvements thereon, provided, however, that any subsequent owner of such property shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

Section 2. Severability. Invalidation of any one of these convenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 3. Term.** The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, perpetually so long as there are mortgages against the Properties. Thereafter, the Owners of a majority of the Lots may sign and have recorded an instrument in writing agreeing to change such covenants and restrictions in whole or in part.

**Section 4. Interpretations.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of community recreational facilities and Common Area. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

**Section 5. Amendments.** Subject to any rights of the VA or the FHA hereunder, this Declaration may be amended only by the affirmative vote or written consent of the Owners holding not less than seventy-five (75) percent of the voting power of each class of Members; provided, however, that the prior written approval of at least seventy-five (75) percent of all first Mortgagees must be obtained. Notwithstanding the foregoing, the sale of the first Lot in the Properties, Declarant shall have the right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification in accordance with the laws of the State of Utah and subject to Article XV, Section 6, of this Declaration, provided Declarant has written approval of Lender. For purposes of this Declaration, the sale shall be deemed to be the date upon which a deed conveying a Lot is recorded in the Office of the County Recorder. Notwithstanding any other provision of this Declaration, no amendment to this Declaration shall be effective unless such amendment be approved in writing by the City of Highland, or its delegates, whose action shall be governed by whether the Declaration, after such amendment, will continue to contain adequate provision for preservation and maintenance of vehicular and pedestrian access rights for individual property owners, all improvements and physical facilities such as landscaping, walls, fencing, buildings, hydrants, utility facilities, parking areas, flood lights, drainage facilities and recreational facilities, consistent with the conditions of approval of the applicable tentative tract plat.

PROVIDED, FURTHER, HOWEVER, that this Declaration shall not be amended in such a manner that the rights of any first Mortgagee will be adversely affected.

**Section 6. "No Public Right or Dedication".** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

**Section 7. "Constructive Notice and Acceptance".** Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

**Section 8. "Reservation of Easements"** Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners for the control, maintenance and repair of the utilities adjoining Lot Owners. Declarant expressly reserves for the benefit of all the real property in the Properties, and the Owners, reciprocal easements of access, ingress and egress over all Lots in accordance with this Declaration, including without limitation for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining Lots, for maintenance and repair of any dwelling. Such easements may be used by Declarant, its successors, purchasers and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Properties, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot and the Common Area. No Owner of a Lot shall interfere with the established drainage pattern over his Lot from adjoining or other Lots. For purposes of this Declaration, "established drainage" on any Lot is defined as the drainage pattern and facilities in

existence at the time that such Lot is conveyed to a purchaser from Declarant. In the event that any Dwelling Unit encroaches upon the Common Area and facilities as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for encroachment and for the maintenance of the same shall exist for so long as the encroachment exists. Declarant and the Lot Owners of each lot on which there is constructed a Dwelling Unit along or adjacent to said Lot's line shall have an easement appurtenant to said Lot over the Lot line to and over the adjacent Lot, for the purposes of accommodating any natural movement or settling of any Dwelling Unit located on said Lot, any encroachment of any Dwelling Unit due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs and architectural features as parts of the original construction of any Dwelling Unit located on said Lot. Declarant reserves the right to grant exclusive easements over certain limited portions of the Common Area, if necessary, to certain Lot Owners for yard purposes, as required by the Federal Housing Administration. Declarant further expressly reserves for the benefit of the Association, its agents and employees, easements of access, ingress and egress, over the Lots and the Common Area for the purpose of maintaining, repairing and installing sewer pipelines and laterals, in accordance with the provisions of this Declaration, and as otherwise provided by law. Declarant, as well as Owners of Lots within the particular Phase, and all others who shall come in contact with the property covered hereby, shall use reasonable restraints with regard to said property when exercising any rights granted under this paragraph, and due regard shall be given to the aesthetic value, beautification, upkeep and maintenance of all of said property; there shall not be any interference with the use, benefit and enjoyment of any Owner with their Lot.

**Section 9. Notices.** Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

**Section 10. No Representations or Warranties.** No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Properties or any portion of the Properties, or connection with the Properties or any portion of the Properties, or any improvement thereon, its physical condition, zoning compliance with applicable laws, fitness for intended use, or in connection with subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned development, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with the Utah Land Sales Practices Act, the Veterans' Administration, the Federal Housing Administration or the City of Highland.

**Section 11. Conflict.** In the event of a conflict between this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, the Articles of Incorporation, or the By-Laws of COTTAGES ON THE GREEN, these Declarations made herein shall be controlling.

DATED: JANUARY 30, 1985

THE MONTERRA GROUP, INC.

BY   
President

ATTEST:



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SCHEDULE I  
"REAL PROPERTY DESCRIPTION OF COTTAGES ON THE GREEN"  
PARCEL "A" (Phase I)

Commencing 2592.44 feet West and 1590.12 feet South of the East Quarter Corner of Section 36, Township 4 South, Range 1 East, SLB & M; thence South 30° 00' 00" East 60.00 feet (S 29° 55' 10" E 59.98 feet Alpine Country Club Plat I"); thence North 60° 30' 00" East 211.29 feet (N 60° 34' 50" E 211.22 feet Alpine Country Club Plat "I"); thence South 20° 55' 38" East 103.13 feet; thence South 57° 34' 06" West 909.82 feet; thence South 68° 49' 00" West 389.58 feet; thence North 80° 25' 01" West 118.20 feet to the Eastern Right of Way of Highway 74; thence along said Right-of-Way North 9° 34' 59" East 205.08 feet; thence along said Right-of-Way left along the arc of a curve 358.91 feet whose radius is 11,459.20 feet (chord bears N 9° 22' 52" E 358.90 feet); thence South 81° 21' 58" East 30.12 feet; thence left along the arc of a curve 28.21 feet whose radius is 70.00 feet (chord bears N 87° 05' 14" E 28.02 feet); thence North 75° 32' 26" East 427.44 feet; thence right along the arc of a curve 120.43 feet whose radius is 230.00 feet (chord bears S 89° 27' 34" E 119.06 feet); thence South 74° 27' 34" East 138.64 feet; thence left along the arc of a curve 163.91 feet whose radius is 208.51 feet (chord bears N 83° 01' 13" E 159.73 feet); thence North 60° 30' 00" East 24.73 feet to the point of beginning.

Contains 10.350 acres.

ANNEXED PROPERTY  
BOUNDARY DESCRIPTION  
PARCEL "B" (Phases II & III)

Commencing 2592.44 feet West and 1590.12 feet South of the East Quarter Corner of Section 36, Township 4 South, Range 1 East, SLB & M; thence S 60° 30' W 24.73 feet; thence right along the arc of a curve 163.91 feet whose radius is 208.51 feet (chord bears S 83° 13' 03" W 159.73 feet); thence N 74° 27' 34" W 138.64 feet; thence left along the arc of a curve 120.43 feet whose radius is 230.00 feet (chord bears N 89° 27' 34" W 119.06 feet); thence S 75° 32' 26" W 427.44 feet; thence right along the arc of a curve 28.21 feet whose radius is 70.00 feet (chord bears S 87° 05' 14" W 28.02 feet); thence N 81° 21' 58" W 30.12 feet to the Eastern Right-of-Way of Highway 74; thence along said Right-of-Way left along the arc of a curve 592.21 feet whose radius is 11,459.20 feet (chord bears N 06° 59' 18" E 598.14 feet); thence East 814.33 feet; thence S 0° 05' 01" E 419.09 feet; thence S 75° 59' 00" W 25.40 feet; thence S 30° 00' 00" E 82.56 feet to the point of beginning.

Contains 10.288 acres.

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ARTICLES OF INCORPORATION  
OF  
COTTAGES ON THE GREEN  
\*\*\*\*\*

KNOW ALL MEN BY THESE PRESENTS

Pursuant to Section 16-6-16.1 et seq. Utah Code Annotated 1953 Replacement Volume 2B, we the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a nonprofit corporation under the laws of the State of Utah, and to that end do hereby adopt Articles of Incorporation as follows:

I. NAME: The name of this corporation ("Association") herein is COTTAGES ON THE GREEN.

II. DURATION: The period of the duration of the corporation is perpetual.

III. PURPOSES: The purposes for which the Association is formed are:

(a) The specific and primary purposes are to bring about civic betterment and social improvements by providing for the preservation of the architecture and appearance of a phased, planned residential development known as COTTAGES ON THE GREEN ("Properties"), and by owning, operating and maintaining common area properties and facilities for the use of all residents in the entire Properties, located in the County of Utah, State of Utah.

(b) The general purposes and powers are:

1. To promote the common good, health, safety and general welfare of all of the residents within the Properties;

2. To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association arising from the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements (the "Declaration"), applicable to the Properties, as amended from time to time, and recorded in the office of the Recorder, County of Utah, State of Utah;

3. To enforce applicable provisions of COTTAGES ON THE GREEN HOME OWNERS ASSOCIATION'S Declaration, By-Laws and Rules and Regulations, and any other instruments for the management and control of the Properties; to fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to contract for and pay all expenses in connection with the maintenance, gardening, utilities, materials, supplies and services relating to the common area (as defined in the Declaration) and facilities; to employ personnel reasonably necessary for administration and control of the common area and for architectural control of all of the Properties, including lawyers and accountants where appropriate; and to pay all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes and special assessments which are or would become a lien on any portion of the Properties;

4. To have and to exercise any and all powers, rights and privileges, including delegation of powers as permitted by law which a corporation organized under the Utah Non-Profit Corporation and Cooperative Association Act by law may now or hereafter have or exercise; and

5. To act in the capacity of principal agent, joint venturer, or partner, or otherwise.

The foregoing statement of purposes shall be construed as a statement both of purposes and of powers, and purposes and powers in each clause shall not be limited or restricted by reference to or influence from the terms or provisions of any other clause, but shall be broadly

construed as independent purpose and powers. Notwithstanding any of the above statements of purposes and powers, the Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Association.

IV. NON-PROFIT: The Association is organized pursuant to the Utah Non-Profit Corporation and Cooperative Association Act as a non-profit corporation, §16-6-16 through 16-6-53 Utah Code Annotated 1953 Replacement Volume 2B.

V. PRINCIPAL OFFICE: The county in this state where the principal office for the transaction of the business of the Association is located is the County of Utah, %Lyle Goodwin, 1141 No. Fort Canyon Road, Alpine, Utah 84003.

VI. MEMBERSHIP IN ASSOCIATION:

Section 1. Membership. Every owner of a Lot shall be a member of the Association, and no owner shall have more than one membership in the Association. Memberships in the Association shall not be assignable, except to the successor in interest of the Owner (including a mortgagee), and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such lot. Ownership of such lot shall be the sole qualification for membership in the Association.

Each member shall be issued a certificate of membership in the Association. The certificate shall include the following:

CERTIFICATE NUMBER  
CLASS OF MEMBERSHIP  
THE NAME OF THE ASSOCIATION  
THE NAME OF THE MEMBER  
RESTRICTIONS ON TRANSFER  
DATE OF ISSUANCE  
THE LOT(S) TO WHICH THE MEMBERSHIP IS APPURTENANT

There shall be as many members as there are owners of lots in the Properties.

Section 2. Transfer. The Association membership held by any Owner of a lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such lot, and then only to the purchaser or mortgagee of such lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class A Member who has sold his lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his lot until fee title to the lot sold is transferred. In the Event the Owner of any lot should fail or refuse to transfer the membership registered in his name to the purchaser of such lot upon transfer of fee title thereto, the Board of Directors shall have the right to charge a reasonable Special Assessment against any Owner, and his lot, equal to the cost of the Association of effectuating any such transfer of his membership upon the books of the Association.

VII. VOTING RIGHTS:

Section 1. Classes of Voting Membership. The Association shall have two (2) classes of voting membership as follows:

Class A. Class A Members shall originally be all Owners with the exception of the Declarant for so long as there exists a Class B membership. Class A Members shall be entitled

to one (1) vote for each lot owned. Declarant shall become a Class A Member with regard to lots owned by Declarant upon conversion of Declarant's Class B membership as provided below. When more than one person holds an interest in any lot, all such persons shall be Members. The vote for any such lot shall be exercised in accordance with the Declaration, and in no event shall more than one (1) vote be cast with respect to any lot.

Class B. The Class B Member shall be the Declarant and it shall be entitled to three (3) votes for each lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership, inclusive of votes attributable to any property annexed to the Properties, equals the total votes outstanding in the Class B membership; or

(b) Three (3) years from the date of recording the Declaration; or

(c) On voluntary cancellation of the Class B membership by Declarant.

Section 2. Vote Distribution - Class A Members. Members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any lot, ("co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote to which the lot is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the Class A vote for each lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if such designation is revoked, the vote for each lot shall be exercised as the majority of the co-owners of the lot mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the corresponding voting co-owner is acting the consent of his or her co-owners. No vote shall be cast for any lot where the majority of the co-owners present in person or by proxy and representing such lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the By-Laws of the Association, shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in the Declaration and in the Articles of Incorporation and By-Laws of the Association.

VIII. DIRECTORS: The number of directors of the Association shall be three (3), and said number may be changed by a duly adopted amendment to the By-Laws of the Association, except that in no event may the number of directors be less than three (3).

The names and addresses of the persons who are appointed to act as the first directors of this corporation and to continue to act as such directors until the election and qualification of their successors are as follows:

LYLE GOODWIN	1141 North Fort Canyon Road Alpine, Utah 84003
MAC J. ADAMSON	5044 Country Club Drive Highland, Utah 84003
LESLIE ANN GOODWIN	1141 North Fort Canyon Road Alpine, Utah 84003

The above named individuals are also the incorporators of the corporation.

IX. AMENDMENT: Amendment to these Articles of Incorporation shall require the



vote or written consent of the Owners representing at least seventy-five percent (75%) of the voting power of the Association, and shall be subject to the requirements of the Declaration.

X. **DISSOLUTION:** The Association may be dissolved with the vote or written consent of the membership representing at least fifty percent (50%) of the voting power of the Association, subject to the requirements of the Declaration.

The Association is one which does not contemplate pecuniary gain or profit to the Members thereof, and it is organized solely for non-profit purposes. Upon the winding up and dissolution of the Association, after paying or adequately providing for the debts and obligations of the Association, the remaining assets shall be distributed to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event such dedication is refused acceptance, such assets shall be distributed, granted, conveyed and assigned to a non-profit fund, trust corporation or other organization which is organized and operated for similar purposes. If the Association holds any assets in trust, such assets shall be disposed of in such manner as may be directed by decree of the Court of Utah County, State of Utah, upon petition therefor by any person concerned in the liquidation.

XI. **AGENT:** The agent for all legal purposes for said corporation shall be Lyle Goodwin, and said agent's address is 1141 No. Fort Canyon Road, Alpine, Utah 84003.

XII. **CONFLICT:** In the event that any of the provisions provided for herein in these Articles of Incorporation or by By-Laws of said Corporation conflict with the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for COTTAGES ON THE GREEN HOME OWNERS ASSOCIATION, then and in that event, said Declaration shall be controlling.

IN WITNESS WHEREOF, the undersigned, constituting the incorporators of this Association, have executed these Articles of Incorporation on this 10<sup>th</sup> day of NOVEMBER, 1984.

Lyle Goodwin  
LYLE GOODWIN

Mac J. Adamson  
MAC J. ADAMSON

Leslie Ann Goodwin  
LESLIE ANN GOODWIN

STATE OF UTAH )  
                  : ss.  
COUNTY OF UTAH )

On this 8 day of Feb., 1985, personally appeared before me LYLE GOODWIN, MAC J. ADAMSON, and LESLIE ANN GOODWIN, the signers of the foregoing instrument, who duly acknowledged to me that they executed same.

Kathleen J. Childs  
NOTARY PUBLIC

Residing at: Lindon UT

My Commission Expires: 7-28-88

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