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Date 12-OCT-2004 9:23am  
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BRENDA NELSON, Recorder  
Filed By BDN  
For GARDNER COTTONWOOD CREEK LC  
MORGAN COUNTY

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**DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE COTTONWOODS AT MOUNTAIN GREEN--ROSEHILL  
(THE COTTONWOODS AT MOUNTAIN GREEN, PHASE I)**

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

**RECITALS:**

October 8<sup>5</sup> A. Declarant is declarant under that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for The Cottonwoods at Mountain Green, dated October 12, 2004 and recorded September 12, 2004, as Entry No. 97334 in Book 210 at Pages 170 of the Official Records of Morgan County, Utah (the "Master Declaration").

B. On October 12, 2004, Declarant recorded the plat entitled "The Cottonwoods at Rose Hill a P.R.U.D. Subdivision in Mountain Green, Morgan County, Utah" as Entry Number 97333, in Book 210, at Pages 168, of the Book of Plats of Morgan County, Utah. The real property described and shown in the Plats and more fully described on "Exhibit A" hereto is a Project, as defined in Section 1.24 of the Master Declaration, to be known as "Rosehill" and is referred to in this Declaration as the "Project Property."

C. The Master Declaration provides that Projects may be created within The Cottonwoods pursuant to the provisions of the Master Declaration, and Declarant desires to designate the Project Property as a Project within The Cottonwoods upon the terms and conditions set forth in this Declaration.

NOW, THEREFORE, the Declarant does hereby declare and provide as follows:

1. **DEFINITIONS.**

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

1.1 **"Project"** means Rosehill Subdivision, a Project within The Cottonwoods, consisting of all of the Project Property.

1.2 **"Project Property"** means all of the property included within the Plat. Additional Property may be annexed to the Project Property in the manner contemplated in the Master Declaration, and any such Additional Property so annexed shall be deemed included within the Project Property from and after the recordation of a plat or supplemental declaration annexing the Additional Property in question.

1.3 **"Residence"** means a single building designed and constructed for residential occupancy to be occupied as a single-family residence per Morgan County ordinances.

1.4 **"Master Declaration"** means the Declaration of Protective Covenants, Conditions, Restrictions and Easements for the Cottonwoods at Mountain Green, dated <sup>October 8<sup>th</sup></sup> ~~September 12~~, 2004 and recorded <sup>October 8<sup>th</sup></sup> ~~September 12~~, 2004, as Entry No. 97334 in Book 210 at Pages 170 of the Official Records of Morgan County, Utah.

1.5 **"Plat"** means that certain plat entitled "The Cottonwoods at Rose Hill a P.R.U.D. Subdivision in Mountain Green, Morgan County, Utah" and recorded as Entry Number 97333, in Book 210, at Pages 168, of the Book of Plats of Morgan County, Utah.

1.6 **Incorporation by Reference.** Except as otherwise specifically provided in this Declaration, each of the terms defined in Article 1 of the Master Declaration shall have the meanings set forth in such Article.

## 2. **PROJECT DESIGNATION.**

The Project Property is hereby designated as a Project and annexed to The Cottonwoods and made subject to the Master Declaration (as the same may be amended from time to time), as set forth herein. The Project Property may be expanded by the annexation of Additional Property pursuant to the terms and conditions set forth in the Master Declaration. Project Property may be withdrawn from the Project in accordance with the Master Declaration.

## 3. **LAND CLASSIFICATIONS.**

The Project Property, together with any property annexed thereto pursuant to a subsequent Project Declaration or Declaration Annexing Additional Property, shall be a Project Parcel as defined in Section 1.26 of the Master Declaration. All land within the Project Parcel is included within one or another of the following classifications:

3.1 **Residential Lots.** All platted Lots within the Project Property, but excluding Lots or tracts within the definition of "Common Area," "Common Easement Area," "Private Roads," "Limited Common Area," "Project Common Area," or "Open Space" on the Plat, shall be Residential Lots as defined in Section 1.29 of the Master Declaration.

3.2 **Project Common Areas.** Open Space Parcels A, I and L identified on the Plat shall be Project Common Areas as defined in Section 1.24 of the Master Declaration.

3.3 **Common Areas.** Open Space Parcels C, D, E and H identified on the Plat shall be Common Areas as defined in Section 1.5 of the Master Declaration.

## 4. **MASTER DECLARATION.**

4.1 **Effect of Master Declaration.** The Project Property shall be subject to all of the terms and provisions of the Master Declaration.

4.2 **Incorporation of Master Declaration Provisions for Project.** For purposes of the use, maintenance, and management of the Project by the Owners of Residential Lots within the Project, the Project Association and the Project Architectural Review Committee, the following provisions of the Master Declaration are incorporated into this Declaration and shall be applicable with respect to the Owners, Project Association and the Project Architectural Review Committee as if fully set forth herein for purposes of governing the Project: Article 4 (Property Rights in Common Areas); Article 5 (Property Rights in Lots); Article 6 (General Use Restrictions); Article 9 (Maintenance, Utilities, and Service); Article 10 (Assessments); Article 11 (Enforcement); Article 12 (Mortgages); and Article 13 (General Provisions).

5. **PROJECT MANAGEMENT.**

5.1 **Project Association.** Declarant shall organize an association of all of the Owners within the Project (the "Project Association"). Such Project Association, its successors and assigns, shall be organized under the name "CMG Rosehill Owners Association, Inc." or such similar name as Declarant shall designate. The Project Association shall have such rights, powers and obligations as are set forth in Master Declaration with respect to the Association vis-a-vis The Cottonwoods and the Common Areas, except that such rights, powers, and obligations as applied to the Project Association shall be limited to the Project Property and all Owners of Lots located therein. The foregoing powers of the Project Association shall include the power to charge Assessments to Owners of Lots in the Project, on the same basis and pursuant to the same procedures as are set forth in the Master Declaration for the Master Association, for costs incurred by the Project Association in connection with the Project. Accordingly, Owners of Lots within the Project may be subject to a separate assessment from each of the Project Association and the Master Association. The provisions of Article 8 of the Master Declaration, providing for the organization and operation of the Association are hereby incorporated herein and made applicable to the Project Association to be organized and to operate under this Declaration, except as set forth in the following sentence. Effective as of the turnover meeting described in Section 8.7 of the Master Declaration (incorporated in this Declaration for purposes of the operation of the Project), the Management Committee of the Project Association will be elected by the Owners of Lots in the Project in compliance with the Articles of Incorporation and Bylaws of the Project Association. After the organization of the Project Association, there shall be no Project Committee for the Project as provided in the Master Declaration.

5.2 **Particular Project Association Maintenance Obligations.** The Project Association's obligations with respect to the Project Common Areas shall specifically include, without limitation, the storm water retention areas located on Open Space Parcel A. The storm water retention areas will be maintained as part of the regular scheduled maintenance performed by the Project Association. Maintenance of the storm water retention areas must include the maintenance of: (1) full volume capacities of storm drain pond(s), through excavation if necessary; (2) the storm drain pond sump and excavation of silts, fine soils and rocks as needed; (3) outlet works so that they remain open and free from all obstructions, including ice; and (4) vegetation within the storm drain pond[s] and the harvesting of vegetation (including mowing grasses) as appropriate, and hauling harvested vegetation from the area and appropriately disposing of it. If the Morgan County Engineer deems such testing necessary, the water quality will be tested periodically as instructed by the said Engineer and the results shall be provided to the Engineer, which results shall be deemed public information. The Project Association shall comply with all reasonable requests of the Morgan County Engineer pertaining to mitigation measures that maintain appropriate water quality discharged from the Project. Notwithstanding the foregoing, the said testing will not be more or less restrictive than typical Morgan County storm drainage requirements. Notwithstanding anything in this declaration to the contrary, the provisions of this Section 4.2 shall not be amended without the prior written consent of the Morgan County zoning administrator. Declarant shall guaranty the performance of the Project Association's maintenance obligations for a period of two (2) years from and after the recording of this Declaration.

5.3 **Project Architectural Review Committee.** Declarant shall organize an Architectural Review committee for the Project ("Project Architectural Review Committee"). The provisions of Article 7 of the Master Declaration, providing for the organization and operation of the Architectural Review Committee are hereby incorporated herein and made applicable to the Project Architectural Review Committee to be organized and to operate under this Declaration, but only with respect to the Project. All submissions required pursuant to Article 7 of the Master Declaration pertaining to property and Improvements located within the Project, except for Common Areas, shall be submitted to, evaluated and decided by the Project Architectural Review Committee, as opposed to the Architectural Review Committee. The Project Architectural Review Committee all powers, authorities and rights as the Architectural Review Committee with respect to matters within the scope of the Project Architectural Review Committee's power of review as set forth in this Section 4.2.

6. **ADDITIONAL RESTRICTIONS.**

In addition to the requirements set forth in the Master Declaration, the Project Property shall be subject to the following additional restrictions:

6.1 **Prohibition Against Further Subdivision.** Except as specifically approved in writing by the Project Architectural Review Committee and allowed by applicable law, no Lot may be further subdivided or otherwise separated into smaller parcels.

6.2 **Minimum Square Footages—Garage Orientation.** No single story Residence shall be constructed, altered, placed or permitted to remain on any Lot unless the main floor area, exclusive of basement, open porches and garages, is 1,340 square feet or greater. No multi-story Residence shall be constructed, altered, placed or permitted to remain on any Lot unless the main floor, exclusive of basements, open porches and garages, is a total of 1,000 square feet or greater and the upper level, exclusive of open porches, is a total of 400 square feet or greater. Garages shall be enclosed, large enough for at least two (2) cars and, where possible, situated so as to utilize a side facing entrance unless otherwise approved by the Project Architectural Review Committee.

6.3 **Setbacks.** No Improvements shall be located on a Lot closer to the respective Lot line than as follows: thirty (30) feet from the front Lot line for the garage and twenty-five (25) feet from the balance of the Improvement, unless a side facing garage entry is utilized, in which case the twenty-five (25) foot standard shall apply; ten (10) feet from each side Lot line, unless the Lot is a corner Lot, in which case the twenty-five (25) foot front yard standard shall apply to the applicable side yard; and twenty-five (25) feet from the rear Lot line. The Project Architectural Review Committee may take into account unique aspects of a particular Lot and grant variances to the foregoing standards; provided, however, that no such variance shall be granted in contravention of applicable Morgan County zoning ordinances and any purported variance in violation of such ordinances shall be deemed void to the extent it is inconsistent with such zoning ordinances. A site plan shall

6.4 **Height.** No Improvements shall be located on Residential Lots with a height in excess of thirty (30) feet, measured from the natural grade of the Lot prior to the commencement of construction of the Improvements. Declarant reserves the right to modify the grade of any Lot prior to commencement of construction of Improvements in an amount not to exceed four (4) feet.

6.5 **Architectural Style and Compatibility of Improvements.** The exterior of all Residences must be constructed of brick, stucco, hardboard siding, and/or stone. Log homes and log veneer siding are prohibited. Every Residence shall have a minimum of 35% brick or stone on the front façade and 15% brick or stone on each side facade. Street facing side facades on corner Lots shall have the minimums set forth above for front facades. Aluminum soffits and fascia trim is allowed, provided, however, that a minimum width of 10 inches shall be required on the fascia. No aluminum exterior siding is permitted in the Project. Roof surfaces shall slope a minimum of 6:12 pitch and be asphalt architectural shingles, or wood shingles, unless specific, written approval of the Project Architectural Review Committee is received for the use of other roofing materials. Flat roofs, A-frame, geodesic dome and other irregular roof forms are prohibited. Colors of exterior materials shall be earth tones and grays while allowing accents of white, black or green. Care should be given that each Residence complements those around it, and not detract in design, quality or appearance. All exterior materials and colors must be approved in writing by the Project Architectural Review Committee. All final decisions with respect to these enumerated standards and their application to a particular proposed structure in the Project shall be made by the Project Architectural Review Committee. All exposed metal flues, vents, ventilators, or other metallic rooftop protrusions shall be positioned on the back slope of the roof and shall be coated or painted with tones which complement surrounding structures.

6.6 **Maintenance Responsibility.** The Project Association shall have the responsibility to maintain the Project Common Areas, including the Improvements thereon, in a clean and attractive condition, in good repair. In addition, the Project Association and respective Owners, as applicable, shall keep all shrubs, trees, grass, and plantings of every kind in manicured areas of the Project Common Areas and on the Lots neatly trimmed, properly cultivated and free of trash, weeds, and other unsightly material.

6.7 **Maintenance Responsibility of Improvements.** The Owner of each Lot shall have the responsibility to maintain the Improvements on the Lots, in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, painting, repair, replacement and care for roofs, gutters, downspout, exterior building surfaces, walks and other exterior improvements and glass surfaces. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of the Owner and shall be restored within a reasonable period of time.



6.8 **Animals.** No horses, cows, pigs, sheep, fowl, livestock or animals, other than ordinary household pets that do not constitute a nuisance, shall be allowed within the Project Property. Dogs and cats belonging to Owners, occupants or their licensees or invitees within the Project Property must be kept within an enclosure (or on a leash being held by a person capable of controlling the animal). The enclosure must be maintained such that the animal cannot escape therefrom. Any such contained enclosure areas must be cleaned on a regular basis to minimize odors and maintain a clean appearance. In no case may any household pet or other animal kept at or around the Residence be allowed to create a nuisance for neighboring Lot owners due to noise, odors or otherwise. Any other term or condition hereof to the contrary notwithstanding, an Owner may not keep or maintain more than two (2) dogs and two (2) cats on a Lot at any time.

6.9 **Fences, Walls, Hedges and Screens.** No fences or non-living screens shall be constructed on any Lot without prior written approval having been obtained from the Project Architectural Review Committee. The Project Architectural Review Committee, in its sole discretion, may govern the placement of any fence upon any Lot in the Project. Cement, block or other solid walls or fences and/or non-living screens are prohibited entirely in front yards except at the entrance to the Project, as approved in writing by the Project Architectural Review Committee. No hedges, shrubs or other living Landscaping or screen of any kind shall be erected so as to constitute a hazard for vehicular traffic, pedestrians, children, etc., particularly near the entrances to driveway(s) onto a Lot. Any solid hedge within twenty (20) feet of the front lot line shall be trimmed to a maximum height of three (3) feet. Backyard fences are allowed in the Project, but shall not exceed six (6) feet in height or extend further along the side yard Lot line, or otherwise, toward the front of the Lot beyond the front yard setback. If fencing around the perimeter of the Project is provided by the Declarant, then all other backyard fencing is encouraged to match the perimeter fencing or to be coordinated with neighboring property fences in an effort to provide consistency. Vinyl or aluminum slats in chain-link fencing are prohibited. All retaining walls must be approved in writing by the Project Architectural Review Committee. If retaining walls exceed four feet in height, the retaining wall design must be engineered and the design thereof must be certified as structurally sound by a civil or structural engineer. All fencing, walls, hedges, etc. shall be maintained in a first-class and attractive manner. An Owner removing or replacing any fence, wall or other Landscaping affecting an adjoining Owner's Lot shall, at all times, install and maintain bracing to maintain such adjoining Owner's fencing or other Improvements that may be adversely affected.

6.10 **Landscaping.** All front yards, side yards and rear yards shall be landscaped. The use of sodded landscaping berms and trees is encouraged in front yard Landscaping. However, those portions of rear or side yards which are located on or within natural or wooded hillsides or areas may be maintained with the natural vegetation and trees, consistent with the stated spirit and intent of this Project Declaration. The parking strip between curb and sidewalk, where applicable, shall be maintained by each Lot Owner in a uniform manner with other parking strips in the Project. Only sod and approved trees shall be permitted in the park strip. In the event that the Project Architectural Review Committee shall elect to allow trees to be planted in the park strips, the Project Architectural Committee shall specify the type, number, size, and placement of trees in the park strips and may, in its sole discretion, require the Owners of the applicable Lot to plant such trees at the time or times specified by the Project Architectural Review Committee. All trees shall be planted and maintained at the Owners' expense. The Project Architectural Review Committee may also, in its sole discretion, elect not to allow the planting of trees in the park strips. Each Lot shall be landscaped and maintained in such a manner so as to prevent any erosion thereof or drainage upon adjacent streets or adjoining property.

6.11 **Motorcycles and ATV's.** All motorcycles, trail bikes, three-wheel, four-wheel and other ATV's, automobiles, and other two or four-wheel drive recreational-type vehicles are to be operated only on driveways and Streets within the Project, but only to the extent permitted by applicable Morgan County ordinances and Utah State law. The use of such vehicles on unoccupied Lots or other areas of the Project Property is expressly prohibited.

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

7. **BINDING EFFECT.**

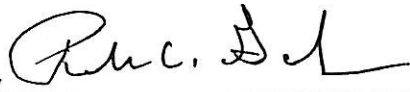
The Project Property, including all Common Areas, Project Common Areas, and Lots therein,

shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved only in accordance with the provisions of the Master Declaration, as modified by this Declaration, which easements, covenants, restrictions, and charges shall run with the Project Property and shall be binding upon all parties having or acquiring any right, title or interest in the Project Property or any part thereof and shall inure to the benefit of each Owner thereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first set forth above.

Declarant:

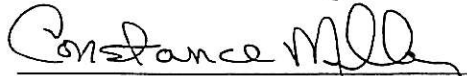
**GARDNER COTTONWOOD CREEK, L.C.**  
a Utah limited liability company

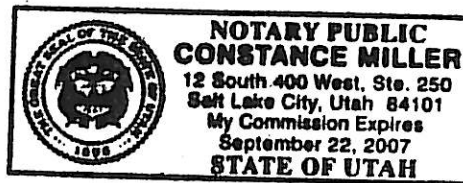
By   
\_\_\_\_\_  
Rulon C. Gardner, Manager

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

The foregoing Declaration of Covenants, Conditions and Restrictions for The Rosehill Subdivision, was acknowledged before me this 5<sup>th</sup> of October, 2004, by Rulon C. Gardner, who duly acknowledged to me that he executed the same as a Manager of Gardner Cottonwood Creek, L.C., a Utah limited liability company.

My Commission Expires:  
9-22-2007

  
Notary Public  
Residing at Salt Lake County



**DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE ROSEHILL SUBDIVISION**

**Exhibit A**

(Legal Description of the Project Property)

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.