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DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
THE COTTONWOODS AT MOUNTAIN GREEN

GARDNER COTTONWOOD CREEK, L.C.
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MORGAN COUNTY

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DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
THE COTTONWOODS AT MOUNTAIN GREEN

THIS DECLARATION is made this 12 day of October, 2004,
by GARDNER COTTONWOOD CREEK, L.C., a Utah limited liability company
("Declarant").

O B J E C T I V E S

A. Declarant owns, controls or has the option to acquire, directly or indirectly through one or more of its members or affiliated entities, approximately 1170 acres within Morgan County, Utah. Declarant proposes to develop all or portions of this property as a planned development to be known as "The Cottonwoods at Mountain Green" ("The Cottonwoods").

B. Declarant hopes to create in The Cottonwoods a carefully planned community which will provide an attractive place to live. Declarant presently plans to organize within The Cottonwoods a number of residential areas (each a "Project"). Other areas within or adjacent to The Cottonwoods may be devoted to various recreational purposes, or to public or private parks and open space areas.

C. Declarant will provide leadership in organizing and administering The Cottonwoods during the development period, but expects property owners in The Cottonwoods to accept the responsibility for community administration by the time the development is complete.

D. The purpose of this Declaration is to provide for the ownership, maintenance and use of certain Community Open Space Parcels (defined below) and Community Facilities (defined below) that will be owned and operated by an owners association for the benefit of all properties now or later made subject to this Declaration. In addition, Projects made subject to this Declaration may be subject to Project Declarations which impose additional or different restrictions on the use of property within such Projects

and may establish Project Open Space Parcels for the benefit of the owners within such Projects.

E. Funds for the maintenance and development of Community Open Space Parcels and Community Facilities generally will be provided through assessments against those who purchase property within The Cottonwoods, although to assist with the development of The Cottonwoods, Declarant may from time to time itself provide some Improvements. For the protection of all Owners of property in The Cottonwoods there will be a system designed to assure that each person who purchased property in The Cottonwoods will pay an equitable share of the moneys necessary for the maintenance and development of the Community Open Space Parcels and the Community Facilities.

F. Declarant desires to subject the property described in Exhibit "A" to this Declaration to the conditions, restrictions and charges set forth in this instrument for the benefit of such property and its present and subsequent owners. In addition, Declarant desires to establish CMG Rosehill as a separate Project within The Cottonwoods subject to the conditions, restrictions and charges set forth in this instrument for the benefit of such property and its present and subsequent owners.

NOW, THEREFORE, Declarant hereby declares that the real property included within the subdivision plat of CMG ROSEHILL SUBDIVISION, shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 "Additional Property" means any land, whether or not owned by Declarant, which is made subject to this Declaration as provided in Section 2.2 below.

1.2 "Architectural Review Committee" or "the Committee" means the committee appointed pursuant to Article 7 below.

1.3 "Assessments" means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments as described in Article 10 below.

1.4 "Assessment Unit" means a factor assigned to each Lot in accordance with Section 10.3 below for purposes of determining such Lot's pro rata share of Annual Assessments, Special Assessments, Emergency Assessments and Limited Common Area Assessments.

1.5 "Association" means The Cottonwoods at Mountain Green Master Association, Inc., a Utah nonprofit corporation to be formed to serve as the owners association as provided in Article 8 below, and its successors and assigns.

1.6 "Common Areas" means those lots or tracts conveyed to the Association pursuant to any plat of the Property or otherwise designated as "Community Open Space Parcels" on any plat of the Property, or in this Declaration or any declaration annexing Additional Property to The Cottonwoods or to any Project thereof, including any Improvements thereon, and shall also include Common Easement Areas, Limited Common Areas and any Lots converted to Common Areas as provided in Section 3.3 below. Common Areas do not include areas conveyed to a Project Association pursuant to the applicable Plat for such Project or otherwise designated as Project Open Space Parcels on any Project plat or in the Project Declaration for such Project. Unless the plat specifically indicates that a tract or parcel located outside of a Lot is a "Community Open Space Parcel" the tract or parcel shall be deemed to be Project Open Space Parcel.

1.7 "Common Easement Areas" means those easements and private roads established for the benefit of all property within The Cottonwoods pursuant to any plat or declaration annexing Additional Property to The Cottonwoods, but excluding any easements and private roads designated as Project Open Space Parcels on any Project plat or in any Project Declaration. Unless the plat specifically indicates that a tract or parcel is a "Community

Common Easement Area" or "Community Private Road," the tract or parcel shall be deemed to be Project Common Area.

1.8 "Condominium" means any property subject to this Declaration submitted to the Utah Condominium Ownership Act.

1.9 "Declarant" means Gardner Cottonwood Creek, L.C., a Utah limited liability company, and its successors and assigns if such successor or assignee should acquire Declarant's interest in the remainder of the proposed project site, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant's rights under this Declaration. Without the written assignment of Declarant, a Member of Declarant may exercise the rights of Declarant with respect to any portion of the Property owned separately by that Member which is covered by a Project Declaration or an annexation declaration under Section 2.2.

1.10 "Declaration" means all of the easements, covenants, restrictions and charges set forth in this instrument, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof, including the provisions of any supplemental declaration annexing property to The Cottonwoods.

1.11 "Development" means The Cottonwoods, including every Project.

1.12 "Improvement" means every structure or improvement of any kind, including but not limited to a fence, wall, driveway, swimming pool, storage shelter or other product of construction efforts on or in respect to the Property.

1.13 "Initial Development" or "Initial Property" means the real property referred to in Section 2.1 below.

1.14 "Limited Common Areas" means any Common Areas established for the exclusive use or enjoyment of certain Lots as designated on any plat of any portion of the Property, in this Declaration or in any declaration annexing property to The Cottonwoods.

1.15 "Living Unit" means a building or a portion of a building located upon a Lot within the Property and designated for separate residential occupancy, including a house and a Condominium unit.

1.16 "Lot" means a platted or partitioned lot, tract or Condominium unit within the Property, with the exception of any tract or Lot marked on a plat of the Property as being common or open space or so designated in this Declaration or the declaration annexing such property to The Cottonwoods. Lot does not include Common Areas, Project Open Space Parcels or Public Areas.

1.17 "Mortgage" means a mortgage or a trust deed; "mortgagee" means a mortgagee or a beneficiary of a trust deed; and "mortgagor" means a mortgagor or a grantor of a trust deed.

1.18 "Owner" means the person or persons, including Declarant, owning any Lot in the Property, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.19 "Project" means any separately designated and developed neighborhood or area constructed upon a portion of the Property and comprised of discrete types of development or use, including, without limitation, the following types of uses:

- (a) A Condominium project;
- (b) A residential development of single-family detached houses;
- (c) Residential development of attached, townhomes or zero lot line homes; or
- (d) Any other separately designated area within The Cottonwoods devoted to a discrete purpose.

Any such Project shall be designated as a Project in the Project Declaration, this Declaration or the declaration annexing such portion of the Property to The Cottonwoods.

1.20 "Project Assessments" means assessments levied pursuant to a specific Project Declaration.

1.21 "Project Association" means any association established for a specific Project pursuant to a Project Declaration.

1.22 "Project Committee" means a committee appointed or elected for a Project pursuant to Section 8.12 below.

1.23 "Project Common Area" means the area within a Project restricted in whole or in part to common use primarily by or for the benefit of the owners within the Project and their families, tenants, employees, guests and invitees and including any Project Limited Common Areas as may be designated on any plat of any Project. Unless the plat specifically indicates that a tract or parcel located outside of a Lot is "Community Open Space Parcel," the tract or parcel shall be deemed to be Project Common Area.

1.24 "Project Declaration" means a declaration of easements, covenants, conditions and restrictions establishing a plan of Condominium ownership or townhouse ownership, or otherwise imposing a unified development scheme on a particular Project.

1.25 "Project Parcel" means the portion of the Property upon which a Project is located, as indicated, if appropriate, on the plat relating to the Project and as designated in the Project Declaration.

1.26 "Property" means such portions of the 1170 acres of land to be known as The Cottonwoods, including the Initial Property, which is included within any Project added by the recordation of a Project Declaration and such other portions of such 1170 acres of land described in Exhibit "B" or other land as may be made subject to the terms of this Declaration by the recordation of a supplemental declaration annexing property to The Cottonwoods.

1.27 "Public Areas" means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Declaration or the declaration annexing such property to The Cottonwoods.

1.28 "Residential Lots" means those Lots designated as such in this Declaration or in the declaration annexing such Lots to The Cottonwoods.

1.29 "Sold" means that legal title has been conveyed or that a contract of sale has been executed and recorded under which the purchaser has obtained the right to possession.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

2.1 Initial Development. Declarant hereby declares that all of the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

All that certain real property located in Morgan County, Utah, located within that certain plat entitled "The Cottonwoods at Rose Hill a P.R.U.D. Subdivision in Mountain Green, Morgan County, Utah" filed in the plat records of Morgan County, Utah, including Lots 1 through 70, and Open Space Parcels A through H.

2.2 Annexation of Additional Property. Subject to such Morgan County approvals as may be required by Morgan County ordinances or any development agreement entered into between the Declarant and the County applicable to The Cottonwoods, Declarant may from time to time and in its sole discretion add to The Cottonwoods as Additional Property any real property now or hereafter acquired by it, and may also from time to time and in its sole discretion permit other holders of real property to add real property owned by them to The Cottonwoods. The addition of such real property shall be accomplished as follows:

(a) The owner or owners of such real property shall record a declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, designate the Project of which such property is a part, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

(b) The property included in any such annexation shall thereby become a part of The Cottonwoods and this Declaration, and the Declarant

and the Association shall have and shall accept and exercise administration of this Declaration with respect to such property.

(c) Notwithstanding any provision apparently to the contrary, a declaration with respect to any Project or Additional Property may:

(i) establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of the Additional Property.

(ii) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of such Additional Property.

(iii) incorporate provisions contained in this Declaration with or without modification to become applicable to the Project Common Area, the Project Association, the Project Architectural Control Committee, Project Assessments or other matters affecting a Project without a requirement that such provisions be repeated in a Project Declaration.

(d) There is no limitation on the number of Lots or Living Units which Declarant may create or annex to The Cottonwoods, except as may be established by applicable ordinances of Morgan County. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by Morgan County.

(e) Declarant does not agree to build any specific future Improvement, but does not choose to limit Declarant's right to add additional Improvements.

(f) Upon annexation, additional Lots so annexed shall be entitled to voting rights as set forth in Section 8.3 below. (Prior to annexation, proposed Lots shown on the Conceptual Site Plan Approval for The Cottonwoods shall be counted as provided in Section 8.3 below for calculating the voting rights of the Class B member.)

(g) The formula to be used for reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the

common expenses if additional Lots are annexed during a fiscal year are set forth in Section 10.9 below.

2.3 Withdrawal of Property. Subject to such Morgan County approvals as may be required by Morgan County ordinances or any development agreement entered into between the Declarant and the County applicable to The Cottonwoods, Declarant may withdraw property from The Cottonwoods only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Initial Property or any Additional Property annexed pursuant to a declaration described in Section 2.2 above at any time prior to the sale of the first Lot in the respective plat of the Initial Property, or in the case of Additional Property, prior to the sale of the first Lot in the property annexed by the supplemental declaration. Such withdrawal shall be by a declaration executed by Declarant and recorded in the deed records of Morgan County, Utah. If a portion of the Property is so withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 10.9 below. Such right of withdrawal shall not expire except upon sale of the first Lot within the applicable phase of the Property as described above.

ARTICLE 3

PROJECT DESIGNATIONS AND LAND CLASSIFICATIONS

3.1 Project Designation. CMG Rosehill, as defined below, is hereby designated a Project within The Cottonwoods.

(a) CMG Rosehill shall consist of Lots 1 through 70 within that certain plat entitled "CMG Rosehill Subdivision" filed in the Plat Records of Morgan County, Utah, together with such Additional Property declared to be a part of such Project in any supplemental declaration annexing Additional Property to CMG Rosehill Subdivision.

3.2 Land Classifications within Initial Development. All land within the Initial Development is included in one or another of the following classifications:

(a) Residential Lots, which shall consist of all Lots on the plat of the Initial Development.

(b) Project Open Space Parcels, which shall be the areas marked as landscaped open space, open space and private roads, or other similar designations, on the plats recorded as a part of the Initial Development. Unless the plat specifically indicates that a tract or parcel is "Community Open Space Parcel" the tract or parcel shall be deemed to be Project Common Area.

(c) Community Open Space Parcels, which shall be the areas marked as Community Open Space Parcels or other similar designations, on the plats recorded as a part of the Initial Development.

(d) Public Areas, which shall be the areas marked as public parks, trails or streets on the plats recorded as a part of the Initial Development.

3.3 Consolidation of Lots. The Owner of two adjoining Lots, with the approval of Morgan County and subject to any applicable Morgan County ordinances, may elect to consolidate such Lots into one Lot. The consolidation shall be effected by the Owner's recording in the deed records at Morgan County, Utah, a declaration stating that the two Lots are consolidated and such other documents as are required by applicable ordinance, which declaration shall include a written consent executed on behalf of Morgan County. Thereafter, the consolidated Lots shall constitute one Lot for all purposes of this Declaration, including voting rights and assessments. Once so consolidated, the consolidated Lot may not thereafter be partitioned nor may the consolidation be revoked without the prior approval of Morgan County.

ARTICLE 4

PROPERTY RIGHTS IN COMMON AREAS

4.1 Owners' Easements of Enjoyment. Subject to provisions of this Article, every Owner and his invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot.

4.2 Common Easement Areas. Common Easement Areas shall consist of two types: (i) easements reserved over land for signage and visual landscape features and (ii) land reserved for private roads and trails. Such areas are to be maintained by the Association and no changes in the use or

improvement of those areas will be permitted without written authorization by the Management Committee of the Association. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner so as to trespass or encroach upon the Common Easement Areas. Unless the plat specifically indicates that a tract or parcel is a "Community Easement Area," the tract or parcel shall be deemed to be Project Common Area.

4.3 Title to Common Areas. Title to the Common Areas, including Common Easement Areas except for Common Easement Areas reserved for signage or landscaping on public or private land, shall be conveyed to the Association by Declarant, free and clear of monetary liens, prior to the date on which Class B membership in the Association ceases and is converted to Class A membership as described in Section 8.3(b). Title to Common Easement Areas reserved for landscaping and signage across private land, subject to the easements set forth in this Declaration, shall pass to the Owners of the respective Lots within which such areas are located, or to the public if part of dedicated street right of ways.

4.4 Extent of Owners' Rights. The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and all other provisions of this Declaration:

(a) Easements. Declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Property (including in the case of easements for ingress and egress, the invitees of the Owners of Lots) the following easements over, under and upon the Common Areas, including the Common Easement Areas:

(i) An easement on all Common Areas for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by Declarant or with the approval of the Management Committee of the Association and any such easement shown on any plat of the Property.

(ii) An easement for construction, maintenance, repair and use of Common Areas, including common facilities thereon.

(iii) An easement for the purpose of making repairs to any existing structures on Common Areas.

(iv) An easement across all Common Easement Areas consisting of private roads for ingress and egress to and from Lots, other Common Areas and publicly dedicated roads. This right shall include the right of access using Common Easement Areas through one Project for the benefit of the Owners of other Projects where the roads are physically connected.

(v) An easement across all Common Easement Areas consisting of trails for ingress and egress, by foot or by non-motorized vehicles only, to and from Lots, other Common Areas and publicly dedicated roads or any adjacent public lands.

Declarant or the Association may (and, to the extent required by law, shall) grant or assign such easements to Morgan County or other political subdivisions, municipalities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire and other public officials and to employees of utility companies and communications companies serving the Property.

(b) Use of the Common Areas. The Common Areas shall not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas, including Common Easement Areas. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas identifying the Property or any Project or identifying pathways or items of interest, provided such signs comply with any applicable Morgan County sign ordinance. The Management Committee of the Association shall have authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings. A declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use a particular Common Area or facility located on such Common Area. In such case, those Owners will not be required to share in the costs of maintaining the facility, as is more particularly described in Section 10.9.

(c) Alienation of the Common Areas. The Association may not by act or omission 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 unless the holders of at least 80 percent of the Class A

Association voting rights and the Class B member (as defined in 8.3(b) below), if any, have given their prior written approval. Any such abandonment, partition, subdivision, encumbrance, sale or transfer shall also be subject to the requirements of Section 13.1 and such Morgan County approvals as may be required by Morgan County ordinances or any development agreement entered into between the Declarant and the County applicable to The Cottonwoods. The foregoing provision shall not apply to Common Easement Areas or to the easements described in Section 4.4(a) above. The Association, upon approval in writing of at least 50 percent of the Class A Association voting rights and the Class B member, if any, and if approved by order or resolution of Morgan County, may dedicate or convey any portion of the Common Areas to a park district or other public body.

(d) Limitations on Use. Use of the Common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use rights of an Owner to the extent provided in Article 11 below.

(ii) The right of the Association to adopt, amend and repeal rules and regulations in accordance with this Declaration.

4.5 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment of the Common Areas to the members of his family and to tenants or contract purchasers who reside on the Property.

4.6 Easements Reserved by Declarant. So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas in order to carry out sales and rental activities necessary or convenient for the sale or rental of Lots. In addition, Declarant hereby reserves to itself and for the owners of Lots in all future phases of The Cottonwoods a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of other property owned by Declarant and future phases of the Property. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on

the Property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or his family, tenants, employees, guests or invitees.

4.7 Conversion of Streets to Limited Common Areas. Upon approval of the owners of a majority of the Lots within any Project, any non-public principal road providing access to the Project and not also providing access to any other Project may be converted from a Common Easement Area to a Project Common Area for the exclusive benefit of the Project in question. Any road so converted to Limited Common Area may use gated entries to the extent permitted by Morgan County. Thereafter, the costs of maintaining such Limited Common Area and gates shall be the responsibility of Owners of Lots within the applicable Project.

ARTICLE 5

PROPERTY RIGHTS IN LOTS

5.1 Use and Occupancy. The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and the Owner shall comply with the restrictions contained in the applicable Project Declaration, and all other provisions of this Declaration and the provisions of any supplement to this Declaration and/or any applicable Project Declaration.

5.2 Easements Reserved. In addition to any utility and drainage easements shown on any recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

(a) Adjacent Common Area. The Owner of any Lot which blends together visually with any Common Area shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Area.

(b) Right of Entry. Declarant, and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals and upon reasonable notice to the Lot Owner under the circumstances, enter upon any Lot for the purpose of determining whether or not the use and/or improvements of such Lot are then in

compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(c) Utility Easements. Easements for installations and maintenance of drainage facilities and public utilities are hereby reserved over ten (10) feet of the front, rear and one side of each Lot, and as otherwise identified on the plats for particular Projects. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. However, the Architectural Review Committee may, in its sole discretion, approve a structure within the easements such as a fence, wall, landscaping, driveway or off-street parking area. It is expressly understood, however, that any such Improvement shall be constructed at the Owner's or the easement holder's sole risk, as the case may be, and as provided in the easement document(s), of having the Improvement partially or wholly removed, dismantled, taken out, or destroyed where necessary because of drainage or public utility servicing, installation, alteration or maintenance. The easement areas within each Lot and all Improvements in such areas shall be maintained continuously by the Owner of the Lot, except for those improvements which a public authority or utility company is responsible to maintain.

Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on any recorded plat.

(d) Landscape Maintenance. Where a specific Project Declaration or Project plat so provides, the Project Association shall undertake principal responsibility to provide for the maintenance of exterior landscaping on the Lots within the Project including watering and the maintenance, repair or replacement of the exterior sprinkling system. If landscape maintenance remains the principal responsibility of the Owners of Lots, the Project Association and/or the Association shall have the right to enter on the Lot in order to maintain landscaping in the event the Owner fails to adequately maintain the landscaping in accordance with the standards of the Project including watering and the maintenance, repair or replacement of the exterior sprinkling system. The Project Association's and the Association's right of access for maintenance shall include the right of access to a garage or other part of a residence on a Lot containing the automatic sprinkling control box and the right to use the water at the expense of the owner in any amount deemed necessary

and appropriate by the Project Association or the Association for maintaining the landscaping in the Lot.

ARTICLE 6

GENERAL USE RESTRICTIONS

6.1 Structures Permitted. No structures shall be erected or permitted to remain on any Residential Lot except structures containing Living Units and structures normally accessory thereto. The foregoing provision shall not exclude construction of a private greenhouse, storage unit, private swimming pool or structure for the storage of a boat and/or camping trailer for personal use, provided the location of such structure is in conformity with the applicable Morgan County regulations and the front, side and rear yard setback requirements of this Declaration or any Project Declaration, is compatible in design and decoration with the dwelling structure constructed on such Lot, and has been approved by the Architectural Review Committee. No structure of a temporary character, or trailer, mobile home, camper, tent, shack, garage or other outbuilding shall be used on any Lot at any time as a residence. No old or secondhand structures shall be moved onto any Residential Lot, it being the intention hereof that all dwellings and other buildings be erected on said Residential Lots shall be new construction of first class quality, workmanship and material.

6.2 Residential Use. Residential Lots shall only be used for residential purposes. Except with the consent of the Management Committee, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Residential Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Living Units, (b) the right of Declarant or any contractor or homebuilder to construct Living Units on any Residential Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Living Unit as a sales or rental office or model home or apartment for purposes of sales or rental in The Cottonwoods, and (c) the right of the Owner of a Residential Lot to maintain his professional personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients

or customers, in his Living Unit, provided, however, there shall be no external evidence thereof and such use is conducted pursuant the Morgan County home occupation/business ordinances. The Management Committee shall not approve commercial activities otherwise prohibited by this paragraph unless the Management Committee determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable Morgan County ordinances.

6.3 Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon the Property, nor shall anything be done or placed on the Property which interferes with or jeopardizes the enjoyment of the Property, or which is a source of annoyance to residents. Except for legitimate construction and maintenance purposes, no excessively loud noises shall be permitted in the Projects. No unlawful use shall be made of the Property nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any Lot nor shall oil wells, tunnels, mineral excavations or shafts be permitted. No derrick or other structure designed for use in drilling for oil or natural gas or water shall be erected, maintained or permitted upon any Lot.

6.4 Animals. Except as specifically stated to the contrary in a Project Declaration, no animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any Residential Lot other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of their respective owners. No dog, cat or other pet shall be permitted to roam the Property unattended, and all dogs, cats or other pets shall be kept on a leash while outside a Lot. An Owner or resident may be required to remove a pet upon receipt of the third written notice from the Association Management Committee of violations of any rule, regulation or restriction governing pets within the Property.

6.5 Maintenance of Structures and Grounds. Each Owner shall maintain his Lot and Improvements thereon in a clean and attractive

condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or re-staining and exterior remodeling shall be subject to prior review and approval by the Architectural Review Committee. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on his Lot neatly trimmed, property cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

6.6 Parking. Except as may otherwise be provided in the Rules and Regulations of the Association, parking of boats, trailers, off-road motorcycles, trucks, mobile homes, campers or other recreational vehicles or equipment, regardless of weight, and parking of any other vehicles in excess of three-quarter (3/4) ton in weight shall not be allowed to remain overnight on any part of the Property, excepting only within areas designated for such purposes by the Management Committee of the Association or within the confines of an enclosed garage, the plans of which shall have been reviewed and approved by the Architectural Review Committee prior to construction, and no portion of the same may project beyond the screened area.

6.7 Vehicles in Disrepair. No Owner shall permit any vehicle which is either inoperable or in an extreme state of disrepair or not currently licensed for use on the public roadways to be abandoned or to remain parked on the Common Area or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Management Committee reasonably determines that, by reason of its poor exterior condition, its presence degrades the visual environment of the neighborhood. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to him by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner.

6.8 Signs. No signs shall be erected or maintained on any Residential Lot, except that in its sole discretion the Architectural Review Committee may adopt regulations permitting not more than one "For Sale"

or "For Rent" sign placed by the Owner, Declarant or by a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be temporarily displayed on any Residential Lot. In addition, the Owner of a multi-family Lot may maintain one sign identifying the name of the project and the location of the resident manager, provided such signs comply with applicable ordinances of Morgan County and are approved as to appearance and location by the Architectural Review Committee. The restrictions contained in this paragraph shall not prohibit the temporary placement of "political" signs on any Residential Lot by the Owner within reasonable regulations to be promulgated by the Architectural Review Committee. This section shall not apply to any signs used by Declarant or its agents in connection with the original construction and sale of the Lots or signs used by a builder, up to ten (10) square feet or smaller in size, to advertise the Improvement or Lot and to designate a particular identity of the construction project. The erection of any sign within The Cottonwoods shall be subject to such Morgan County approvals as may be required by Morgan County ordinances or any development agreement entered into between the Declarant and the County applicable to The Cottonwoods.

6.9 Rubbish and Trash. No part of the Common Area or Residential Lots shall be used as a dumping ground for trash or rubbish of any kind. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets or Common Areas. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any streets or Common Area or Residential Lots where deposited by him within ten (10) days following the date on which notice is mailed to him by the Management Committee of the Association, the Association may have such materials removed and charge the expense of such removal to the Owner. Without limiting the generality of the foregoing, the Owners shall not allow any builder, contractor, or subcontractor to wash any cement truck or cement mixer or to dump or deposit any asphalt, concrete or other construction materials or debris which are not part of the Improvements to a Lot upon any part of the Project Property. An Owner shall be directly responsible for any violation of this Master Declaration or damage to any of the Property by or caused by the Owner's builder(s), contractor(s), or subcontractor(s). The "Deposit" referred to in Article 7 hereof may be retained by the Architectural Review Committee in accordance with Section 7.1 for any such violation or damage. Nothing contained herein or in Section 7 shall limit the amount of damages for which an Owner may be liable. The

foregoing to the contrary notwithstanding, an Owner or the Owner's contractor may, during the period of construction as specified herein,, place and maintain upon a Lot no more than one (1) dumpster and one (1) portable toilet facility.

6.10 Completion of Construction. The construction of any building on any Residential Lot, including painting and all exterior finish, shall be completed within eighteen (18) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Architectural Review Committee. The building area shall be kept reasonably clean and in workmanlike order, free of liter, during the construction period with a garbage can or other garbage disposal facility on the site during such period. If construction has not commenced upon any Residential Lot within one (1) year after acquisition by the Owner, the Owner shall install the sidewalk, landscape, irrigate and maintain the Lot fully. The Architectural Review Committee may waive this requirement if it determines that construction will commence within a reasonable time. In any case, all unimproved Residential Lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

6.11 Landscape. All landscaping shall comply with Design Guidelines adopted by the Architectural Review Committee and completed within eighteen (18) months for front and side yards and twenty-four (24) months for rear yards from the first to occur of substantial completion of construction or the date of occupancy of the Living Unit constructed thereon. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Architectural Review Committee.

6.12 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Residential Lot at any time as a residence either temporarily or permanently.

6.13 Service Facilities. Above and below ground fuel tanks and clotheslines are not allowed.

6.14 Antennas and Satellite Disks. Exterior antennas and satellite receiver and transmission disks shall not be permitted to be placed upon any Residential Lot except as approved by the Architectural Review Committee, except for small dishes attached to roof and not to exceed 24 inches in diameter. Any other term or condition hereof to the contrary notwithstanding, no commercial, ham radio, citizens band or radio antenna or other similar electronic receiving or sending device shall be permitted that interferes with the peace and quiet enjoyment of any neighboring Owner's Lot or home entertainment facilities or equipment.

6.15 Exterior Lighting or Noisemaking Devices. Except with the consent of or pursuant to regulations adopted by the Architectural Review Committee, no exterior lighting or noisemaking devices shall be installed or maintained on any Residential Lot, other than security and fire alarms. All exterior lighting shall be low pressure sodium. Lighting of home facades, flood lighting, and up lighting of trees is prohibited when such lighting adversely affects adjoining Lots .

6.16 Tree Removal. No Owner or contractor or agent of any Owner or contractor shall remove any of the existing trees from any Lot (other than trees which the Architectural Review Committee has allowed to be removed in connection with the approval of an Owner's plans and specifications. In the event that an Owner, or contractor or agent of any Owner or contractor shall remove any tree from a Lot without first obtaining the written consent of the Architectural Review Committee, the Association shall be entitled to require the Owner to replace any and all trees removed with the same species, age, and height of tree or trees as the tree or trees removed, which remedy shall be in addition to all other rights and remedies of the Association as set forth in this Declaration.

6.17 Utility Lines. All utility lines located on any Lot shall be installed underground. All connection fees and other charges for utilities installed on a Lot shall be paid by the Owner of such Lot.

6.18 Governmental Regulations. All activities on any Lot shall comply with applicable governmental rules, regulations, and ordinances of Morgan County and any other applicable State or Federal law. When a particular activity is governed by both this Declaration and the rules, regulations and ordinances of Morgan County, the more restrictive requirement shall be applicable.

6.19 Fire Protection. All occupants of any Lot shall strictly comply with all State and Morgan County ordinances pertaining to fire hazard control. All stacks and chimneys from fire places in which combustibles, other than natural gas, are burned shall be fitted with spark arresters. Exterior fires are prohibited, except fires contained within appropriate receptacles as provided by Morgan County ordinances.

6.20 Environmental Concerns. If required by Morgan County, all site plans submitted to the Architectural Review Committee pursuant to section 7.1 of this Declaration shall address soils, seismic conditions, re-vegetation of natural areas (indicating areas where natural vegetation is to be removed and plans for the replanting of those areas), and grading of the Lot, including cuts and fills.

6.21 Pest Control. No Owner shall permit any thing or condition to exist upon any portion of the Property which shall induce, breed or harbor infectious plant diseases or noxious insects or vermin.

6.22 Grades, Slopes and Drainage. Each Owner of a Lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Lot or Common Area without the express written permission of the Architectural Review Committee, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels. All persons erecting or constructing Improvements on any Lot shall comply with the Morgan County Ordinances requiring, among other things, that grading and vegetation plans be approved by the County Engineer before building permits are issued. Any disturbance of a hillside is controlled by Morgan County ordinances. Construction of berms, channels or other flood control facilities on any Lot is the sole responsibility of the Lot Owner and shall be done in accordance with the flood control district plans approved by the Morgan Country Flood Control. Such construction shall commence at the time the Lot is graded or otherwise altered from its natural state.

6.23 Project Restrictions. Each Owner of a Lot, and such Owner's

family, tenants, guests and invitees, shall also comply with any additional use restrictions contained in any Project Declaration applicable to such Lot.

6.24 Association Rules and Regulations. In addition, the Association from time to time may adopt, modify or revoke such Rules and Regulations governing the conduct of persons and the operation and use of the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association Management Committee promptly to each Owner and shall be binding upon all Owners and occupants of all Residential Lots upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

6.25 Deviations. Deviations from the standards set forth in this Declaration may be allowed only upon written approval by the Architectural Review Committee for good cause shown.

6.26 Application to Additional Property. The provisions of Sections 6.1 through 6.25 shall not apply to Residential Lots if the declaration annexing the Residential Lots so specifies. The declaration annexing such Additional Property to this Declaration may establish restrictions governing the use and conduct of such Lots that are more or less restrictive than the restrictions contained in this Declaration.

ARTICLE 7

ARCHITECTURAL REVIEW COMMITTEE

7.1 Architectural Review. No Improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Architectural Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials, to assure harmony of external design with the existing Improvements and as to location with respect to topography and finished grade elevations, and to avoid plan repetition. The Architectural Review Committee is not responsible for determining compliance with structural

and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the applicant. The procedure and specific requirements for review and approval of residential construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Architectural Review Committee may condition such approval on the Lot Owner depositing cash in the sum of Five Hundred Dollars (\$500.00) with the Committee (the "Deposit"), Two Hundred Dollars (\$200.00) of which shall constitute a non-refundable fee) for the estimated costs of professionals, e.g. architects and engineers, to review the designs and plans submitted by the Owner; and the remainder of the Deposit for the purpose of insuring that 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 and/or landscaping process from blowing or collecting on neighboring Lots and streets, (2) reasonably cleans up his or her Lot at or near the completion of the construction and/or landscaping process, and (3) complies in all respects with the terms and conditions of this Declaration. The Deposit may be required by the Architectural Review Committee prior to the commencement of construction by an Owner, or at any time during the construction period. If the Lot Owner fails in any of these responsibilities, the Five Hundred Dollar (\$500.00) Deposit may be retained by the Architectural Review Committee as a fine upon such Lot Owner. Additionally, if any such failure is not remedied by the Owner within fourteen (14) days after written notice thereof, the Architectural Review Committee may remedy such condition itself and in connection therewith, it may have reasonable access to the Lot and shall charge the Lot Owner for the cost of the remedy, in which event the provisions of Article 10 shall be applicable. Upon the completion of the construction of the Residence, and the Landscaping of the Lot, in a satisfactory manner, the balance of the Deposit shall be returned to the Lot Owner by the Committee. The Architectural Review Committee may change the amount of the Deposit at any time or from time-to-time hereafter in order to allow for increasing costs and for inflation. In all cases which the Architectural Review Committee consent is required by this Declaration or any Project Declaration, the provisions of this Article shall apply subject to the provisions of Section 7.11. Nothing contained herein shall prevent the Declarant from completing excavation, grading and construction of Improvements to any portion of the Property, or to alter the foregoing or to construct such additional improvements as Declarant deems advisable in the course of development of The Cottonwoods so long as any Lot owned by the Declarant remains unsold.

7.2 Committee Decision. The Architectural Review Committee shall render its decision with respect to the construction proposal within fifteen (15) working days after it has received all material required by it with respect to the application. In the event the Committee fails to render its approval or disapproval within thirty (30) working days after the Committee has received all material required by it with respect to the proposal, or if no suit to enforce this Declaration has been commenced within one year after completion thereof, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

7.3 Committee Discretion. The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the Committee intends for The Cottonwoods or any specific Project therein. Consideration such as siting, shape, size, color, design, height, solar access, impairment of the view from other Lots, or other effect on the enjoyment of other Lots or the Common Area, disturbance of existing terrain and vegetation and any other factors which the Committee reasonably believes to be relevant, may be taken into account by the Committee in determining whether or not to consent to any proposed work.

7.4 Membership: Appointment and Removal. The Architectural Review Committee shall consist of as many persons, but not less than three, as the Declarant may from time to time appoint. At least one member shall be a professional in the field of architecture. The Declarant may remove any member of the Committee from office at its discretion at any time and may appoint new or additional members at any time. In the event Declarant fails to appoint an Architectural Review Committee prior to delegating the power to appoint or remove members to the Management Committee of the Association, then Declarant shall function as the Architectural Review Committee. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Committee. Declarant may at any time delegate to the Management Committee of the Association the right to appoint or remove members of the Architectural Review Committee. In such event, or in the event Declarant fails to appoint an Architectural Review Committee, the Management Committee shall assume responsibility for appointment and removal of members of the Architectural Review Committee, or if it fails to

do so, the Management Committee shall serve as the Architectural Review Committee.

7.5 Majority Action. Except as otherwise provided in this Declaration, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. The Committee may render its decision only by written instrument setting forth the action taken by the consenting members.

7.6 Liability. Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member of the Committee, provided only that the member has, in accordance with the actual knowledge possessed by him, acted in good faith.

7.7 Nonwaiver. Consent by the Architectural Review Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

7.8 Appeal. At any time after Declarant has delegated appointment of the members of the Architectural Review Committee to the Management Committee of the Association pursuant to Section 7.4, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Management Committee of the Association. Appeals shall be made in writing within ten (10) days of the Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Management Committee of the Association within fifteen (15) working days after receipt of such notification.

7.9 Effective Period of Consent. The Architectural Review Committee's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the Committee.

7.10 Estoppel Certificate. Within fifteen (15) working days after written request is delivered to the Architectural Review Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Committee to cover costs, the Committee shall provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either: (a) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration, or (b) such Improvements do not so comply, in which event the certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between Declarant, the Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

7.11 Delegation of Architectural Review to Project Architectural Review Committees. The Declarant or the Architectural Review Committee may delegate its responsibilities within a Project to a Project Architectural Review Committee, which shall have the responsibility to administer the provisions of this Article 7, the Project Declaration and Design Guidelines relating to the Project. The Project Architectural Committee shall consist of a Project Architectural Review Committee appointed by Declarant as provided in this Article or, in the event no such committee has been appointed by Declarant, either (i) the Project Committee, (ii) the Management Committee of the Project Association if one has been established or (iii) a Project Architectural Review Committee appointed by the Project Association for that purpose. In the event that delegation to a Project Architectural Review Committee occurs, the provisions of this Article shall apply.

ARTICLE 8

ASSOCIATION

Declarant shall organize an association of all of the Owners within The Cottonwoods. Such Association, its successors and assigns, shall be organized under the name "The Cottonwoods at Mountain Greens Master Association, Inc." or such similar name as Declarant shall designate, and shall have such property, powers and obligations as are set

forth in this Declaration for the benefit of the Property and all Owners of property located therein.

8.1 Organization. Declarant shall, before the first Lot is conveyed to an Owner, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Utah. The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association.

8.2 Membership. Every Owner of one or more Lots within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within the Property, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

8.3 Voting Rights. Voting rights within the Association shall be allocated as follows:

(a) Residential Lots. Residential Lots shall be allocated one vote per Living Unit located on such Lot. Condominium units shall be entitled to one vote for each Condominium unit.

(b) Classes of Voting Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to voting rights for each

Lot owned computed in accordance with Section 8.3(a) above. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more voting rights be cast with respect to any Lot than as set forth in Section 8.3(a) above. Solely for purposes of calculating the voting right of the Class B member, the number of Lots owned by Declarant shall be deemed to include the additional unplatted Lots shown on the then current Conceptual Site Plan Approval for The Cottonwoods.

Class B. The Class B member shall be the Declarant and shall be entitled to five times the voting rights computed under Section 8.3(a) for each Lot owned by Declarant. 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:

(i) When eighty percent (80%) of the Lots in the final phase of development of The Cottonwoods have been sold and conveyed to Owners other than Declarant (which final phase of development shall be determined with reference to the most current Conceptual Site Plan Approval for the Property); or

(ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

8.4 General Powers and Obligations. The Association shall have, exercise and perform all of the following powers, duties and obligations:

(a) The powers, duties and obligations granted to the Association by this Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah.

(c) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Property.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with its provisions, accompanied by

changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

8.5 Specific Powers and Duties. The powers and duties of the Association shall include, without limitation, the following:

(a) Maintenance and Services. The Association shall provide maintenance and services for the Property as provided in Article 9 and other provisions of this Declaration.

(b) Insurance. The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.

(c) Rulemaking. The Association shall make, establish, promulgate, amend and repeal Rules and Regulations governing the Common Area.

(d) Assessments. The Association shall adopt budgets and impose and collect Assessments as provided in Article 10 of this Declaration.

(e) Enforcement. The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association.

(f) Employment of Agents, Advisers and Contractors. The Association, through its Management Committee, may employ the services of any person or corporation as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreational experts, architects, planners, lawyers and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property.

(g) Borrow Money, Hold Title and Make Conveyances. The Association may borrow and repay moneys for the purpose of maintaining

and improving the Common Areas, subject to Section 4.4(c) above, and encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within The Cottonwoods conveyed to the Association by Declarant.

(h) Transfer, Dedication and Encumbrance of Common Area. Except as otherwise provided in Section 4.4(c) above, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

(i) Create Classes of Service and Make Appropriate Charges. The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those of its members who do not assent to such charges and to such other Rules and Regulations as the Management Committee deems proper. In addition, the Management Committee shall have the right to discontinue any service upon nonpayment or to eliminate such service for which there is no demand or adequate funds to maintain the same.

(j) Implied Rights and Obligations. The Association may exercise any other right or privilege reasonably to be implied from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

8.6 Liability. A member of the Management Committee or an officer of the Association shall not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, except for acts of gross negligence or intentional acts. In the event any member of the Management Committee or any officer of the Association is

made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

8.7 Interim Board; Turnover Meeting. Declarant shall have the right to appoint an interim board of three directors, who shall serve as the Management Committee of the Association until replaced by Declarant or until their successors take office at the turnover meeting described in this section. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than one hundred twenty (120) days after Lots representing seventy-five percent (75%) of the voting power computed in accordance with Section 8.3(a) and (b) (including for this purposes the unplatted Lots contemplated by Section 8.3(a) and (b) above have been sold and conveyed to Owners other than Declarant. At the turnover meeting the interim directors shall resign and be replaced by their successors, who shall be designated as provided in this Declaration and the Bylaws of the Association. If Declarant fails to call the turnover meeting required by this section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

8.8 Appointment of Directors. Effective as of the turnover meeting described in Section 8.7, the Management Committee of the Association will be composed of one director representing each of the Projects within The Cottonwoods. In the event the Project has a Project Association, the director for such Project shall be appointed by the Management Committee of the Project Association. If the Project does not have a Project Association, the director for such Project shall be designated by the Owner of the Lot within the Project if the Project has only one Lot, or elected by the Owners of Lots within the Project if the Project is composed of more than one Lot. Terms of office of directors shall be as set forth in the Bylaws. If additional Projects are created within The Cottonwoods, directors for such Projects shall be added to the Management Committee of the Association in the same manner.

8.9 Declarant Voting Rights After Turnover. After the turnover meeting described in Section 8.7 above, Declarant shall continue to have the voting rights described in Section 8.3(b) above.

8.10 Contracts Entered into by Declarant or Prior to Turnover Meeting. Notwithstanding any other provision of this Declaration, any leases or contracts (including management contracts, service contracts and employment contracts) entered into by the Declarant or the Management Committee on behalf of the Association prior to the turnover meeting described in Section 8.7 above shall have a term of not in excess of three (3) years. In addition, any such lease or contract shall provide that it may be terminated without cause or penalty by the Association or Management Committee upon not less than thirty (30) nor more than ninety (90) days' notice to the other party given at any time after the turnover meeting described in Section 8.7 above.

8.11 Project Associations. Nothing in this Declaration shall be construed as prohibiting the formation of Project Associations within The Cottonwoods, including, without limitation, Condominium associations, and neighborhood associations. By a majority vote, the Owners of Lots within a Project may elect to establish a Project Association for such Project. The Management Committee of the Association shall assist the Project Associations in the performance of their duties and obligations under their respective Project Declarations, if any, and the Association shall cooperate with each Project Association so that each of those entities can most efficiently and economically provide their respective services to Owners. It is contemplated that from time to time either the Association or a Project Association may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Assessment by the Association for the particular Project or by an item in the Project Association's budget which shall be collected through Project Assessments and remitted to the Association. If a Project Association fails or is unable to perform a duty or obligation required by its Project Declaration, then the Association may, after reasonable notice and an opportunity to cure given to the Project Association, perform such duties or obligations until such time as the Project Association is able to resume such functions, and the Association may charge the Project Association a reasonable fee for the performance of such functions.

8.12 Project Committees. With respect to any Project within The Cottonwoods that does not have a Project Association, the Management Committee of the Association shall appoint a Project Committee composed of three (3) to five (5) Owners of Lots within such Project, which

committee shall be responsible for establishing any Rules and Regulations pertaining to Limited Common Areas for such Project, for decisions pertaining to the operation, use, maintenance, repair, replacement or improvement of such Limited Common Areas, and for such other matters pertaining to the Project as the Management Committee may elect to delegate to the Project Committee. Following the turnover meeting described in Section 8.7, the Management Committee of the Association shall provide for election of such committee members by Owners of Lots within such Project.

ARTICLE 9

MAINTENANCE, UTILITIES AND SERVICES

9.1 Maintenance and Lighting of Common Areas. The Association shall provide exterior lighting (where appropriate) for and perform all maintenance upon the Common Areas, Common Easement Areas, and Limited Common Areas, including but not the following areas or facilities located in such Areas: storm water facilities, parks, grass, trees, walks, private roads, entrance gates, street lighting, signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in an attractive condition to at least applicable Morgan County standards, and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. Declarant shall guaranty the performance of the foregoing maintenance obligations for a period of two (2) years from and after the recording of this Declaration.

9.2 Maintenance of Utilities. The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. Each Owner shall be responsible for maintaining utility lines within his Lot.

9.3 Services. The Association shall provide or contract for such services as the Board may reasonably deem to be of benefit to the Property, including, without limitation, garbage and trash removal for Common Areas and security services.

9.4 Project Maintenance. The Association may, in the discretion of the Management Committee, assume the maintenance responsibilities set out in any Project Declaration for any Project located on the Property, after giving the responsible Project Association reasonable notice and an opportunity to correct its deficient maintenance. In such event, all costs of such maintenance shall be assessed only against those Owners of Lots in the Project to which the services are provided and shall be Individual Assessments for purposes of this Declaration. The assumption of this responsibility may take place either by contract or because, in the opinion of the Management Committee, the level and quality of service then being provided is not consistent with the community-wide standard of The Cottonwoods.

9.5 Owner's Responsibility. Except as otherwise provided in this Declaration, applicable Project Declarations, or by written agreement with the Association, all maintenance of the Lots and all structures, landscaping, parking areas, and other Improvements thereon, shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in accordance with the community-wide standard of The Cottonwoods. The Association shall, in the discretion of the Management Committee, assume the maintenance responsibilities of such Owner if, in the opinion of the Management Committee, the level and quality of maintenance being provided by such Owner does not satisfy such standard, and the Project Association or the Project in which the Lot is located has failed to adequately provide such maintenance. Before assuming the maintenance responsibilities, the Management Committee shall notify the Owner and any applicable Project Association in writing of its intention to do so, and if such Owner or the Project Association has not commenced and diligently pursued remedial action within thirty (30) days after mailing of such written notice, then the Association shall proceed. The expenses of such maintenance by the Association shall be reimbursed to the Association by the Owner, together with interest as provided in Section 11.6 below. Such charges shall be an Individual Assessment and lien on the Lot as provided in Sections 10.8 and 11.3 below.

ARTICLE 10

ASSESSMENTS

10.1 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of The Cottonwoods and for the improvement, operation and maintenance of the Common Areas and the Residential Lots.

10.2 Types of Assessments. The Association may levy Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments, all as more particularly described below.

10.3 Apportionment of Assessments. Lots owned by Declarant shall not be subject to Assessments until such time as the Lot is occupied for a residential or a commercial use, as applicable, subject to accrual of reserves as described in Section 10.11 below. All other Lots shall pay a pro rata share of the Annual Assessments, Special Assessments, Emergency Assessments and Limited Common Area Assessments commencing upon the date such Lots are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Assessment Units of Lots subject to assessment, times the number of Assessment Units assigned to such Lots as follows:

(a) Residential Lots. Each Residential Lot (including Condominium Units) shall be assigned one Assessment Unit for each Living Unit located on the Lot. A single family Residential Lot shall be assigned one Assessment Unit, regardless whether the Living Unit has been constructed on the Lot.

10.4 Annual Assessments. The Management Committee of the Association shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any common profits of the Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 10.11 below. Annual Assessments for such operating expenses and reserves ("Annual Assessments") shall then be apportioned among the Lots as provided in Section 10.3 above. The method of adoption of the budget and the manner of billing and collection of Assessments shall be as provided in the Bylaws.

10.5 Special Assessments. In addition to the Annual Assessment authorized above, the Management Committee may levy during any fiscal year a Special Assessment ("Special Assessment"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to fifteen percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Special Assessments shall be apportioned as provided in Section 10.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Management Committee.

10.6 Emergency Assessments. If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Management Committee of the Association shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("Emergency Assessment"). Any Emergency Assessment which in the aggregate in any fiscal year would exceed an amount equal to five percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Emergency Assessments shall be apportioned as set forth in Section 10.3 above and payable as determined by the Management Committee.

10.7 Limited Common Area Assessments. Annual Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement or improvements to Limited Common Areas ("Limited Common Area Assessments") shall be assessed exclusively to the Lots having the right to use such Limited Common Areas.

10.8 Individual Assessments. Any common expense or any part of a common expense benefitting fewer than all of the Lots may be assessed exclusively against the Lots benefitted ("Individual Assessment"). Individual Assessments include, without limitation, charges for services provided under Sections 8.5(i), 8.11 and 9.4. Individual Assessments shall also include default assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Management Committee, Individual Assessments shall be due 30 days after the Management Committee has given written notice thereof to the Owners subject to the Individual Assessments.

10.9 Annexation of Additional Property. When Additional Properties are annexed to The Cottonwoods, the Lots included therein shall become subject to Assessments from the date of such annexation. Lots owned by Declarant shall not be subject to Assessments until occupied for residential or commercial use, as applicable. All other Lots shall pay such Assessments in the amount then being paid by other Lots based upon the number of Assessment Units applicable to the Lot in question. The Management Committee of the Association, however, at its option may elect to recompute the budget based upon the additional Lots subject to assessment and additional Common Areas and recompute Annual Assessments for all Lots, including the new Lots, for the balance of the fiscal year. Notwithstanding any provision of this Declaration apparently to the contrary, a declaration annexing Additional Property may provide that such Additional Property does not have the right to use a particular Common Area or facility located thereon, in which case such Additional Property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Common Area or facility.

10.10 Operations Fund. The Association shall keep all funds received by it as Assessments, other than reserves described in Section 10.11, separate and apart from its other funds, in an account to be known as the "Operations Fund." The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this

purpose and related to the use and enjoyment of the Common Areas and of the Lots situated upon the Property, including but not limited to:

(a) Payment of the cost of maintenance, utilities and services as described in Article 9.

(b) Payment of the cost of insurance as described in the Bylaws of the Association.

(c) Payment of taxes assessed against the Common Areas and any improvements thereon.

(d) Payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

10.11 Reserve Fund. The Association shall establish a reserve fund for replacement of those Improvements to be maintained by the Association all or a part of which will normally require functional replacement in more than three (3) and less than thirty (30) years ("Reserve Fund"). Such Reserve Fund shall be funded by Assessments against the individual Lots assessed for maintenance of the items for which the Reserve Fund is being established. The Assessments under this Section begin accruing against each Lot from the date the Lot is sold by Declarant. The Declarant shall not be obligated to contribute to the Reserve Fund at the time of the sale of each Lot by Declarant. The amount assessed to each Lot shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund shall be established in the name of the Association and shall be adjusted at regular intervals to recognize changes in current replacement costs over time. The Reserve Fund shall be used only for replacement of common property as determined by the Management Committee and shall be kept separate from the Operations Fund. After the turnover meeting described in Section 8.7, however, the Management Committee may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from Annual Assessments, Special Assessments, Emergency Assessments or Limited Common Area Assessments. Nothing in this section shall prohibit prudent investment of the Reserve Fund. Following the second year after the turnover meeting, future Assessments for the

Reserve Fund may be reduced, eliminated or decreased by an affirmative vote of not less than seventy-five percent (75%) of the voting power of the Association. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

10.12 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Property, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 11.6, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or charge is made; provided, however, that no lien shall attach to any Lot owned by Declarant until such time as such Lot is subject to Assessment pursuant to the requirements of Section 10.3. Such Assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 11 below.

ARTICLE 11

ENFORCEMENT

11.1 Use of Common Areas. In the event any Owner shall violate any provision of this Declaration, the Bylaws of the Association or other rules adopted by the Association governing the use of Common Areas, then the Association, acting through its Management Committee, shall notify the Owner in writing that the violations exist and that he is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend his voting rights and right to use the Common Areas for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations, (b) impose reasonable fines upon the Owner, in the manner and amount the Board deems appropriate in relation to the violation, which fines shall be paid into the Maintenance

Fund, or (c) bring suit or action against such Owner to enforce this Declaration. Nothing in this section, however, shall give the Association the right to deprive any Owner of access to and from his Lot.

11.2 Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on his Lot, then the Association acting through its Management Committee shall notify the Owner in writing of any such specific violations of this Declaration and shall require the Owner to remedy or abate the same in order to bring his Lot, the Improvements thereon and his use thereof, into conformance with this Declaration. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Association acting through its Management Committee, shall have the right to do any or all of the following:

(a) Impose reasonable fines against such Owner in the manner and amount the Board deems appropriate in relation to the violation, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Operations Fund, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings; or

(c) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

11.3 Default in Payment of Assessments; Enforcement of Lien. If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such Assessment or charge shall

become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owner's voting rights and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from his Lot.

(b) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine or charge is due. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of mortgages. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Lot.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines and charges under this Declaration without foreclosing or waiving the lien described in paragraph (b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) The Association shall have any other remedy available to it by law or in equity.

11.4 Notification of First Mortgagee. The Management Committee shall notify any first mortgagee of any individual Lot of any default in performance of this Declaration by the Lot Owner which is not cured within sixty (60) days after notice of default to the Owner.

11.5 Subordination of Lien to Mortgages. The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a decree of

foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure shall extinguish any lien of an Assessment notice of which was recorded after the recording of the mortgage or trust deed. Such sale or transfer, however, shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

11.6 Interest, Expenses and Attorneys' Fees. Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three (3) percentage points per annum above the prevailing Salt Lake City, Utah prime rate at the time, or such other rate as may be established by the Management Committee, but not to exceed the lawful rate of interest under the laws of the State of Utah. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Management Committee of the Association not to exceed thirty percent (30%) of such Assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Management Committee of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

11.7 Nonexclusiveness and Accumulation of Remedies. An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

11.8 Enforcement by Morgan County. The provisions of this Declaration relating to preservation and maintenance of Common Areas shall be deemed to be for the benefit of Morgan County as well as the Association and Owners of Lots, and the County may enforce such provisions as affect in any way the health, safety, welfare and prosperity of any of its citizens and/or the public. If the County prevails in any proceeding at law or in equity to enforce the provisions of this Declaration, the County is entitled to an award of its costs and reasonable attorneys' fees associated with the action.

ARTICLE 12

MORTGAGEES

12.1 Reimbursement of First Mortgagees. First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Area. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

12.2 Right of First Mortgagees Relating to Maintenance. At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as provided in this paragraph, shall be entitled to exercise the rights of the Owner of the Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this section shall quote this Section 12.2 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 Amendment and Repeal. This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners of Lots representing seventy-five percent (75%) of the voting power in the Association, computed in accordance with Section 8.3(a) and (b) (including for this purposes the unplatted Lots contemplated by Section 8.3(a) and (b), together with the written consent of the Class B member, if such Class B membership has not been terminated as provided in this Declaration. Any such amendment or repeal shall become effective only upon recordation in the Official Records of Morgan County, Utah, of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment. In no event shall an amendment under this section affecting the Common Area and open space restrictions, or eliminating the Association or any Project Association or otherwise affecting the ability of such Associations to levy Assessments or Project Assessments or to otherwise enforce the terms of this Declaration or any Project Declaration be effective without the prior written consent of Morgan County. Morgan County ordinances currently provide that the Common Area and restrictions thereon shall be permanent, and not just for a period of years.

13.2 Regulatory Amendments. Notwithstanding the provisions of Section 13.1 above, until termination of the Class B membership Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance or regulation or of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Utah, or any corporation wholly owned, directly or indirectly, by the United States or the State of Utah which insures, guarantees or provides financing for a planned community or lots in a planned community.

13.3 Duration. This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Property and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this document is recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property within the Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners of Lots representing seventy-five percent (75%) of the voting power in the Association computed in accordance with Section 8.3(a) and (b) (including for this purposes the unplatted Lots contemplated by Section 8.3(a) and (b)). Any such termination shall become effective only if (a) a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Official Records of Morgan County, Utah, not less than six (6) months prior to the intended termination date, and (b) prior to the intended termination date, such termination has been approved by Morgan County and a copy of which shall have been recorded in the Official Records of Morgan County, Utah. Such termination shall not have the effect of denying any Owner of access to his Lot unless such Owner and any mortgagee of such Lot have consented in writing to the termination.

13.4 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved shall then be

disregarded completely in determining the proportion of votes or consents given with respect to such matter.

13.5 Lessees and Other Invitees. Lessees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of his Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner himself.

13.6 Nonwaiver. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

13.7 Construction; Severability; Number; Captions. This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.


As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

13.8 Notices and Other Documents. Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant or the Association, 1030 East 400 South, Fruit Heights, Utah 84037; if to an Owner, at the address given at the time of the Owner's purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notice in writing delivered as provided herein.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date set forth above.

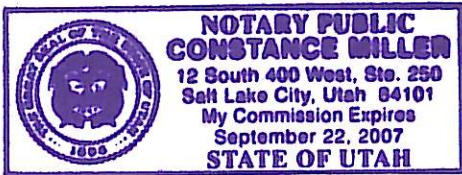
L.C.,

GARDNER COTTONWOOD CREEK,
a Utah limited liability companyh

By 
Rulon C. Gardner, Manager

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

The foregoing instrument was acknowledged before me this 8th day of October, 2004, by Rulon C. Gardner, as Manager of Gardner Cottonwood Creek, L.C., a Utah limited liability company.





Notary Public for Utah
My commission expires: 9-22-2007

EXHIBIT 'A'

The Cottonwoods at Rose Hill
Legal Description

A parcel of land located in the Southwest Quarter of Section 30, Township 5 North, Range 2 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point which is North 88°42'14" West 58.35 feet along the center of section line from the Center of Section 30, Township 5 North, Range 2 East, Salt Lake Base and Meridian, (Basis of bearing being South 88°42'14" East 1341.72 feet between the Center of Section and the CE 1/16 corner of said Section 30) and running thence South 581.05 feet; thence South 18°52'04" West 17.71 feet to a point on a 300.00 foot radius curve to the right; thence southwesterly 229.34 feet along the arc of said curve through a central angle of 43°48'03" (chord bears South 40°46'06" West 223.80 feet) thence South 62°40'07" West 67.13 feet; thence South 27°19'53" East 128.18 feet; thence South 42°00'44" West 599.14 feet; thence South 02°32'09" West 713.67 feet; thence South 60°32'47" West 791.18 feet to the north right of way line of Old Highway 30; thence along said right-of-way line North 44°07'19" West 1159.71 feet to the Southeastcorner of the Caton Investment Co. – Book M92 Page 388 as recorded in the Morgan County recorders Office; thence leaving said right-of-way line and along said property line North 45°53'37" East 200.00 feet to the Northeasterly corner of said property; thence North 44°06'23" West 200.00 feet to the Northwest corner of said property. Said point being on the southeasterly property line of the Church of Jesus Christ of Latter Day Saints – Entry No. 31367 as recorded in the Morgan County recorders Office; thence along said property line North 45°53'37" East 49.95 feet to the Northeasterly corner of said property; thence North 44°06'23" West 7.65 feet to a point on the Southeasterly line of Rose Hill Subdivision Phase 1 as recorded in the Morgan County Recorders office; thence along Rose Hill Subdivision Phases 1, 2, and 3 the following ten calls (1)thence North 56°14'35" East 557.97 feet; (2)thence North 59°31'30" East 626.22 feet; (3)thence North 67°30'25" East 38.59 feet; (4)thence North 27°31'12" East 17.84 feet; (5)thence North 45°15'38" East 151.85 feet; (6)thence North 29°29'27" East 81.04 feet; (7)thence North 19°52'05" East 84.07 feet; (8)thence North 06°29'04" East 130.57 feet; (9)thence North 64°53'04" East 64.25 feet; (10)thence North 17°11'38" East 258.66 feet to a point on the center of section line and on the South line of the Silver Stone Subdivision as recorded in the Morgan County Recorders Office; thence along said center of section line South 88°42'14" East 673.53 feet to the point of beginning.

Containing 2,623,259 square feet, or 60.222 Acres more or less.