

DECLARATION OF PROTECTIVE COVENANTS  
APPLYING TO  
SUNSET HILLS PLANNED UNIT DEVELOPMENT  
UTAH COUNTY, STATE OF UTAH

THIS DECLARATION is made on the date hereinafter set forth by Mountain View Development Company, a Utah corporation, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is now the owner of certain real property in Utah County, Utah, described hereinafter; and

WHEREAS, Declarant intends to acquire ownership of additional real property in Utah County, Utah, adjacent and contiguous to the land described herein to be developed as a planned unit development, all of which shall be known as "Sunset Hills Planned Unit Development"; and

WHEREAS, the land which is the first phase of "Sunset Hills Planned Unit Development," and the subject of this Declaration is more particularly described as follows, to-wit:

Commencing at a point 1410.09 feet South and 251.80 feet East from the West Quarter Corner of Section 11, Township 5 South Range 1 East, Salt Lake Base Meridian. Thence North 0°57'32" East 376.00 feet; thence East 110.00 feet; thence South 70°0'0" East 91.79 feet; thence North 49°6'16" East 173.17 feet; thence East 173.00 feet; thence South 0°55'27" West 735 feet; thence North 66°6'51" West 134.08 feet; thence North 39°51'2" West 69.88 feet; thence North 48°32'28" West 126.08 feet; thence North 64°32'28" West 124.00 feet; thence North 75°2'28" West 125.00 feet to point of beginning. Contains 6.066 acres.

WHEREAS, it is the intent of the Declarant to develop the said described land, together with additional adjacent and contiguous land owned or to be acquired and developed at later dates in an orderly program of phases or stages of development by which periodically parcels of land may be added or annexed to the first phase of "Sunset Hills Planned Unit Development" with all such land to be subject to the same provisions of declaration of protective covenants; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of certain roadways, open spaces and other community and recreational facilities to be developed as a part of said community; and to this end, desires to subject the real property described herein to the covenants, restrictions, servitudes, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and the subsequent owners thereof; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an association to which all be delegated and assigned the powers and duties of maintaining and administering certain roadways, open spaces and other community and recreational facilities, administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

WHEREAS, the Declarant has formed Sunset Hills Homeowners Association, Inc., as a non-profit corporation without capital stock under the laws of the State of Utah for the purposes of carrying out the powers and duties aforesaid.

NOW THEREFORE, the Declarant hereby declares that the real property described herein is and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, restrictions; uses, limitations, obligations, easements, equitable servitudes, charges and liens (hereinafter sometimes referred to as "covenants and restrictions") hereinafter set forth, all of which are declared and agreed to be in aid of a plan for improvement of said property, and shall be deemed to run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, its successors and assigns, and any person acquiring or owning an interest in said property and improvements, including, without limitation, any person, group of persons, corporation, trust or other legal entity, or any combination thereof, who holds such interest solely as security for the performance of an obligation:

#### ARTICLE I

Section 1. Definitions. The following words, when used in this Declaration, shall have the following meanings:

(a) "Association" shall mean and refer to Sunset Hills Homeowners Association, Inc., and its successors and assigns.

(b) "The Property" shall mean and refer to all real property described herein and such additions thereto as may hereafter be made pursuant to the provisions of Article II hereof.

(c) "Lot" shall mean and refer to all subdivided parcels of property which are part of The Property, with the exception of the Common Areas, and shall include each of the building sites whether designated for single-family detached dwelling units or multiple family units, whether townhouses or apartments as shown upon any recorded subdivision map of The Property.

(d) "Dwelling Unit" shall mean and refer to any building or portion of a building situated upon The Property and designated or intended for use and occupancy as a residence by a single family.

(e) "Single-family Detached Dwelling" shall mean any Dwelling which is not attached to at least one other Dwelling by a common or party wall or walls, and/or roof and/or foundation.

(f) "Townhouse" shall mean and refer to a Dwelling attached to at least one other Dwelling by a common or party wall, and/or foundation.

(g) "Apartment" shall mean and refer to several dwelling units attached to each other and sharing a common roof and/or foundation.

(h) "Maintenance Assessment" shall mean and refer to the cost of water and sewer services, garbage and trash collection and/or other utilities and services which may be provided by the Association with respect to the common areas or the individual townhouses, apartments or single-family detached dwelling units.

(i) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situate on The Property, including contract buyers but excluding those having such interest solely as security for the performance of an obligation.

(j) "Member" shall mean and refer to every person, group of persons, corporation, trust or other legal entity, or any combination thereof, who holds any class of membership in the Association.

(k) "Capital Improvement" shall include, but not necessarily be limited to, streets, water systems, sewer systems, water meters and structures and appurtenant facilities installed and intended for use in common by the members.

(l) "Declarant" or "Developer" shall mean and refer to Mountain View Development Company.

Whenever in this Declaration, any action is required to be taken by a specified percentage of "each class of the then members" of the Association, then such action shall be required to be taken separately by the specified percentage of the then outstanding Class A members of the Association and the specified

percentage of the then outstanding Class B members of the Association. Whenever in this Declaration any action is required to be taken by a specified percentage of the "then members" of the Association, then such action shall be required to be taken by the specified percentage of the then outstanding cumulative membership of the Association.

## ARTICLE II

Section 1. Property Subject to Declaration. The real property which **is**, and shall be, held conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration is located in Utah County, State of Utah, and is more particularly described in the Recitals to this Declaration, each of which are by this reference made a part hereof.

Section 2. Additions. For a period of ten (10) years from the date of recordation hereof, additional property may be annexed to the above-described property without the assent of the Class A members of the Association, if any. The scheme of the within Covenants and Restrictions shall not, however, be extended to include any such additional property unless and until the same is annexed to the real property described above in the manner hereinafter provided.

Any annexations made pursuant to this Article, or otherwise, shall be made by recording a Supplementary Declaration of Protective Covenants among the Records of the Office of the Recorder for Utah County, Utah, which Supplementary Declaration shall extend the scheme of the within Covenants and Restrictions to such annexed property. Such Supplementary Declaration may contain such complementary additions and modifications to the Covenants and Restrictions set forth in the within Declaration as may be necessary to reflect the different character or use of such annexed property provided, however, that in no event shall any such addition or modification be substantially inconsistent with the provisions of the within Declaration.

## ARTICLE III

Section 1. Membership. The Association shall have two (2) classes of voting membership:

(a) Every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who is a record owner of a fee interest in any Lot which is a part of the premises described herein and which is or becomes subject by covenants or record to assessment by the Association, shall be a Class A member of the Association; provided, however, that any such person, group of persons, corporation, partnership, trust or other legal entity who holds such interest solely as security for the performance of an obligation shall not be a Class A member solely on account thereof. Each Class A member shall be entitled to one vote for each Lot and/or dwelling

unit in which such member holds the interest required for Class A membership.

(b) There shall be 500 Class B memberships, all of which shall be issued to the Declarant or its nominee or nominees. The Class B member shall be entitled to one vote for each Class B memberships so held, provided, however, that each Class B membership shall lapse and become a nullity on the first to happen of the following events:

(i) thirty (30) days following the date upon which the total authorized, issued and outstanding Class A memberships equal 400; or

(ii) on January 1, 1985; or

(iii) upon surrender of said Class B memberships by the then holders thereof for cancellation on the books of the Association.'

Upon the lapse and/or surrender of all of the Class B memberships, as provided for in this Article III, the Declarant shall be and thereafter remains a Class A member of the Association as to each and every Lot and/or dwelling unit which the Declarant holds the interest otherwise required for such Class A membership.

#### ARTICLE IV

Section 1. Member's Right of Enjoyment. Every member shall have a right and easement of enjoyment in and to the common areas, community facilities and recreational facilities and such easement shall be appurtenant to and shall pass with the title to every lot subject to the following:

(a) the right of the Association, in accordance with its Articles of Incorporation and By-Laws, with the consent of two-thirds (2/3) of each class of the then members of the Association, and after it acquires title to any portion of the land, to borrow money for the purpose of improving the common areas, community facilities and/or the recreational facilities in a manner designed to promote the enjoyment and welfare of the members and in aid thereof to mortgage said property; and

(b) the right of the Association, with the consent of two-thirds (2/3) of both Class A and B members of the Association, to levy reasonable admission and other fees for the use of any recreational facilities situated upon The Property by the members of the Association and their families and/or guests; and

(c) the right of the Association to take such steps as are reasonably necessary to protect the property of the Associa-

tion against mortgage default and/or foreclosure, provided, always, however, that the same are in conformity with the other provisions of this Declaration; and

(d) the right of the Association to limit the number of guests of members to the use of any facilities which are developed upon The Property; and

(e) the right of the Association to suspend the voting rights and the rights to **use** the common areas, community facilities and/or recreational facilities (except for rights to the use of streets, roadways and parking areas, which shall not be subject to suspension for any reason) for any period during which any assessment remains unpaid and for any period not to exceed one hundred eighty (180) days for any infraction of any of the published Community Rules of the Association; and

(f) the right of the Association to dedicate or transfer all or any part of the common areas, community facilities and/or authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members; provided, however, that no such dedication or transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by two-thirds (2/3) of each class of the then members of the Association has been recorded, agreeing to such dedication, transfer, purpose or conditions, and unless written notice of the proposed agreement and action thereunder is sent to each member at least sixty (60) days prior to the taking of any action; and

(g) the right of the Association, acting by and through its Board of Trustees, to grant rights-of-way and/or easements for any public utility purpose to any municipal agency, public utility or to the Declarant for the purpose of the installation and/or construction and/or maintenance of public utilities to Sunset Hills Planned Unit Development, provided that no such rights-of-way shall be permanently inconsistent with the enjoyment of the common areas, community facilities, and/or the recreational facilities by the members of the Association; and

(h) the right of the Declarant to retain title to The Property or any portion thereof during the course of construction and development of Sunset Hills Planned Unit Development project, and to borrow money and mortgage, pledge and encumber any portion thereof for the purpose of financing the development and construction of the Dwellings, Townhouses, Apartments, Common Areas, Community Facilities, Recreational Facilities and any other improvement to be installed upon the project and any expenses directly or indirectly arising from the development or construction of the project. The Declarant hereby covenants for itself, its successors and assigns, that it will convey title to the Association to the common areas, community facilities and recreational facilities free and clear of all liens

and encumbrances contracted for construction of improvements thereon, said conveyance to be made on or before January 1, 1985 or on the date of final completion of work on Sunset Hills Planned Unit Development project, whichever shall occur sooner.

Section 2. Delegation of Use. Any member may delegate, in accordance ~~with~~ <sup>the</sup> provisions of the By-Laws of the Association and such Community Rules as may from time to time be promulgated by the Association, his right of use and enjoyment to the common areas and community facilities to the members of his immediate family residing on said premises, his tenants and/or contract purchasers who reside on The Property.

Section 3. Right of Inspection and Maintenance by American Fork City. American Fork City, through its duly authorized employees ~~Off~~agents, shall have the right at any time it sees fit, to inspect any part or portion or thing connected in any way with any street, water system, sewer system or other common areas or community facilities in Sunset Hills Planned Unit Development. In the event of failure by the Association, its successors or assigns to maintain conditions in such facilities generally, on a standard reasonably equivalent to that which is maintained in similar facilities or areas owned by American Fork City; then and in that event, American Fork City shall have ~~a~~ right, after ninety (90) days written notice to the Association to an easement to enter in and upon The Property and to do any reasonably necessary work to maintain said facilities and to charge the Association and the Association shall have a duty to levy an assessment against the owners and their property in conformity with the power and authority of the Association and to pay any such charges to American Fork City.

#### ARTICLE V

Section 1. Annual Maintenance Assessments. Each person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who becomes an owner of a lot and/or dwelling unit entitling him to a Class A membership with The Property by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association, in advance a monthly sum (hereinelsewhere sometimes referred to as "maintenance assessments") equal to one-twelfth (1/12) of the member's proportionate annual share of the sum required by the Association, as estimated by its Board of Trustees, to meet certain of its annual expenses, including, but in no way limited to, the following:

(a) the cost of all operating expenses of the common areas and the services furnished to or in connection with the common areas and community facilities, including charges by the Association for services furnished by it; and

(b) the cost of necessary management and administration of the common areas, including fees paid to any Management Agent; and

(c) the cost of fire, extended coverage, vandalism, malicious mischief, and a minimum of \$300,000.00 liability insurance on the common areas, townhouses and apartments, and community facilities and the cost of such other insurance as the Association may effect with respect to the common areas; and

(d) the amount of all taxes and assessments levied against the common areas, if any; and

(e) the cost of garbage and trash collection, water and/or other utilities and services which may be provided by the Association, with respect to the common areas; and

(f) the cost of maintaining, replacing, repairing and landscaping the common areas (including, without limitation, the cost of maintaining, replacing and repairing the streets, roadways, and open areas with The Property), and such equipment as the Board of Trustees shall determine to be necessary and proper in connection therewith; and

(g) the cost of funding all reserves established by the Association with respect to the common areas, including, when appropriate, a general operating reserve and/or a reserve for replacements.

The Board of Trustees shall determine the amount of the maintenance assessments annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Trustees, installments of annual assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis hereinabove provided for. Any Class A member may prepay one or more installments or any annual maintenance assessment levied by the Association, without premium or penalty.

It is intended that the Association shall provide certain maintenance functions with respect to the exteriors of the townhouses and apartments including, but not necessarily limited to, landscaping, lawn maintenance, periodic repainting, roof repairs, gutter repair and the like. It is not contemplated that such services will be provided by the Association with respect to the single-family detached dwellings. It **is**, therefore, expressly provided that there shall be an equitable difference in the maintenance assessment levied by the Association against lots improved by single-family detached dwellings and lots improved by townhouses and/or apartments. Such differential shall be commensurate with the actual difference in cost to the Association for the provision of such exterior maintenance



services; provided however, that the maintenance assessment for an empty lot after it has been sold by the Developer shall be one-fourth (1/4) of the normal lot assessment, until such lot shall have improvements placed thereon and be occupied; and provided further that there shall not be a maintenance assessment for an empty lot held by the Developer.

Section 2. Special Maintenance Assessments. In addition to the regular maintenance assessments authorized by this Article, the Association may levy in any assessment year, a special maintenance assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, inordinate repair or replacement of a described capital improvement located upon, or forming a part of the common areas, including the necessary fixtures and personal property related thereto, or for such other purpose as the Board of Trustees may consider appropriate, provided that any such assessment shall have the assent of the members representing two-thirds (2/3) of both the then Class A members of the Association and two-thirds (2/3) of the then Class B members of the Association. A meeting of such members shall be duly called for this purpose, written notice of which shall be sent to all such members at least ten (10) days, but not more than thirty (30) days, in advance of such meeting, which notices shall set forth the purposes of the meeting.

Section 3. Reserve for Replacements. The Association shall establish and maintain a reserve fund for replacements of the common areas by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Trustees. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited in any banking institution, the accounts of which are insured by any State or by any agency of the United States of America or may, in the discretion of the Board of Trustees, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacements of the common areas may be expended only for the purpose of effecting the replacement of the common areas, major repairs to any streets or roadways developed as a part of Sunset Hills Planned Unit Development, equipment replacement, and for operating contingencies of a non-recurring nature.

The proportionate interest of any member in any such reserve for replacements of the common areas shall be considered an appurtenance of his lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the lot to which it appertains and shall be deemed to be transferred with such lot.

Section 4. Increase in Annual Maintenance Assessment. The Board of Trustees shall prepare, or cause the preparation of, a separate annual operating budget for the common areas and for exterior townhouse and apartment maintenance to be carried out by the Association. The Board of Trustees of the Association

shall make reasonable efforts to fix the amount of the annual maintenance assessment against each lot and/or dwelling unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the lots and/or dwelling units and the annual maintenance assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any owner upon reasonable notice to the Board. Written notice of the annual maintenance assessments shall thereupon be sent to the Class A members. The omission of the Board of Trustees, before the expiration of any assessment period, to fix the amount of the annual maintenance assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article, or a release of any Class A member from the obligation to pay the annual maintenance assessment, or any installment thereof, for that or any subsequent assessment period, but the annual maintenance assessment fixed for the preceding period shall continue until a new maintenance assessment is fixed. No Class A member may exempt himself from liability for maintenance assessments or by abandonment of any lot and/or dwelling unit belonging to him to avoid such assessment.

#### ARTICLE VI

Section 1. Non-payment of Assessment. Any assessment levied pursuant to **ITas** Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent and shall together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the lot or lots belonging to the member against whom such assessment is levied and shall bind such lot or lots in the hands of the then owners and their successors, heirs, devisees, personal representatives and assigns. The personal obligation of the member to pay such assessment shall, however, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without foreclosing or waiving the lien herein created to secure the same, Any and all privileges for the use of the common areas may be suspended by the Board of Trustees if the assessments are not paid within thirty (30) days of the due date, and remain so suspended until all assessments have been fully paid.

Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Trustees, bear interest at a rate not to exceed three percent (3%) per month from the date of said delinquency until paid, and may, by resolution of the Board of Trustees, subject the member obligated to pay the same to the payment of such penalty or "late charge" as the Board may fix, and the Association may

bring an action of law against the member personally obligated to pay the same, or foreclose the lien against the member's interest in the lot or lots then belonging to said member in the manner now or hereafter provided by law for the foreclosure of mortgages, deeds of trust or other liens containing powers of sale on real property in the State of Utah, and subject to the same requirements, both substantive and procedural, or as may otherwise from time to time be provided by law, in either of which events interest, costs and reasonable attorney's fees shall be added to the amount of each assessment. The Association shall notify the holder of all mortgages and contract owners on any lot when any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) days and in any other case where the owner of such lot is in default with respect to the performance of any other obligation hereunder for a period in excess of sixty (60) days, but any failure to give such notice shall not affect the validity of the lien for any assessment levied pursuant to this Declaration nor shall any such failure affect any of the priorities established in this Article.

The Association shall take no action or foreclose the lien herein provided as security for the payment of assessments, except after mailing notice in writing to the holder of any mortgage or contract owner on the lot or lots involved as shown upon the records of the Recorder of Utah County, Utah.

In the event any proceeding to foreclose the lien for any assessment due the Association pursuant to this Declaration is commenced with respect to any lot or lots in the community, then the owner of such lot or lots, upon resolution of the Board of Trustees, may be required to pay a reasonable rental for such lot or lots, and the Association shall be entitled to the appointment of a receiver to collect the same.

The Board of Trustees may post a list of members who are delinquent in the payment of any assessment or other fees which may be due the Association, including any installment thereof which becomes delinquent, in any prominent location within Sunset Hills Planned Unit Development.

Section 2. Assessment Certificates. The Association shall, upon demand at any time, furnish to any member liable for any assessment levied pursuant to this Declaration (or any other party legitimately interested in the same), a certificate in writing signed by an officer of the Association, setting forth the status of said assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A charge not to exceed Thirty Dollars (\$30.00) may be levied in advance by the Association for each certificate so delivered.

Section 3. Acceleration of Installments. Upon default in the payment of any one or more month-Ay installments of any assessment

levied pursuant to this Declaration, or any other installment thereof, the entire balance of said assessment may be accelerated at the option of the Board of Trustees and be declared due and payable in full.

Section 4. Priority of 'Lien. The liens established by this Declaration shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

(a) general and special assessments for real estate taxes on the lot; and

(b) the liens of any deeds of trust, mortgage instruments or encumbrances duly recorded on the lot prior to the assessment thereon of the lien provided for in this Declaration or duly recorded on the lot after receipt of a written statement from the Board of Trustees reflecting that payments on said lien were current as of the date of recordation of said deed of trust, mortgage instrument or encumbrance.

Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to this Declaration upon any lot shall be subordinate to, and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage (meaning a mortgage with priority over other mortgages) upon such interest made in good faith without knowledge of any delinquency in payment of assessment, and for value received, provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser at such sale of the lot from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

No amendment to this Section shall affect the rights of the holder of any such mortgage (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or of the indebtedness secured thereby) shall join **in** the execution of such amendment.

The Board of Trustees may, in its sole and absolute discretion, extend the provisions of this Section to the holders of mortgages (or the indebtedness secured thereby) not otherwise entitled thereto.

Section 5. Additional Default. Any recorded first mortgage secured on any lot ~~shall~~ provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured

thereby); but a failure to include such a provision in any such mortgage shall not affect the validity or priority thereof and the protection extended to the holder of such mortgage (or the indebtedness secured thereby) by reason of Section 4 of this Article shall not be altered, modified or diminished by reason of such failure.

Section 6. Definition. As used in this Declaration, the term "mortgagee" shall include deed of trust, and the term "holder" or "mortgagor" shall include the party secured by any deed of trust or any beneficiary thereof.

Section 7. Commencement of Annual Assessments. The annual maintenance assessment for each Class A membership shall commence on the date a deed for the lot and/or dwelling unit to which such membership is appurtenant is delivered by the Declarant to the member, or at such other date as agreed to by both parties. The first monthly installment of each such annual assessment shall be made for the balance of the month during which a deed for the lot and/or dwelling unit is delivered to the member and shall become due and payable and a lien on the date a deed for a lot and/or dwelling unit is delivered to the member. Except as hereinelsewhere provided, the monthly installments of each such annual assessment for any lot and/or dwelling unit for any month after the first month shall become due and payable and a lien on the first day of each successive month.

Section 8. Assessment of Declarant. Declarant will pay all **yearly costs** and anything in this Declaration to the contrary notwithstanding, no lot held by the Declarant shall be subject to assessment by the Association until the first to happen of the following events:

(a) with respect to any lot held by the Declarant, thirty (30) days following the issuance by the appropriate agency of American Fork City, Utah, of a Certificate of Occupancy, or the like, for a dwelling constructed upon such lot; or

(b) with respect to any lots then held by the Declarant, sixty (60) days following the lapse of all of the Class B memberships.

Section 9. Exempt Property. No portion of the Common Areas, Community or Recreational Facilities shall be subject to assessment of any kind by the Association. No property dedicated to and accepted by any local public authority shall be subject to assessment of any kind by the Association. No property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Utah, provided the same is not devoted to residential purposes, shall be subject to assessment of any kind by the Association.

## ARTICLE VII

Section 1. Management Committee Operation. The Board of Trustees shall appoint a Management Committee. The Management Committee shall be composed of three (3) or more natural persons designated from time to time by the Board of Trustees of the Association and such persons shall serve at the pleasure of the Board of Trustees. At least one (1) member of the Management Committee shall be a Class A member of the Association. The affirmative vote of a majority of the members of the Management Committee shall be required in order to adopt or promulgate any rule or regulation, or to make any finding, determination, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Article. In the event that the Board of Trustees shall fail to appoint the Management Committee or until such time as it does so, the Board of Trustees shall act as the Management Committee. The Management Committee may be paid such sums for services rendered as the Board of Trustees may determine.

Section 2. Management Committee. Except for original construction and/or development by the Declarant, and except for any improvements to any lot or to the common areas accomplished by the Declarant concurrently with said construction and/or development, and except for purposes of proper maintenance and repair, no building, fence, wall or other improvements or structures shall be commenced, directed, placed, moved, altered or maintained upon The Property, nor shall any exterior addition to change (including any change of color) or other alteration thereupon be made until the complete plans and specifications showing compliance with applicable local ordinances and codes and the location, nature, shape, height, material, color, type of construction and/or any other proposed form of change (including, without limitation, any other information specified by the Management Committee) shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by the Management Committee designated by the Board of Trustees.

Subject to the same limitations as hereinabove provided for, it shall be prohibited to install, erect, attach, apply, paste, hinge, screw, nail, build, alter, plant, remove or construct any lighting, shades, screens, awnings, patio covers, decorations, fences hedges, landscaping features, walls, aerials, antennas, radio or television broadcasting or receiving devices, slabs, sidewalks, curbs, gutters, patios, balconies, porches, driveways, walls or to make any change or otherwise alter (including any alteration in color) in

any manner whatsoever the exterior of any improvements constructed upon any lot or upon any of the common areas or to combine or otherwise join two or more dwellings, or to partition the same after combination, or to remove or make any change or alteration within any dwelling which will alter the structural integrity of the building or otherwise affect the property, interest or welfare of any other lot owner, materially increase the cost of operating or insuring any common areas or impair any easement, until the complete plans and specifications showing the location, nature, height, material color, type of construction and/or any other proposed form of change (including, without limitation, any other information specified by the Management Committee) shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for Sunset Hills Planned Unit Development by the Management Committee designated by the Board of Trustees.

Section 3. Approvals, etc. Upon approval by the Management Committee of any plans and specifications submitted pursuant to the provisions of this Article, a copy of such plans and specifications, as approved, shall be deposited among the permanent records of such Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. In the event the Management Committee fails to approve or disapprove any plans and specifications which may be submitted to it pursuant to the provisions of this Article within sixty (60) days after such plans and specifications (and all other materials and information required by the Management Committee) have been submitted to it in writing, then approval will not be required and this Article will be deemed to have been fully complied with.

Section 4. Limitations. Construction or alterations in accordance with plans and specifications approved by the Management Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date upon which the same are approved by the Management Committee (whether by affirmative action or by forbearance from action, as in Section 3 of this Article provided), and shall be substantially completed within twelve (12) months following the date of commencement, or within such other period as the Management Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Management Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no deviations from plans and specifications approved by the Management Committee without the prior consent in writing

of the Management Committee. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Management Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

Section 5. Certificate of Compliance. Upon the completion of any construction or alterations or other improvements or structure in accordance with plans and specifications approved by the Management Committee in accordance with the provisions of this Article, the Management Committee shall, at the request of the owner thereof, issue a Certificate of Compliance which shall be prima facie evidence that such construction, alteration or other improvements referenced in such certificate have been approved by the Management Committee and constructed or installed in full compliance with the provisions of this Article and with such other provisions and requirements of the Declaration as may be applicable:

Section 6. Rules and Regulations, etc. The Management Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval and may publish and/or record such statements of policy, standards, guidelines and/or establish such criteria relative to architectural styles or details, lot coverage, colors, set-backs, materials or other matters, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provisions or requirement of this Declaration. If they incur expenses in connection with review of plans, the Management Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article. The decisions of the Management Committee shall be final except that any member who is aggrieved by any action or forbearance from action by the Management Committee ( or by any policy, standards or guidelines established by the Management Committee) may appeal the decision of the Management Committee to the Board of Trustees and, upon the request of such member, shall be entitled to a hearing before the Board of Trustees of the Association.

Section 7. Residential Use. All dwellings shall be used for private residential purposes exclusively, and the owner's use of each such lot shall not endanger the health or disturb the reasonable enjoyment of any other owner or resident. The term "residential" as used herein, shall be held and construed to exclude hospitals, clinics, mobile homes, hotels, motels, boarding houses, commercial and professional uses, including personal service shops, whether in the townhouses, apartments,



the single-family dwelling units, or otherwise, and all such uses are expressly prohibited. Nothing contained in this Article, or elsewhere in this Declaration., shall be construed to prohibit the Declarant from the use of any lot or dwelling for promotional or display purposes or as "model homes" or the like.

Section 8. Party Walls. Each wall which is built as part of the original construction of the dwellings upon The Property and placed on the dividing line between lots or dwellings shall constitute a party wall, and to the extent not inconsistent with the provisions of the Section, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(a) Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

(b) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(c) Weatherproofing. Notwithstanding any other provision of this Section, any owner who by his negligent or willful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

(d) Right to Contribution Runs with Land. The right of any owner to contribution from any other owner under this Section shall be appurtenant to the land and shall pass to such owner's successors in title.

(e) Arbitration. In the event of any dispute concerning a party wall, or under the provisions of this Section, each party to the dispute shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision made by a majority of all arbitrators shall be binding upon all of the parties to the dispute. In the event any party to any such dispute refuses to appoint an arbitrator within ten (10) days after written request for the appointment of the same, then the Board of Trustees of the Association shall select an arbitrator on behalf of such party.

(f) Encroachments. If any portion of a party wall shall encroach upon any adjoining lot, or upon the common areas or community facilities, by reason of settlement or shifting of any

building, or the repair or reconstruction of any building, or otherwise, a valid easement for the encroachment and for the maintenance of the same as long as the building stands, shall exist.

(g) Easements. Each lot and dwelling shall be subject to easement to the benefit of the owners of the adjoining and abutting lots and dwellings for the unobstructed and uninterrupted use of any and all pipes, ducts, flues, chutes, conduits, cables and wire outlets and utility lines of any kind, to easements for lateral support of adjoining and abutting dwellings, and to easements for the leadwalks, sidewalks and patios serving adjoining and abutting dwellings.

Section 9. Reconstruction Followin: Fire or Other Casualt . In the event any •we ing is partla y or tota y estroye• by fire or other casualty, then the owner of same shall promptly reconstruct such dwelling at his own expense, or from insurance proceeds to which he may have access, it' accordance with the original plans and specifications for the same (or as the same may be modified with the written consent of the Management Committee), and any failure promptly so to do shall be considered a violation of the provisions of this Article.

Section 10. Enforcement - Right to Remove or Correct Violations. In the event any violation or attempted violation of any of the covenants or restrictions contained in this Article shall occur or be maintained upon any lot, or in the event of any other conduct in violation of any of the provisions and requirements of this Article, then the same shall be considered to have been undertaken in violation of this Article, and without the approval of the Management Committee required herein, and, upon written notice from the Board of Trustees, such violation shall be promptly removed or abated. In the event the same is not removed, or the violation is not otherwise terminated or abated, within fifteen (15) days (or shorter period as may be required in any such notice) after notice of such violation is delivered to the owner of the lot upon which such violation exists, or to the member responsible for such violation if the same shall be committed or attempted on premises other than the lot owned by such member, then the Association shall have the right, through its agents and employees to enter upon such lot and to take such steps as may be necessary to remove or otherwise terminate or abate such violation and the cost thereof may be assessed against the lot upon which such violation occurred and, when so assessed, a statement for the amount thereof shall be rendered to the owner of said lot at which time the assessment shall become due and payable and a continuing lien upon such lot, and a binding personal obligation of the owner of such lot, in all respects (and subject to the same limitations) as provided in Article V of this Declaration. The Association shall have the further right, through its agents, employees or committees, to enter upon and inspect any lot at any reasonable time for the purpose of ascertaining whether any violation of the provisions

of this Article or any of the other provisions or requirements of this Declaration exist on such lot; and neither the Association nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

#### ARTICLE VIII

Section 1. Easement for Utilities and Related Purposes. The Association is authorized and empowered to grant and shall from time to time grant) such licenses, easements and/or rights-of-way over the common areas for sewer lines, water lines, electrical cables, telephone cables, gas lines, storm drains, underground conduits and/or such other purposes related to the provision of public utilities to Sunset Hills Planned Unit Development as may be considered necessary and appropriate by the Board of Trustees for the orderly maintenance, preservation and enjoyment of the common areas and community facilities and/or for the preservation of the health, safety, convenience and/or welfare of the owners of the lots.

Any and all streets, walkways, roadways, sidewalks and/or the like, which are owned by the Association shall be subject to non-exclusive easements for ingress, egress and regress for the benefit of all members of the Association, the Declarant, their respective heirs, personal representatives and assigns and all other persons or other parties claiming under any of them.

There is hereby created a non-exclusive easement upon, across, over and under all of The Property for ingress and egress, installation, replacing, repairing and maintaining utilities, including, but not limited to, water, sewer, telephone, electricity, gas and television cables. By virtue of this easement, it shall be expressly permissible for the utility companies to affix and maintain pipes, wires, conduits or other service lines on, above, across and under the roofs and exterior walls of the townhouses and apartments. Notwithstanding anything to the contrary contained in this Section, no sewer, electrical lines, water lines or other utilities may be installed and/or relocated upon The Property until approved by the Board of Trustees of the Association. In the event that any utility company furnishing a service covered by the general easement hereinabove provided requests a specific easement by separate recordable instrument, the Association shall have the right to grant such easement upon said property without conflicting with the terms hereof.

The Association shall supply and be responsible for all utilities supplied to or used in connection with the common areas and may supply water and sewer services to the townhouses, apartments and single-family detached dwelling units with the cost thereof to be included in the annual maintenance assessments.

All other utilities supplied to the individual townhouses, apartments or single-family detached dwelling units shall be metered separately and individually as to the utility supplied to the individual dwelling, and the owners thereof shall hold the Association harmless from any obligation to make payments for the use thereof.

The owners of the respective lots shall not be deemed to separately own pipes, wires, conduits or other service lines running through their property which are utilized for or serve other lots, but each owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his lot.

Easements and alleys for the installation and maintenance of utilities and drainage facilities are reserved as shown by the Plat, and instruments recorded in the Office of the County Recorder of Utah County, Utah, and by instruments that may hereafter be recorded in said office. Copies of these shall be kept on file in the principal office of the Association. Right of use for ingress and egress shall be had at all times over any dedicated easement, and for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement, that would constitute interference with the use, maintenance, operation or installation of such utility.

Section 2. Community Rules. There shall be no violation of any rules for the use of the common areas, community facilities or recreational facilities or other community rules and regulations not inconsistent with the provisions of this Declaration which may from time to time be adopted by the Board of Trustees of the Association and promulgated among the membership by them in writing, and the Board of Trustees is hereby and elsewhere in this Declaration authorized to adopt such rules.

#### ARTICLE IX

Section 1. Management Agent. The Board of Trustees may employ for the Association, a professional management agent (the "Management Agent") at a rate of compensation to be established by the Board of Trustees of the Association to perform such duties and services as the Board of Trustees shall authorize in writing including, without limitation:

(a) to establish (with the approval of the Board of Trustees of the Association) and provide for the collection of the annual maintenance assessments and the annual recreation assessments provided for in this Declaration and to provide for the enforcement of liens therefor in a manner consistent with law and the provisions of this Declaration; and

(b) to provide for the care, upkeep, maintenance and surveillance of the common areas, community facilities and recreational facilities; and

(c) to designate, hire and/or *dismiss* such personnel as may be required for the good working order, maintenance and efficient operation of the common areas, community facilities and recreational facilities; and

(d) to promulgate (with the approval of the Board of Trustees of the Association) and enforce such rules and regulations and such restrictions or requirements, "Community Rules" or the like as may be deemed proper respecting the use of the common areas, community facilities and recreational facilities; and

(e) to provide such other services (including accounting services) for the Association as may be consistent with law and the provisions of this Declaration.

Section 2. Limitation of Liability. The Association shall not be liable for any Tailure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the common areas, community facilities or recreational facilities, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any member for loss or damage, by theft or otherwise, of articles which may be stored upon the common areas, community facilities or recreational facilities. No diminution or abatement of assessments, as hereinelsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common areas, community facilities or recreational facilities, or from any action taken by the Association to comply with any law or ordinance or with the order or directive of any municipal or other governmental authority.

## ARTICLE X

Section 1. Insurance. The Board of Trustees shall obtain and maintain to the extent reasonably available, at least the following:

(a) policies of casualty or physical damage insurance in an amount equal to the full replacement value (i.e. 100% of "replacement cost" exclusive of land, foundation and excavation), respectively, of the common areas and recreational facilities (including all building service equipment and the like) with a replacement cost endorsement, without deduction or allowance for depreciation (as determined annually by the Board of Trustees) with the assistance of the insurance company affording such coverage, such coverage to afford protection against all risks.

(b) policies of public liability and personal liability insurance, each with a "severability of interest" endorsement, in such amounts and in such forms as may be considered appropriate by the Board of Trustees, including, but not limited to, hired automobile, non-owned automobile,

liability for property of others, and any and all other liability incident to the ownership and/or use of the common areas and recreational facilities, respectively; and

(c) workmen's compensation insurance to the extent necessary to comply with any applicable law; and

(d) a "Legal Expense Indemnity Endorsement", or its equivalent, affording protection for the officers and directors of the Association for expenses and fees incurred by any of them in defending any suit or settling any claim, judgment or cause of action to which any such officer or director shall have been made a party by reason of his or her services as such; and

(e) such other policies of insurance, including insurance for other risks of a similar or dissimilar nature and fidelity coverage as required by Section 1 (c) of Article V of the Protective Covenants of the Association, as are or shall hereafter be considered appropriate by the Board of Trustees.

Section 2. Limitations. Any insurance obtained pursuant to the requirement of this Article shall be subject to the following provisions:

(a) all policies shall be written with a company or companies licensed to do business in the State of Utah and holding a rating of "A + AAAA" or better in Best's Insurance Guide or equivalent.

(b) exclusive authority to negotiate losses under said policies shall be vested in the Board of Trustees or its authorized representative.

## ARTICLE XI

Section 1. Duration. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot or dwelling unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of recordation of this Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then owners of a majority of the lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. No such agreement to change shall be effective unless made and recorded sixty (60) days in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every member at least thirty (30) days in advance of any action taken.

Section 2. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the community of Sunset Hills Planned Unit Development. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages, or both, and against any lot to enforce the lien created hereby; and the failure or forbearance by the Association or the owner of any lot to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The provisions hereof may be enforced, without limitation, by the Association, by any owner or any mortgagee of any lot which becomes subject to the provisions hereof and/or by any other person, firm, corporation or other legal entity who has any right to the use of any of the common areas, community facilities or recreational facilities owned by the Association, including, again without limitation, any person, firm, corporation or other legal entity who has any right to the use of any of the streets or roadways owned by the Association.

There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages.

Section 3. Incorporation by Reference on Resale. In the event any owner sells or otherwise transfers any lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration, and the Buyer shall receive a copy of the By-Laws, Protective Covenants and Community Rules, and sign a receipt for same. A copy of said receipt shall be deposited with the Management Committee.

Section 4. Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have properly sent when mailed by ordinary mail, postage pre-paid, to the last known address of the person who appears as member or owner on the records of the Association at the time of such mailing.

Section 5. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any common area, community facility or recreational facility by any public or municipal agency, authority, or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of said common areas, community facilities or recreational facilities.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

Section 7. Consents. Any other provision of this Declaration to the contrary notwithstanding, the Association shall not, without the prior written consent of all institutional first mortgagees of record:

- (a) abandon or terminate the Declaration; or
- (b) modify or amend any of the substantive provisions of the Declaration; or
- (c) substantially modify the method of determining and collecting maintenance assessments as provided in this Declaration; or
- (d) mortgage, partition, subdivide, transfer or otherwise dispose of any of the common areas, community facilities or recreational facilities.

Section 8. Definition. As used in this Article, the term "mortgagee" shall mean any mortgagee of a lot or dwelling unit subject to this Declaration and shall not be limited to the institutional mortgagees, and the term "mortgage" shall include a deed of trust. As used generally in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, pension funds, real estate investment trusts, mortgage companies, the Declarant, FNMA, FHLMC, and any corporation, including a corporation of, or affiliated with the United States Government, or any agency thereof.

Section 9. Captions. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration.

Section 10. Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

IN WITNESS WHEREOF, the undersigned, being the declarant herein, has hereunto set its hand and seal this \_\_\_\_\_ day of

July,

1975.

MOUNTAIN VIEW DEVELOPMENT COMPANY

Attest:

Ralph B. Binnick  
Secretary

By

Keith J. Richman  
President



STATE OF UTAH )

SS.

COUNTY OF UTAH )

On the ~~tea~~<sup>4</sup> day of (--) A. D., 1975, personally appeared before me Keith J. 'Richan and J. Ralph Binnall, who being by me duly sworn did say, each for himself, that he, the said Keith J. Richan is the President, and he, the said J. Ralph Binnall is the Secretary of Mountain View Development Company and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and the said Keith J. Richan and J. Ralph Binnall each duly acknowledged to me that said company executed the same and that the seal affixed is the seal of said company, and that said company in executing said instrument as Declarant is the owner of all of the land which is the subject of this instrument and of each individual lot and dwelling unit contained therein as well as being the owner of all existing memberships in the Association.

*John A. Williams*

\_\_\_\_\_  
NOTARY PUBLIC /

My Commission ,Expires:

Residing at: '

*4/1/1*