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SLC, UTAH 84119

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**Alpine Cottages L.L.C.**

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**DECLARATION OF COVENANTS, CONDITIONS, &  
RESTRICTIONS AND BY-LAWS**

**FOR**

**ALPINE COTTAGES**

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**A PLANNED RESIDENTIAL DEVELOPMENT**

**IN**

**ALPINE CITY, UTAH COUNTY, UTAH**

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**ALPINE COTTAGES L.L.C.**

A Utah Limited Liability Company

**ALPINE VALLEY GROUP L.L.C.**

A Utah Limited Liability Company

**AS DECLARANT**

3701 South 700 West ~ Salt Lake City, Utah 84119  
Phone (801) 553-1016 ~ Fax 265-9534

AFTER RECORDING, PLEASE RETURN TO:  
 Bill Gibbs  
 3701 South 700 West  
 Salt Lake City, Utah 84119

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
 FOR  
 ALPINE COTTAGES

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ALPINE COTTAGES

This Declaration of Covenants, Conditions and Restrictions is made and executed this     day of 1999, by Alpine Cottages, L.L.C., a Utah limited liability company, of     3701 South 700 West, Salt Lake City, Utah 84119 (hereafter referred to as the "Declarant").

RECITALS:

A. This Declaration of Covenants, Conditions and Restrictions affects that certain real property located in the City of Alpine, Utah described with particularity in Article II below (hereinafter referred to as the "Tract").

B. Declarant is the owner of the Tract.

C. Declarant has constructed, is in the process of constructing or will construct upon the Tract a residential planned unit of development, which shall include certain Lots (to include dwelling units and all other improvement upon the tract, Common Area, and other improvements. All of such construction has been, or is to be, performed in accordance with the plans contained in the Record of Plat Map to be recorded concurrently herewith.

D. Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Tract, and a corresponding membership interest in the Association of Lot Owners (which shall own the Common Area), subject to the Plat map and the covenants, conditions and restrictions set forth herein.

E. Declarant desires, by filing this Declaration, to submit the Tract and all improvements now or hereafter constructed thereon to the terms, covenants and conditions of this Declaration. The Project is to be known as "Alpine Cottages".

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Declarant makes the following Declaration:

I. DEFINITIONS

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

1. Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorney's fees, late charges, service fees, filing and recordation fees, accruing interest, fines, and expenditures actually incurred or assessed by the Association.
2. Articles of Incorporation shall mean and refer to the Articles of Incorporation of the ALPINE COTTAGES HOMEOWNERS ASSOCIATION, Inc., on file or to be filed with the Utah Department of Commerce.
3. Assessments shall mean and refer the amounts levied against a Lot or Lot Owner.
4. Association shall mean and refer to association of Lot Owners at the ALPINE COTTAGES, acting as a group.
5. Building shall mean and refer to any of the structures constructed in the Project.
6. By-Laws shall mean and refer to the document attached to this Declaration as Exhibit "C".
7. Capital Improvement shall mean and refer to all non-recurring expenses (as opposed to day-today expenses) to repair, maintain or replace significant fixed assets in the Project intended to restore, enhance, improve or ameliorate the useful life, utility, value or beauty of the Common Areas or Facilities.
8. Class B control Period shall mean and refer to the period of time during which the Class B Member is entitled to appoint all or a majority of the members of the Management Committee.
9. Committee shall mean and refer to the Management Committee.
10. Common Areas shall mean and refer to all real property in the Project (identified with an encircled letter "A" on the Map or Maps) in which the Association owns an interest for the common use and benefit of its Members, their successors, assigns, tenants, families, guests and invitees, including but not limited to the following items:
  - a) The real property and interest in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Lots.
  - b) All Common Areas and Facilities designated as such in the Plat Map or Maps;
  - c) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Lot Owners, such as telephone, electricity, gas water and sewer;
  - d) The project's outdoor grounds, landscaping, street lighting, perimeter and interior fences and private pathways.

- e) All portions of the Project not specifically included within the individual Lots; and
- f) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

11. Common Expense shall mean and refer to:

- a) All sums lawfully assessed against the Owners;
- b) Expenses of administration, maintenance, repair or replacement of the Project;
- c) Expenses allocated by the Association among the Owners;
- d) Expenses agreed upon as common expenses by the Management Committee; and
- e) Expenses declared common expenses by the Declaration.

12. Community shall mean and refer to the Project.

13. Community Wide Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community as determined by the Management Committee from time to time.

14. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of ALPINE COTTAGES.

15. Declarant shall mean ALPINE COTTAGES, L.L.C., a Utah limited liability company, individually, their successors and assigns.

16. Dwelling Unit or Unit shall mean and refer to the detached single family home, living unit or residential structure constructed upon a Lot.

17. Eligible Insurer shall mean and refer to an insurer or governmental guarantor or a mortgage or trust deed that has requested notice in writing of certain matters from the Association in accordance with this Declaration.

18. Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

19. Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or the Committee. A vote which is for any reason suspended is not an "eligible vote".

20. Family shall mean and refer to a group of natural persons residing in the same residential structure and maintaining a common household.

21. Guest shall mean and refer to a temporary visitor, invitee or person whose presence within the Project is approved by or is at the request of a particular resident.

22. Improvement shall mean and refer to all existing physical structures and appurtenances to the Property of every kind and type, including but not limited to all Buildings, Dwelling Units, fixtures, plumbing, electrical, heating, air conditioning and utility systems, roads, pathways, walking trails, driveways, parking areas, fences, walls, stairs, landscaping, trees, shrubs, bushes and green space.

23. Land shall mean and refer to all of the real property subject to this Declaration.

24. Lot shall mean and refer to a portion of the Property, other than the Common Area, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plat Map filed with this Declaration or amendments thereto. Where the context indicates or requires, the term Lot includes any Dwelling Unit, physical structure or improvement constructed on the Lot.

25. Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot.

26. Lot Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Utah County, Utah) of a fee or an undivided fee interest in a Lot, including but not limited to both the seller and buyer under an executory sales contract (e.g. uniform real estate, land sales contract, or other similar instrument). The term Lot Owner does not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

27. Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

28. Management Committee shall mean and refer to those Lot Owners duly elected and

qualified to manage, operate and regulate the Association.

29. Manger shall mean and refer to the person or entity appointed or hired to manage and operate the Project.

30. Map shall mean and refer to the Plat Map on file in the office of the County Recorder of Utah County.

31. Member shall mean and refer to an Owner obligated, by virtue of his Ownership, to be a shareholder in the Association.

32. Mortgage shall mean and refer exclusively to either a first mortgage or first deed of trust on any Lot, but shall not mean or refer to an executory contract of sale.

33. Mortgagee shall mean and refer exclusively to a mortgagee under either a first mortgage or a beneficiary under a first deed of trust on any Lot, but shall not mean or refer to a seller under an executory contract of sale.

34. Owner shall mean and refer to the Lot Owner.

35. Community Park shall mean and refer to that open space set aside for the specific and exclusive use of the members and guests of Alpine Home Owners Association.

36. Permanent Resident shall mean and refer to anyone who resides in the Project for more than four (4) consecutive weeks or for more than eight (8) weeks in any calendar year.

37. Person shall mean and refer to a natural person, corporation, partnership, trust, Limited Liability Company, or other legal entity.

38. Plat Map shall mean and refer to the Plat Map or Maps of ALPINE COTTAGES, on file in the office of the County recorder of Utah County, as they may be amended from time to time. The Plat Map will show the location of the Lots, and Common Areas.

39. Private Yard Area shall mean and refer to the area in the rear yard of certain Lots designated by Declarant, around which Alpine Cottages L.L.C. may construct a fence and in which owner may plant a flower or vegetable garden, subject to certain conditions and restrictions.

40. Project shall mean and refer to the ALPINE COTTAGES.

41. Project Documents shall mean the Declaration, By-Laws, and Rules and Regulations, and Articles of Incorporation.



42. Property shall mean and refer to all of the land or real estate, improvements, and appurtenances submitted to this Declaration.

43. Recreational, Oversized or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational, oversized or commercial transportation device of any kind.

44. Single Family Home or Residence shall mean and refer to both the architectural style of a dwelling unit and the nature of the residential use permitted.

45. Trade and business shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether : (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefor.

46. Unit shall mean and refer to a Dwelling Unit.

## II. Submission

The land described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference, is located in Utah County, Utah, is hereby submitted to the terms, covenants and conditions of this Declaration, and is hereby made subject to, and shall be governed and regulated by, this Declaration of restrictive covenants. In addition:

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

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat Maps or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar

Facilities.

ALL OR THE FOREGOING IS SUBJECT TO THE OPEN SPACE EASEMENT ON THE PASTURELAND.

### III. COVENANTS, CONDITIONS, AND RESTRICTIONS

1. Description of Improvements The significant improvements in the Project include, or shall include, twenty two (22) Lots and Dwelling Units, with cement footings and foundation; wood or vinyl siding, stucco and/or brick exteriors; interiors of wood frame and dry wall plaster; and wood, tile or composite asphalt shingles on the roof, and certain Common Area and Facilities consisting of green space, landscaping, fences, pathway or walking trail, utility systems, community park, as well as an entrance to and exit from the Community. The Project will also contain other improvements of a less significant nature.
2. Description and Legal status of the Property. The Project consists of approximately 9.4 acres, upon an estimated five (5) acres of which shall be constructed Dwelling Units. The remaining acreage shall consist primarily of roads, open space and Community Park. The Lots shall be individually owned and the Common Areas and Facilities shall be owned by the Association.
3. Membership in the Association. Membership in the Association is appurtenant to the ownership of a Lot, and may not be partitioned therefrom.
4. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows:

All of LOT NO \_\_\_\_\_ Contained within the ALPINE COTTAGES a Planned Residential Development, as the same is identified in the Record of Plat Map recorded in Utah County, Utah as Entry No.\_\_\_\_, in Book \_\_\_\_\_, at Page (as said Record of Plat Map may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions and Restrictions of ALPINE COTTAGES recorded in Utah County, Utah as Entry No.\_\_\_\_, in Book, \_\_\_\_\_ at Page, (as said Declaration may have heretofore been amended or supplemented), together with an undivided percentage of ownership interest in the Association.

Regardless of whether or not the description employed in any such instrument is in the above specified form, all provisions of this Declaration shall be binding upon and shall inure to the

benefit of any party who acquires any interest in a Lot. Neither the membership in the Association, nor the right of non-exclusive use of a Common Area shall be separated from the Lot to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Lot to which they relate.

5. Ownership and Use. Each Owner shall be entitled to the exclusive ownership and possession of his Lot and to membership in the Association as set forth herein, subject, however, to the following:

a) Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple Ownership of his Lot. There shall be no requirements concerning who may own a Lot, it being intended that they may and shall be owned as any other property rights by persons. This is a residential community and as such the Lots shall be used only for residential purposes, except as set forth below. The Common Areas and Facilities shall only be used in a manner consistent with the residential nature of the Project.

b) Title to the Common Area. The Common Area, the legal description of which is set forth with particularity on Exhibit "D" attached hereto and incorporated herein by this reference, shall be owned by the Association. The Common Area is also identified with an encircled letter "A" on the Map or Maps.

c) Mandatory Association. Each purchaser of a Lot shall automatically become a member of the Association.

d) Member's Easements and Rights of Way. Every Member of the Association shall as an Owner have the right and non-exclusive easement to use and enjoy the Common Area and Facilities. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following restrictions:

(1) The right of the Association to limit the number of guests and residents;

(2) The right of the Association to suspend the voting privilege; and

(3) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes. During the Developer's period of development of the Project, any such dedication or transfer shall be effective only if approved in writing by the Declarant.

e) Rules and Regulations. The Management Committee shall have the power and authority to adopt, amend or repeal administrative rules and regulations from time to time.

f) Restrictions and Limitations of Use. The use of the Lots, of whatever kind, is subject to the following guidelines, limitations and restrictions:

(1) Parties Bound. The Project Documents shall be binding upon all Owners and residents their family members, guests, and invitees.

(2) Nuisance. It shall be the responsibility of each Owner and resident to prevent the creation or maintenance of a nuisance in, on or about the Project. For purposes of this section a "nuisance" includes but is not limited to the following:

a. The development of any unclean, unhealthy, unsightly, or unkept condition on, in or about a Lot or the Common Areas;

b. The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;

c. The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

d. The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;

e. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;

f. Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents, their guests or invitees;

g. Causing or allowing too much noise in, on, or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.;

h. Causing or allowing too much traffic in, on, or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.

(3) Unsightly Work, Hobbies or Unkept Condition. The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkept conditions;

shall not be pursued or undertaken on any part of the Project.

(4) Removing Garbage, Dust & Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. Garbage cans shall be stored so as not to be visible from the street except on pick-up day and then for no more than twenty-four (24) hours.

(5) Subdivision of a Lot. No Lot shall be subdivided or partitioned.

(6) Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices, or the painting of graffiti, within the Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

(7) Temporary Structures. No Owner or resident shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Committee. Anything to the contrary notwithstanding and until the occurrence of the Events referred to herein, the Developer may install and use temporary structures in the development of the Project and marketing of the Lots or Units.

(8) Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections. All Property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by an Owner or resident in, on or about the Common Areas without the prior written consent of the Committee. The Management Committee may alter or remove any objects planted or placed in violation of this subsection.

(9) Energy Conservation Equipment. No solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Project without the prior written consent of the Committee.

(10) Business Use. No commercial trade or business may be conducted in or from any Lot unless: a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; b) The business activity conforms to all zoning requirements for the Project; c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the project; and d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Committee. Anything to the contrary notwithstanding, the leasing of a residence shall not be considered a trade or business within the meaning of this subsection.

(11) Storage and Parking of Vehicles. The driving, parking, standing and storing of motor vehicles in, on, or about the Project shall be subject to the following:

- a. The parking rules and regulations adopted by the Committee from time to time;
  - b. Except for purposes of loading or unloading passengers or supplies (for a period of time up to twenty-four (24) hours), no recreational, commercial or oversized vehicle parking is allowed in the Project. Cement pads on Lots to park or store said vehicles are prohibited;
  - c. No overnight parking on the street is allowed in the Project;
  - d. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any Lot, Building or parking space, or to create an obstacle or potentially dangerous situation.
  - e. Residents may only park their motor vehicles within their garages and driveways.
  - f. No resident shall repair or restore any vehicle of any kind in, on, or about any Lot or the Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.
  - g. No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed.
  - h. All parking areas shall be used solely for the parking and storage of vehicles.
  - i. Garage doors shall remain closed except when the garage is in use.
  - j. Vehicles parked in violation of this Declaration may be impounded or towed without further notice, and at the Owner's sole risk and expense.
- (12) Aerials, Antennas, and Satellite Systems: Antennas and satellite dishes shall be prohibited within the Property, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) antennas or satellite dishes designed to receive video programming services via multipoint distribution services which are one

meter or less in diameter or diagonal measurement; or (c) antennas or satellite dishes designed to receive television broadcast signals ("Permitted Devices") shall be permitted, provided that any such Permitted Device is:

(1) located in the attic, crawl space, garage, or other interior spaces of the dwelling or another approved structure on the Lot so as not to be visible from outside the dwelling or other structure;

(2) located in the rear yard of the dwelling (i.e., the area between the plane formed by the front facade of the dwelling and the rear lot line) and setback from all lot lines at least eight (8) feet;

(3) attached to or mounted on a deck or patio and extending no higher than the eaves of the portion of the roof of the dwelling directly in front of such antenna;

(4) attached to or mounted on the rear wall of the dwelling so as to extend no higher than the eaves of the dwelling at a point directly above the position where attached or mounted to the wall.

Notwithstanding, the foregoing, should an Owner determine that a Permitted Device cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, then the Owner may install the device in the least conspicuous alternative location on the dwelling where an acceptable quality signal can be obtained. The Board may adopt rules establishing a preferred hierarchy of alternative locations and requiring screening of all Permitted Devices, so long as such rules do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device.

(13) Windows and Window Coverings. No-aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover the exterior windows of any Dwelling Unit or garage. Horizontal and vertical levelers, sun shades and tinted windows are allowed. All windows and window panes in the Project shall be harmonious and comparable in size, design and quality, so as not to detract from uniformity in appearance or quality of construction.

(14) Pets. Up to two (2) domestic pets per Lot are allowed unless a variance is granted in writing by the Management Committee. Residents with pet(s) must abide by the pet rules and regulations adopted by the Committee from time to time. **No pets, animals, livestock or poultry of any kind shall be bred in, on, or about any Lot.**

**Pets which constitute a nuisance will not be allowed in the Project.** Pets outside the Dwelling Unit must be in a fenced yard or kept on a leash or in a cage at all times. All city ordinances and regulations concerning pets will also be followed by Owners and residents of the Project. Dogs which bark, whine, howl

or scratch unreasonable, or pets running loose in the Common Area and not in a cage or on a leash and under the control of the owner, or pets whose owners do not immediately clean up after them, or pets in violation of any city ordinance or regulation, or pets which threaten any Owner, resident, guest or invitee with physical harm shall be deemed to constitute a nuisance. Anything to the contrary notwithstanding, animals in the Community Park or other open space shall be governed by such rules and regulations as they may be adopted or modified from time to time.

(15) Construction of Dwellings / Improvements. In order to insure uniformity of appearance and quality of construction consistent with the architectural guidelines included in "EXHIBIT E" attached hereto and incorporated herein by this reference. All construction will be contracted with and performed by ALPINE COTTAGES L.L.C..

(16) Insurance. Nothing shall be done or kept in, on, or about any Lot or the Common Area which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Project of what the Management Committee, but for such activity, would pay.

(17) Laws. Nothing shall be done or kept in, on, or about any Lot or Common Area, or any part thereof, which would be a violation of any statute, rule ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(18) Damage or Waste. No damage to, or waste of, the Common Area shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Management Committee and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or an invitee; provided, however that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.

(19) Structural Alterations. No structural alteration of any Building, Unit or the Common Area and Facility is allowed without the prior written consent of the Management Committee. In order to insure uniformity of appearance and quality of construction consistent with the architectural guidelines included in "EXHIBIT E" attached hereto and incorporated herein by this reference. All construction will be contracted with and performed by ALPINE COTTAGES L.L.C..

(20) Mail Boxes. The original mailbox on any lot must be the one approved and provided by the Declarant. Replacement mailboxes must be approved in writing by the Management Committee.

17. Leases. Any agreement for the leasing, rental, or occupancy of a Dwelling Unit (hereinafter in this Section referred to as a "lease") shall be in writing and a copy thereof shall be delivered to the Association before the term of the Lease commences. Every lease shall provide that the terms of such lease shall be subject in all respects to the provisions of the Project Documents and that



any failure by the Resident thereunder to comply with the terms of the foregoing documents shall be a default under the lease. If any lease does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be a part of the lease and binding on the Owner and Resident by virtue of their inclusion in this Declaration. No Owner shall be permitted to lease his Unit for short term, transient, hotel, seasonal, vacation or corporate/executive use purposes, which shall be deemed to be any occupancy or rental with an initial term or for an initial period of less than six (6) months. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons.

Any Owner who shall lease his Unit shall be responsible for assuring compliance by the Resident with the Project Documents. Failure by an Owner to take legal action, including the institution of an eviction proceeding against his Resident who is in violation of the Project Documents within ten (10) days after receipt of written demand so to do from the Committee, shall entitle the Association to take any and all such action including the institution of eviction proceedings. Neither the Association nor any agent retained by the Association to manage the Project shall be liable to any Owner or Resident for any loss, damage, liability, claim or demand arising out of or related to any eviction proceeding commenced hereunder, if it is made in good faith. Any expenses incurred by the Association, including attorneys' fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Board to levy an Individual Assessment against such Owner and his Unit for all such expenses incurred by the Association, and to file a notice of lien to secure payment of the debt. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Unit.

7. Easements, Drainage, Support, Maintenance and Repair. There are hereby RESERVED and the Association is hereby GRANTED the following easements and rights of way:

a) A non-exclusive easement over, across, through, above and under the Lots and the Common Area for the operation, maintenance and regulation of the Common Area, amenities and facilities, and landscaping and maintenance.

b) A reciprocal easement on, over, under, through and across all Lots and Common Area for the drainage of surface waters on, over, under, through and across the Project. The Declarant shall establish a subdrain and storm drainage system designed to serve the entire Project (the "Master Subdrain and Storm Drain System"). No Lot Owner shall interfere with the Master Subdrain and Storm Drain System established by the Declarant, or its successors or assigns. Each Lot Owner shall be responsible to develop his Lot in a manner consistent with the Master Subdrain and Storm Drain System, and so as not to detract therefrom or interfere therewith, or the Established Drainage Pattern on any other Lot in the Project. No changes to the Established Drainage Pattern on any Lot shall be permitted without the prior written consent of the Management Committee. For purposes of this Section, the term "Established Drainage Pattern" is defined as the approved drainage pattern, facilities and improvements in existence at the time such Lot is conveyed to a home purchaser by the Declarant, its successor or assign. The cost of all improvements, maintenance, repairs and replacements of the subdrain or storm drainage

System located within the boundaries of any Lot shall be the responsibility of the Lot Owner. The cost of all improvements, maintenance, repairs and replacements of the subdrain and storm drainage system located in the Common Area shall be the responsibility of the Association. If the Association or the Lot Owners fail to properly manage, maintain or replace the subdrain and storm drainage system, the City of Alpine or Utah County shall have the right, but not the obligation, to maintain the systems and to charge the cost thereby incurred to the Association. The Association shall not have the authority to change, by vote, alienation, alteration, transfer, sale, or otherwise, the use of the currently existing areas and structures designed to control storm water runoff unless the consent of the appropriate governmental agencies has first been obtained in writing. The City of Alpine and Utah County is hereby made a party to the covenants established by this Declaration for the sole purpose of protecting and preserving the use of the common storm drainage system and structures that serve the Project; however, neither the City of Alpine nor Utah County shall not be a member of the Association and they shall have to vote in the management, operation, or regulations of its affairs although they are hereby granted a right of enforcement as set forth in Section 36 of this Declaration.

8. **Liability of Owners and Residents for Damages.** Any Owner or Resident who is negligent or careless and thereby causes damage to any person or property within the project shall be strictly liable for said damage, loss or claim.
9. **Encroachments.** In the event that any portion of the Common Area or Lot encroaches or comes to encroach upon other Common Area or Lot as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.
10. **Management Committee.** The Association shall be managed by a management Committee that shall be comprised of three (3) members. Until the happening of the Events (described below), the Declarant shall have the exclusive and irrevocable right to appoint all of the members of the Committee and their successors or replacements. Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted the following authority and powers:
  - a) **To Enter.** The power and authority to enter into or upon any Lot or in to any Dwelling Unit to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project, Common Areas and Facilities. Except in the case of emergency, reasonable notice shall be given to the residents.
  - b) **Grant Easements.** The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under across, and through the

Common Areas for utilities, roads, and other purposes reasonable necessary or useful for the proper maintenance, operation or regulation of the Project.

- c) Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration of Plat Map which has been approved by the vote or consent necessary to authorize such amendment.
- d) Standing. The power to sue and be sued.
- e) Enter into contracts. The authority to enter into contracts, which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement, has been obtained.
- f) Transfer Interests in Real Property. The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the members in the Association.
- g) To Purchase. The power and authority to purchase, otherwise acquire, and accept title to any interest in real property so long as it has been approved by at least seventy five percent (75%) of the members in the Association.
- h) To Add Property. The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph (g) above to the Project, so long as it has been approved by at least (75%) of the members in the Association.
- i) To Borrow Money. Provided the loan has been approved by at least seventy five percent (75%) of the members in the Association.
- j) Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, and procedures as may be necessary or desirable to aid the committee is maintained and used in a manner consistent with this Declaration.
- k) User Fees. The authority to charge a user fee for the exclusive use of the Community Park or other Community Open Space area as it deems reasonable.
- l) All Other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Owners.

11. Delegation of Management Responsibilities. The Committee may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, independent contractors, through service contracts or any combination thereof. The termination provision of any such contract must not require a termination penalty or any advance notice of more than thirty (30) days, no such contract shall be for a term greater than one (1) year.

12. Classes of Membership & Voting Allocations. The Association shall have two (2) classes of membership – Class A and Class B, described more particularly as follows:

a) Class A. Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled to vote on all issues before the Association to, subject to the following:

(1) One Vote. Each Lot shall have (1) vote;

(2) Subject To Assessment. No vote shall be cast or counted for any Lot not subject to assessment;

(3) Multiple Owners. When more than one (1) person or entity holds such interest in a Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) person or entity seeks to exercise it.

(4) Leased Lot. Any Owner of a Lot which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

b) Class B. Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to three (3) votes per Lot owned. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (herein referred to as the "Event" or "Events"):

(1) Lots Sold. One hundred and twenty (120) days after certificates of occupancy have been issued for all of the Dwelling Units constructed upon the Lots have been sold; or

(2) Four Years. Four (4) years from the effective date of this Declaration; or

(3) Election. When, in its sole discretion, Declarant so determines.

From and after the happening of these Events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot owned. At such time, the Declarant shall call a meeting, in the manner described in the By-Laws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

13. Lists of Lot Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Committee shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such person, and the Lot which is owned by him or her; (b) the name of each person or entity who is Eligible Mortgagee, the address of such person or entity, and the Lot which is encumbered by the Mortgage held by such person or entity; and the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Lot which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Committee with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Utah County, Utah. The Committee may for all purposes act and rely on the information concerning Lot ownership in its records or, at its option, the records of the county recorder. The address of any Owner shall be deemed to be the address of the Lot owned by such person unless the Committee is otherwise advised in writing.

14. Capital Improvements and Table. The Management Committee shall prepare a Table of Capital Improvement, which shall contain a list of foreseeable expenditures for capital improvements within the Area of Common Responsibility. The Table shall be included in every annual budget, and it shall be reviewed and updated at least annually, and reasonable reserve accounts shall be established by the Committee for the replacement of capital assets as they age. Expenditures by the Association for capital improvements to the Project shall be subject to and governed by the following:

a) Committee Discretion/Expenditure Limit. Capital improvements to the Project which cost ten percent (10%) or less of the Total Annual Operations Budget and do not materially alter the nature of the Project, may be authorized by the Management Committee alone and without additional approval.

b) Homeowner Approval/Expenditure Limit. Any capital improvement, the cost of which will exceed such amount, must, prior to the commencement of construction, be authorized by at least a majority of the Owners.

c) Homeowner Approval/Changing the Nature of the Project. Any capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven percent (67%) of the undivided ownership interest in the Project.

15. Operation, Maintenance and Alterations. The Lots and Common Area shall be maintained by the Lot Owners and the Association, respectively, as follows:

(a) Area of Common Responsibility. The Association shall maintain, repair and replace, as needed from time to time, the following:

- 1) All common elements and facilities, including but not limited to all physical improvements constructed or installed on the Common Area;
- 2) Except for the fenced Private Yard Areas designated by Declarant, all landscaping, green space, sprinkler systems, grass, sod, berms, flower and plant beds, ground cover, trees, shrubs, bushes and other plant life. This includes but is not limited to the:
  - (a) maintenance of the sprinkling system, including the repair and replacement of sprinkler heads and the water distribution lines as needed;
  - (b) mowing, edging and trimming of all grass, lawns and in the front, side and, rear yards of Lots;
  - (c) pruning of the trees, bushes and shrubs; and
  - (d) all planting, fertilizing, weeding and care of the plant life in, on or about the Common Area and Lots.
- 3) All fences within the Project, excluding the interior surface of fences surrounding Private Yard Areas designated by Declarant;
- 4) The entryway to the Project;
- 5) All Private sidewalks, walkways, and driveways in the Project, excluding only the sidewalks and walkways in the side and rear yards of the Lots;
- 6) All central or common utility systems for telephones, gas, power, light, water, sewer and garbage removal;
- 7) The community park ;
- 8) Any item not expressly and specifically included in the Area of Personal Responsibility.

b) Area of Personal Responsibility. Each Owner shall maintain, repair and replace, as needed from time to time, the following;

- 1) His Dwelling Unit and garage, including the roof, foundation, footings, columns, girders, beams, supports and main walls thereof,
  - 2) All utilities servicing his Lot and Dwelling Unit including power, light gas, hot and cold water, heating, refrigeration and air conditioning systems;
  - 3) All fixtures, furnishing, windows, doors, patios, balconies and decks, garage doors and garage door systems located in his Lot or Dwelling Unit;
  - 4) The interior surface of the fence surrounding his Private Yard Area
  - 5) His Private Yard Area
  - 6) The steps, porch and landing at the entry to his Dwelling Unit; and
  - 7) All of the other non-landscaping improvements constructed or installed in, on, under or above his Lot, unless otherwise determined in writing by the Management Committee.
- d) Community Park. The use of the Community Park is for the exclusive use of the owners of the Association and their guests, and is subject and conditioned upon the following: 1) their assumption of all liability of such use, 2) their release of the Association and other Lot owners from all liability, 3) their waiving all claims against the Association and other Lot owners, and 4) their indemnifying the Association and other Lot owners.
- e) Changing Items in the Areas of Common or Personal Responsibility. In its sole discretion, the Management Committee may change any duty or obligation in the Areas of Common or Personal Responsibility, subject only to thirty (30) days prior written notice.
- f) Landscaping Guidelines. Because of the design of the Project with its open and visible spaces, aesthetics are of paramount importance and the Association is hereby given permission to make decisions based purely on aesthetic considerations. For the same reason, the Association shall be directly and primarily responsible for the storm drains, storm drainage system or drainage pattern and all of the landscaping, sprinkling systems, trees, bushes, shrubs, grass, sod, groundcover, plant and flower beds (hereinafter referred to collectively as "landscaping") in and throughout the entire Project, except for the fenced Private Yard Areas designated by the Declarant. Owners shall not modify the landscaping in, on or about any Lot or the Common Area or to plant any flower gardens or beds without prior express written consent of the Management Committee.

g) Private Yard Areas. Owners with Private Yard Areas may remove sod within that Area in order to create a flower and/or vegetable garden, which shall be properly maintained. Corn or plants taller than three (3') feet at maturity may not be planted. The Owner or resident shall be exclusively responsible to maintain repairs and replace the sprinkling system, including the controls, sprinkler heads and water distribution lines, in said Private Yard Area. If, in the opinion of the Committee, a resident has created a vegetable garden area but has ceased to use the area for its intended purpose or to properly maintain it, the area shall be restored to its original condition. The Declarant or his successor and assign reserves the authority to terminate any Private Yard Area designation or status.

h) Right to Enter. The Management Committee is hereby granted the right, without claim of trespass or invasion of privacy, to enter any Lot, including but not limited to the Lot upon which the existing home is located and any Private Yard Area, in order to remove, repair or replace any fences, fertilize, weed, remove dead or diseased plant life and trash trees, prune, trim, edge or otherwise care for any trees, bushes, shrubs, ground cover, grass, sod, flowers or plants located thereon.

i) Standard of Care - Generally. The Property shall be maintained in a usable, clean, functional, safe, healthy, sanitary, attractive, and good condition, consistent with Community Standards. If a dispute arises between the Management Committee and a Lot Owner or resident as to the condition of a Lot, the decision of the Management Committee shall be binding, final and conclusive.

j) Standard of Care - Landscaping. All landscaping in the Project shall be maintained and cared for in a manner consistent with Community Standards and the quality of design and construction originally established by Declarant. Specific guidelines and restrictions on landscaping may be established by the Management Committee from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, ground cover, trees, bushes or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be properly pruned and trimmed. Since aesthetics are important, all landscaping shall be tasteful, so as not to affect adversely the value or use of any other Lot, or to detract from the general attractiveness and the uniform design and appearance of the Project. Unless the replacement of capital landscaping improvements is made necessary by the negligence of a Lot Owner or resident, the cost of replacing or restoring the asset shall be the Association's responsibility.

k) Neglect. If the Committee determines that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder, or that the need for maintenance, repair, or replacement of the Common Area and Facilities is caused through the willful or negligent act of any Owner or resident, or their family members, guests, visitors or invitees, and it is not covered or paid for by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense, subject to the following:



(1) Debt and Lien. Such costs as are incurred by the Association in the performance of an item included in the Area of Personal Responsibility is a debt of the Owner at the time the assessment is made and is collectible as such. If any Owner fails or refuses to make any payment of the debt when due, that amount constitutes a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the manager or Management Committee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except:

a) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and

b) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

(2) Notice of Intent to Repair. Except in an emergency situation, the Management Committee shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Management Committee. The Owner shall have ten (10) days after delivery of such notice within which to complete the maintenance or repair or, if the maintenance or repair is not capable of completion within such time period, to commence the maintenance or repair.

(3) Emergency Situation. If the Management Committee in its sole discretion determines that an emergency exists, then notice and the opportunity to cure the default is not necessary and is deemed to have been waived.

(4) Optional Repairs. The decision of the Association to maintain, repair or replace any item is purely optional. If it elects to do any such work, then its agents or employees shall have a right of entry upon or into any Lot or Common Area as necessary to perform such work, and shall not be liable for trespass or invasion of privacy.

(5) Alterations to the Common Area. Anything to the contrary notwithstanding, the Declarant may make changes to the Common Area and Facilities without the consent of the Owners, Association or the Management Committee; provided, however, no Owner or resident may make any structural alterations, modifications, changes or improvements to the Common Area, including but not limited to any additions, extensions, enclosures, fencing, decks, patios, balconies, walkways, structures or sheds not shown on the approved plans and specifications, without the prior written consent of the Management Committee. No fencing, walls or barriers of any kind (other than the perimeter of the Project or around the Private Yard Area) are allowed in

or on the Lots.

n) Color Scheme. Owners and residents may not change the color scheme in the Project, including the color of the stucco or garage door, without the prior written consent of the Management Committee.

o) Snow and Ice Accumulations. The Association is responsible for removing all ice and snow accumulations from the streets and common sidewalks as well as the driveways, front yard sidewalks, steps, landings and porches of each Dwelling Unit. Each Lot Owner is responsible for removing all ice and snow accumulations from all side and rear yard walkways, patios, porches, landings and steps.

p) Garbage Removal.

q) Utilities. The Association shall provide those utility services not separately metered and billed to the individual Owners by the provider. If the Declarant elects to provide electricity to certain Common Area lamp posts from any individual Lot, the cost, nevertheless, shall be divided equally among all Owners.

16. Common Expenses. Each Owner, upon receipt of a deed or other document of conveyance or transfer to a Lot, agrees to and shall pay his share of the Common Expenses and Assessments against him or his Lot; provided, however, anything to the contrary notwithstanding, the Developer shall not be obligated to pay Assessments until such time as any residential structure, Building or Dwelling Unit is substantially complete and a permanent certificate of occupancy has been issued or, in the alternative, the Developer elects in writing to commence payment, whichever first occurs.

a) Purpose of Common Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Committee.

b) Creation of Assessments. The Management Committee shall establish and determine the Assessments.

c) Budget. At least thirty (30) days prior to the annual meeting of the Association, the Management Committee shall prepare and deliver to the Owners a proposed Budget which:

(1) Itemization. Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

(2) Basis. Shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates shall include but are not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Committee is required or permitted to maintain, common lighting and heating, water charges, carpeting, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Management Committee employees, legal and accounting Assessments, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration.

d) Apportionment. The common profits of the property shall be distributed among, the common expenses shall be charged and voting rights shall be allocated to the Lot Owners equally pursuant to Exhibit "B" attached.

e) Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the annual meeting of the Association by a vote of at least a majority of the Owners. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Management Committee fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new Budget and Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

f) Personal Obligation of Owner. Each Owner is liable to pay his portion of the Common Expenses and all Assessments against him or his Lot, accruing interest, late Assessments and collection costs, including attorneys Assessments. Provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under an executory contract of sale such as a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (I) the Owner of both the legal and equitable interest in any Lot, (ii) the owner of record in the offices of the County Recorder of Utah County, Utah, and (iii) both the Buyer and Seller under any executory sales contract or other similar instrument.

g) Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least

thirty (30) days written notice of any changes.

h) Dates and Manner of Payments. The dates and manner of payment shall be determined by the Committee.

i) Reserve Accounts. The Committee shall establish and maintain at least two (2) reserve accounts: one to pay for unexpected operating expenses and the other to pay for capital improvements. The reserve accounts shall be funded out of regular Assessments.

j) Acceleration. Assessments shall be paid in the manner and on dates fixed by the Committee who may, at its option and in its sole discretion, elect to accelerate the entire annual Common Area Fee for delinquent Owners. If, however, the Common Area Fee is accelerated and an Owner subsequently finds it in its best interest, the Committee, at its option and in its sole discretion, may elect to de-accelerate the obligation.

k) Statement of Assessments Due. Upon written request, the Committee shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request, shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

l) Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled, which, by acceptance of a deed or other document of conveyance or transfer of a Lot, each Owners agrees to subordinate or waive.

m) Termination of Utility Service. At the discretion of the Committee, the utility service to any Owner paid for by Assessments may be terminated if the Owner is in arrears on his obligation to pay Assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

n) Suspension of Right to Vote for Non-Payment. At the discretion of the Committee, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

17. Special Assessments. The Management Committee may levy special assessments in any year, subject to the following:

a) Committee Based Assessment. So long as the special assessment does not exceed the sum of Five Hundred and 00/100ths Dollars (\$500.00) (the "Special Assessment Limit") per Lot in any one fiscal year, the Committee may impose the special assessment without any additional approval.

b) Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the members of the Association.

18. Specific Assessments. The Committee may specifically assess an Owner in a particular area in the manner set forth below provided the Owner has the choice to accept or reject the benefit:

a) Benefit only To Specific Lot. If the expense benefits less than all of the Lots, then those Lots benefitted may be specifically assessed, and the specific assessment shall be equitably apportioned among those Lots according to the benefit received.

b) Unequal or Disproportionate Benefit. If the expense benefits all Lots, but does not provide an equal benefit to all Lots, then all Lots shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Lots according to the benefit received. Failure of the Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Committee has not previously exercised its authority under this Section.

19. Individual Assessments. Individual Assessments may be levied by the Association against an Owner or Lot for:

- a) fines levied and costs incurred in enforcing the Project Documents;
- b) costs associated with the maintenance, repair or replacement of Common Area for which the Lot Owner is responsible;
- c) any other charge, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents; and
- d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

20. Collection of Assessments. Assessments shall be collectible as follows:

a) Time is of the Essence. Time is of the essence and all Assessments shall be paid promptly when due.

b) Debt & Lien. Each Owner's portion of the Common Expenses and all Assessments or fines levied against each Lot or Owner is a debt of the Owner at the time the Assessment or fine is made and is collectible as such. Suit to recover a money judgment for unpaid Common Expenses, Assessments or fines is maintainable without foreclosing or waiving the lien securing it. If any

Owner fails or refuses to make any payment of his portion of the Common Expenses or an Assessment or fine when due, that amount constitutes a lien on the interest of the Owner in the Property, and upon the recording of notice of lien, it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except:

1) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and

2) encumbrances on the interest of the Lot Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

c) Late Assessments and Accruing Interest. Any Assessments delinquent for a period of more than ten (10) days shall incur a late charge of twenty five Dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of One and 1/2 percent (1.5%) per month shall accrue on all delinquent accounts. The Committee may, in its sole discretion, change the amount of the late fee or waive late fees and default interest but is not required to do so.

d) Foreclosure of Lien and/or Collection Action. If any Assessments remain unpaid, the Association may, as determined by the Committee, institute suit to collect the amounts due and/or to foreclose the lien.

e) Personal Obligation. Each Owner, by acceptance of a deed or other document of conveyance or transfer, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

f) No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Lot.

g) Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or perform some function required to be taken or performed by the Association or committee under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

h) Application of Payments. All payments shall be applied as follows: Additional

Charges, delinquent Assessments and current Assessments.

i) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's Assessments, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

j) Appointment of Trustee. If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

k) Attorney in Fact. Each Owner by accepting a deed to a Lot hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Lot, if the Lot is rented and Owner is delinquent in his Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

21. Liability of Management Committee. The Association shall indemnify every officer and member of the Committee against any and all expenses, including but not limited to attorney's Assessments reasonably incurred by or imposed upon any officer or member of the Committee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Committee) to which he may be a party by reason of being or having been an officer or member of the Committee. The officers and members of the Committee shall not be liable for any mistake of judgement, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Committee may also be Members of the Association); and the Association shall indemnify and forever hold each such officer and member of the Committee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Committee, or former officer or member of the Committee, may be entitled.

The Association shall, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

22. Insurance. The Management Committee shall at all times purchase, maintain in force, and pay the premiums for, if reasonably available, insurance on the Common Areas satisfying at least the following requirements:

a) Property Insurance. Blanket property insurance using the standard "Special" or "All Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard planned residential development casualty policy. This additional coverage may be added by the Committee as it deems necessary in its best judgement and in its sole discretion.

b) Flood Insurance. If any part of the Project's improvements are in a Special Flood Hazard Area -- which is designated as A, AE, AH, AO, AI-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate Map (FIRM) -- the Association shall obtain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover any common element buildings and any other common property. The Unit Owner may also be required to purchase an individual policy. The amount of flood insurance should be at least equal to the lesser of 100% of the insurable value of the facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program.

c) Liability Insurance. Liability insurance with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated first class subdivisions in the county. If possible, the policy should be written on the comprehensive form and shall include not-owned and hired automobile protection.

d) Director's and Officers's Insurance. Adequate director's and officer's liability insurance aka "D & O," "Errors and Omissions" or "E & O" coverage.

e) Fidelity Bond. A separate fidelity bond in a reasonable amount to be determined by the Management Committee to cover all non-compensated officers as well as all employees for theft of Association funds, subject to the following:

(1) Agents. Furthermore, where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Committee or the Association.

(2) Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Committee's best business judgement, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Committee,



the Association, or the management agent as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Lots, plus reserve funds.

(3) Quality of Coverage. The bonds required shall meet the following additional requirements:

a. they shall name the Committee, the Owners Association, and the Property Manager as obligee;

b. if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense;

c. the premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and

d. the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Committee and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee, and FNMA.

f) Earthquake Insurance shall not be required unless requested by at least Seventy five percent (75%) of the Members of the Association.

g) Miscellaneous Items. The following provisions shall apply to all insurance coverage:

(1) Quality of Carrier. A "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance reports — International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service — if the carrier is issuing a master policy or an insurance policy for the common elements in the Project.

(2) The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Lot Owners of the ALPINE COTTAGES for the use and benefit of the individual Owners."

(3) Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

(4) Beneficiary. In any policy covering the entire Project, each owner and his Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided Ownership interest in the Common Areas and Facilities.

(5) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(6) Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

(7) Prohibited Provisions. Each insurance policy shall contain at least the following additional miscellaneous items:

a. Waiver of Subrogation. A waiver of the right of a subrogation against Owners individually;

b. Individual Neglect. A provision that the insurance is not prejudiced by any act or neglect of any individual Owner; and

(8) Deductible. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the Association.

(9) Individual Insurance. Each Owner and resident shall purchase and maintain adequate liability and property insurance on his Lot, Dwelling Unit, personal property and contents; provided, however, no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Owners and their mortgagees, may realize under any insurance policy which the Association may have in force on the Property at any particular time.

(10) Primary Coverage. The insurance coverage of an Owner shall, in the event the Association also has insurance covering the loss, be primary and the insurance of the Association shall be secondary.

(11) Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

(12) Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Lot, and may be enforced by them.

(13) Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated first class subdivisions in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost and,; or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction; Steam Boiler and Machinery Coverage Endorsement if the Project has any central heating or cooling.

(14) Restrictions on Policies. No insurance policy shall be maintained where:

a. Individual Assessments Prohibited. Under the term of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Management Committee, the Association, FNMA, or the designee of FNMA.

b. Payments Contingent. By the terms of the Declaration, By- Laws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or

c. Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Committee, the Association, an Owner, FNMA, or the borrowers) from collecting insurance proceeds.

(15) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Committee or Owners to obtain and maintain insurance coverage, in amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

23. Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project:

a) Definitions. Each of the following terms shall have the meaning indicated:

(1) "Substantial Destruction" shall exist whenever as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) or more of the estimated restored value of the Project.

(2) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

(3) "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.

(4) "Partial Condemnation" shall mean any other such taken by eminent domain or grant or conveyance in lieu thereof.

(5) "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) or more of the estimated restored value of the Project.

(6) "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(7) "Restored Value" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

(8) "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition.

(9) "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

b) Determination by Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Committee shall,

from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

c) Restoration of the Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the Project's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Lots which have appurtenant at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

d) Notices of Destruction or Obsolescence. Within thirty (30) days after the Committee has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

e) Excess Insurance. If the insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, then the excess funds shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association and any Mortgagee, and, therefore, may also be enforced upon them. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

f) Inadequate Insurance. In the event the cost of Restoration exceeds Available Funds, all of the Lots shall be assessed for the deficiency on the basis of their respective percentages of undivided Ownership interest in the Common Areas.

g) Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Lots will not be the subject of Restoration (even though the Project will continue as a planned unit development) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Lots.

h) Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Plat Map shall

terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Lot is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

i) Authority of Committee to Represent Owners in Condemnation or to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.

j) Settlement Proceeds. The award in any condemnation proceeding and the process of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

k) Restoration Power. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Lot therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.

l) Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

24. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing from Owners who collectively hold the required percentages, subject to the following conditions:

a) Ninety-Day Limit. All necessary consents must be obtained prior to the expiration of ninety (90) days from the time the first written consent is obtained; and

b) Change in Ownership. Any change in Ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

25. Mortgagee Protection. The lien or claim against a Lot for unpaid Assessments levied by the Management Committee or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, subject to the following:

a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power

of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot the lien of any Assessments becoming due thereafter.

b) Books and Records Available for Inspection. The Committee or the Association shall make available to the Owners, to Mortgagees, lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, By-Laws, Articles of Incorporation, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Committee and the Association. The term "Available", as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

c) Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

d) Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Management Committee or the Association shall provide or be deemed to provide hereby that either party may terminate the contract with or without cause upon at least sixty (60) days prior written notice to the other party thereto.

e) Eligible Mortgagee Designation. Upon written request to the Committee or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Lot Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder, insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor", as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(1) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

(2) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.

(3) Lapse of Insurance. Any lapse, cancellation, or material modification of any

insurance policy or fidelity bond maintained by the Committee or the Association.

(4) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

f) No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot shall not be subject to any right of first refusal or similar restriction.

26. Amendment. This Declaration may be amended as follows:

a) Consent of the Owners. The affirmative vote of at least Sixty seven percent (67%) of the Owners shall be required and shall be sufficient to amend the Declaration or the Plat Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is obtained; and

b) Consent of Eligible Mortgagee. The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project; and the consent of Eligible Mortgagees holding at least fifty-one percent (51%) of the undivided Ownership interest in the Common Areas shall be required to add to or amend any material provision of this Declaration or the Plat Map which establishes, provides for, governs, or regulates any of the following: (1) voting rights; (2) increases in assessments that raise the previously assessed amount by more than twenty-five (25%), assessment liens, or the priority of assessment liens; (3) reductions in reserves for maintenance, repair, and replacement of the Common elements; (4) insurance or fidelity bonds; (5) limitations and restrictions on the right to use of the Common Areas; (6) responsibility for maintenance and repairs; (7) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (8) the boundaries of any Lot; (9) the percentages of Ownership interest in the Common Areas; (10) convertibility of a Lot into Common Areas or Common Area into a Lot; (11) the imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot; (12) express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Guarantors; and (13) the requirement that the Project be professionally managed rather than self managed. Any addition or amendment shall not be considered material for purposes of this Paragraph b) if it is for the clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat Map is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Plat Map or the termination of the legal status of the Project as a performance development if such amendments or



Such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

27. Notice and Hearing. In the event of a claimed violation of the Declaration, By-Laws or administrative rules and regulations governing the Project, a Member or resident shall be entitled to the following:

- a) Notice. Written notice specifying the nature of the violation (and providing any other appropriate information) and stating the time, date and place that the member will have an opportunity to be heard by the Management committee. Written notice shall be given at least fifteen (15) days prior to the date set for the hearing 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 it has been deposited in the United States mail, first class postage prepaid, addressed to the member at the address given by the member to the Management Committee for the purpose of service or notice or to the address of the member's Lot if no other address has been provided. Any address may be changed from time to time by giving written notice to the Management committee.
- b) Costs and Assessments. If the violation, or the failure to correct or remedy a violation, results or may result in the expenditure of funds, the notice shall also state that the Management Committee may vote to assess the adverse party, levy a fine, or impose other sanctions if the Committee finds that a violation has occurred.
- c) Final Determination. After the hearing has taken place, the management Committee shall (1) determine whether a violation has occurred and, if so, may impose a fine or issue sanctions which shall become effective not less than five (5) days after the date of the hearing; or (2) take such other action as may be appropriate. The determination of the management Committee shall be final. However, nothing herein shall be construed to prevent the management Committee from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing Notice and Hearing.

28. Declarant's Sales Program. Notwithstanding anything to the contrary, until Declarant has sold all the Lots and Dwelling Units owned by it in the Project or the expiration of a reasonable sales period following four years (4) after the date on which this Declaration is filed of record in the office of the Utah County Recorder whichever first occurs (hereinafter referred to as the "Occurrence") neither the owner, the Association nor the Committee shall interfere with the completion of improvements and sale of all remaining Lots, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

- a) Sales Office and Model Lots. Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Lots, homes or Units at any one time. Such offices and/or models may be one or more of the Lots owned by it, or one or more of any separate

structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

b) Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

c) Common Area Use. Declarant shall have the right to use the Common Areas of the Project to facilitate sales.

d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the Occurrence, Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

29. Limitation on Improvements by Association. Until the Occurrence described above, neither the Association nor the Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

30. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Lots or Buildings in the Project title to which is vested in Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protection and controls which are accorded to Declarant (in its capacity as Declarant) herein.

31. Working Capital Fund. A working capital fund shall be established by the Declarant to meet unforeseen expenditures or to purchase any additional equipment or services. The initial working capital fund shall be in an amount equal to two (2) months of estimated common assessments for each Lot. Each Lot's share of the working capital fund shall be collected either at the time of the sale of any Lot or Unit is closed or when control of the Project is transferred to the Lot Owners, whichever first occurs. Any amounts paid into the working capital fund shall not be considered as advance payments of regular monthly assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Lot Owners. The Declarant is prohibited from using the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. When a Lot or Unit is sold, however, the

Declarant may reimburse itself for monies it has paid the Association for an unsold Lot's or Unit's share of the working capital fund by using funds collected at closing when the Lot or Unit is sold.

32. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right to select members of the Committee, and to transfer management of the Project to the Association. If and when Declarant elects to do so, Declarant shall send written notification to each Owner of the effective date of the transfer (the "transfer or Transition Date") at least forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the members of their own Management Committee to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Area expenses of the Committee incurred prior to the Transfer Date to be paid in full on or before such date.

33. Certain Provisions Applicable to Declarant. Notwithstanding any other provision herein contained, for so long as Declarant continues to own any of the Lots, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot owned by Declarant in accordance with the Declaration.

a) Disclaimer. Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration except as specifically set forth herein or in any agreement for sale of a Lot, and no person shall rely upon any warranty or representation not so specifically made therein.

b) Declarant's Consent to Amendment. No amendment may be made to the Declaration without the written consent of Declarant so long as Declarant retains the Ownership of five (5) or more Lots;

34. Interpretation. To the extent Utah Law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

35. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitude, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisee, personal representative, successors, and assigns. Each Owner or

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

36. Enforcement and Right to Recover Attorney's Assessments. The Association, Management Committee, or any Unit Owner may take action, at law or in equity, to enforce the terms, covenant or conditions of the Project Documents. Should the Association, Management Committee or a Unit Owner be required to take action to enforce or construe the Project Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorney's fee, which may arise or accrue.

37. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. However, neither the Association nor the Committee shall in any way be considered insurers or guarantors of security within the Project. Neither the Association nor the Management Committee shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness or security measures undertaken. All Owners and residents, their guests and invitees, as applicable, acknowledge that neither the Association nor the Committee represent or warrant that any security measures undertaken will ensure their safety. All Owners and residents, their guests and invitees, acknowledge and understand that the Association and Committee are not insurers of their safety and they hereby assume all risks for loss or damage to their person or property and further acknowledge that the Association and Committee have made no representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to any security measures undertaken within the Project.

38. Mechanics Liens. Mechanics liens shall be filed in the office of the County Recorder as follows:

a) Association/Goods or Services. Mechanics liens for labor, materials or supplies purchased by the Association shall be filed against all Lot Owners in the Project and their appurtenant interest in the Common Area, and shall be indexed in the public records under the name of the Association and Community. If the Association has encumbered the Common Areas and thereafter defaults on its obligations, the lienholder must exercise its rights against the Common Areas before it may proceed against any Lot. Any Owner wishing to release that lien as to his Lot may pay the pro rata share of the total amount of the lien and that shall be sufficient to release the lien against his Lot.

b) Lot Owner/Goods or Services. Mechanics liens filed for labor, materials or supplies benefitting a particular Lot shall be filed against that Lot and its appurtenant interest in the

Common Area.

- b) Constructive Consent. Any person or entity that elects to perform labor or provide materials at this Project agrees to be bound by and subject to the terms of this Section.
39. Agent for Service of Process. The initial Registered Agent shall be Bill Gibbs and the office of the Registered Agent shall be 3701 South 700 West, Salt Lake City, Utah 84119. After the occurrence of the Event, the President of the Association shall be the person to receive service of process in the cases authorized by Utah law.
40. Waiver. No restriction, condition, obligation, or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.
41. Severability. The invalidity of any one or more phrases, sentences, subparagraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this document should be invalid or should operate to render this document invalid, this document shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections, or section or sections had not been inserted.
42. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Map shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah.

EXECUTED the day and year first above written.

DECLARANT:

ALPINE COTTAGES, L.C.

By: [Signature], Manager  
Title:

By: [Signature], Manager  
Title:

State Of Utah  
County of Utah

On the \_\_\_\_ day of May, 1999, personally appeared before me \_\_\_\_\_, and \_\_\_\_\_, who by me being duly sworn, did say that they are Members of ALPINE COTTAGES, L.L.C., a Utah Limited Liability Company, and that the within and foregoing instrument was signed in behalf of said Company by authority of its Articles of Organization or a resolution of its members, and said \_\_\_\_\_ and \_\_\_\_\_, duly acknowledged to me that said Company executed the same.

Notary Public

Exhibit "C"  
BY-LAWS OF ALPINE COTTAGES

The following are the By Laws of the Alpine Cottages

Article 1

PLAN OF LOT OWNERSHIP AND INCORPORATION

1. Submission. These are the By-Laws referred to in the foregoing Declaration of Covenants, Conditions and Restrictions of Alpine Cottages. Which is located in Utah County, State of Utah. These By-Laws shall governed the administration of the Project and the Association.
2. Organizational Form. If the Association is incorporated under the laws of the State of Utah, then these By-Laws shall also function and operate as the by-laws of the corporation.
3. Office and Registered Agent. The initial Registered Agent shall be Bill Gibbs and the office of the Registered Agent shall be 3701 South 700 West, Salt Lake City, Utah 84119. However, after transfer of management and control of the Association is made by the Declarant to the members of the Association, the Registered Agent shall be the President of the Association and the Registered Office shall be the home of the President or such other place as shall be designated by him.

ARTICLE II

ASSOCIATION

1. Composition. The association of Lot owners is a mandatory association consisting of all Owners.
2. Place of meeting. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Management Committee from time to time and stated in the notice of meeting.

3. Notice of Meeting. It shall be the duty of the Secretary to hand deliver or mail to each owner at his last known address, by regular U.S. mail postage prepaid, a notice of (a) each annual meeting of the Association not less than ten (10) and not more than thirty (30) days in advance of such meeting. The notice shall state the purpose, day, date, time and place of the meetings. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

4. Qualified Voters. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid his share of the Common Expenses and all Assessments and/or Additional Charges due.

5. Proxies. The votes appertaining to any Lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Lot Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically (a) if the Owner attends the meeting in person, (b) it is revoked in writing and written notice of the revocation is given to the Secretary of the Association prior to the meeting, and (c) upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Association prior to the meeting. Only individual Owners or the legal representative of an institutional Owner may be proxies.

6. Quorum Voting. A majority of the members of the Association shall constitute a quorum for the adoption of decisions. If however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than two days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an oral announcement at the meeting to be rescheduled. Those Owners present, either in person or by proxy, at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Owners representing a majority of the members of the Association in person or by proxy, shall decide any question brought before the meeting. If the Declaration requires a fixed percentage of Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.

7. Order of Business. The order of business at all meetings of the Association shall be as follows:

- a. roll call;
- b. proof of notice of meeting;
- c. reading of minutes of preceding meeting;
- d. reports of officers;
- e. report of special committees, if any;
- f. election of inspectors of election, if applicable;



- g. election of Committee Members, if applicable;
- h. unfinished business; and
- I. new business.

8. Conduct of Meeting. The President shall, or in his absence the Vice-President, preside over all meetings of the Association; and the Secretary shall keep the minutes of the meeting as well as record of all transactions occurring thereat.

a) Sunshine Policy. A portion of each meeting of the Management Committee shall be open to all members of the Association, but Owners other than members of the Committee may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Committee.

b) Executive Session. The Management Committee may, with approval of a majority of a quorum, adjourn a meeting and reconvene in an Executive Session to discuss and vote upon private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an Executive Session shall first be announced in open session.

c. Action Without A Formal Meeting. Any action to be taken at a meeting of the Management Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all members of the Committee.

### ARTICLE III

#### MANAGEMENT COMMITTEE

1. Powers and Duties. The affairs and business of the Association shall be managed by the Management Committee. The Management Committee shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things necessary to operate and maintain the Project. The Committee shall have the power from time to time to adopt any Rules and Regulations deemed proper for the exercise of its management powers. The Committee may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Declaration, the Committee shall be responsible for at least the following:

a) Preparation of an annual budget, in which there shall be established each Owner's share of the Common Expenses.

b) Establishing the Assessment of each Owner, the means and methods of collecting Assessments from the Owners, and the method of payment. Unless otherwise determined by the Committee, each Owner's common area fee may be payable in equal monthly installments, due and payable in advance on the first day of each month of each year. However, in the event an Owner fails

to make an installment payment in a timely manner or the Association deems itself insecure, then the entire annual Assessment may be accelerated by the Committee and shall thereafter be automatically due and payable without further notice. The Committee may subsequently elect to de-accelerate the obligation in whole or in part.

c) Providing for the operation, care, upkeep, replacement, maintenance, and regulation of all the Common Areas and Facilities.

d) Designating, hiring, and dismissing the personnel necessary to operate and maintain the Project.

e) Collecting and depositing the Assessments.

f) Making, amending, and enforcing the Rules and Regulations.

g) Opening and closing of bank accounts for and in behalf of the Association, and designating the signatories required therefor.

h) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Declaration and other provisions of the By-Laws, after damage or destruction by fire or other casualty.

i) Enforcing by legal means the Project Documents.

j) Purchasing and maintaining insurance.

k) Paying the cost of all services rendered to the Project and not billed directly to Owners or individual Lots.

l) Keeping books and records with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Project, specifying the maintenance and repair expenses of the Common Areas and any other expenses incurred. Said documents, books, financial statements, and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Committee for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices, and the same, upon a resolution approved by a majority of the Members of the Association, shall be formally Audited by an outside auditor employed by the Committee who shall not be a resident of the Project or an Owner therein. The cost of such Audit shall be a Common Expense. Copies of books and records, financial statements, reports, compilations, and Audits shall be supplied to any first mortgagee of any Lot in the Project who requests the same in writing from the Secretary. A mortgage holder, at its expense, may have an Audited financial statement prepared.

at any time.

m) Providing, where necessary, all water, electricity, and other necessary utility services for the Common Areas and such services to the Lots, including but not limited to heating, as are not separately metered or charged to the Owners.

n) Paying any amount necessary to discharge any mechanic's or materialmen's lien or other encumbrance levied against the Property, or any part thereof, which may in the opinion of the Committee constitute a lien against the Property or against the Common Areas, rather than merely against the particular Lot. When one or more Owners are responsible for the existence of such a lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Committee by reason of said lien or liens shall be specially assessed to said Owners and shall, until paid by said Owners, constitute a lien on the interest of said Owners in the Property which lien may be perfected and foreclosed in the manner provided in the Declaration.

o) Giving notice of and conducting hearings on alleged violations of the Project Documents, sanction, cite, or fine Owners, occupants and residents.

p) Making emergency repairs.

q) At the sole expense and risk of the owner, impounding, immobilizing, towing or otherwise removing any motor vehicle parked, stored or standing in violation of the parking rules and regulations or in an unauthorized area.

r) Evicting non-Owner residents in material violation of the Project Documents.

s) Assigning or leasing overflow parking spaces to residents.

t) Establishing and collecting user fees.

u) Doing such other things and acts necessary to accomplish the foregoing and not inconsistent with the Declaration or By-Laws, or to do anything required by a proper resolution of the Management Committee or Association.

2. Composition of Management Committee. The Management Committee shall be composed of five (5) members.

3. Election and Term of Office of the Committee. The term of office of membership on the Management Committee shall be two (2) years. At the expiration of the member's term, a successor shall be elected.

4. First Meeting. The first meeting of the members of the Management Committee shall be immediately following the annual meeting of the Association or at such other time and place

designated by the Committee.

5. Regular Meetings. Regular meetings of the Management Committee shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Committee, but no less often than monthly.

6. Special Meetings. Special meetings of the Management Committee may be called by the President, Vice President or a majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. Mail postage prepaid, or by telephone, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Committee shall be valid for any and all purposes.

7. Waiver of Notice. Before or at any meeting of the Management Committee, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Committee shall constitute a waiver of notice. If all the members are present at any meeting of the Committee, no notice shall be required and any business may be transacted at such meeting.

8. Committee's Quorum. At all meetings of the Management Committee, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the Committee members present at a meeting at which a quorum is present shall be deemed to be the acts of the Committee. If, at any meeting of the Committee, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no longer than two days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

9. Vacancies. Vacancies in the Management Committee caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Committee at a special meeting of the Committee held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the committee; and each person so elected shall be a member for the remainder of the term of the member so replaced and until a successor is elected at the next annual meeting of the Association. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

10. Removal of Committee Member. A member of the Management Committee may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Committee Member who misses twenty-five percent (25%) or more of the Committee Meetings or who misses three (3) consecutive meetings, in any calendar year, shall be automatically removed from the Committee.

11. Conduct of Meetings. The President shall preside over all meetings of the Committee and the Secretary shall keep a Minute Book of the Committee recording therein all resolutions adopted by the Committee and a record of all transactions and proceedings occurring at such meetings.

12. Report of Committee. The Committee shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

#### ARTICLE IV

##### OFFICERS

1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Committee. The Committee may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Committee. Two or more offices may be held by the same person, except that the President shall not hold any other office.

2. Election of Officers. The officers of the Association shall be elected annually by the Committee at the Corporation meeting of each Committee and shall hold office at the pleasure of the Committee. Any vacancy in an office shall be filled by the Committee at a regular meeting or special meeting called for such purpose.

3. Removal of Officers. The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Committee may be removed at any time by the affirmative vote of a majority of the Committee, and his successor may be elected at any regular meeting of the Committee, or at any special meeting of the Committee called for such purposes.

4. President. The President shall be the chief executive officer; he shall preside at meetings of the Association and the Committee shall be an ex officio member of all committees; he shall have general and active management of the business of the Committee and shall see that all orders and resolutions of the Committee are carried into effect. He shall have all of the general powers and duties which are usually vested in or incident to the use of president of a stock corporation organized under the laws of the State of Utah.

5. Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Committee or the President shall prescribe. If neither the President nor the Vice President is able to act, the Committee shall appoint a member of the Committee to do so on an interim basis.

6. Secretary. The secretary shall attend all meetings of the Committee and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him or her for that purpose and shall perform like duties for committees when required. He shall give, or cause to be given, notices for all meetings of the Association and the Committee and shall perform such other duties as may be prescribed by the Committee. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Committee including resolutions.

7. Treasurer. The Treasurer shall have custody of all funds and securities that are not under the control of the Managing Agent, and with the assistance of the Managing Agent, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Committee. He shall disburse funds as ordered by the Committee, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Committee, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Project.

#### ARTICLE V

##### FISCAL YEAR

The fiscal year of the Association shall be the calendar year consisting of the twelve (12) month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Committee should it be deemed advisable or in the best interests of the Association.

#### ARTICLE VI

##### AMENDMENT TO BY-LAWS

1. Amendments. These By-Laws may be modified or amended either (a) by the affirmative vote of a majority of the members of the Association or (b) pursuant to a written instrument of consent duly executed by a majority of the members of the Association provided all of the written consents are obtained within a ninety day period.

2. Recording. An amendment to these By-Laws shall become effective immediately upon recordation in the Office of the County Recorder of Utah County, State of Utah.

#### ARTICLE VII

## NOTICE

1. Manner of Notice. All notices, demands, bills, statements, or other communications provided for or required under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage pre-paid, a) if to an Owner, at the address of his Lot and at such other address as the Owner may have designated by notice in writing to the Secretary; or b) if to the Committee or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Declaration.

ARTICLE VIII

## COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. Conflict. These By-Laws are subordinate and subject to all provisions of the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration. In the event of any conflict between these By-Laws and the Declaration, the provision of the Declaration shall control.

2. Waiver. No restriction, condition, obligation, or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

3. Captions. The captions contained in these By-Laws are for convenience only and are not part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

4. Interpretation. Whenever in these By-Laws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine; and the term "shall" is mandatory while the term "may" is permissive.

5. Severability. The invalidity of any one or more phrases, sentences, subparagraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this document should be invalid or should operate to render this document invalid, this document shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections, or section or sections had not been inserted.

EXHIBIT "A"  
LEGAL DESCRIPTION

The Land referred to in the foregoing document is located in Alpine City, Utah County, Utah and is described more particularly as follows:



EXHIBIT "D"  
LEGAL DESCRIPTION OF "PERPETUAL OPEN AREA"

The land referred to in the foregoing documents as "Common Area", "Open Space", "Community Park", and or "Open Area", is located in Alpine City, Utah County, Utah and is set forth and delineated and defined as follows:

A. "Perpetual Open Space":