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**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COTTONWOOD COVE AT TANNER LANE**  
 BY GARY W. OTT, DEPUTY - WI 29 P.  
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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COTTONWOOD COVE AT TANNER LANE (this "Declaration") amends and restates in its entirety that certain "Termination of Condominium Declaration, as Amended And Record of Survey Map, as Supplemented for Cottonwood Cove at Tanner Lane (Formerly Known as Tanner Lane Condominium) and Declaration of Covenants, Conditions and Restrictions for Cottonwood Cove at Tanner Lane and Deeds and Consent of Lender(s) and Amendment to Deed of Trust and Owner's Request for Notice," which was recorded in the office of the County Recorder of Salt Lake County, Utah as Entry No. 5241890, in Book 6445, at Pages 2642, et seq.

This Declaration is made and executed this 10<sup>th</sup> day of May, 2005 by the undersigned, being the President of Cottonwood Cove at Tanner Lane Owners Association, a Utah Nonprofit Corporation (the "Association"), who hereby declares and certifies on behalf of the Association that this Declaration was approved and consented to by the affirmative written assent or vote of not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members of the Association. The Members are sometimes hereinafter referred to as the "Declarants" and are the fee owners of the Lots on the real property situated in Salt Lake County, State of Utah, more particularly described in Exhibit "A" to this Declaration, which real property shall be referred to in this Declaration as the "Covered Property."

Recorded in the Office of the County Recorder for Salt Lake County, Utah on April 23, 1992, as Entry No. 5241889, in Book 92-4, at Pages 81, et seq., is a subdivision plat of the Covered Property entitled "Cottonwood Cove at Tanner Lane Amended, a Planned Unit Development," and on December 31, 1993, as Entry No. 5690028, in Book 93-12, at Pages 338, et seq., is a subdivision plat of the Covered Property entitled "Cottonwood Cove at Tanner Lane, a P.U.D 2nd Amendment," which plats subdivide the Covered Property as indicated thereon (collectively the "Plat").

Declarants have deemed it desirable to establish covenants, conditions and restrictions upon the Covered Property and each and every portion thereof, which will constitute a general scheme for the improvement, development and management of the Project, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property.

The Association has been created for the efficient management of the Project, and the preservation of the value, desirability and attractiveness of the Covered Property, and the powers of managing the Covered Property, maintaining and administering the Common Areas and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessment and charges hereinafter created and referred to and to perform such other acts as shall generally benefit the Covered Property, have been delegated and assigned to the Association. The Association has been incorporated under the laws of the State of Utah for the purpose of exercising the powers and functions aforesaid.

Declarants will hereafter hold and convey title to all of the Covered Property subject to the protective covenants, conditions and restrictions hereinafter set forth.

## DECLARATION

NOW, THEREFORE, Declarants hereby covenant, agree and declare that all of their interest as the same may from time to time appear in the Covered Property shall be held and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of said interests in the Covered Property, and the owners of said interests, their successors and assigns. These covenants, conditions, restrictions and easements shall run with said interests and shall be binding upon all parties having or acquiring any right or title in said interests or any part thereof, and shall inure to the benefit of each owner thereof and are imposed upon said interests and every part thereof as a servitude in favor of each and every of said interests as the dominant tenement or tenements.

### ARTICLE I DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

Section 1. "Architectural Committee" shall mean and refer to the committee provided for in the Article hereof entitled "Architectural Control".

Section 2. "Articles" and "Bylaws" shall mean and refer to the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended.

Section 3. "Assessments" The following meanings shall be given to the assessments hereinafter defined:

"Special Assessment" shall mean a charge against a particular Owner and his/her Lot, directly attributable to the Owner, to reimburse the Association for costs incurred in bringing the Owner and his/her Lot into compliance with the provisions of this Declaration, the Articles, Bylaws or Association Rules, or any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or the Association Rules, together with attorneys' fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

"Reconstruction Assessment" shall mean a charge against each Member and his/her Lot representing a portion of the cost to the Association for reconstruction of any portion or portions of the Common Areas pursuant to the provisions of this Declaration.

"Capital Improvement Assessment" shall mean a charge against each Member and his/her Lot, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Areas that the Association may from time to time authorize pursuant to the provisions of this Declaration.

Section 4. "Association" shall mean and refer to Cottonwood Cove at Tanner Lane Owners Association, a nonprofit corporation, incorporated under the laws of the State of Utah, its successors and assigns.

Section 5. "Association Rules" shall mean rules adopted by the Association pursuant to the Article hereof entitled "Duties and Powers of the Association."

Section 6. "Board" shall mean the Board of Trustees of the Association.

Section 7. "Common Areas" shall mean all real property and the improvements thereon, including, without limitation, any private storm drains, private streets, private utilities, easements and open space, owned or leased from time to time by the Association for the common use and enjoyment of the Members, which initially shall be the easements, private streets and open spaces shown on the subdivision plat recorded concurrently herewith.

Section 8. "Common Expenses" shall mean and refer to the actual and estimated costs of:

(a) maintenance, management, operation, repair and replacement of the Common Areas, and all other areas on the Governed Property which are maintained by the Association; unpaid Special, Reconstruction and Capital Improvement Assessments; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees; the costs of utilities, trash pickup and disposal, landscaping and other services benefiting the Owners and their Lots to the extent such services are paid for by the Association; the costs of fire, casualty, liability, workers compensation and other insurance covering the Common Areas; the costs of any other insurance obtained by the Association; reasonable reserves as deemed appropriate by the Board; the costs of bonding of the members of the Board, any professional managing agent or any other person handling the funds of the Association; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;

(b) costs incurred by the Architectural Committee or other committees of the Association; and

(c) 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 Common Areas, this Declaration, the Articles or the Bylaws or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

Section 9. "County" shall mean and refer to Salt Lake County, a political subdivision of the State of Utah.

Section 10. "Covered Property" shall mean and refer to all the real property described on Exhibit A hereto, which is incorporated herein by this reference.

Section 11. "Dwelling" shall mean the residential dwelling unit together with garages and other structures on the same Lot.

Section 12. "Institutional Mortgagee" shall mean and refer to a Mortgagee that is a bank, or savings and loan association or established mortgage company, or other entity chartered under Federal or

state laws, any corporation or insurance company, any Federal or state agency, or any other institution specified by the Board in a recorded instrument.

Section 13. "Lot" shall mean and refer to a lot shown on the Plat.

Section 14. "Member" shall mean and refer to every person or entity that qualifies for membership pursuant to the Article of this Declaration entitled "Membership."

Section 15. "Mortgage" shall mean and refer to any duly recorded mortgage or deed of trust encumbering a Lot. "First Mortgage" shall mean and refer to any Mortgage encumbering a Lot that is recorded before and has priority over any other Mortgage or Assessment lien encumbering said Lot.

Section 16. "Mortgagee" shall mean and refer to the mortgagee or beneficiary under any Mortgage. A "First Mortgagee" shall refer to a Mortgagee whose Mortgage has priority over any other Mortgage or Assessment lien encumbering a specific Lot.

Section 17. "Owner" shall mean and refer to one or more persons or entities who are alone or collectively the record owner of a fee simple title to a Lot, including the vendee under an installment land sales contract, but excluding those having such interest merely as security for the performance of an obligation.

Section 18. "Project" shall mean and refer to all of the Covered Property, together with all of the Dwellings and other improvements constructed thereon as well as all of the persons living therein.

Section 19. "Structure" shall mean and refer to anything erected, constructed, placed or installed upon any Lot except for landscaping.

## ARTICLE II MEMBERSHIP

Section 1 - Membership. Every Owner shall be a Member of the Association subject to the terms of this Declaration, the Articles, Bylaws and Association Rules. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles and the Bylaws of the Association to the extent the provisions thereof are not in conflict with this Declaration. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership; provided, however, a Member's voting rights or privileges in the Common Areas, or both, may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. Not more than one membership shall exist based upon ownership of a single Lot.

Section 2 - Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance 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. In the event an Owner should fail or refuse to transfer the membership registered in his/her name to the transferee of such Owner's interest in such Lot, the Association shall have the right to record the transfer upon the books of the

Association.

Section 3 - Voting Rights. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules.

Section 4 - One Class of Membership.

The Association shall have only one (1) class of membership. Members shall be all Owners. 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 owns a portion of the interest required for membership, each such person shall be a Member and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Association shall not be required to recognize the vote or written assent of any such co-Owner except the vote or written assent of the co-Owner designated in a writing executed by all of such co-Owners and delivered to the Association.

Section 5 - Approval of Members. Any provision of this Declaration or the Bylaws which requires the vote or written assent of a specified majority of the voting power of the Association or membership shall be deemed satisfied by the vote of the specified majority at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members or a writing or writings signed by all of the Member entitled to vote with respect to the subject matter thereof. In any matter requiring the consent of the Members, but not specifically provided for in this Declaration or the Articles, Bylaws, or any contract executed by the Association, a simple majority of the voting power of Members entitled to vote on such matter shall suffice.

### ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1 - Creation of the Lien and Personal Obligation of Assessments. The Members of the Association, for each Lot owned by them, respectively hereby covenant and agree to pay and each Owner of any Lot by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be expressed in any such deed or other conveyance is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, Capital Improvement Assessments and Reconstruction Assessments, such Assessments to be fixed and established and collected from time to time as hereinafter provided. The assessments, together with interest thereon, late charges, attorneys' fees and other costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such Assessment, together with such interest, late charges and costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due.

Section 2 - Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Members and the management of the Project, enhancing the quality of life in the Project and the value of the Covered Property including, without limitation, the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas.

**Section 3- Regular Assessments.** The amount and time of the payment of Regular Assessments shall be determined by the Board pursuant to the Articles and Bylaws after giving due consideration to the current maintenance, operational, and other costs and the future needs of the Association. Not later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall prepare and furnish to each Member an operating budget for the forthcoming fiscal year. The budget shall itemize the estimated Common expenses for such fiscal year, anticipated receipts (if any), and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Regular Assessments for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period. The budget shall be presented to the Members at the annual meeting of the Association. The Board shall use the annual budget to determine the amount of the Regular Assessment to be paid by each Member. Written notice of the annual Regular Assessments shall be sent to every Member and each member shall thereafter pay to the Association his/her Regular Assessment in installments as established by the Board. In the event the Board shall determine that the-estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and prepare and issue to each Member an amended budget and submit it to the Members. The Board shall use the amended budget to determine the revised amount of Regular Assessments against each Member, and the date or dates when due.

**Section 4 - Capital Improvement Assessments.** In addition to the Regular Assessments, the Association may levy in any calendar year, the Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement upon the Common Areas to the extent the same is not covered by the provisions affecting Reconstruction Assessments in the Article hereof entitled "Destruction of Improvements", including the necessary fixtures and personal property related thereto. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

**Section 5 - Uniform Rate of Assessment.** Regular Reconstruction and Capital Improvement Assessments shall be fixed at an equal amount for each Lot and may be collected at intervals selected by the Board, provided that the Members may, by unanimous approval, elect to be assessed at a non-uniform rate provided there are reasonable grounds for assessing different Lots at different rates.

**Section 6 - Certificate of Payment.** The Association shall, upon demand, furnish to any Member liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

**Section 7 - Exempt Property.** The following portions of the Covered Property shall be exempt from the Assessments created herein: (a) all properties dedicated to and accepted by, or otherwise acquired by a public authority, and (b) the Common Areas. However, no land or improvements

devoted to residential use shall be exempt from said Assessments.

**Section 8 - Special Assessments.** Except for conveyances made by virtue of foreclosure of a Mortgage or any transfer in lieu thereof, a Special Assessment in the amount of THREE HUNDRED DOLLARS (\$300) is hereby levied upon each Lot sold or otherwise conveyed in fee effective each time a Lot is sold or otherwise conveyed in fee. Also, Special Assessments may be levied by the Board against a Lot for the use by the Owner of such Lot of the recreational vehicle parking situated within the common areas or for the cost of mowing any privately fenced yards. Further, Special Assessments shall be levied by the Board against a Lot to reimburse the Association for costs incurred in bringing an Owner and his/her Lot into compliance with the provisions of this Declaration, the Articles, the Bylaws or Association Rules, or any other charges designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. In the event the Association undertakes to provide materials or services which benefit individual Lots and which can be accepted or not by individual Owners, such as tree trimming, such Owners in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

**Section 9 - Date of Commencement of Regular Assessments.** The Regular Assessments shall commence as of the date this Declaration is recorded in the office of the County Recorder of Salt Lake County, Utah.

**Section 10 - Maximum Capital Improvement Assessments.** To the extent the costs of capital improvements during any year shall exceed the sum of One Thousand Dollars (\$1,000.00), a Capital Improvement Assessment shall have the written assent or vote of a majority of Members present at a meeting duly called for this purpose, written notice of which shall be sent to all Members in accordance with the procedures from time to time established in the Bylaws for the calling of special meetings of Members. Any reserves collected by the Association for the future maintenance and repair of the Common Areas, or any portion thereof, shall not be included in determining said annual capital improvement limitation.

**Section 11 - No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

**Section 12 - Control of Common Areas.** As provided in the Article hereof entitled "Definitions", the Common Areas shall be conveyed to the Association.

**Section 13 - Reserves.** The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Areas. All amounts collected as reserves, whether pursuant to the preceding sentences of this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

ARTICLE IV  
NONPAYMENT OF ASSESSMENTS

**Section 1 - Delinquency.** Any Assessment provided for in this Declaration that is not paid when due shall be delinquent on said due date (the "delinquency date"). If any such Assessment is not paid within Fifteen (15) days after the delinquency date a late charge of TEN DOLLARS (\$10.00) shall be levied and the Assessment shall bear interest from the delinquency date at the rate of eighteen percent (18%) per annum. The Association may, at its option, and without waiving the right to foreclose its lien against the Lot, bring an action at law against the Member personally obligated to pay the same, and/or upon compliance with the notice provisions set forth in Section 2 of this Article, to foreclose the lien against the Lot. If action is commenced, there shall be added to the amount of said Assessment, the late charge, interest, the costs of preparing and filing any Assessment lien, the costs of preparing and filing the complaint in such action, attorneys' fees incurred in connection with the commencement of such action and in the event a judgment is obtained, such judgment shall include said late charge, interest and a reasonable attorney's fee, together with the costs of such action, and all other expenses incurred by the Association in collecting said Assessment. Each Member vests in the Association or its assigns, the right and power to bring all actions at law or lien foreclosure against such Member or other Members for the collection of such delinquent Assessments.

**Section 2 - Notice of Lien.** No action shall be brought to foreclose said Assessment lien or to proceed under the power of sale herein provided until thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the County Recorder in Salt Lake County; said notice of claim of lien must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which shall include interest on the unpaid Assessment at the rate of eighteen percent (18%) per annum, a late charge pursuant to this Declaration, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant.

**Section 3 - Foreclosure Sale.** Said Assessment lien may be enforced by sale by the Association, its attorney or any other person authorized to make the sale after failure of the Owner to make the payments specified in the notice of claim of lien within said thirty (30) day period. Any such sale provided for above is to be conducted in accordance with the provisions of the statutes of the State of Utah as said statutes may from time to time be amended, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. The Board may appoint as the Trustee to conduct said Deed of Trust Sale, any person or entity qualified to act as a Trustee under the Utah Deed of Trust statutes. The Association, through its duly authorized agents, shall have the power to bid on the Lot, using Association funds, or funds borrowed for such purpose, at the sale, and to acquire and hold, lease, mortgage and convey the same.



**Section 4 – Termination of Utility Service.** If a Member fails or refuses to pay an Assessment when due, the Board may, after giving notice and an opportunity to be heard, terminate the Member's right to receive utility services paid as a Common Expense and access and use of any recreational facilities in the Project that are part of the Common Areas. Said notice shall inform the Member that utility service or right of access and use of recreational facilities (a) will be terminated if payment of the Assessment is not received within the time provided herein, (b) the amount of the Assessment due, including any interest or late payment fee, and (c) the right to request a hearing. A Member who is given notice under this Section may request an informal hearing to dispute the Assessment by submitting a written request to the Board within fourteen (14) days after the date on which the Member receives the notice. The Board will conduct the hearing in accordance with the Association Rules. If a hearing is requested, utility services or right of access and use of recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered. Upon payment of the Assessment due, including any interest or late payment fee, the Board shall take action to reinstate the terminated utility services or access and use of any recreational facilities.

**Section 5 – Payment of Tenant Lease Payments.**

(a) If a Member is leasing his/her Lot and fails to pay an Assessment for more than sixty (60) days after the Assessment is due, the Board may demand that the tenant that is leasing the Member's Lot pay to the Association all future lease payments due the Member, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid.

(b) The Board shall give the Member written notice of its intent to demand full payment from the tenant. Said notice shall (i) provide notice to the tenant that full payment of the remaining lease payments will be paid to the Association beginning with the next monthly or other periodic payment unless the delinquent Assessment is received by the Association within the time provided herein, (ii) state the amount of the Assessment due, including any interest or late payment fee, and (iii) state that any costs of collection, not to exceed the amount permitted by law in the State of Utah, and other assessments that become due may be added to the total amount due.

(c) If the Member fails to pay the Assessment by the date specified in said notice, the Board may then deliver written notice to the Member's tenant demanding that the tenant make all future payments otherwise due the Member be paid to the Association. The Board shall mail a copy of said tenant notice to the Member. Said notice shall state (i) that due to the Member's failure to pay the Assessment within the time period allowed, the Member has been notified of the intent of the Board to collect all lease payments due to the Association, (ii) that until notification by the Association that the assessment due, including any interest, collection cost, or late payment fee, has been paid, the tenant shall pay to the Association all future lease payments due to the Member, and (iii) that payment by the tenant to the Association in compliance with this paragraph will not constitute a default under the terms of the tenant's lease agreement with the Member.

(d) All funds deposited with the Association pursuant to this paragraph shall be (i) deposited in a separate account; and (ii) disbursed to the Association until the assessment due, together with any cost of administration, not to exceed \$25.00, is paid in full. Any remaining balance shall be paid to the Member within five (5) business days after payment in full to the Association.

(e) Within five (5) business days after payment in full of the Assessment, including any interest or late payment fee, the Board shall notify the tenant in writing that future lease payments are no longer due to the Association. A copy of said notice shall also be mailed to the Member.

Section 6 - Curing of Default. Upon the timely payment, or other satisfaction, of (i) all delinquent Assessments specified in the notice of claim of lien, (ii) all other Assessments which have become due and payable with respect to the Lot as to which such notice of claim of lien was recorded and (iii) interest, late charges and attorneys' fees pursuant to this Declaration and the notice of claim of lien which have accrued, officers of the Association or any other persons designated by the Board are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release.

Section 7 - Cumulative Remedies. The Assessment Lien 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 8 - Written Statement of Unpaid Assessment. Within ten (10) days of receiving a written request of any Member and upon receipt of the payment of ten dollars (\$10.00), the Board shall issue a written statement to the Member indicating any unpaid assessment with respect to a Lot covered by the request.

## ARTICLE V ARCHITECTURAL CONTROL

Section 1 - Appointment of Architectural Committee. The Board shall appoint an Architectural Committee consisting of not less than three (3) persons who need not be Members. The Board shall retain the right to appoint, augment or replace members of the Architectural Committee.

### Section 2 - General Provisions.

(a) The Architectural Committee may establish reasonable rules and may assess a reasonable fee for submission of plans in connection with review of plans and specification including, without limitation, the number of sets of plans to be submitted.

(b) Unless any such rules regarding submission of plans are complied with, such plans and specifications shall be deemed not submitted. The Architectural Committee may also employ such architects, engineers and other consultants as it deems necessary to carry out its responsibilities.

(c) Plans and specifications shall be submitted to the principal office of the Association as designated by the Board pursuant to the Bylaws.

(d) The establishment of the Architectural Committee and the systems herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter, modify or otherwise have control over the Dwellings or Lots as may otherwise be specified in this Declaration, in the Bylaws or in any Association Rules.

**Section 3 - Approval and Conformity of Plans.** The Architectural Committee shall, from time to time, adopt and promulgate Architectural Standards. The Architectural Standards shall include among other things those restrictions and limitations upon the Owners set forth below:

(a) Unless the Architectural Standards provide otherwise, no building, fence, wall or other Structure shall be commenced, erected or maintained upon the Covered Property, nor shall any landscaping be commenced, installed, altered, removed, or maintained upon the Covered Property, nor shall there be any addition to or change in the exterior of any Dwelling, Structure or other improvement or landscaping, unless plans and specifications therefor have been submitted to and approved by the Architectural Committee;

(b) time limitations for the completion of any architectural improvements for which approval is required pursuant to the Architectural Standards; and

(c) the conformity of completed architectural improvements to plans and specifications approved by the Architectural Committee and to the Architectural Standards. In addition, the Architectural Standards may include such other limitations and restrictions as the Board in its reasonable discretion shall adopt including, without limitation, the regulation of the following: construction; reconstruction, exterior addition; change or alteration to or the maintenance of any building, structure, wall, fence, landscaping, drainage, or grade, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location of such Dwelling or Structure, and may require the provision of off-street parking as a condition to constructing a Dwelling on any Lot. Plans and specifications are not approved for engineering design, and by approving such plans and specifications neither the Architectural committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications.

**Section 4 – Appeal.** In the event plans and specifications submitted to an Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Committee. Within Thirty (30) days following receipt of the request for appeal, the Board shall render its written decision.

## **ARTICLE VI**

### **DUTIES AND POWERS OF THE ASSOCIATION**

**Section 1 – General Duties and Powers of the Association.** In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

(a) enforce the provisions of this Declaration, the Articles, the Bylaws, and the Association Rules by appropriate means and carry out the obligations of the Association hereunder, including without limitation, the collection of assessments from the Owners, the expenditure of funds of the Association, the employment of legal counsel, the hearing and resolution of complaints, the commencement of actions, the regulation and restriction of renting and leasing of the Dwelling Units in the Project, the promulgation of the Association Rules as provided in the Bylaws and Section 2 of this Article, which shall include the establishment of a system of fines or penalties enforceable as Special Assessments;

(b) acquire, maintain and otherwise manage all of the Common Areas and all facilities, improvements and landscaping thereon, and all personal property acquired by the Association;

(c) pay any real and personal property taxes and other charges assessed against the Common Areas unless the same are separately assessed to the Owners;

(d) obtain, for the benefit of the Common Areas, all water, electric, refuse collections and other services, if any;

(e) grant easements where necessary for vehicular and pedestrian ingress and egress, utilities and sewer facilities over the Common Areas for the benefit of individual Lots within the Covered Property and/or to serve the Covered Property as provided in the Article hereof entitled "Rights in the Common Areas";

(f) contract for and maintain such policy or policies of insurance as may be required by the Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its Members;

(g) delegate its powers to committees, officers, or /employees as provided in the Bylaws, employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association;

(h) establish and maintain a working capital and contingency fund in an amount to be determined by the Board;

(i) maintain architectural control over the property and appoint Architectural Committees in connection therewith, pursuant to the Article hereof entitled "Architectural Control";

(j) have the power of entry upon any Lot where necessary in connection with inspection, construction, maintenance or repair for the benefit of the Common Areas, or the Owners;

(k) provide snow removal service for the benefit of the Owners and their Lots;

(l) acquire real property easements, or other interests in real property by lease or purchase for the benefit of individual Lots within the Covered Property, offices or other facilities that may be necessary or convenient for the management of the Common Areas, the administration of the affairs of the association or for the benefit of the Members or any of them; and

(m) have the power to establish in cooperation with the County a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right to convey or lease, with or without the payment of monetary consideration all or any portion of the Common Areas to said district.

**Section 2 - Association Rules.** The Board shall also have the power pursuant to the procedures set forth in the Bylaws to adopt, amend and repeal rules and regulations as it deems reasonable, (the "Association Rules") The Association Rules shall govern such matters in furtherance of the

purposes of the Association, including, without limitation, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Institutional Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, the Articles or the Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

Section 3 - Delegation of Powers. The Association shall have the right according to law, to delegate any of its powers under this Declaration, the Articles and Bylaws, provided, however, no such delegation, whether to a professional management company, the Architectural Committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

## ARTICLE VII REPAIR AND MAINTENANCE

Section 1 - Repair and Maintenance by Association. Without limiting the generality of the statement of duties and powers contained in this Declaration, the Association shall have the duty to accomplish the following upon the Lots, Common Areas or other land in such manner and at such times as the Board shall prescribe:

- (a) maintain all private walkways, or other pedestrian paths located on the Common Areas, if any.
- (b) maintain all access easements and private streets within the Covered Property.
- (c) maintain, repair, restore, replace and make necessary improvements to the Common Areas.
- (d) maintain all drainage facilities and easements, whether located on the Common Areas or on Lots, in accordance with the requirements of the applicable flood control district.
- (e) cause the appropriate public utility to maintain any utility easements located on the Common Areas.
- (f) maintain and keep in good repair all, landscaping, grounds areas within the boundaries of Lots, except for landscaping, if any, contained within privately fenced yards, for which the Association shall only be responsible for lawn mowing, subject to the Association's right to collect a special assessment for mowing within any privately fenced yards. The Association shall maintain and keep in good repair all paved or concrete walkways, driveways, parking areas, and patios even though located partially or wholly within the boundaries of a Lot.
- (g) provide exterior maintenance upon Dwellings as follows: paint, stain, repair, replace, and care for roof surfaces and roof systems, gutters, downspouts, chimneys, and, with the exception of entry doors, garage doors, doors, glass and their appurtenant hardware, all exterior building surfaces.

(h) maintain all other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote or written consent of a majority of the voting power of the Members.

(i) maintain all sewer, water and other utility pipes, lines, ducts or conduits lying outside of the point of entry into any dwelling, except where such maintenance is necessitated by the negligence of the Owner of the Lot upon which such pipes, lines, ducts or conduits are located.

Section 2 - Repair and Maintenance by Owner. Except as provided in Section 1, above, all maintenance of the Lot shall be the responsibility of the Owner thereof.

Section 3 - Standards for Maintenance and Installation. All portions of a Lot which are disturbed either in the course of construction of a Dwelling or Structure or as a result of any other activities, but which remain unimproved with a Dwelling or Structure, shall be landscaped by the Owner thereof before any significant erosion or other soil damage occurs and in any event on or before a date six (6) months from the completion of said construction or other activity, all in accordance with plans and specifications which have been previously submitted to and approved by the Architectural Committee. Thereafter, the Association shall maintain such landscaping in a clean, safe, and attractive condition according to the rules promulgated by the Board.

Section 4 - Right of Association to Maintain and Install. As a condition to granting architectural approval to improvements to be constructed on a Lot, the Architectural Committee may require the Lot owner to assume the responsibility of maintaining and repairing such improvements, and the provisions of this Section 4 shall apply. In the event any Owner fails to maintain his/her Lot in accordance with this Article, the Association may cause such maintenance and installation to be accomplished as hereinafter set forth.

(a) Upon finding by the Board of a deficiency in such maintenance or installation, the Board shall give notice of a deficiency to the responsible Owner that shall briefly describe the deficiency and set a date for hearing before the Board or a committee selected by the Board for such purpose. Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said notice.

(b) If the Board renders a decision against the responsible Owner, it shall further set a date by which the deficiency is to be corrected by the responsible Owner.

(c) If the deficiency continues to exist after the time limitation imposed by the Board, the Board may cause such maintenance or installation to be accomplished at any reasonable time.

(d) If the Association pays for all or any portion of such maintenance or installation, such amount shall be a Special Assessment to the affected Owner and Lot.

## ARTICLE VIII INSURANCE

Section 1 - Types. The Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance:

(a) A comprehensive policy of public liability insurance covering the Common Areas for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles and liability for property of others, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Covered Property, and shall contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners. The limits of liability under such insurance shall not be less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence.

(b) A policy of fire and casualty insurance with extended coverage for the full replacement value of the buildings or other improvements, if any, situated on the Common Areas, without deduction for depreciation, with an "agreed amount endorsement" or its equivalent and clauses waiving subrogation against Members and the Association and persons upon the Covered Property with the permission of a Member, such insurance to afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Covered Property.

(c) Fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible to handle the funds of the Association, and such fidelity bonds shall name the Association as obligee, shall be written in an amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of "employee" or similar expression.

Section 2 - Waiver By Members. As to each of said policies which will not be voided or impaired thereby, the Members hereby waive and release all claims against the Association, the Board, the Declarant and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

Section 3 - Other Insurance; Annual Review. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Common Areas in light of increased construction costs, inflation, practice in the area in which the Covered Property is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 4 - Premiums and Proceeds. Insurance premiums for any such insurance coverage obtained by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in the Article hereof entitled "Destruction of Improvements." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) Trustees of the Association may sign a loss claim form and release form in connection with the

settlement of a loss claim, and such signatures shall be binding on the Association and the Members.

**Section 5 - Abandonment of Replacement Cost Insurance.** Unless at least seventy-five percent (75%) of the Institutional Mortgagees based on one (1) vote for each First Mortgage have given their prior written approval, the Association shall not be entitled to fail to maintain the extended coverage fire and casualty insurance required by this Article on less than a one hundred percent (100%) current replacement cost basis.

**Section 6 - Payment of Taxes or Premiums by First Mortgagees.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas, unless such taxes or charges are separately assessed against the Owners, in which case the rights of First Mortgagees shall be governed by the provisions of their Mortgages. First Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any First Mortgagee which requests the same to be executed by the Association.

**Section 7 - Owner's Insurance.** Each Owner of a Lot shall obtain and maintain fire and casualty insurance with extended coverage for the full replacement value of the improvements situated on his/her Lot, such insurance to afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Covered Property. The Board may elect, upon ninety-days prior written notice to all Owners and their First Mortgagees, to obtain such insurance under a blanket policy for all Lots, including all improvements thereon, in such amounts as the Board may determine but in any event sufficient to cover the full replacement cost thereof. The insurance policy shall be satisfactory to the First Mortgagees of any Lot and shall provide that it may not be cancelled or substantially modified without ten-days prior written notice to all the insureds, including any First Mortgagee. The premiums for insurance obtained by the Association under this Section shall be included as a Regular Assessment. Lot Owners shall not be prohibited from carrying additional insurance for their own benefit.

## ARTICLE IX DESTRUCTION OF IMPROVEMENTS

In the event of partial or total destruction of improvements upon the Common Areas, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practical. In the event of partial or total destruction of improvements upon any Lot, it shall be the duty of the Owner thereof to restore and repair the same to its former condition as promptly as practical. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.



ARTICLE X  
EMINENT DOMAIN

The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Areas, the Members hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking, the Board may in its sole discretion retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Members. The rights of an Owner and the Mortgagee of his/her Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

ARTICLE XI  
USE RESTRICTIONS

Section 1 - Single Family. Residential. All Lots shall be known and described as residential lots and shall be used for no purpose other than residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single family Dwelling provided, however, that the foregoing restriction shall not be construed to prohibit or restrict so-called "twin homes" or other single family residences which are contiguous with one of the Lot boundaries or which have a common wall with another residence situated on an adjacent Lot.

Section 2 - No Further Subdivision. No further subdivision of any lot shall be permitted at any time, whether by physically subdividing a lot or by dividing up ownership into different time periods.

Section 3 - Commercial Use. Subject to the Section entitled "Construction and Sales" of the Article hereof entitled "Easements," no part of a Lot or Dwelling shall be used or caused to be used or allowed or authorized directly or indirectly for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purposes.

Section 4 - Signs. No sign or billboard of any kind shall be displayed to the public view on any portion of the Covered Property except such signs as may be used by the respective Owners of undeveloped Lots or their sales agents in connection with the sale or development of the undeveloped portions of the Covered Property; provided, however, that a Member may display in his/her Lot a sign advertising its sale or lease by him so long as such shall comply with any customary and reasonable standards promulgated by the Board as to the size, color, shape or other qualifications for permitted signs.

Section 5 - Nuisance. No noxious or offensive trade or activity shall be carried on upon any Lot, or any part of the Covered Property nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood, or which shall, in any way, interfere with the quiet enjoyment of each of the Owners of his/her/her respective Dwelling, or which shall in any way increase the rate of insurance.

Section 6 - Temporary Structures. No used or second-hand structure, no building of a temporary

character, no mobile home, trailer, camper, recreational vehicle, basement, tent, shack, garage, barn or other outbuilding be used on any Lot at any time, either temporarily or permanently.

**Section 7 - Vehicles.** No automobile, truck, pickup, motorbike, motorcycle, trail bike, tractor, golf cart, mobile home, trailer, camper, recreational vehicle, snowmobile, all-terrain vehicle, boat or similar equipment shall hereafter be permitted to remain upon any Lot, unless placed or maintained within an enclosed garage, nor permitted to be parked other than temporarily, on any street, alley, or Common Areas within the Covered Property, except within that portion of the Common Areas specifically designated for recreational vehicle parking on the recorded subdivision plat of the covered property, and except as may be specifically designated for such purpose by the Board. Temporary parking shall mean, parking of vehicles belonging to guests, of Owners, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Association or the Owners and parking of vehicles belonging to or being used by Owners for loading and unloading purposes. The Board may adopt rules for the regulation of the admission and parking of vehicles within the Covered Property, including the assessment of charges to Owners who violate or whose invitees violate, such rules. Any charges so assessed shall be Special Assessments.

**Section 8 - Animals.** No animals, horses, livestock or poultry of any kind, shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept on the Lots, provided they are not kept, bred or maintained for any commercial purpose, or in numbers deemed unreasonable by the Board. Notwithstanding the foregoing, no animals may be kept on the Lots that in the good faith judgment of the Board or a committee selected by the Board for this purpose result in an annoyance or are obnoxious to residents in the vicinity. Dogs shall be permitted to run free within the Covered Property only within completely fenced yards of Lots. Otherwise, all dogs shall be on a leash at all times and Owners shall immediately clean up any droppings left by their dogs and other pets within the Covered Property.

**Section 9 - Unsightly Items.** All weeds, rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from the Lots and shall not be allowed to accumulate, thereon. All clotheslines, refuse or containers, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining streets, all other Lots, alleys or Common Areas. Any fence or screen required by this Section shall comply with any standards promulgated by the Board as to size, color or other qualifications for permitted fences or screens.

**Section 10 - Antennae.** No television, radio, or other electronic antenna, 'satellite dish or device of any type shall, hereafter be erected, constructed, placed or permitted to remain on any of the Lots, or upon any of the buildings constructed on such Lots unless and until the same shall have been approved in writing by the Architectural Committee, or unless the same be contained within a house or building.

**Section 11 - Utility Lines Underground.** All utility lines, pipes and conduits within the Covered Property shall be installed underground and no such utility lines, pipes or conduits or supporting apparatus shall be permitted above ground, except to the extent reasonably necessary to support such underground utilities.

**Section 12 - No Swimming Pools or Tennis Courts.** No swimming pools, tennis courts or other similar structures shall be constructed or maintained on any portion of the Covered Property at any time.

**Section 13 - No Skateboarding.** Skateboarding is prohibited within the Covered Property at all times.

**Section 14 - No Violation of County Ordinances.** Nothing herein shall give any Owner the right to violate ordinances of Salt Lake County, and where any activity allowed herein is proscribed by said ordinances, said ordinances shall have priority.

## ARTICLE XII RIGHTS IN THE COMMON AREAS AND OPEN SPACE

**Section 1 - Members' Right of Enjoyment.** Every Member shall have a nonexclusive easement for use and enjoyment in and to the Common Areas, and such right shall be appurtenant to and shall pass with the interest required to be an Owner to every Lot, subject to the following provisions:

(a) The right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Areas.

(b) The right of the Association, subject to the approval rights of Mortgagees pursuant to the Article hereof entitled "Rights of Lenders," to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility or other entity for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Common Areas to a special tax assessment district or to the County, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of the membership has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance.

(c) The right of the Association to establish, in cooperation with the County, a special assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of subsection (b) above, all or any portion of the Common Areas to said district.

(d) The right of the Association to grant easements where necessary for vehicular and pedestrian ingress and egress, utilities and sewer facilities over the Common Areas for the benefit of individual Lots within the Covered Property and/or to serve the Covered Property.

**Section 2 - Waiver of Use.** No Member may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Areas, or the abandonment of his/her Lot.

ARTICLE XIII  
EASEMENTS

**Section 1 - Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang between each Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to the unintentional placement or settling of the improvements (but not including fences) existing as of the date of recording of this Declaration or hereafter constructed thereon in accordance with the terms of this Declaration.

**Section 2- Owners' Rights and Duties: Utilities and Cable Television.** The rights and duties of the Owners with respect to water, sewer, electricity, gas, telephone, cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, the Owners of any Lot served by said connections, lines or facilities shall have the right to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, repair, replace and generally maintain said connection as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

(b) Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone or cable television lines or drainage facilities are installed within the Covered Property, which connections serve more than one (1) Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections which service his/her or her Lot.

**Section 3 - Utilities.** Easements over the Covered Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded subdivision maps or plats of the Covered Property are hereby granted to the Association, together with the right to grant and transfer the same.

**Section 4 - Construction and Sales.** There is hereby granted to the respective Owners of undeveloped Lots, including, without limitation, their sales agents and representatives and prospective purchasers of Lots, over the Common Areas as the same may from time to time exist, easements for construction, display and exhibit purposes in connection with the erection and sale of Lots and Dwellings within the Covered Property; provided, however, that such use shall not be for a period beyond the sale by the respective Owners of undeveloped Lots of their respective Lots, and provided further that no such use by the respective owners of undeveloped Lots and others shall otherwise restrict the Members in the reasonable use and enjoyment of the Common Areas.

**Section 5 - Repair and Maintenance.** There is hereby granted to the Association, an easement for the purposes as provided in the Article of this Declaration entitled "Repair and Maintenance," including, without limitation, maintaining the drainage facilities, detention ponds, traps and easements, and inspecting each Lot at any reasonable time for compliance with said Article.

Section 6 - Nature of Easements. Any easements granted to the Association herein, when transferred to an Owner in the same instrument conveying a Lot to such Owner shall be appurtenant to such Owner's interest in said Lot.

#### ARTICLE XIV RIGHTS OF LENDERS

Section 1 - Filing Notice, Notices and Approvals. A Mortgagee shall not be entitled to receive any notice that this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Covered Property. Such notice shall state which Lot or Lots are encumbered by such Mortgage, and shall state whether such Mortgagee is a First Mortgagee. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

Section 2 - Priority of First Mortgage Lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any First Mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot, except as otherwise provided in this Article.

Section 3 - Curing Defaults. A First Mortgagee or the immediate transferee of such First Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on all First Mortgagees.

Section 4 - Resale. It is intended that any loan to facilitate the resale of any Lot after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other First Mortgagees.

Section 5 - Relationship With Assessments Liens.

(a) The lien provided for in the Article hereof entitled "Nonpayment of Assessments" for the payment of Assessments shall be subordinate to the lien of any First Mortgage that was

recorded prior to the date any such Assessment becomes due.

(b) If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a First Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such First Mortgage; and (2) the foreclosure of the lien of said First Mortgage, the acceptance of a deed in lieu of foreclosure of the First Mortgage or sale under a power of sale included in such First Mortgage (such events being hereinafter referred to as "Events of Foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

(c) Any First Mortgagee who obtains title to a Lot by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot free of any lien or claim for unpaid Assessments against such Lot which accrue prior to the time such First Mortgagee or purchaser takes title to the Lot, except for liens or claims for a share of such Assessments resulting from a reallocation of such Assessments to all Lots within the Covered Property.

(d) Nothing in this Section shall be construed to release any Owner from his/her obligation to pay for any Assessment levied pursuant to this Declaration.

**Section 6 - Seventy-Five Percent Vote of Institutional Mortgagees.** Except upon the prior written approval of at least seventy-five percent (75%) of Institutional Mortgagees, based on one (1) vote for each First Mortgage held, neither the Association nor the Members shall be entitled to do any of the following:

(a) Dissolve the Association or abandon or terminate the maintenance of the Common Areas by the Association; or

(b) Amend a material provision of this Declaration, the Bylaws or the Articles, and without limiting the generality of the foregoing, the provisions of this Article, or any other rights granted specifically to the First Mortgagees pursuant to any other provision of this Declaration; or

(c) Abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Areas; provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas shall not require such approval.

**Section 7 - Other Rights of Institutional Mortgagees.** Any Institutional Mortgagee, or its mortgage servicing contractor, shall, upon written request to the Association, be entitled to:

(a) Inspect the books and records of the Association during normal business hours; and

(b) Receive the annual financial statement of the Association ninety (90) days following the end of the Association's fiscal year; and

(c) Receive written notice of all annual and special meetings of the Members or of the Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give an Institutional Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting; and

(d) Receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such Institutional Mortgage, which default has not been cured within sixty (60) days of a request therefor by the Association; provided, however, the Association shall only be obligated to provide such notice to Institutional Mortgagees whose written request therefor to the Association specifies the Lot or Lots to which such request relates.

Section 8 - Mortgagees Furnishing Information. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any loan encumbering a Lot.

Section 9 - Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

Section 10 - Voting Rights of Institutional Mortgagees. In the event of a default by the Owner of any Lot in any payment due under the terms of any Institutional Mortgage or the promissory note secured thereby, the Institutional Mortgagee or his/her representative shall have the right, upon giving written notice to such defaulting Owner and the Association and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights shall be restored to him at such time as such default is cured.

Section 11 - Notice of Destruction or Taking. In the event that the Common Areas, or any portion thereof, are substantially damaged or are made the subject of any condemnation proceeding in eminent domain or are otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any First Mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" shall mean exceeding Ten Thousand Dollars (\$10,000). If requested in writing by a First Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such First Mortgagee.

## ARTICLE XV PARTY WALLS

Section 1 - General Rules of Law to Apply. Each wall which is built as a part of the original construction of the residences within the Covered Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2 - Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3 - Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4 - Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by his/her negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5 - Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under the Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6 - Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

#### ARTICLE XVI FLOOD CONTROL

The Association shall maintain the existing storm water detention areas and ponds and the storm drain sediment as may be necessary to keep the systems clean, functional and generally in good condition and repair. Said maintenance shall include all steps reasonably necessary to prevent said detention areas and ponds from losing their capacity to retain storm run-off water. All costs incurred for maintenance and management of the drainage systems and detention ponds shall be paid by the Association as a Common Expense. In the event that the Association fails to properly manage and maintain the drainage systems or detention ponds, Salt Lake County shall have the right, but not the obligation, to maintain the drainage systems or detention ponds and to charge the costs thereby incurred to the Association and Owners. The Association shall maintain the contours of the earth in said detention areas substantially in the configuration now existing, and neither the Association nor any Owner shall allow structures of any type to be placed or erected in said areas that may cause a reduction in the water capacity thereof. Notwithstanding anything contained in this Declaration to the contrary, the use of the existing detention areas shall not be changed unless the consent of the Salt Lake County Development Services Division has first been obtained in writing. Salt Lake County shall be entitled to enforce the covenants set forth in this paragraph as if a party to this Declaration. The provision of this Article XVII shall not be deleted or amended without the written consent of the Salt Lake County Development Services Division.

#### ARTICLE XVII GENERAL PROVISIONS

Section 1 - Enforcement. The Association, or any Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens and Association Rules, the Association shall have the



exclusive right to enforcement thereof. The Association or any Member shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or Bylaws and any amendments thereto.

Failure by the Association or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles and the Bylaws, in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same covenant, condition or restriction.

**Section 2 - Severability.** Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

**Section 3 - Term.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for a successive period of ten (10) years, unless an instrument, signed by a majority of the then Members has been recorded, at least one (1) year prior to the end of any such period agreeing to change said covenants, conditions and restrictions in whole or in part.

**Section 4 - Construction.** 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 the Covered Property and the Common Areas. 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.

**Section 5 - Amendments.** Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees and/or First Mortgagees pursuant to the Articles hereof entitled "Insurance" and "Rights of Lenders," and the rights of Salt Lake County Development Services Division pursuant to the Article hereof entitled "Flood Control", this Declaration may be amended only by the affirmative written assent or "vote of not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members, and, further, this amendment provision shall not be amended to allow amendments by the written consent or vote of less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members. An amendment or modification shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided, and recorded in the Official Records of Salt Lake County, Utah.

**Section 6 - Singular Includes Plural.** Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

**Section 7 - Nuisance.** The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is 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 the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

**Section 8 - Attorneys' Fees.** In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Special Assessment with respect to the Lot involved in the action.

**Section 9 - Notices.** Any notice to be given to an Owner or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice or, if no such address shall have been furnished, then to the street address of such Owner's Lot. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivery on all such co-Owners.

(b) Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice or, if no such address is furnished, to any office of the Mortgagee in Salt Lake County, Utah, or, if no such office is located in said County, to any office of such Mortgagee.

**Section 10 - Effect of Declaration.** This Declaration is made with the intent to establish a general scheme for the use, occupancy and enjoyment of the Covered Property and each and every Lot and portion thereof. Declarants make no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

**Section 11 - Personal Covenant.** To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

**Section 12 - Nonliability of Officials.** To the fullest extent permitted by law, neither the Board nor the Architectural Committee, nor any other committee of the Association or any member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

**Section 13 - Leases.** Any agreement for the leasing or rental of a Lot (hereinafter in this Section referred to as a "lease") shall provide that the terms of such lease shall be subject in all respects to

the provisions of this Declaration, the Articles, the Bylaws and the Association Rules. Said lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the lease. All leases shall be in writing. Any Owner who shall lease his/her Lot shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, Bylaws and Association Rules.

Section 14 - Existing Fences. The Declarants acknowledge that fences contained within the Covered Property are not necessarily located on Lot boundary lines, but are for the convenience of the Owners, of each Lot. The existence of such fences shall not give rise to any implied or prescription easement, and any Owner upon whose Lot any such fence may encroach shall be entitled to require the relocation of such fence to the Lot boundary upon thirty-days prior written notice to the Owner or Owner's sharing such fence, provided that the cost of such relocation shall be shared equally by the Owners whose Lots border the fence.

IN WITNESS WHEREOF, this Amended and Restated Declaration of Covenants, Conditions and Restrictions has been executed at the end of this entire Instrument as of the day and year first above written.

COTTONWOOD COVE AT TANNER LANE  
OWNERS ASSOCIATION, a Utah Nonprofit  
Corporation

By: *Charles E. Rardin*  
Its: President

Attest:

*Kelley D. Anderson*  
Secretary

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

On the 10<sup>th</sup> day of May, 2005, personally appeared before me *Chuck E. Rardin*  
the signer of the foregoing instrument, who duly acknowledged to me that they executed the same.

My Commission Expires: 11/26/2005  
Residing at: Salt Lake City

*Lori Vee Hand*  
NOTARY PUBLIC



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

On the 10<sup>th</sup> day of May, 2005, personally appeared before me Kelly D. Anderson  
the signer of the foregoing instrument, who duly acknowledged to me that they executed the same.

My Commission Expires: 7-16-08  
Residing at: 265 E. 100 So. Ste. 255  
SLL, UT 84111

Jean M. Ingleby  
NOTARY PUBLIC

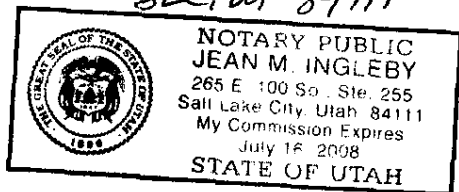


EXHIBIT "A"

All of that certain real property located in Salt Lake County, Utah and more particularly described as follows:

- A. Beginning at a point which is N 0°7'45" E 1244.47 feet and N 89°57'30" W 1650.33 feet from the East quarter corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence S 0°07'45" W 998.726 feet; thence S 68°52'10" W 236.259 feet; thence N 0°21'10"W 141.71 feet; thence N 0°07'47" E 458.415 feet; thence West 90.00 feet; thence North 484.00 feet; thence S 89°57'30"E 312.46 feet to the point of beginning.
- B. Beginning at a point which is N 89°57'30"W, 1872.790 feet and South, 483.934 feet from a county monument located at the intersection of 6400 South 2000 East Streets; said monument being N00°07'45"E, 1344.470 feet from the East quarter corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence 26.590 feet along the arc of a 25.290 foot radius curve to the right (chord bears S59°53'05"E, 25.360 feet); thence S29°46'30"E. 22.609'; thence 64.510 feet along the arc of a 61.500 foot radius curve to the Left (chord bears S30°10'50"W, 61.590 feet); thence S00°07'52"W, 14.430 feet; thence 53.380 feet along the arc of a 304.709 foot radius curve to the left (chord bears S04°56'04E, 53.810 feet; thence 68.539 feet along the arc of a 178.500 foot radius curve to the right (chord bears S01°00'02"W, 68.120 feet); thence 25.930 feet along the arc of a 141.500 foot radius curve to the left (chord bears S06°45'02"W, 25.900 feet); thence S01°30'00"W, 49.00 feet; thence 37.720 feet along the arc of a 123.500 foot radius curve to the left (chord bears S07°15'00"E, 37.570 feet); thence 27.270 feet along the arc of a 66.500 foot radius curve to the right (chord bears S04°15'00"E, 27.000 feet); thence 56.690 feet along the arc of a 67.500 foot radius curve to the left, (chord bears S17°24'34E, 56.06 feet); thence 52.330 feet along the arc of a 47.582 foot radius curve to the left (chord bears S31°38'20"W, 49.740 feet); thence S00°07'47"W, 1.070 feet; thence S00°21'10"E, 141.710 feet to the north line of I-215 freeway; thence along said north line S70°06'30"W, 116.804 feet; thence north, 639.867 feet; thence East 110.000 feet to the point of beginning.

22-21-255