

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF

The Cottages on Kimball's Lane, a PUD

This Declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration," is made and executed in Salt Lake City, State of Utah, this 4<sup>th</sup> day of October, 1996 by Cottage Development Partners L.C., hereinafter called "Declarant."

RECITALS

A. Declarant is the owner of certain real property in the county of Salt Lake, State of Utah, which is more particularly described as follows:

Legal Description:

Parcel 1:

BEGINNING 30 rods East of the Northwest corner of the Northeast quarter of the Northwest quarter of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence East 10 rods; thence South 80 rods; thence West 10 rods; thence North 80 rods, to the point of BEGINNING.

Parcel 2:

BEGINNING 20 rods East of the Northwest corner of the Northeast quarter of the Northwest quarter of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence East 10 rods; thence South 80 rods; thence West 10 rods; thence North 80 rods, to the point of BEGINNING

RESERVED FROM THE FOREGOING SUBMISSION are such easements and rights of ingress and egress over, across, through, and under the above-described tracts and any improvements now or hereafter constructed thereon as may be necessary to develop the entire Project. This reservation shall terminate upon the completion and sale by Declarant of all Units in the Project.

B. The Cottages on Kimball's Lane is intended as an expandable project. Declarant anticipates that the Project created hereby will be the initial phase of a larger project which ultimately come into existence. Declarant intends to annex expandable land whose owners will become members of the Association and will be entitled and subject to all rights, powers, privileges, covenants, restrictions, easements, charges, and liens set forth hereafter.

C. Declarant desires to provide for preservation and enhancement of the property values and amenities of the property and for maintenance of the Common Areas. To this end and for the benefit of the property and of the owners thereof, the Declarant desires to subject the properties referred to in Recital A to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which are for the benefit of the property and each owner thereof.

NOW THEREFORE, Declarant declares that the property is and shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of said property and which shall be construed as covenants of equitable servitude, which shall run with the real property and shall be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. "Board of Trustees" (or "the Board") shall mean the governing board of the Homeowners Association.

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**Section 2. "Common Area"** shall mean all real property (including all improvements located thereon) presently owned by the Homeowners Association or hereafter acquired for the common use and enjoyment of the members and not dedicated for the general public located in Salt Lake County, State of Utah, to-wit:

**Parcel 1:**

BEGINNING 30 rods East of the Northwest corner of the Northeast quarter of the Northwest quarter of Sections 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence East 10 rods; thence South 80 rods; thence West 10 rods; thence North 80 rods, to the point of BEGINNING.

**Parcel 2:**

BEGINNING 20 rods East of the Northwest corner of the Northeast quarter of the Northwest quarter of Sections 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence East 10 rods; thence South 80 rods; thence West 10 rods; thence North 80 rods, to the point of BEGINNING

Less and Excepting therefrom, the approximate total of 61 building lots; including but not limited to the 20 lots designated on the official plat of The Cottages on Kimbell's Lane, Phase I, a PUD, as recorded in the office of the Salt Lake County Recorder; and any additional lots, buildings or areas not designated as Common Area on subsequent recorded phases.

The Homeowners Association may increase the Common Area by purchasing additional adjacent land as provided herein and (1) filing additional subdivision plats in the Salt Lake County Recorder's office and stating thereon that said land is subject to this Declaration and any supplemental or amended declaration and any supplemental or amended declarations and (2) filing a Supplement to this Declaration in accordance with the terms of this Declaration and the same thereafter shall be included within this definition as common area and such shall also be additional land in the legal description of the Project.

**Section 3. "Conveyance"** shall mean actual conveyance of fee title to any Lot, and/or Unit to any owner by a warranty deed or other document of title, including entering into an installment sales contract.

**Section 4. "Declarant"** shall mean and refer to COTTAGE DEVELOPMENT PARTNERS, L.C. , its successors and assigns, if such successors or assigns shall acquire more than one undeveloped Lot from the Declarant for the purpose of development.

**Section 5. "Declaration"** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the properties recorded in the Salt Lake County Recorder's Office.

**Section 6. "Expandable Land"** (sometimes referred to hereinafter as "Additional Land") shall mean and refer to any land or an interest therein which may come from time to time to be added to the Project as an expansion thereof under the terms and conditions of this Declaration. Such Additional Land may include all or part of the real property located within Salt Lake County, State of Utah, together with all appurtenances thereto, that is located adjacent to that property more particularly described in Recital A.

**Section 7. "Homeowners Association" or "Association"** shall mean and refer to The Cottages on Kimbell's Lane Homeowners Association, its successors and assigns, a Utah non-profit corporation.

**Section 8. "Limited Common Areas"** shall mean and refer to those Common Areas as referred to herein and designated on the plat as reserved for use of a certain unit to the exclusion of the other units which are or may include the driveways, adjacent yard areas, patios, which lead to or are associated with certain units or both. Limited Common Areas are a subcategory of and are included in Common Areas.

**Section 9. "Living Unit" or "Unit"** shall mean and refer to a structure which is designed and intended for use and occupancy as a single family residence, whether attached or detached from another residence, together with all improvements located on the lot concerned which are used in conjunction with such residence.

**Section 10.** "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area.

**Section 11.** "Member" shall mean every person or entity holding membership in the Association.

**Section 12.** "Mortgagee" shall mean and refer to any person named as a first mortgagee or beneficiary of a first deed of trust.

**Section 13.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract purchasers, but excluding those having an interest merely as security for the performance of an obligation.

**Section 14.** "Plat" and "Phase" shall mean and refer to The Cottages on Kimball's Lane, a PUD, as recorded in the office of the County Recorder of Salt Lake County, Utah, and as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions of this Declaration or supplements to this Declaration which are to occur in conjunction with the expansion of the Project as provided herein. "Plat" and "Phase" shall also mean and refer to subsequent official plats as the same may be filed in the office of the Salt Lake County Recorder from time to time by the Declarant, with each such plat/phase designating additional Lots and Common Area added to and lying within the expandable Project.

**Section 15.** "Properties," "Property" and "Project" shall mean that certain real property referred to in Recital A and included herein by this reference, plus improvements and such additions thereto as may hereafter be expanded and brought within the jurisdiction of the Homeowners Association as provided in Article X hereafter and is also sometimes referred to as The Cottages on Kimball's Lane, or The Cottages.

**Section 16.** "Recreational Vehicles" shall mean camping trailer, tent trailer motor home, pickup truck with self-contained camper unit, boat, all terrain vehicle (ATV's), converted bus used as a motor home, and any trailer used for transporting any recreational vehicle. Recreational Vehicle shall not include a pickup truck with a shell on the bed and which shall is not used primarily for overnight camping.

**Section 17.** "Supplementary Declaration" shall mean any supplementary declaration of covenants, conditions, and restrictions, or similar instrument, which extends the provisions of the Declaration to all or any portion within the expandable land and containing such complimentary or amended provisions for such Additional Land as are herein required by the Declaration.

**Section 18.** "Time-sharing" shall mean any form of shared contractual ownership of a Living Unit whereby each Owner's right to use the unit is limited to a certain period of the year. Time-sharing shall include plans that employ contractual rights and those that employ estates in land, such as (a) vacation leases whereby the Owner or Declarant conveys recurring leasehold interest to time-share purchasers and retains a reversion in fee simple and (b) interval ownership whereby the Owner or Declarant conveys recurring leasehold interest to time-share purchasers and also conveys to them a co-ownership of a remainder in fee simple.

**Section 19.** "Townhome" shall mean and refer to a single family dwelling unit, whether attached or detached from another unit, constructed by Declarant on a Lot.

**Section 20.** "Utilities" shall mean public utilities, including but not limited to, sewer, water, drainage, natural gas, telephone, electricity, and cable television.

## ARTICLE II PROPERTY RIGHTS

**Section 1.** "Owners' Easements of Enjoyment to Common Areas. Every lot owner shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his lot and in and to the Common Area, which easement shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Area, provided that such fees charged by the Association shall in no way affect its non-profit corporation status.
- (b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said property; the rights of any such mortgagee in said property to be subordinate to the rights of the Owners hereunder;
- (c) The right of the Association to suspend the voting rights of a Member at any meeting of the Members (annual or special) for (1) any period during which an assessment against his Lot remains unpaid and (2) a period of not to exceed sixty (60) days for each separate violation of the Association's published Rules and Regulations. Notwithstanding the foregoing, for any continuing and ongoing violation of the Association's published Rules and Regulations, the Member's voting right will be suspended until the rule or regulation is complied with.
- (d) With the approval of all the holders of first mortgage liens on lots, and two-thirds of the owners, the right of the Association to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as agreed to by the members. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by two-thirds (2/3) of each class of members and has been recorded.
- (e) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.
- (f) The right of Declarant and Association to grant and reserve easements and rights-of-way through, under, over and across the Common Area, for installation, maintenance and inspection of lines and appurtenances for public or private utilities and construction of additional Townhomes.
- (g) The right of the City of Draper and any other governmental entity or quasi-governmental body having jurisdiction over the Property to access and have rights of ingress and egress over and across any street, parking area, walkway, or open spaces contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service.
- (h) The right of City of Draper to levy taxes and issue bonds.
- (i) The right of the Board of Trustees to publish and enforce rules and regulations as provided in Article VII, Section 7.

**Section 2. Owners' Easements of Enjoyment to Limited Common Areas.** Each Lot Owner is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas appurtenant to certain lots and identified on the official Plats filed in the Project. The exclusive right to use and occupy each Limited Common Area shall be appurtenant to and shall pass with the title to every Lot with which it is associated. A Lot Owner's exclusive right of use and occupancy of Limited Common Areas reserved for their Lot shall be subject to and in accordance with the Declaration and Bylaws.

**Section 3. Delegation of Use.** Any member may designate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, guests or contract purchasers who reside on the property. All such use by family members, tenants, contract purchasers or guests shall be subject to this Declaration, including all supplements and amendments thereto, the Bylaws and the Rules and Regulations to be promulgated by the Board of Trustees. Any damage caused to the Common Area, including facilities and personal property owned by the Association, by one to whom a Member's right to use and enjoyment has been delegated shall create a debt to the Association owed by the Owner and shall be assessed by the Association as provided more fully in Article

VII, Section 5.

**Section 4. Title to the Common Area.** Declarant agrees that it shall on or prior to the last conveyance of a lot in a particular phase, convey to the Association fee simple title to all Common Areas within said phase. Declarant further agrees that it will discharge all liens and encumbrances on said Common Areas on or before the sale and closing of the last lot in each phase, except for (a) any state of facts an accurate survey may show, (b) covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration and easements and rights-of-way of record.

**Section 5. Limitation of Homeowners Association.** The Association shall not be entitled to take any of the following actions unless at least two-thirds (2/3) of the first mortgagees (based on one vote for each lot mortgaged) or two-thirds (2/3) of the Class A Members owners shall have first given their prior written approval:

- (a) To act, or by omitting to act, to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas owned, directly or indirectly, by the Association for the benefit of the lots. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area is not a transfer within the meaning of this clause.
- (b) To act, or by omitting to act, to change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of lots or living units, the exterior maintenance of the lots or living units, the maintenance of the Common Areas, or the upkeep of the Common Areas.
- (c) Take action to separately bill or meter any utility services paid for by the Association in accordance with Article VII, Section 3, Utilities.
- (d) To fail to maintain fire and extended coverage on insurable Common Areas on a current replacement cost basis in an amount equal to at least one hundred percent (100%) of the insurable value (based on current replacement cost).
- (e) To use hazard insurance proceeds for losses to any Common Area for other than the repair, replacements, or reconstruction of the Common Areas.
- (f) To purchase additional adjacent land as Common Area.

**Section 6. Encroachments.** If any portion of a Living Unit constructed by Declarant, or if any portion of a Living Unit reconstructed so as to substantially duplicate the Living Unit originally constructed by Declarant, encroaches upon the Common Areas or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the development, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

**ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Membership.** Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**Section 2. Board of Trustees.** The Board of Trustees shall initially consist of three (3) members. Declarant reserves the right to appoint the Board of Trustees and to exercise all powers and responsibilities associated with the Board of Trustees until December 31, 2002.

**Section 3. Classes of Membership.** The Association shall have two classes of membership:

- (a) **Class A.** Class A member(s) shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. In no event, however, shall more than one Class A vote

exist with respect to any Lot.

- (b) **Class B.** The Class B member(s) shall be the Declarant and shall be entitled to five (5) votes for each Lot (whether improved or not) owned or controlled by the Declarant, its assigns or successors. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
1. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or,
  2. On December 31, 2002
- (c) **Changes in Voting Procedure.** If Declarant shall exercise his option to expand and add additional lots, then at such time as additional subdivision plats are filed, the voting shall be adjusted accordingly, including that developer may regain his Class B voting status for all lots owned, even if previously converted to Class A status in prior phases and according to the terms hereof.
- (d) **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, a vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any such Owner, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.
- (e) **Limitation on Members' Votes.** Electing members to the Board of Trustees shall be subject to the reservation in Article III, Section 2.

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant and members, for each Lot owned within the Properties, hereby covenants, and each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments, (b) special assessments, and (c) additional assessments as set forth in this Declaration. Assessments shall be levied, fixed, established and collected from time to time as hereinbelow provided. The assessments, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such Lot at the time the assessment becomes due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of residents of the property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes; insurance, management and supervision of the Common Areas, including personal property owned by the Association; funding the purchase of (a) personal property to be used by Association Members and (b) adjacent land to be used as Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or the Articles of Incorporation.

**Section 3. Basis and Maximum of Annual Assessments.** Each Lot on which a Living Unit has been constructed and which is certified for occupancy shall be assessed according to the schedule set forth below. For the purpose of annual assessments, the term "owner" shall exclude the Declarant, who shall pay no assessment (annual or special), unless a Unit owned by Declarant is constructed on a Lot and is occupied as a residence. The annual assessment for each Lot shall be determined by the Board of Trustees

setting an annual base assessment, and assessing each Lot according to the total finished living area of the Townhome (basements included), exclusive of garage, patio, and balcony areas, and according to the following schedule: 0-1650 square feet: 100% of base assessment; 1651-2999 square feet: 110% of base assessment; 3000 + square feet: 115% of base assessment.

The Board of Trustees shall fix the annual base assessment at an amount not in excess of the maximum allowed.

- (a) Until December 31, 1997, the maximum annual base assessment shall be fixed at no more than One thousand five hundred and sixty Dollars (\$1,560.00) per Lot (or \$130.00 per month).
- (b) From and after December 31, 1997, the maximum annual assessment may be increased each year not more than fifteen percent (15%) above the maximum assessment for the previous year without approval of two-thirds (2/3) of the members of each class. Any such vote must be taken at a meeting to be called for this purpose.
- (c) The limitations hereof shall not apply to any change in the basis and maximum of the assessments undertaken incident to (a) a merger or consolidation which the Association is authorized to participate in under its Articles of Incorporation, or (b) an expansion of the Project in phases.

**Section 4. Special Assessments.** In addition to the annual assessments authorized above, the Association upon assent of two-thirds (2/3) of Class A Members at a meeting called for this purpose, may levy in any assessment year a special assessment applicable to the year for the purpose of (a) defraying, in whole or in part, the cost of any construction (including new construction), reconstruction, repair or replacement of any capital improvement upon the Common Area, including fixtures and personal property related thereto; (b) purchasing adjacent property as additional Common Area; (c) providing for capital improvements and personal property to be used by Association Members upon the Common Area on additional phases of the Project (d) and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or the Articles of Incorporation, and (e) such other purpose as two-thirds (2/3) of all Class A Members approve.

**Section 5. Reserve Fund.** The Association shall maintain a reserve fund, funded by annual assessments. Special assessments for the purpose of defraying, in whole or in part, the cost of any construction (including new construction), reconstruction, repair or replacement of any capital improvement upon the Common Area, including fixtures and personal property related thereto on any phase of the Project, and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or the Articles of Incorporation, will be allowed only after the reserve fund has been expended and not replenished.

**Section 6. Declarant Subsidy.** Declarant or its assigns shall have the obligation to subsidize the Association until Declarant's rights as a Class B Member terminate as provided in Article III, Section 3. Subsidization shall be defined as the payment of the reasonable cost needs of the Association for ordinary and necessary maintenance expenses of the Common Areas of uncompleted phases of the Project (i.e., all lots not being sold to first-time buyers); excluding construction, reconstruction, repair or replacement of any Capital Improvement upon the Common Area, including fixtures and personal property related thereto.

**Section 7. Notice and Quorum for any Action Authorized Under Article IV, Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Article IV, Sections 3 and 4, shall be sent to all members not less than thirty (30) days, no more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty-six and two thirds percent (66-2/3%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

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**Section 8. Rate of Special Assessments.** Special assessments shall be fixed at uniform rates for all lots and may be collected on a monthly basis.

**Section 9. Regular Assessments, Due Dates.** The Board of Trustees shall fix the amount of the annual base assessment as well as any adjustments in accordance with Article IV, Section 3, against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates for payment of said assessment shall be established by the Board of Trustees.

The Association shall, upon demand at any time furnish a certificate in writing signed by an officer of the Association, or an authorized agent, setting forth whether the assessments on a specified Lot have been paid. Furthermore, a first mortgage holder, upon request, is entitled to a written certificate from the Association advising of any default by the Lot owner of any obligation not cured within sixty (60) days. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 10. Effect of Non-Payment of Assessments; Remedies of the Association.**

- (a) **Non-Payment.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the Association shall have the remedies provided in subsection (b) below.
- (b) **Remedies.** For any delinquent payment as provided in subsection (a) above, the Association shall be entitled to all or any combination of the following remedies against a Member whose assessment is delinquent.
- (1) File a notice of lien on the Lot.
  - (2) Bring an action at law against the Owner personally obligated to pay for the following:
    - (i) the principal amount of the unpaid assessment;
    - (ii) interest from the date of delinquency at a rate of eighteen percent (18%) per annum, or such other rate as the Board of Trustees may establish from time to time; and
    - (iii) all court costs and attorney fees.
  - (3) Foreclose the lien against the Lot to satisfy judgment rendered for the full amount of the delinquent assessment, including interest, costs and attorney fees as specified above.
  - (4) Levy as an additional sum to such delinquent assessment, all expenses for preparation of the notice of lien (whether or not prepared by an attorney), court costs, interest and a reasonable attorney's fee.
  - (5) Withhold and interrupt the service of utilities provided by the Association to any such unit on which the assessment is delinquent.
- (c) **Right to Bring Action.** Each Owner, by his acceptance of a deed to a Lot, hereby expressly grants to the Association, its successors, assigns or agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other lot owners. The Association, acting on behalf of the lot owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to

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acquire and hold, lease, mortgage and convey the same.

**Section 11. Non-use and Abandonment.** No owner may waive or escape personal liability for the assessments provided for herein, nor release the Lot owned by him from the liens and charges hereof, by non-use of any Common or Limited Common Area or abandonment of his Lot and/or Unit.

**Section 12. Subordination of the Lien to Mortgages.** The lien created by this Declaration upon any Lot shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any first mortgage (meaning a mortgage with first priority over other mortgages) or equivalent security interest on any Lot, made in good faith and for value, recorded prior to the date any such assessment becomes due. Any holder of a first mortgage lien or equivalent security interest on a Lot who comes into possession by virtue of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take said Lot and the improvements appurtenant thereto free of any claims for unpaid assessment charges against said Lot which accrue prior to the time such holder comes into possession of the Lot, except for the claims for a share of such expenses or charge resulting from a reallocation of such assessment or charges to all lots including the mortgaged Lot. Any first mortgagee, who obtains title to a lot in the development pursuant to the remedies in the mortgage/deed of trust or through foreclosure of the mortgage/deed of trust or any other security instrument, shall not be liable for more than six (6) months of the lot's unpaid dues or charges which have accrued before the acquisition of title to the lot by the mortgagee through foreclosure. However, no such sale or transfer shall relieve such Lot from liability for any assessments which thereafter become due or from the lien thereof.

**Section 13. Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments created herein:

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

**Section 14. Additional Assessments.** In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to the streets or other common or limited common areas from the activities of the City of Draper in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

## ARTICLE V PARTY WALLS

**Section 1. General Rules of Law to Apply.** Each wall built as a part of the original construction of a Townhome or Townhome garage upon the properties and placed between two (2) separate living units or garage units intended for use and occupancy as a residence by a single family or appurtenant garage shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared equally by the owners who make use of the wall. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit, but designated and designed to serve only that Unit; including, but not in any way limited to, electrical receptacles and outlets, air conditioning, heating, and other ventilation apparatus, fixtures and the like, pipes, wires, conduits, or other public utility lines or installations, shall be considered part of the Unit; and to the extent such equipment and appurtenances penetrate, are attached to, or located between the party wall, the Owner of the Unit shall be responsible for their repair and maintenance. In the event that any such equipment and appurtenances service more than one Unit, the cost for the repair of any damage or adverse condition

created thereby, and the maintenance of such shall be shared equally between the Owners of the Units jointly serviced thereby.

**Section 3. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any owner who has used the wall may restore it, and if the owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions. The word "use" as referred to herein means ownership of a dwelling unit or other structure which incorporates such wall or any part thereof.

**Section 4. Weatherproofing.** Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of any and all repairs and maintenance resulting therefrom, as well as the cost of furnishing the necessary protection against such elements.

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

**Section 6. Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Trustees of the Association shall select an arbitrator for the refusing party.

**Section 7. Encroachment.** If any portion of a party wall or other part of a building or structure now or hereafter constructed upon said property encroaches upon any part of the Common Areas or upon the lot or lots used or designated for use by another lot Owner, an easement for the encroachment and for the maintenance of same is granted and reserved and shall exist and be binding upon the Declarant and upon all present and future owners of any part of said property for the benefit of the present and future owners of such encroaching building or structure for the purpose of occupying and maintaining the same; in the event a structure consisting of more than one dwelling unit becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements are granted and reserved upon the Common Areas and in and upon each dwelling unit and lot for the benefit of the Association and the adjacent Owner or Owners to the extent reasonably necessary or advisable to make repairs and replacements; and minor encroachments resulting from any such repairs or replacements, or both, and the maintenance thereof are hereby granted and reserved for the benefit of the present and future owners thereof. The easements for encroachment herein granted and reserved shall run with the land.

## ARTICLE VI ARCHITECTURAL CONTROL

**Section 1. Architectural Control Committee.** The Board of Trustees of the Association shall appoint a three (3) member committee (hereinafter sometimes referred to as "ACC") the function of which shall be to insure that all exteriors of living units and landscaping within the property maintain the original architectural design and exterior appearance, and harmonize with existing surroundings and structures within the project. The committee need not be composed of owners. If such a committee is not appointed, the Board itself shall perform the duties required of the committee.

**Section 2. Submission to Committee.** No accessory, attachment or addition to a living unit, landscaping, patio enclosure, or other improvement of a lot, specifically including the Limited Common Areas; shall be constructed, maintained, or accomplished, and no additions, alterations, repainting or refurbishing, addition or relocation of lighting (see Section 10 hereafter), of/to the exterior of any living unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee.

**Section 3. Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on lots within the property conform to and harmonize with existing surroundings and structures. The board may formulate general guidelines and procedures. The adopted guidelines and procedures shall be incorporated in the book of rules and regulations adopted by the board and the Architectural Control Committee, or the board, as the case may be, shall act in accordance with such guidelines and procedures.

**Section 4. Approval Procedures.** Any plans and specifications submitted to the committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the committee fails to take any action within such period, it shall be deemed to have approved the material submitted.

**Section 5. Construction.** Once begun, any improvements, construction, landscaping, or alterations approved by the committee shall be diligently pursued to completion. If reasonably necessary to enable such improvement, construction, landscaping or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupancy of unimproved portions of the Common Area in the vicinity of the activity.

**Section 6. Disclaimer of Liability.** Neither the Architectural Control Committee, nor any member thereof acting in good faith, shall be liable to the Association or any Owner for any damage, loss, or prejudice suffered or claimed on account of:

- (a) The approval or rejection of, or the failure to approve or reject, any plans, drawings or specifications;
- (b) The development or manner of development of any of the property;
- (c) Any engineering or other defect in approved plans and specifications.

**Section 7. Non-Waiver.** The approval of the Architectural Control Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Control Committee to disapprove any similar plans and specifications.

**Section 8. Exception for Declarant.** The foregoing provisions of this Article shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any lot or on any part of the Common Areas and which occurs at any time during the six (6) year period (unless extended as a result of the expansion of the Project in accordance with Article X of this Agreement) following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah. In no event will the ACC have any authority over living units under development and/or construction by the Declarant, their Successors or Assigns. Only proposed modifications to those units which have been completed and conveyed to the new Owner will be reviewed and acted upon by the ACC. Declarant shall further have the right to designate the location and design of any common area amenities, including, but not limited to, clubhouse (if any), landscaping, pathways or other recreational amenities or green areas, provided that the Declarant shall not be required to provide any such amenities by virtue of this Section.

**Section 9. Declarant's Obligation.** Declarant hereby covenants in favor of each Owner:

- (a) That all living units erected by it, or caused to be erected by it, and all improvement of the Common Area accomplished by it shall be architecturally compatible, as determined the sole discretion of the Declarant, with respect to one another; and
- (b) That on or before six (6) years (unless extended as a result of the expansion of the Project in accordance with Article X of this Agreement) from the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, there shall be substantially completed and usable as part of the Common Areas, all open spaces in the location shown on the

plat.

## ARTICLE VII OPERATION AND MAINTENANCE

**Section 1. Maintenance of Common Areas, Lots and Living Units.** The Common Areas, the roofs, exteriors, and any extension of the Living Units shall be maintained by the Association so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any Living Unit. The Owner of each Lot and Living Unit shall maintain such Lot and Living Unit in an attractive appearance, including and free from all trash, rubbish, garbage and debris.

**Section 2. Operation and Maintenance by Association.** The Association, by its duly delegated representative(s), shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive and generally in good condition and repair. The Association shall maintain, repair and restore those improvements located upon the Common Areas, including, but not by way of limitation, the following: clubhouse, social areas, pathways, gardening areas, and any common recreational amenities, grass, landscaping, shrubs, watering and sprinkling system, as may, or may not, be included as part of the development. The patio areas of each Living Unit may be used and decorated at the discretion of the Owner so long as the use and decoration does not adversely affect other unit Owners or the Association. The Association shall maintain any landscaped areas within the patio areas unless and until (1) Owner installs or causes to be installed any exotic landscape materials, or plants; or any landscaping not consistent with that of the Common Areas in general, which may require additional care resulting in increased maintenance costs to the Association, and/or (2) the Owner encloses the patio area (in compliance with ARTICLE VI, ARCHITECTURAL CONTROL) in any manner which has the effect of restricting access in any way. If Owner elects to enclose the patio area located at the rear of the owner's Unit, and which is defined as Limited Common Area on the plat, Owner shall maintain the enclosed patio area in a manner so as to not adversely effect other unit owners or the Association. In addition, the Association shall maintain the exterior appearance and roof of each Living Unit, excluding mechanical systems and glass, which shall be the responsibility of unit Owners. In the event that special needs for maintenance or repair of the Common Areas (including personal property of the Association related thereto) or the building exteriors should be necessitated through willful or negligent act of a Member, his family, guests, or invitees, the cost of such maintenance shall be added to become a part of the assessment to which such Lot is subject as provided under Article IV.

**Section 3. Utilities.** Each Lot Owner shall pay for all utility services which are separately billed or metered to individual Lots, including, but not limited to, electrical, gas, and telephone service as the same may be provided by the City of Draper and/or other utility companies or entities furnishing such service. The Association shall pay for the general utility services of water and Cable Television, sewer, and trash removal. The Board of Trustees shall determine what additional utility services, if any, shall be included in the general utility services for which the Association will be responsible for payment as an association debt. In the event the Association elects, in accordance with Article II, Section 5(c), to separately meter any general utility service for which the Association has previously been responsible for payment; each Lot Owner shall pay any and all costs associated with separately billing or metering, including any connection fees, modifications, or additions required to separately bill or meter any utility service.

**Section 4. Indemnification by Declarant.** The Declarant, by this instrument and recording of the same, agrees to indemnify the Association against loss or damage arising or accruing on the Common Areas as a result of the construction activities of the Declarant or his agents.

**Section 5. Repair of Damage Caused by an Owner, his Tenants, Guests, Invitees and Pets.** Any damage caused to the Common Area and facilities, including personal property owned by the Association, by an Owner, his tenant, guests, invitee, minor child or any animal or pet under the control of or owned by an Owner, or any one or a combination of the foregoing, shall create an assessable debt owed by such Owner to the Association. If the Owner does not adequately repair the damage, the Association, after approval of a majority vote of the Board of Trustees, shall have the right, through its agents, employees,

or through an independent contractor, to repair the damage. The costs incurred by the Association in repairing the damage shall be added to and become an assessment against the Lot as described in Article IV, Section 1 of this Declaration, and the same may be enforced and collected as provided in Section 10 of said Article. Any repair of damage undertaken by the Owner or agent of Owner pursuant to this Section must first have submitted plans to the "ACC" and will have obtained the approvals required as provided at Article VI herein before commencing repair work.

**Section 6. Management Agreements.** The Board of Trustees may employ a manager or other persons who may contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. Any contract with a person or firm appointed as a manager or managing agent shall be terminable by the Association for cause upon thirty (30) days' written notice thereof. Any such contract, and any other contract with a third person wherein the third person is to furnish goods or services for any Common Area or the Association, shall be limited to a duration of one (1) year; provided, however, that such contracts may be renewable for successive one (1) year periods with the approval, for each such period, by a vote or written consent of a majority of the Board of Trustees.

**Section 7. Rules and Regulations.** The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to ensure that the Property and the Common Area is maintained and used in a manner consistent with the interests of the Owners. The Association also has authority to adopt a schedule of monetary fines that may be imposed on Owners for the willful violation of rules that have been duly adopted and published by the Association, provided that such fines in all cases shall be reasonable and shall be subject to review and hearing by the Board if contested. Any such fine imposed and not contested, or any such fine upheld after review and hearing by the Board shall be payable within 30 days. Unpaid fines may be assessed against a lot and collected as provided in Article IV herein. Reasonable rules may include, but shall not be limited to, rules to allocate the fair use of all amenities between children, adolescents and adults. The Board of Trustees shall have, in exercising its reasonable discretion, the power to protect Homeowner Association property by restricting use of the recreational and social amenities and other common facilities in such a manner as to reduce the risk of personal harm to users, which risk management may also relate to obtaining lower insurance premiums on Common Areas.

#### ARTICLE VIII INSURANCE

**Section 1. Assessments.** Fund for insurance shall be provided for from annual assessments as allowed by Article IV.

**Section 2. Required Insurance.** The Association shall secure and at all times maintain the following insurance coverage:

- (a) **Multi-peril Coverage.** A multi-peril type policy covering the entire Project (including all Living Units, Common Areas and facilities Areas). Such policy shall provide coverage against loss or damage by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, fire, earthquake, hailstorm, water damage, and such other risks as customarily are covered with respect to projects similar to this Project in its construction, location, and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than 100% of the full insurable value (based upon current actual replacement cost). Such policy shall include an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent, an "increased cost of construction endorsement" or its equivalent, and a "contingent liability from operation of building laws endorsement" or its equivalent.
- (b) **Broad-form Public Liability Coverage.** A comprehensive policy insuring the Owners, the Association, its trustees, officers, agents and employees against all damage or injury caused by their negligence to the public, invitees, tenants or Owners on the Common Area. Limits of the liability under such coverage shall not be less than \$1,000,000 for all claims for personal injury or

property damage, or both, arising out of a single occurrence. Such policy or policies shall be issued on a comprehensive liability basis, shall provide that cross-insurers as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner in the development because of negligent acts of the Association or others.

- (c) **Fidelity Coverage.** A fidelity policy or policies to protect against dishonest acts on the part of a trustee(s), officer(s), manager, employee(s) of the Association and all others, including volunteers, who handle or are responsible for handling funds of the Association. The fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than 100% of the reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of employee or similar expression. Said policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days' prior written notice to all first mortgagees of Lots.

**Section 3. Additional Provisions.** The following additional provisions shall apply with respect to insurance:

- (a) **Approval of Policies.** All policies shall be written by a reputable company approved by the Board of Trustees.
- (b) **Contribution.** Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual owners or their mortgagees.
- (c) **Flood Insurance.** In the event that some part of the Project is now or may in the future be classified by the Housing and Urban Development as an area having special flood hazards, a blanket policy of flood insurance on the flood areas shall be maintained in an amount customarily required in projects of this type to ensure against flood damage.
- (d) **Premiums Maintained in the Name of the Association as Trustee.** Premiums for all insurance coverage obtained by the Association shall be written in the name of the Association as trustee for each of the Townhome Owners.
- (e) **Insurance on Living Unit and Lot.** The Association shall have no duty or responsibility to procure or maintain any fire, liability, earthquake or similar casualty coverage for the contents of any Living Unit or Lot. The Association also shall have no duty to insure against any negligent acts or events occurring at or on the Living Unit or Lot. Accordingly, each Owner should secure and keep in force at all times public liability insurance coverage and a broad-based casualty insurance coverage for the contents of the Living Unit and Lot.
- (f) **Review of Insurance Policies.** The Board of Trustees shall periodically, and whenever demand is made by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and actions of any mortgagee or any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board of Trustees shall be available for inspection by the Owners.
- (g) **Rebuilding After Damage or Destruction.** In the event of damage or destruction by fire or other casualty to any Properties covered by insurance written in the name of the Association as trustee for the Owners, the Board of Trustees shall, with concurrence of the Mortgagee, if any, and upon receipt of insurance proceeds, contract to rebuild or repair such damage or destroyed portions of the Properties to as good a condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, whose accounts are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by the signatures of at least two (2) members of the Board of Trustees. The Board of Trustees shall advertise for sealed bids with any licensed contractors. The contractors shall be

required to provide a full performance and payment bond for the repair, construction, or rebuilding of destroyed property. In the event the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, or both, to the same condition as formerly, the Board of Trustees shall levy a special assessment against all Owners in such proportions as the Board of Trustees deems fair and equitable in light of the damage sustained.

#### ARTICLE IX EASEMENTS

**Section 1. Minor Encroachments.** Each Lot and the Common Area shall be subject to an easement for encroachment created by construction, repair, shifting, settling or movement, and overhangs as designed or constructed by the Declarant. A valid easement for said encroachment and for the maintenance of same, so long as it stands, shall and does exist.

**Section 2. Utilities Easement.** There is hereby granted and conveyed to the City of Draper, Utah Power and Light, Salt Lake County Sewer District, Draper Irrigation Company, Mountain Fuel Supply Company, cable television companies, security or monitoring services, and US West Telephone Company, their successors and assigns, a blanket easement upon, across, over and under all of the Common Area, including Limited Common Area, for ingress, egress, installation, replacing, repairing and maintaining all utilities at such location or locations as said entity deems appropriate. By virtue of this easement, it shall be expressly permissible for the providing electrical, cable television, security service, and/or telephone company to construct and maintain the necessary equipment on said property and to affix and maintain electrical, cable television and/or telephone wires, circuits and conduits on, across and under the Common Area, including Limited Common Area.

An easement is further granted to all police, fire protection, ambulance, trash collection and all similar persons to enter upon the streets and Common Area, including Limited Common Area, in the performance of their duties. Notwithstanding anything to the contrary contained in this Article, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said property except as (1) initially planned and approved by the Declarant, or thereafter approved by the Board of Trustees, or (2) as required by the City of Draper. Should any company furnishing a service conveyed by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said property without conflicting with the terms hereof.

**Section 3. Easements for Ingress and Egress.** An easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or to cross over the Common Area, including Limited Common Area, and any Lot to perform the duties of maintenance and repair of the Unit, yard and landscape area, or Common Area provided for herein. The Declarant expressly reserves to itself, its successors and assigns, and perpetual easement and right, at their own risk, to cross the Common Area, including Limited Common Area, by the streets, roads, paths, walkways, established or hereafter established on said property by the Declarant, for the purpose of having access for ingress and egress to such other adjacent property upon which Declarant has or may create additional planned unit development Lots or Units.

#### ARTICLE X ANNEXATION OF ADDITIONAL PROPERTIES

**Section 1. Reservation of Option to Expand.** Declarant hereby explicitly reserves an option until the seventh (7) anniversary of the recording of this Declaration to expand the Project or Property from time to time, without the consent of any Unit Owner or Mortgagee. The option to expand may be terminated prior to such anniversary only upon the filing by the Declarant of an amendment to this Declaration. Declarant expressly reserves the right to add any or all portions of the Additional Land at any time, at different times, in any order, without limitation; provided however that the Additional Land shall be contiguous, or part of a larger parcel of land that is contiguous with the Property or Project.

**Section 2. Assurances.** Declarant makes no assurances as to the location of building or other improvement on the Expandable Land. At such time as the Project is expanded, the maximum number or

Units on the Additional Land will be no more than 300 Units. Declarant makes no assurance as to whether any building to be constructed on the Additional Land will be compatible in quality, materials, or style with the buildings contained within the initial phases of the Project. No assurances are made by Declarant whether any Units or Additional Land will be substantially identical or similar to those within the prior phase or phases. Declarant expressly reserves the right to create Limited Common Areas on the Additional Land and to designate Common Areas therein which may be subsequently assigned as Limited Common Areas. Declarant makes no assurances as to the type, size, or maximum number of such Common Areas or Limited Common Areas. The allocation of Percentage Interests in the Additional Land shall be computed in the same manner as the prior phase or phases. In the event the Declarant shall not add any portion of the Additional Land, Declarant shall nevertheless have the right to construct all or any portion of any building, or buildings, on the Additional Land and operate the same without restriction. The maximum units per acre that may be created on any portion of the Additional Land added to the Project shall be 30 (thirty) units. There will be no Unit that may be created on the Additional Land, and incorporated into the expanded Common Areas or Limited Common Areas, the use of which will not be restricted exclusively to residential or residential health care purposes.

**Section 3. No obligation to expand.** Notwithstanding anything to the contrary which may be contained herein, this Declaration is not intended, and shall not be construed so as, to impose upon Declarant in any way with regard to: (i) the submission of any portion of the Additional Land, (ii) the creation, construction, or addition to the Project of any phase or phases; (iii) the carrying out in any particular way or within any particular time, any development which may be undertaken; or (iv) the taking of any particular action with respect to the Additional Land, the Project, any Tract, or any Phase. Accordingly, Declarant may create on Additional Land any development which would be entirely independent and unrelated to the Project created by this Declaration.

**Section 1. Annexation by Declarant.** Declarant reserves the right and option to expand the Property and annex all or any part of the expandable land, as defined in Article I, Section 6. The annexation of such land shall become effective upon the recordation in the office of the County Recorder of Salt Lake County, Utah, of a Supplementary Declaration which (a) describes the land to be annexed or incorporated by reference within the description contained in the expandable land portion of the plat, (b) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the property subject to the Declaration, and (c) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land. When such annexation becomes effective, the annexed land shall become part of the Property and shall be subject to the terms of the covenants, conditions and restrictions, which terms, covenants, conditions and restrictions run with the land, of this Declaration or any supplements or amendments thereto. Such annexation may be accomplished in one or more annexations or phases without limitation as to size or location within the expandable property.

**Section 2. Limitation on Annexation.** Developer's right to annex said land to the property shall be subject to the following limitations:

- (a) Declarant's right to annex land to the Property shall expire seven (7) years after this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.
- (b) If additional planned unit developments are created by the Declarant pursuant to the terms of this Article, the lot owners in said addition(s) shall be members of the Association and shall have the same rights to the use and enjoyment of the property and facilities of the Association as any other member. The Common Area in any such additional planned unit development(s) as set forth therein shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens prior to the conveyance of the first Lot on said plat and the Association must accept the deed to said Common Area.
- (c) Declarant shall not effectuate any annexation of land which would cause the total number of Living Units existing on or planned for, the Property, to exceed 300 total Lots.
- (d) Declarant reserves unto itself and its assigns the right to create Common Areas and facilities within the portion of the annexed land. No assurances can therefore be made with respect to such



terms.

**Section 3. Supplementary Declaration.** The annexation authorized under the foregoing Section shall be made by filing of record a Supplementary Declaration of Covenants, Conditions, and Restrictions or similar instrument together with an Official Plat with respect to such additional property which shall extend the plan of this Declaration to such property.

Such Supplementary Declaration contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the plan of this Declaration.

The recordation of such supplementary Declaration and Official Plat shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the owners of lots in said real property shall automatically be members of the Association.

**Section 4. Declarant's Right to Amend.** Until all portions of the expandable land are included in the development, or until the right to enlarge the development through the addition of tracts or subdivisions terminates, whichever event first occurs, Declarant shall have, and is hereby vested with the right to unilaterally amend the Declaration or the plat, or both, as may be reasonable, necessary or desirable: (a) to adjust the boundaries of the lots, including adding or deleting Common Areas (by filing an appropriate amended plat) to accommodate design changes or changes in type of units or adjustment to lot configuration; (b) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; or (c) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the development.

**Section 5. Expansion of Definitions.** In the event the Property is expanded, the Definitions used in this Declaration automatically shall be expanded to encompass and refer to the Property as so expanded, e.g., "Property" shall mean the real property described in Recital A (or Exhibit A) of this Declaration, plus any additional real property added by a Supplementary Declaration or by Supplementary Declarations, and reference to this Declaration shall mean this Declaration as so supplemented.

#### ARTICLE XI USE RESTRICTIONS

**Section 1. Residential Use.** No Owner shall occupy or use his Townhome, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the Owner and the Owner's family or the Owner's lessees or guests.

**Section 2. Fee Conveyed.** Each Lot shall be conveyed as a separately designated and legally described freehold estate, the Owner taking title in fee simple, or purchasing by contract and being subject to the terms, conditions, and provisions hereof.

**Section 3. Uses Permitted by Declarant During Construction.** Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant on the building of said Townhomes to maintain during the period of construction and sale of said Townhomes, upon such portion of the project as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of said Townhomes, including, but without limitation, a business office or trailer, storage area or trailer, construction yard or trailer, signs, banners, flag, model Townhomes and sales office or trailer. Declarant, and its agents, shall also have reasonable access and use of all common areas, including all amenities located on the Common Area for the purpose of showing, promoting and selling Townhomes to prospective buyers.

**Section 4. Household Pets Permitted.** No animals, livestock or poultry of any kind may be raised, bred, or kept on any Lot or in the Common Area, except that dogs, cats or other household pets may be

kept in Townhomes, or upon any Lot, subject to the rules and regulations adopted by the Board of Trustees. All dogs or cats in the Common Area, including the Limited Common Area shall be on a leash. Any damage requiring repairs to the Common Area, including the Limited Common Area, caused by a pet of an Owner, his guest, or invitee, shall be an additional assessment upon the Lot as provided by Article VII, Section 6.

**Section 5. Signs.** No sign of any kind shall be displayed to the public view on or from any Lot or the Common Area except that an Owner may display a "For Sale" sign, subject to all restrictions of this provision. Each "For Sale" sign displayed shall be of a dimension, color, and print style as determined by the Association and all such signs shall be made to the exact specifications designated by the Association, including dimension, color, printed information, etc. The Association shall maintain sign specifications and an example "For Sale" sign in the office of the Association for use by members. No more than one "For Sale" sign shall be displayed on any one Unit at a time and the location of sign placement on the townhome Unit shall be determined by the Association. Banners, flags, lighting, or any decoration of the exterior of Unit, for the purpose of promoting the Unit for sale is strictly prohibited. This restriction is applicable to all townhomes offered for sale within the Project, whether by owner or through a real estate broker. This provision is not applicable to the Declarant for so long as the Declarant is engaged in the development of the The Cottages Project and selling new townhome units therein.

**Section 6. Obstruction of the Common Area.** There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board of Trustees. Personal property of Owners shall not be stored on the Limited Common Areas adjacent to Lots. Motor vehicles in an inoperable condition or not currently legally registered shall not be stored on the Common Areas, including driveways, and may be towed or removed at Owners expense. Motor vehicles may not be parked within the Common Areas, guest parking areas, or upon the driveways of each Unit for longer than forty-eight (48) hour period. The Board of Trustees are specifically empowered to enforce this provision by having vehicles in violation towed and stored at the Owner's expense. All such fees and expenses, including attorney fees if necessary, and all towing and storage charges, may be made a part of the Lot Owner's assessment and enforced and collected accordingly. Owners shall be assessed for all costs and expenses related to property removal and storage for a violation of this provision by any lessees, guest or invitee of Owner.

**Section 7. Prohibited Uses.** No loud, noxious or offensive activities shall be carried on in any Lot or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the owners.

**Section 8. Oil and Mining Operations.** No drilling, quarrying or mining operations of any kind shall be permitted upon or in any Lot or upon the Common Area.

**Section 9. Hazardous or Toxic Wastes.** No bulk storage of hazardous materials, hazardous wastes, hazardous substances, or toxic substances or any toxin regulated by any federal or state statute or regulation may be stored upon the Property; specifically, but not by way of limitation, including garages of the units.

**Section 10. Alteration of Common Area.** Nothing shall be altered or constructed, or removed from the Common Area, except with the written consent of the Board of Trustees.

**Section 11. Time Sharing Prohibited.** Neither the Declarant or the Owner of any Lot shall allow or permit any form of time sharing ownership.

**Section 12. Leases.** Any lease agreement between a Townhome Owner and a lessee shall be required to provide that the terms of the leases shall be subject in all respects to the provisions of this Declaration, Articles of Incorporation of the Association and the Bylaws of said Association, and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. No Unit Owner may lease less than the entire Unit. Furthermore, all leases shall be in writing and copy of each signed lease shall be left in the office of the Association by the homeowner. Any damage caused by the lessee, including guests of lessee, to the Common Areas and exteriors of the buildings shall be an

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additional assessment upon the Lot as provided by Article VII, Section 5.

**Section 13. Recreational Vehicles.** No recreational vehicle may be parked within the Common Areas or upon the driveways of each Unit for longer than a forty-eight (48) hour period. In no event shall any recreational vehicle be used for camping or for overnight accommodations by the lot Owner or by the lot Owner's guests in and on the common Areas of the development or on the driveways of the townhome Units, except on that property specially designated by the Board for this purpose. The Board of Trustees are specifically empowered to enforce this provision by having vehicles in violation towed and stored at the Owner's expense.

**Section 14. Electronic Antennas.** No television, radio, or other electronic antenna, satellite dish or device of any similar type shall be erected, constructed, attached, placed or permitted to remain on a Lot, or on the exterior of any Townhome or any other structure located on a Lot, unless approved in writing by the Architectural Control Committee. The Architectural Control Committee approval or disapproval shall include, but not in any way be limited to, the location, dimensions, materials, color, and method of installation. The Owner will be required to provide the Association with a waiver holding the Association harmless from any costs relating to the Owner's installation of an electronic antenna; specifically including, but not limited to, damage caused by roof leaks.

**Section 15. Exterior Lighting.** Exterior lighting ( defined as lights or light fixtures located on the exterior of the living Unit; or interior lights which project light out into the Common Areas) in addition to that lighting provided in the base unit construction package, is expressly forbidden.

## ARTICLE XII GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or the Declarant or its successors in interest, or any Owner, shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges nor or hereafter imposed by the provisions of this Declaration, Bylaws or Articles of Incorporation. Specifically, the aggrieved party may seek to recover damages and for injunctive relief. Failure by the Association to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party to any action brought to enforce the terms of this Declaration or any supplements or amendments thereto, shall be entitled to costs and a reasonable attorney's fee.

**Section 2. Severability, Construction and Validity of Restrictions.** All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant and lot Owners, their successors, heirs or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason become unenforceable.

**Section 3. Duration.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

**Section 4. Gender and Grammar.** The singular wherever used in this Declaration shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

**Section 5. Conflicts.** In case of any conflict between this Declaration, as the same may be amended from time to time, and the Articles of Incorporation and the Bylaws of the Association, as they may be amended from time to time, the provisions of this Declaration shall be controlling.

ARTICLE XIII  
AMENDMENT

Except as otherwise provided herein, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the lot Owners, and thereafter, by an instrument signed by not less than sixty percent (60%) of the lot Owners, which amendment shall be effective upon recordation in the Office of the Recorder of Salt Lake County, State of Utah. Prior to any material amendment to this Declaration, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the members will vote on said amendment.

ARTICLE XIV  
INITIAL REGISTERED AGENT AND INITIAL REGISTERED OFFICE

The address of the initial registered office of the Association shall be 175 S. West Temple, #780, S.L.C., Utah 84101. The name of the registered agent at that address is Douglas F. Lowe.

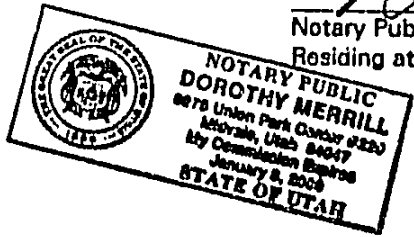
IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set his hand and seal the day and year first written above.

Declarant  
Cottage Development Partners, L.C.  
By: Douglas F. Lowe

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

On this 4 day of October, 1996, personally appeared before me Douglas F. Lowe whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and, who, being by me duly sworn (or affirmed), did say that he is the President of Cottage Development Partners L.C. a corporation, and that the foregoing document was signed by him on behalf of that corporation by authority of its By-laws or of a resolution of its Board of Directors, and he acknowledges before me that the corporation executed the document and such execution was the act of the corporation for its stated purpose.

Dorothy Merrill  
Notary Public  
Residing at: \_\_\_\_\_



207506282325

Recital A  
(Expandable Land)

The Expandable Land, also referred to as Expandable Property is situated in the State of Utah, County of Salt Lake and is described as follows:

Parcel 1:

BEGINNING at the Northwest corner of the Northeast quarter of the Northwest quarter of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence East 10 rods; thence South 80 rods; thence West 10 rods; thence North 80 rods, to the point of BEGINNING.

Parcel 2:

BEGINNING 10 rods East of the Northwest corner of the Northeast quarter of the Northwest quarter of Sections 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence East 10 rods; thence South 80 rods; thence West 10 rods; thence North 80 rods, to the point of BEGINNING.

6474782  
10/07/96 3:53 PM 69.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
COTTAGE DEVELOPMENT PARTNERS  
175 S WEST TEMPLE #780 SLC UT  
84101  
REC BY:R ZITO DEPUTY - WI