

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS & RESTRICTIONS**

OF

**THE COTTAGES AT BLUE WATER SUBDIVISION PHASE 1
THE COTTAGES AT BLUE WATER SUBDIVISION PHASE 2
THE COTTAGES AT BLUE WATER SUBDIVISION PHASE 3**

(Common Area to be owned by the Association)

THIS AMENDED AND RESTATED DECLARATION (the "Restated Declaration"), made on the date hereinafter set forth, of the certain covenants, conditions and restrictions pertaining to that certain real estate development known as The Cottages at Blue Water Phase 1, The Cottages at Blue Water Phase 2, and The Cottages at Blue Water Phase 3 (hereinafter the "Development"), by the undersigned Cottages at Blue Water Owners Association, Inc.(hereinafter the "Successor Declarant") for itself, its successors, grantees and assigns, pursuant to the Utah Community Association Act codified at § 57-8a-1 et seq. of the Utah Code Annotated (the "Act").

RECITALS:

A. The original Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as the "Original Declaration") for development Phase 1 at the Cottages at Blue Water was made and executed on the May 2, 2003 by ODD Properties, L.L.C., a Utah limited liability company (hereinafter the "Original Declarant") and was recorded on May 16, 2003 as filing number #61237 at Book R9 Page 282 of the records of the Rich County Recorder's Office.

B. The Original Declaration was supplemented by the following: (i) First Supplementary Declaration of Covenants, Conditions and Restrictions of The Cottages at Blue Water Phase 1 (Annexation of Phase 2) made and executed on 9th day of February 2005 by the Original Declarant and was recorded on February 16, 2005 as filing number #65292 at Book 29, Page 1417 of the records of the Rich County Recorder's Office and (ii) Second Supplementary Declaration of Covenants, Conditions and Restrictions of The Cottages at Blue Water Phase 1 (Annexation of Phase 3) made and executed on 29th day of December 2006 by the Original Declarant and was recorded on December 29, 2006 as filing number #70551 at Book I10, Page 180 of the records of the Rich County Recorder's Office.

C. The Original Declarant was the owner of certain real property in Rich County, Utah, more particularly described on Exhibits A, B and C attached hereto and incorporated herein by this reference (hereinafter the "Land"). The Original Declarant has sold or intends to sell subdivided lots and additional ground as needed, to certain individual owners and will transfer the remaining Land to Successor Declarant.

D. Certain buildings and improvements have been or will be constructed on the Land, all in accordance with the plans and drawings set forth in the "Record of Survey Maps," which is comprised of plat maps for phases 1 through 3. An Amended Plat for The Cottages at Blue Water Subdivision Phase 1 was recorded on November 24, 2003 as filing number #62585 at Book V9, Page 616 of the records of the Rich County Recorder's Office. A Final Plat for The Cottages at Blue Water Subdivision Phase 2 was recorded on February 16, 2005 as filing number #65291 at Book Z9, Page 1416 of the records of the Rich County Recorder's Office. A Final Plat for The Cottages at Blue Water Subdivision Phase 3 was recorded

Recorded SEP 7 2007 Filing No. 72563
At 9:00 AM in Book L10 Page 1152
Fee \$6.00 Debra L. Ames Rich County Recorder

9/3/07 Owner Approved

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1152

Requested by Rich Land Title Company
*Cottages at Blue Water Owners
Assoc Inc.*

on December 29, 2006 as filing number #70550 at Book I10, Page 179 of the records of the Rich County Recorder's Office.

E. Successor Declarant desires that the individual parcels contained in the Development, together with the Common Areas and Facilities appurtenant thereto, be subject to the covenants, limitations, and restrictions contained herein.

F. Original Declarant desires and intends to develop phase 3 to be built on the remaining Land as identified on the Record of Survey Maps. It is Successor Declarant's intent to subject the existing Phase 1, Phase 2 and Phase 3 of the Development to this Restated Declaration by the filing of this Restated Declaration.

RESTATED DECLARATION:

NOW, THEREFORE, for such purposes, Successor Declarant hereby makes the following Restated Declaration containing covenants, conditions and restrictions relating to the Development which, pursuant to the Act, shall be enforceable equitable servitudes, where reasonable, and shall run with the Land:

1. **Name of the Development.** The name by which the Development shall be known is THE COTTAGES AT BLUE WATER SUBDIVISION, comprised of Phase 1, Phase 2, and Phase 3.

2. **Definitions.** The terms used in this Declaration shall have the meaning stated in the Act and as given herein unless the context otherwise requires.

(a) "Act" shall refer to the Utah Community Association Act codified at § 57-8a-1 et seq. of the Utah Code Annotated, as the same may be amended from time to time.

(b) "Assessment" shall mean and refer to any charge, including Common Expenses and capital improvement expenses, imposed or levied by the Association on or against a Lot or an Owner and pursuant to this Restated Declaration.

(c) "Association" shall mean and refer to Cottages at Blue Water Owners Association Inc., a Utah non-profit corporation, of which all of the Owners shall be members. The Association shall be governed in accordance with this Restated Declaration as may be amended at a meeting of the Association and the Association's bylaws (the "Bylaws").

(d) "Board of Directors" or "Board" shall mean and refer to the governing committee, including its agents, provided in this Restated Declaration and the Bylaws. The Board is charged with and shall have the responsibility and authority to manage the affairs of the Association and to make and enforce all of the reasonable rules and regulations covering the operation and maintenance of the Development.

(e) "Common Areas" shall mean and refer to:

(1) The Property, other than the Lots and other than the land and any improvements thereon deeded or to be deeded for each individual Lot, including all sidewalks, streets, recreational areas, common facilities as may be provided, fences, service and parking areas, open spaces, and entrances and exits, and in general all other apparatus, installations and

other parts of the Development necessary or convenient to the existence, maintenance and safety of the Common Areas or normally in common use;

(2) All areas and facilities owned, maintained, repaired and/or administered by the Association;

(3) Those areas specifically set forth and designated in the Record of Survey Maps as "Common Area;" excepting those portions of Common Area deeded or to be deeded to individual Lot Owners and to become a part of individual parcels;

(4) Lots 11, 17, 21, 25, 30, 34, 41, 44, and 51, as identified on the Record of Survey Maps; and

(5) All Common Areas as defined in the Act, whether or not expressly listed herein.

(f) "Common Expenses" shall mean and refer to all expenses of administration, maintenance, repair or replacement of the Common Areas, taxes and insurance, and all items, things and sums described in the Act that are lawfully assessed against the Owners in accordance with the provisions of the Act, this Restated Declaration, the Bylaws, such rules and regulations pertaining to the Owners as the Board may from time to time adopt, and such other determinations and agreements lawfully made and/or entered into by the Board.

(g) "Development" shall mean and refer to the Property, together with all rights, obligations and organizations established by this Restated Declaration.

(h) "Lot" shall mean and refer to a residential lot, parcel, plot, or other division of land designated for separate ownership or occupancy as designated as such on the Maps, or as subsequently modified by the Original Declarant or Successor Declarant, the Association and Garden City. Each such Lot shall include the residential home and all improvements thereon unless otherwise expressly provided in this Restated Declaration. The term shall not refer to any parcel that was originally designated as a residential lot on the Maps but was or is later designated as Common Area by the Original Declarant, Successor Declarant or the Association.

(i) "Manager" shall mean and refer to the person, persons, entity, or corporation selected by the Board to manage the affairs of the Development.

(j) "Owner" shall mean the person or persons owning a Lot in fee simple as shown in the records of the County Recorder of Rich County, Utah. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such a party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. Unless subsequently modified, each Lot Owner will have a 1.612 % ownership interest in the Association and its Common Areas.

(k) "Ownership Interest" shall mean an interest in each Lot and non-exclusive rights to use the Common Areas.

(l) "Phase" shall mean and refer to each separate step in development of the Land. The term shall also include all improvements that are constructed and all appurtenances, rights, obligations, and legal relationships that come into existence in conjunction with any such separate step in development.

(m) "Property" shall mean and include the Land, all buildings, improvements, and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

(n) "Record of Survey Maps" or "Maps" shall mean and refer to the plat maps of the Development recorded in the Office of the Rich County Recorder, State of Utah.

(o) Those definitions contained in the Act, to the extent they are applicable to and not inconsistent herewith, shall be and are hereby incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

3. **Submission to Ownership.** Successor Declarant hereby submits the Land, buildings, and other improvements constructed thereon or hereafter to be constructed, together with all appurtenances thereto, to the provisions of the Act for purposes of facilitating the ownership of individual Lots, and this Restated Declaration is submitted in accordance with the terms and the provisions of the Act and shall be construed in accordance therewith. It is the intention of Successor Declarant that the provisions of the Act shall apply to the Property.

4. **Covenants to Run with the Land.** This Restated Declaration containing covenants, conditions and restrictions relating to the Development shall be enforceable equitable servitudes which shall run with the land and this Restated Declaration and its servitudes shall be binding upon Original Declarant and Successor Declarant, their respective successors and assigns, and upon all Owners or subsequent Owners, their grantees, mortgagees, successors, heirs, executors, administrators, devisees and assigns.

5. **Description of Property.**

(a) **Description of Land.** The Land is those tracts or parcels, more particularly described in Exhibits A, B and C attached hereto.

(b) **Description of Improvements.** The significant improvements contained or to be contained in the Development include single family homes with Lot lines. The homes shall be constructed principally of concrete foundation with exterior walls of stucco and rock, asphalt shingle roofing, interior walls of wood studs, plywood and dry wall plaster or a similar looking material. Each home shall have an attached garage. The Development also includes landscaping and other facilities located substantially as shown on the Maps and will be subject to easements that are reserved through the Development as may be required for utility services.

(c) **Description and Legal Status of Lots.** The Maps show the Lot number of each Lot, its location, and the Common Areas to which it has immediate access. All Lots, of whatever type, shall be capable of being independently owned except those designated for parking in §2(e).

(d) **Description of Common Areas.** Except as otherwise provided in this Restated Declaration, the Common Areas shall consist of those areas and facilities described in §2(e), and constitute in general all of the parts of the Property except the lots.

6. **Statement of Purpose and Restriction on Use.**

(a) **Purpose.** The purpose of the Development is to provide residential housing on individual Lots in accordance with city requirements in effect on the date hereof for Owners and their tenants and guests, all in accordance with the provisions of the Act.

(b) **Restrictions on Use/Construction.** The Lots and Common Areas shall be used and occupied as follows:

(1) Each of the Lots shall be occupied by the Owner, his family, servants, guests or tenants as a private residence and for no other purpose. Occupancy of a home on a Lot for residential use, whether by the Owner, a tenant under long-term lease or rental agreement, shall all be deemed to be acceptable residential occupancy. Any short-term lease or rental (any period less than 1 year) of a home on a Lot shall not be permitted. No Lot shall be owned as, converted to, or used as a time-share, fractional-ownership, or other interval-ownership unit or arrangement.

(2) Parking in Common Areas shall be permitted only in areas of the Development designated for such use as evidenced by parking stalls painted upon parking surfaces or by signs otherwise designating specified areas for such parking. No parking shall be permitted upon any roadway, upon any sidewalk, upon any lawns, or upon any other area of the Development unless such area shall be specifically designated for such purpose. Common Area includes those portions of Lots 11, 17, 21, 25, 30, 34, 41, 44, and 51, not transferred to adjoining Lot Owners to become a part of the adjoining lot, as such Lots are identified on the Record of Survey Maps, shall be used only for parking and other common uses as determined by the Board; provided, however, the remainder of such Common Area Lots shall not be used for future residential homes.

(3) The Common Areas shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Owners.

(4) Nothing shall be done or kept on any Lot, in the Common Areas, or on the Property that will increase the rate of insurance on the Common Areas or Property beyond that customarily applicable for residential use, or will result in the cancellation of insurance on the Common Areas or Property without the prior written consent of the Board. No Owner shall permit anything to be done or kept on his Lot, in the Common Areas, or on the Property that violates any law, ordinance, or regulation of any governmental authority. No Owner or guest shall use or store any hazardous material or substance anywhere on the Property.

(5) None of the Common Areas shall be used for over-night camping or parking without the prior written consent of the Board. No temporary structures, tents, tarps, nets, open fires, or other facilities shall be placed on or in the Common Areas without the prior written consent of the Board.

(6) Except for customary decorations (including state or US flags) and services, no Owner shall cause or permit anything (including, without limitation, a flag, sign, awning, canopy, radio antenna, television antenna, and clothes lines) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof of the home or on the Lot, without the prior written consent of the Board. Temporary "Open House" signs may be placed subject to written approval of the Board as to location, duration, size and design. If signs are placed without written approval, the Board retains the right to remove them. No signs for the sale of a Lot may

be placed in or upon any vehicle on Common Areas without approval of the Board. Only a single "For Sale" sign of typical size for residential lots/homes may be placed on the Lot. The Board shall provide written notice of any violating sign, and, if such sign is not removed immediately, the Board shall be authorized to assess a fine thereafter.

(7) No noxious, offensive, or illegal activity shall be carried on or permitted on any Lot or in the Common Areas, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or public or private nuisance to the other Owners or occupants.

(8) Nothing shall be done on any Lot or in, on, or to the Common Areas that will impair the structural integrity of the buildings thereon or any part thereof or that would structurally change the buildings or any part thereof except as is otherwise provided herein.

(9) No animals, livestock or poultry of any kind shall be raised, bred or kept within the interior of a home, except that household pets may be kept within the interior of a home on a Lot so long as they do not disturb other Owners. Exterior dog houses or runs shall not be allowed. When pets are outside in the Common Areas, they must be supervised by the owner of the pet who shall immediately clean up after any pet that defecates or otherwise disturbs the grounds. Any owner failing to comply with this requirement may be fined by the Board and/or Association in the amount determined by the Board, payable to the Association.

Each Owner who keeps a pet in a Unit shall indemnify and hold all other Owners harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such pet in the development. If a pet disturbs other Owners by barking or biting or in other ways become obnoxious, the Board of Directors will give notice to the owner of such pet to cause such annoyance to be discontinued and corrected. The Board of Directors may revoke its permission to keep the pet in the Project and the pet shall be removed therefrom. If the pet owner fails to remove the pet upon receipt of such written notice, then, in addition to such other remedies as are set forth herein (including attorney's fees), the pet owner shall pay a penalty in the amount determined by the Board, payable to the Association.

(10) The Common Areas shall be kept free and clear of all rubbish, debris, and other unsightly materials.

(11) No ATV's or snowmobiles shall be operated on the Property except on the streets for immediate ingress and egress from outside the Property to the Owner's Lot. Such ingress and egress shall adhere to all laws regarding the operation of said ATV or snowmobile and any and all regulations as may be adopted by the Association.

(12) No Owner shall, without the prior written consent of the Board in each specific instance, make or cause to be made any alteration, addition, removal, or improvement in or to the Common Areas or any part thereof, or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Property.

(13) No building, residence, dwelling, garage, carport, roof, wind generation device, accessory building or fence, wall, non-living screen or any other structure or landscaping shall be commenced, erected, placed or meaningfully altered on any Lot until the plans, specifications and plot plans showing the location and nature of such structure, building, landscaping or other improvement or meaningful alteration have been submitted to and approved in writing by the Board, which may consider factors such as (but not limited to) the quality of

workmanship and materials, design, harmony of external design with existing project, structures, location with respect to topography and finish grade, elevation, preservation and enhancement of natural beauty of the area, maintenance, alignment within lot boundary, and safety. All materials including color, style and textures to be used on the exterior of any building or external device shall conform with the general architectural style and colors of the Development as originally constructed.

The Board may condition such approval on the Lot Owner depositing cash in a sum to be determined by the Board, the purpose of which shall be to further ensure the Lot Owner (1) fulfills his responsibility to keep his Lot in a condition so as to prevent the rubbish and debris which accumulates during the construction process from blowing or collecting on neighboring lots, (2) reasonably cleans up his Lot at or near the completion of the construction process, and (3) completes restoration of any disruption to Common Area features such as landscaping, sidewalks, roads and utility lines. If the Lot Owner fails in any of these responsibilities, the deposit may be kept by the Board as a fine upon such Lot Owner or as liquidated damages. If any such failure is not remedied by such Lot Owner within 14 days after written notice thereof, the Board may remedy such condition itself and shall charge the Lot Owner for the cost of the remedy.

(14) No Owner shall violate the rules and regulations regarding use of the Lots and of the Common Areas as adopted from time to time by the Board.

(15) All Owners shall conform to requirements of Garden City, Utah for zoning.

(16) No Common Area shall be subdivided, sold, or otherwise conveyed without approval of Garden City, Utah.

7. **Ownership and Use.**

(a) **Ownership of a Lot.** Each Owner shall be entitled to the exclusive ownership and possession of that Lot including former Common Areas deeded as part of the Lot and contiguous portions of adjoining Lots deeded as part of the Lot. A Lot may be owned by any person, entity, group of persons, group of entities, or combination of persons and entities.

(b) **Nature of and Restrictions on Ownership and Use.** Each Owner shall have and enjoy the rights and privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own lots, it being intended that they may and shall be owned as any other property by persons, corporations, partnerships, or trusts and in the form of common tenancy. All Lots are to be sold for the construction of or use as single-family owner occupied residents. All Owners, their tenants and other occupants or users of the Development, shall be subject to this Restated Declaration, the Bylaws, and all rules and regulations of the Board and/or Association.

(c) **Prohibition Against Subdivision of Lot.** No Owner, by deed, plat or otherwise, shall subdivide or in any manner cause the ownership of a parcel to be separated into physical tracts or parcels smaller than the whole Lot or amended parcel as shown on the applicable Map or as actually deeded by the Declarant. That portion of Lots 11, 17, 21, 25, 30, 34, 41, 44 and 51 which is deeded to an adjoining Lot Owner shall become an integral and non-divisible part of the Lot to which it is deeded and can only be deeded with and not separate from the Lot to which it is transferred.

(d) Ownership of Common Areas. The Common Areas contained in the Development are described and identified in this Restated Declaration and on the Maps, except as modified by deed from the Declarant and the Association. Said Common Areas shall be owned by the Association. Each Owner will have an interest in the Common Areas with all other Owners by virtue of their membership in the Association. The Common Areas shall be used only in a manner that is consistent with their community nature and with the use restrictions applicable to the Lots contained in the Development.

(e) Use of Common Areas. Each Owner may use the Common Areas in accordance with the purpose for which they are intended, but subject to this Restated Declaration, the Bylaws, and the rules and regulations of the Board. This right of use shall be appurtenant to and run with each Lot.

8. Voting and Meetings.

(a) The vote attributable to and exercisable in connection with each Lot shall be one vote for an Owner of a Lot, provided that such Lot is subject to Assessments and such Owner has paid all outstanding Assessments, except for reasonably disputed amounts as determined in the discretion of the Board, as of the date of any such vote. In the event there is more than one Owner of a particular Lot, the one vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any meeting by any of such Owners 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. No portion of any Original Lot which has become part of the Common Area shall have any vote.

(b) Meetings shall be held, quorums determined, and votes taken pursuant to the Association's By-Laws, as amended from time to time.

9. Management.

(a) Board of Directors. The business, property and affairs of the Development phases transferred to the Successor Declarant shall be managed, operated and maintained by the Board of Directors of the Association as agent for the Owners. The Board shall have, and is hereby granted, the following authority and powers:

(1) The authority, without the vote or consent of the Owners or of any other person(s), to grant or create, on such terms as it deems advisable, utility and similar easements, over, under, across and through the Common Areas, provided that work performed pursuant to such easements must be done in a manner consistent with surrounding areas ;

(2) The authority to execute and record, on behalf of all Owners, any amendment to the Restated Declaration or Maps which has been approved by the vote or consent necessary to authorize such amendment;

(3) The authority to enter into contracts that in any way concern the Development, so long as any vote or consent of the Owners necessitated by the subject matter of the agreement has been obtained;

(4) The power and authority to convey or transfer any interest in real property, so long as any vote or consent necessary under the circumstances has been obtained;

(5) The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action has been authorized by any vote or consent necessary under the circumstances;

(6) The power and authority to add any interest in real property obtained pursuant to subsection (5) next above, to the Development, so long as such action has been authorized by the necessary vote or consent;

(7) The power to sue and be sued;

(8) The authority to license otherwise unauthorized persons to use the recreational areas and facilities from time to time as the Board deems appropriate upon payment of fees prescribed by it to help defray the cost of maintenance thereof and in conformance with the conditions imposed by Garden City, Utah or Successor Declarant and in conformance with city ordinances and regulations;

(9) The power and authority to borrow money, provided that no indebtedness for borrowed funds shall exceed in the aggregate at any given time the sum of \$10,000.00 without the prior vote or approval of the Association at a meeting duly called and convened at which a quorum is present;

(10) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Board in carrying out any of its functions or to insure that the Development is maintained and used in a manner consistent with the interests of the Owners; and

(11) The power and authority to perform any other acts and to enter into any other transactions that may be reasonably necessary for the Board to perform its functions as agent for the Owners, including the power to collect, enforce, and place liens on Lots for delinquent Association fees.

Any instrument executed by the Board reciting facts that, if true, would establish the Board's power and authority to accomplish through such instrument the acts 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.

(b) Composition of the Board of Directors. The Board shall be composed of at least three (3) and not more than seven (7) members. The Original Declarant transferred responsibility for establishment of the Association Board of Directors to the Owners at the Annual Association Meeting on 2 September, 2006 at Garden City, Rich County, State of Utah, in accordance with State of Utah law.

At each annual Association meeting thereafter, any vacant seat on the Board shall be filled with a member elected for a three-year term. Only Owners, including officers and agents of entities that are Owners, shall be eligible for Board membership. At the annual meeting, an Owner may vote for as many candidates for Board membership as there are seats on the Board to be filled. Members of the Board shall annually elect one member to serve as President of the Association, a second member to serve as Vice President. The Board shall appoint a Secretary and a Treasurer, neither of whom may be a then current member of the Board.

Any Board member who fails (without cause) on three successive occasions to attend Board meetings (whether regular or special) or who has failed (without cause) to attend at least 25 % of

all Board meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat. The remaining Board members shall elect a replacement to sit on the Board until the expiration of the term for which the member being replaced was elected. Unless a member forfeits or otherwise loses his seat as herein provided, a member shall serve on the Board until his successor is elected. Board members shall be reimbursed for all expenses reasonably incurred in connection with Board business.

(c) Responsibility. The Board shall be responsible for the control, operation, and management of the Development in accordance with the provisions of this Restated Declaration, the Bylaws of the Association, such administrative, management and operational rules and regulations as the Board may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the Board.

(d) Additional Facilities. The Board shall, subject to any necessary approval, have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the best interests of the Owners and to effect the necessary amendment of documents and maps in connection therewith.

(e) Manager. The Board may, through a professional property manager or other manager, carry out any of its functions that are properly the subject of delegation. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Board or the Association, shall be responsible for managing the Development for the benefit of the Board and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board itself. Any agreement for professional management of the Development that may be entered into by the Board or the Association shall call for a term not exceeding one (1) year renewable by agreement of the parties for successive one-year periods, and shall provide that such management agreement may be terminated with or without cause by either party upon not more than thirty (30) days written notice, and without any payment of a termination fee.

10. Easements.

(a) Each Lot shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any Common Areas located within the boundaries of such lot and for electrical and gas service, or television cable services to adjacent Lots. The Lots are also subject to a right of entry in favor of the Association as provided in this Restated Declaration. The Common Areas are subject to such utility and other easements as are reasonably necessary for the development and operation of the Development, and for the repair and ongoing maintenance of the water, sewer, and other utilities that service any existing Lots. Each Lot shall be subject to a utility easement for the repair and maintenance of utilities, whether or not such easement is reflected on the applicable Map.

(b) In the event that, by reason of the construction, reconstruction, repair, settlement, movement or shifting of any part of a home, any part of the Common Areas encroaches or shall hereafter encroach upon any part of any Lot or any part of the Common Area, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Lot and the Common Areas, as the case may be, so long as all or any part of the home shall remain standing; provided, however, that in no event shall a valid easement or any encroachment be created in favor of any Owner or in favor of the Owners as owners of the Common Areas if such encroachment occurred due to the willful conduct of such Owner or Owners.

(c) The Board shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions that it is obligated or permitted to perform pursuant to this Restated Declaration.

(d) The Original Declarant shall have a limited transferable easement over and on the Common Areas for the purpose of completing construction of Phase 3 and making improvements therein as shown on the Maps and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the Development by any person utilizing said easement, the Original Declarant and the person causing the damage shall be liable to the Association for the prompt repairs of such damage.

(e) Subject to the then current written agreement between the Association and Blue Water Resort L.L.C. ("BWR"), Owners shall have membership in BWR at the "Cottages membership level" with any and all easement and use rights of BWR facilities upon payment of the annual fee and any use fees as established and collected by BWR. An Owner's use of BWR facilities will be subject to the rules and regulations as established from time to time by BWR.

11. **Change in Ownership.** The Board shall endeavor to maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Lot owned by him. Each Owner shall register from time to time with the Association his current mailing address. The mailing address of an Owner shall be deemed to be the permanent residence address of the Owner unless the Board is otherwise advised in writing. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Board 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 Rich County, Utah. The Board may for all purposes act and rely on the information concerning Owners and Lot ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Lot obtained from the office of the County Recorder of Rich County, Utah.

12. **Assessments.**

(a) **Annual Budget.** Annual Assessments shall be determined on the basis of a fiscal year beginning January 1, and ending December 31 next following. Not less than fifteen (15) days prior to the annual meeting of the Association, the Board shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. The operating budget shall itemize the estimated Common Expenses for such fiscal year, anticipated receipts (if any), and any deficit or surplus from the prior operating period. The operating budget for each fiscal year must be approved by a majority of the votes of Owners who are voting in person or by proxy at a meeting wherein it is presented to the Owners. The operating budget shall serve as the supporting document for the annual Assessment for the upcoming fiscal year and as the major guideline under which the Development shall be operated during such annual period.

(b) **Annual Assessments.** In accordance with Section 16, below, every Owner agrees to and shall pay his equal share of the Common Expenses which shall be apportioned among and assessed to all Owners equally. Payment thereof shall be in such amounts and at such times as the Board determines. There shall be a lien for nonpayment of Common Expenses or any other assessment set forth herein, all as provided by the Act. The Board shall have the authority to place liens (without providing prior notice to the Owner) upon any Lot for which an assessment has not been paid over sixty (60) days after its due date. The failure of the Board to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification, in any respect, of the provisions of this Restated Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date

fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Restated Declaration. The Original Declarant shall not be subject to Assessments for any Lot titled in the Original Declarant's name so long as the Original Declarant owns said Lot for resale.

(c) Special Assessments for Capital Improvements. In addition to annual Assessments, the Association may levy, in any assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, provided that any such Assessment shall have the majority of the votes of Owners who are voting in person or by proxy at a meeting duly called for this purpose. The Original Declarant shall not be subject to special Assessments for any Lot titled in the Original Declarant's name so long as the Original Declarant owns said Lot for resale.

(d) Payment Address. All Assessments shall be made payable to: "Cottages at Blue Water Owners Association, Inc." and shall be sent to the address as designated by the Association from time to time in writing.

(e) Assessment Limit. No assessment for a single improvement in the nature of a capital expenditure which exceeds the sum of fifty thousand (\$50,000) shall be made without the same having been first voted on and approved by at least a majority of the Development's undivided ownership interest.

13. Destruction or Damage. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the Common Areas of the project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of the deed from the Successor Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his attorney-in-fact, as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver and contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted.

14. Taxes. It is understood that each Lot, together with its improvements and corresponding membership interest in the Association, is deemed a parcel and subject to separate assessment and taxation by each assessing authority and special district for all types of taxes authorized by law. Each Owner will, accordingly, pay and discharge any and all taxes that may be assessed against his Lot.

15. Insurance. All Owners of Lots shall provide their own general liability and public liability insurance homeowner policy on each Lot. The limit of liability under such Owner's insurance for each Lot shall not be less than \$500,000 for all claims for personal injury and/or property damage arising out of a single occurrence. The Association shall maintain the following insurance:

(a) Hazard Insurance. The Board or Association shall at all times maintain in force hazard insurance for the Common Areas meeting the following requirements

(1) A multi-peril type "master" or "blanket" policy covering all of the Common Areas shall be maintained by the Association.

(2) The named insured under the policy required to be maintained by the foregoing subsection (1) shall be in form and substance essentially as follows: "Cottages at Blue Water Owners Association, Inc., or its authorized representative, for the use and benefit of the individual owners."

(b) Fidelity Insurance. The Board or Association shall at all times maintain in force fidelity coverage against dishonest acts on the part of Managers (and employees of Manager), trustees, employees, officers, Board members, or volunteers responsible for handling funds belonging to or administered by the Board or Association. The fidelity bond or insurance shall name the Association as the obligee or insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one hundred fifty percent (150%) of the estimated annual operating expenses of the Development including reserve funds. Such 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.

(c) Liability Insurance. The Board or Association shall at all times maintain in force a comprehensive policy of public liability insurance covering all of the Common Areas. Such insurance shall include a severability of interest endorsement or its equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts of other Owners, the Board, or the Association. The coverage afforded by such public liability insurance shall include protection against such risks as customarily are covered with respect to projects similar to the Development in construction, location and use. The limit of liability under such insurance shall not be less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence.

(d) Directors and Officers Insurance. The Board or Association, at the Association's expense, shall at all times maintain in force a comprehensive policy of Director and Officer liability insurance typically issued to directors and officers of non-profit corporations to provide coverage, including defense costs, for a variety of risks that typically befall directors and officers as a result of their status as directors and officers or of acts or omissions in their capacity as directors and officers.

(e) General Requirements Concerning Insurance. Each insurance policy or fidelity bond maintained pursuant to the foregoing Sections 15(a) through 15(d) shall be written by an insurance carrier that is licensed to transact business in the State of Utah. No such policy or fidelity bond shall be maintained where: (1) under the terms of the carrier's charter, bylaws, bond or policy, contributions may be required from, or assessments may be made against, an Owner, the Board, the Association, a Lot, the Common Areas, or the Development; (2) by the terms of the carrier's charter, bylaws, bond or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; (3) the bond or policy includes any limiting clauses (other than insurance conditions) that could prevent the entitled party from collecting insurance proceeds; or (4) the bond or policy provides that the insurance thereunder shall be brought into contribution with insurance purchased by the individual Owners or their mortgagees. Each such fidelity bond or policy shall provide that: (a) coverage shall not be prejudiced by any act or neglect of the Owners when such act or neglect is not within the control of the Association or the Board; (b) coverage shall not be prejudiced by any failure by the Association or Board to comply with any warranty or condition with regard to any portion of the Development over which the Association and Board have no control; (c) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insureds named therein, including any mortgagee named as an insured; and (d) the insurer waives any right to subrogation it might have as to any and all claims against the Association, the Board, and Owner, and/or their respective agents, employees or tenants. If due to changed circumstances, excessive cost, or any other reason, any of the insurance coverage required to be obtained and maintained under Sections 15(a) through 15(d) hereof cannot reasonably be secured, with respect to such coverage the Association or the Board shall obtain and maintain such substitute, different or other coverage as may be reasonable and prudent under the circumstances as they then exist, however the Association shall not self insure.

(f) Additional Provisions. The following additional provisions shall apply with respect to insurance:

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

(2) The Board shall have authority to adjust losses;

(3) Insurance secured and maintained by the Board shall not be brought into contribution with insurance held by the individual Owners; and

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

(g) Contractors and Subcontractors. The Board, Association, or Owners contracting with any contractors or subcontractors to perform work in the Development shall at all times require such contractors or subcontractors to name the Association as an additional insured prior to commencing any work. The contractor's or subcontractor's policy shall name the Association as an additional insured in form and substance essentially as follows: "Cottages at Blue Water Owners Association, Inc., or its authorized representative, for the use and benefit of the individual owners." In addition, the Board must be provided with sufficient evidence of workers' compensation insurance (or sufficient evidence of similar insurance if workers' compensation insurance is not required by Utah law) by any contractors or subcontractors to perform work in the Development. No such work shall commence until the provisions of this subsection are satisfied in the discretion of the Board.

16. Payment of Assessments.

(a) Each Owner shall pay the Association his allocated portion, past, present, and future, of the Assessments deemed necessary by the Board to manage and operate the Development, upon the terms, at the time, and in the manner herein provided without any deduction on account of any set-off or claim which the Owner may have against the Board or Association. Each installment shall be due on or before the first day of each month. If the Owner shall fail to pay any installment within fifteen (15) days of the time when the same becomes due, the Owner shall pay a late fee in the amount determined by the Board, together with all costs and expenses, including attorney's fees, incurred in any proceedings brought to collect such unpaid Assessments, whether or not a suit is filed.

(b) The Common Expenses for each year, or portions of the year, shall be deemed to be such aggregate sum as the Board from time to time shall determine, in its judgment, to be paid by all the Owners then in existence to enable the Board to pay all estimated expenses and outlays of the Association to the close of such year, growing out of or in connection with the maintenance and operation of such land, buildings and improvements; which sum may include, among other things, the cost of management, special assessments, casualty, fire, flood, fidelity, public liability and other insurance or bond premiums, common lighting, landscaping, unmetered utilities, and the care of the grounds, snow removal, repairs, and renovations to Common Areas, legal and accounting fees, management fees, expenses and liabilities incurred by the Board under or by reason of this Restated Declaration, the payment of any deficit remaining from the previous period, the creation of a reasonable contingency or

other necessary reserve or surplus fund, as well as all other costs and expenses relating to the Development. The Board may, from time to time, up to the close of the year for which such cash requirements have been so filed or determined, increase or diminish the amount previously fixed or determined for such year. It may include in the cash requirements for any year, any liabilities or items of expense that accrued or became payable in the previous year, or might have been included in the cash requirements for a previous year, but were not included therein; and also any sums the Board may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year. A working capital fund equal to at least two (2) months' estimated Common Expenses for each Lot shall be established by the Board. In addition, a separate emergency fund for the purpose of paying for emergency or other repairs of sewer, water, or other utilities shall be established and maintained with a balance that is established by the Board, to be used as needed for that purpose and then replenished out of the operating budget of the Association.

(c) The Board shall have discretionary powers to prescribe the manner of maintaining and operating the Development and to determining the cash requirements of the Association to be paid as aforesaid by the Owners under this Restated Declaration. Every such reasonable determination by the Board within the bounds of this Restated Declaration shall be final and conclusive as to the Owners, and any expenditures made by the Board, within the bounds of this Restated Declaration shall as against the Owner be deemed necessary and properly made for such purpose.

(d) If an Owner shall at any time let or sublet his Lot and shall default for a period of one month in the payment of any Assessments, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner occupying the Lot the Assessment due or becoming due and payment of such Assessment to the Board shall be sufficient payment and discharge of such tenant or subtenant and the Owner to the extent of the amount so paid. Said amount shall be applied in the following order: first to the costs of collection and attorney fees; second, to late fees and interest; and lastly to the Assessment.

(e) Each annual Assessment and each special Assessment shall be separate, distinct and personal obligations of the Owner(s) of the Lot against which the same is assessed at the time the Assessment is made and shall be collectible as such. The amount of any Assessment, whether regular or special, assessed to a Lot plus late fees as determined by the Board, and costs, including reasonable attorney's fees, shall become a lien upon such Lot upon recordation of a notice of Assessment as provided by the Act. Suit to recover a money judgment for unpaid Assessments may be maintained without foreclosing or waiving the lien securing the same. Such lien may be foreclosed for nonpayment of Assessments and shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

(1) Tax and special assessment liens on the Lot in favor of any assessment authority, and special 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.

(f) A certificate executed and acknowledged by the Manager or Board stating the unpaid Assessment then outstanding with respect to a Lot shall be conclusive upon the Board and the Owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner or prospective Owner of encumbrances of a Lot upon request at a reasonable fee not to exceed Twenty Dollars (\$20.00). Unless the certificate of indebtedness is provided within ten (10) business days after the Manager or Board

receives such request, all unpaid Assessments that become due prior to the date of the receipt of such request shall be subordinate to the lien or interest held by or obtained by the person making the request. Any person or entity holding a lien on a Lot may pay any unpaid Assessments payable with respect to such Lot and upon such payment such person or entity shall have a lien on such Lot for the amounts paid of the same rank as the lien thereby satisfied.

(g) A purchaser of a Lot shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

(h) Upon payment of delinquent assessments concerning which a notice of assessment has been recorded or other satisfaction thereof, the Board shall cause to be recorded in the same manner as the notice of assessment a further notice stating the satisfaction and release of the lien thereof. Such lien for nonpayment of assessment may be enforced by sale of the Lot by the Board or by a bank or title insurance company authorized by the Board, such sale is to be conducted in accordance with the provisions of the law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the Lot Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees.

(i) In the event of foreclosure, the Lot Owner shall be required to pay a reasonable rental for the Lot and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board or Manager shall have the power to bid on the Lot at foreclosure or other sale and if so purchased, to hold, lease, mortgage and convey the Lot.

17. **Eminent Domain.** In the event that eminent domain proceedings are commenced against the Development or any portion thereof, the Board shall determine the manner of response and allocation of any funds obtained in such proceedings in consultation with affected Owners.

18. **Maintenance.**

(a) Each Owner at his own expense shall keep the Lot in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating and painting that may at any time be necessary to maintain the good appearance of such Lot. The Owner shall repair all injury or damages to the Lot and all such repairs, redecorating and painting shall be of a quality and kind equal to the original work as determined and approved in writing by the Board. Without the written permission of the Board first had and obtained, an Owner shall not make or permit to be made any structural alteration, in or to the Lot, including in or to the home, and shall not paint, decorate or plant any portion of the exterior of the home except in designated flower beds.

(b) In the event an Owner shall fail to maintain the Lot and the improvements situated thereon in a manner satisfactory to the Board, the Association, after approval by two-thirds (2/3) vote of the Board, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the exterior of the home and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

(c) Except as hereinafter provided, the Board shall provide for such maintenance and operation of the Common Areas as may be reasonably necessary to keep them clean, functional, attractive and generally in good condition and repair. The Board shall have no obligation regarding maintenance or care of Lots other than the lawns and original landscape shrubs unless approved in writing.

19. **Right of Entry.** The Board and its duly authorized agents shall have the right to enter any and all of the Lots in case of an emergency originating in or threatening such Lot or any other Owner in the Development, whether or not the Owner or occupant thereof is present at the time. The Board and its duly authorized agents shall also have the right to enter into any and all of said Lots at all reasonable times as required for the purpose of making necessary repairs upon the Common Areas or for the purpose of performing emergency installations, alterations or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations or repairs are necessary to prevent damage or threatened damage to other Lots; and provided further, that the Owner or occupant affected by such entry shall first be notified thereof if available and if time permits. Any damage done to a Lot by the exercise of the foregoing right of entry shall (to the extent not covered by insurance, if any) be deemed a Common Expense of the Association.

20. **Administrative Rules and Regulations.** The Board shall have the power to adopt and establish by resolution, such association management and operational rules as it may deem necessary for the maintenance, operation, management and control of the Development. The Board may, from time to time by resolution, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the Owners, such amendment, alteration or provision shall be taken to be a part of such rules. Owners shall at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all Owners, tenants, subtenants, guests, or other occupants of the Lots.

21. **Obligation to Comply with Restated Declaration, Bylaws, Rules and Regulations.** Each Owner, tenant, subtenant or other occupant of a Lot shall comply with the provisions of the Act, this Restated Declaration, the Bylaws, and the rules and regulations, all agreements and determinations legally made and/or entered into by the Board or the Owners, when acting in accordance with their authority, and failure to comply with any of the provisions thereof shall be grounds for an action by the Board or other aggrieved party for injunctive relief or to recover any loss or damage resulting therefrom.

22. **Indemnification of the Board.** Each member of the Board shall be indemnified and held harmless by the Association against all costs, expenses and liabilities whatsoever, including, without limitation, attorney's fees, reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Board; provided, however, the foregoing indemnification shall not apply if the loss, expense or liability involved resulted from the willful misconduct, gross negligence or other intentional act of the member.

23. **Limitation on Association's Liability.** The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in or upon the Project; unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessments under this Restated Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the project or any part thereof, or from any action taken to comply with the provisions of this Restated Declaration or with the laws, ordinances, regulations, rules, or order of any governmental authority.

24. **Amendment.** This Restated Declaration and/or the Maps may be amended upon the affirmative vote or approval and consent of not less than 67% of the Owners. Any amendment so authorized shall be accomplished by recordation of an instrument executed by the Board. In said

instrument the Board shall certify that the vote or consent required by this section has occurred. Where any amendment is not considered by the Board, in their reasonable judgment, to be a material change to any provision of this Restated Declaration, such as the correction of a technical, drafting or typographical error, correction of some obvious omission, resolution of any conflict with applicable laws, any development agreement or governmental requirements, clarification of any ambiguous statement or the like, such amendment may be made at any time by the Board, without requirement to obtain the consent of the Association.

25. **Consent in Lieu of Vote.** In any case in which this Restated Declaration requires the vote of a stated percentage of the Owners for authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively make up at least such stated percentage. The following additional provisions shall govern any application of this Section:

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

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

26. **Severability.** The invalidity of any one or more phrases, sentences, 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 instrument should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, subsection or subsections or section or sections had not been inserted.

27. **Successor Declarant's Rights Assignable.** All of the rights of Successor Declarant under this Restated Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment.

28. **Lease of Lots.** All lease agreements shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Bylaws of the Association both attached as exhibits to the lease, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing and a copy of such lease shall be delivered to the Board at least five (5) days prior to occupancy by the tenant. The Owner shall notify the Board of the names of the lessee of the Lot. In the event of a lease of a Lot, only the tenant and not the Owner shall have the right to the use of the Common Areas while the Lot is leased.

29. **Records.** The Association shall make available, upon written request and within a reasonable time, to the Owners, lenders and the holders and insurers of the first mortgage on any Lot current copies of the Restated Declaration, Bylaws, and other rules governing the Association and shall also make available to prospective purchasers current copies of the same and the most recent audited financial statement of the Association, if any. The Association may charge a reasonable fee for such records and for compiling the records.

30. **Number and Gender.** The singular, wherever used herein, 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, male or female, shall in all cases be assumed as though in each case fully expressed.

31. **Construction and Invalidity.** To the extent that any portion of this Restated Declaration is in conflict with federal, state or local laws, regulations, rules or ordinances (collectively referred to as the "Laws"), such shall be construed to give maximum effect to the restriction without violating the applicable Laws. For example, to the extent the Americans with Disabilities Act allows accommodation animals, then these restrictions shall be interpreted to allow such animals so long as the animal meets the applicable accommodation criteria. The invalidity of any provisions of this Restated Declaration, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Restated Declaration and, in such event, all of the other provisions of this Restated Declaration shall continue in full force and effect as if such invalid provision had never been included herein. This Restated Declaration, notwithstanding any common law rule of construction, shall be construed in favor of Successor Declarant. If there are any ambiguities, such shall not be construed against the Successor Declarant, but resolved in a manner that would allow expansion of the Development as contemplated by the Successor Declarant, it being understood that it is difficult to anticipate all contingencies and issues, and in this regard Successor Declarant's intent is to provide a means to expand the Development as provided herein.

32. **Waivers.** No provision contained in this Restated Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

33. **Notices and Registration of Mailing Address.** All notices, demands, and other communications to any Owner provided for in this Restated Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. mail, postage prepaid, addressed to the Owner at his registered mailing address or if no address has been registered, to the Unit of such Owner. All notices, demands, and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. mail postage prepaid, addressed to the Association at its offices as published by the Association in writing. Any notice, demand, or communication referred to in this Declaration shall be deemed to have been given and received when personally served or when deposited in the U.S. mail, postage prepaid, as the case may be.

34. **Effective Date.** This Restated Declaration shall take effect upon recording.

35. **Approval.**

(a) This Amended and Restated Declaration was approved and adopted by a vote of not less than a two-thirds vote of all of the Members of the Association at a meeting of the Members duly held on September 1, 2007 and attended in person or by proxy by a quorum of the Members of the Association.

(b) The Association certifies that this Amended and Restated Declaration of Covenants, Conditions and Restrictions was voted upon and consented to as required by paragraph 12.05 of the Original Declaration.

(c) The Association has now adopted Articles of Incorporation that were filed with the State of Utah on January 19, 2007.

(d) The Association has adopted By-Laws for the Association which are on file with the Association Secretary and copies of which are available on request.

IN WITNESS WHEREOF, the Association as Successor Declarant has executed this Restated Declaration this 5th day of September, 2007.

Cottages at Blue Water Owners Association, Inc.

Attest:

Rosemarie Jorgensen
Rosemarie Jorgensen, Secretary

By Leon A. Hyde
Leon A. Hyde, President

STATE OF UTAH)
 : ss.
County of Cache)

On the 5th day of September, 2007 personally appeared before me Leon A. Hyde, and Rosemarie Jorgensen, who, being by me duly sworn did say that they are the President and Secretary, respectively, of The Cottages at Blue Water Owners Association, Inc. and that the said instrument was signed in behalf of said entity by authority of a such Corporation's Articles and By-Laws and/or a resolution of the Board of Directors, and the aforesaid individuals acknowledged to me that said Corporation executed the same.

Melissa D. Elizarde
NOTARY PUBLIC

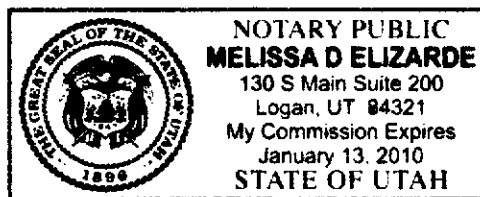


EXHIBIT "A"
TO
AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
and RESTRICTIONS
OF
THE COTTAGES AT BLUE WATER

Legal Description
PHASE 1
AS SURVEYED LEGAL DESCRIPTION

A PARCEL OF GROUND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 14 NORTH, RANGE 5 EAST, OF THE SALT LAKE BASE AND MERIDIAN. DESCRIBED AS FOLLOWS:

COMMENCING AT THE BRASS CAP MONUMENT FOUND AT THE SOUTHWEST CORNER OF SECTION 33, TOWNSHIP 14 NORTH, RANGE 5 EAST OF THE SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 89°20'35" EAST ALONG THE SOUTH LINE OF SAID SECTION AS CURRENTLY MONUMENTED 2640.33 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION; THENCE CONTINUING SOUTH 89°20'35" ALONG SAID SOUTH SECTION LINE 357.72 FEET; THENCE LEAVING SAID SECTION LINE NORTH 00°39'25" EAST 1,618.90 FEET TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY 30, A POINT OF A NON TANGENT CURVE, THE RADIUS POINT OF WHICH BEARS NORTH 54°04'07" EAST 1,096.28 FEET; THENCE ALONG SAID RIGHT OF WAY LINE THE FOLLOWING THREE COURSES, 1) SOUTHEASTERLY 321.50 FEET ALONG THE ARC OF A 1,096.28 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 16°48'10" AND A LONG CHORD THAT BEARS SOUTH 44°19'58" EAST 320.35 FEET; 2) THENCE SOUTH 53°34'47" EAST 48.55 FEET TO THE POINT OF NON TANGENT CURVE THE RADIUS POINT OF WHICH BEARS NORTH 34°46'01" EAST 3,616.33 FEET; 3) THENCE SOUTHEASTERLY 122.78 FEET ALONG THE ARC OF A 3,616.33 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 01°56'43" AND A LONG CHORD THAT BEARS SOUTH 56°12'21" EAST 122.77 FEET TO THE END OF THE CURVE, SAID POINT BEING THE TRUE POINT OF BEGINNING; AND RUNNING THENCE NORTH 25°32'34" EAST 166.73 FEET; THENCE SOUTH 64°27'26" EAST 9.73 FEET; THENCE NORTH 25°32'34" EAST 75.34 FEET; THENCE NORTH 41°18'19" EAST 87.64 FEET; THENCE NORTH 77°32'44" EAST 15.22 FEET; THENCE NORTH 41°18'19" EAST 65.00 FEET; THENCE NORTH 48°41'41" WEST 28.63 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY 7.21 FEET ALONG THE ARC OF A 278.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 01°29'11" AND A LONG CHORD THAT BEARS NORTH 49°26'17" WEST 7.21 FEET; THENCE NORTH 39°49'08" EAST 341.27 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF HODGES LANE; THENCE FOLLOWING SAID SOUTHERLY AND WESTERLY RIGHT OF WAY LINE THE FOLLOWING FOUR COURSES, 1) SOUTH 54°25'30" EAST 194.79 FEET; 2) THENCE SOUTH 26°31'41" EAST 49.89 FEET; 3) THENCE SOUTH 00°34'28" WEST 168.61 FEET; 4) THENCE SOUTH 24°33'08" WEST 550.34 FEET TO A POINT ON THE AFOREMENTIONED NORTHEASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY 30 AND THE POINT OF A NON TANGENT CURVE, THE RADIUS POINT OF WHICH BEARS NORTH 26°04'25" EAST 3,616.33 FEET; THENCE NORTHWESTERLY 425.93 FEET ALONG THE ARC OF A 3,616.33 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 06°44'54" AND A LONG CHORD THAT BEARS NORTH 60°33'08" WEST 425.69 FEET TO THE POINT OF BEGINNING. CONTAINING 6.23 ACRES, MORE OR LESS.

EXHIBIT "B"
TO
AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
and RESTRICTIONS
OF
THE COTTAGES AT BLUE WATER
Legal Description

PHASE 2

AS SURVEYED LEGAL DESCRIPTION

A PARCEL OF GROUND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 14 NORTH, RANGE 5 EAST, OF THE SALT LAKE BASE AND MERIDIAN. DESCRIBED AS FOLLOWS:

COMMENCING AT THE BRASS CAP MONUMENT FOUND AT THE SOUTHWEST CORNER OF SECTION 33, TOWNSHIP 14 NORTH, RANGE 5 EAST OF THE SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 89°20'35" EAST ALONG THE SOUTH LINE OF SAID SECTION AS CURRENTLY MONUMENTED 2640.33 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION; THENCE CONTINUING SOUTH 89°20'35" EAST ALONG SAID SOUTH SECTION LINE 357.72 FEET; THENCE LEAVING SAID SECTION LINE NORTH 00°39'25" EAST 1,618.90 FEET TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY 30 AND THE TRUE POINT OF BEGINNING, SAID POINT ALSO BEING THE BEGINNING OF A CURVE OF WHICH THE RADIUS POINT LIES NORTH 54°04'07" EAST 1,096.28 FEET; AND RUNNING THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE THE FOLLOWING THREE COURSES, 1) 321.50 FEET ALONG THE ARC OF A 1,096.28 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 1 6°48'LO' AND A LONG CHORD THAT BEARS SOUTH 440191581 EAST 320.35 FEET; 2) THENCE SOUTH 53°34'47" EAST 48.55 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE OF WHICH THE RADIUS POINT LIES NORTH 34°46'OL" EAST 3,616.33 FEET; 3) THENCE SOUTHEASTERLY 122.78 FEET ALONG THE ARC OF A 3.6 16.33 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 0 1°56'43 "AND A LONG CHORD THAT BEARS SOUTH 56°12'20" EAST 122.77 FEET; THENCE NORTH 25°32'34" EAST 166.73 FEET; THENCE SOUTH 64°27'26" EAST 9.73 FEET; THENCE NORTH 25°32'34" EAST 75.34 FEET; THENCE NORTH 410181911 EAST 87.64.00 FEET; THENCE NORTH 77°32'44" EAST 15.22 FEET; THENCE NORTH 4101819 EAST 65.00 FEET; THENCE NORTH 48°41'41" WEST 28.63 FEET; THENCE NORTHWESTERLY 7.21 FEET ALONG THE ARC OF A 278.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 01°29'LL" AND A LONG CHORD THAT BEARS NORTH 49°26'17" WEST 7.21 FEET; THENCE NORTH 39°49'08" EAST 341.27 FEET; THENCE NORTH 54°25'30" WEST 425.52 FEET; THENCE SOUTH 46°4 138" WEST 270.14 FEET; THENCE NORTH 43°18'22" WEST 5.99 FEET; THENCE SOUTH 46°41'38" WEST 71.91 FEET; THENCE SOUTH 75°47'30" WEST 92.22 FEET; THENCE SOUTH 14°12'30" EAST 51.33 FEET; THENCE SOUTH 03°04'02" WEST 19 1.25 FEET; THENCE SOUTH 65° 1909" WEST 109.11 FEET TO THE POINT OF BEGINNING. CONTAINING 7.82 ACRES, MORE OR LESS.

EXHIBIT "C"
TO
AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
and RESTRICTIONS
OF
THE COTTAGES AT BLUE WATER
Legal Description
PHASE 3
AS SURVEYED LEGAL DESCRIPTION

A PARCEL OF GROUND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 14 NORTH, RANGE 5 EAST, OF THE SALT LAKE BASE AND MERIDIAN. DESCRIBED AS FOLLOWS:

COMMENCING AT THE BRASS CAP MONUMENT FOUND AT THE SOUTHWEST CORNER OF SECTION 33, TOWNSHIP 14 NORTH, RANGE 5 EAST OF THE SALT LAKE BASE AND MERIDIAN; AND RUNNING SOUTH 8920'35" EAST ALONG THE SOUTH LINE OF SAID SECTION AS CURRENTLY MONUMENTED 2640.33 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION; THENCE CONTINUING SOUTH 8920'35" EAST ALONG SAID SOUTH SECTION LINE 451.21 FEET; THENCE LEAVING SAID SECTION LINE NORTH 00 EAST 1,906.26 FEET TO THE TRUE POINT OF BEGINNING; AND RUNNING THENCE NORTH 1412'30" WEST 330.53 FEET; THENCE NORTH 4814'16" WEST 21.35 FEET; THENCE SOUTH 7537'43" WEST 11.49 FEET; THENCE NORTH 15'24'28" WEST 302.09 FEET; THENCE NORTH 8Z49'12" EAST 116.87 FEET; THENCE SOUTH 38'27'04" EAST 103.73 FEET; THENCE NORTH 45 EAST 47.99 FEET; THENCE SOUTH 3900'30" EAST 339.47 FEET; THENCE SOUTH 54 EAST 125.87 FEET; THENCE SOUTH 4641'38" WEST 270.14 FEET; THENCE NORTH 4318'22" WEST 5.99 FEET; THENCE SOUTH 4641'38" WEST 71.91 FEET; THENCE SOUTH 7547'30" WEST 92.22 FEET TO THE POINT OF BEGINNING. CONTAINING 3.75 ACRES, MORE OR LESS.

J:\MPJ\Corp\The Cottages at Blue Water Owner Association, Inc\Amended RDC CR of Blue Water Subdivision 1-3.FINAL.doc
N-6514.18 w/ Sec 24 change