

When recorded return to:

The Villages at Wolf Creek, LLC
881 Baxter Drive, Suite 100
South Jordan, UT 84095

AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
THE VILLAGE AT WOLF CREEK

TABLE OF CONTENTS

ARTICLE 1 – DEFINITIONS	3
1.1 “Acts”	3
1.2 “Additional Charges”	3
1.3 “Annual Meeting”	3
1.4 “Annual Assessments”	3
1.5 “Articles”	4
1.6 “Assessment”	4
1.7 “Association”	4
1.8 “Association Sprinkler System”	4
1.9 “Board of Directors” or “Board”	4
1.10 “Building”	4
1.11 “Bylaws”	4
1.12 “Common Area”	4
1.13 “Common Expenses”	4
1.14 “Common Expense Fund”	5
1.15 “Common Improvements”	5
1.16 “Community Act”	5
1.17 “County”	5
1.18 “Declarant”	5
1.19 “Declaration”	5
1.20 “Design Review Board” or “DRB”	5
1.21 “Dwelling”	6
1.22 “Driveway”	6
1.23 “Eligible Mortgagee”	6
1.24 “General Reserve Fund”	6
1.25 “Governing Documents”	6
1.26 “Improvements”	6
1.27 “Landscaping”	6
1.28 “Lot”	6
1.29 “Majority of the Owners”	6
1.30 “Manager”	6
1.31 “Member”	7
1.32 “Mortgage”	7
1.33 “Mortgagee”	7
1.34 “Nonprofit Corporation Act”	7
1.35 “Occupant”	7
1.36 “Owner”	7
1.37 “Percentage Interest”	7
1.38 “Period of Declarant’s Control”	7
1.39 “Plat Map”	8
1.40 “Private Drives”	8
1.41 “Private Roads”	8
1.42 “Private Streets”	8

1.43	“Project”	8
1.44	“Recorder’s Office”	8
1.45	“Recording Date”	8
1.46	“Reimbursement Assessment”	8
1.47	“Reserve Fund”	8
1.48	“Rules and Regulations”	8
1.49	“Single Family Home” or “SFH”	9
1.50	“Single Family Home Lots” or “SFH Lots”	9
1.51	“Single Family Home Lot Assessments” or “SFH Lot Assessments”	9
1.52	“Single Family Home Lot Common Expenses” or “SFH Lot Common Expenses”	9
1.53	“Single Family Home Lots Reserve Fund” or “SFH Lots Reserve Fund”	9
1.54	“Townhome”	9
1.55	“Townhome Lots”	9
1.56	“Townhome Lot Assessments”	9
1.57	“Townhome Lot Common Expenses”	9
1.58	“Townhome Lots Reserve Fund”	9
1.59	“Vacant Lot”	10
1.60	“Walkway”	10
ARTICLE 2 – DESCRIPTION OF PROJECT		10
2.1	Project	10
2.2	Association	10
2.3	Legal Description and Location	10
2.4	Lots	10
2.5	Common Area	11
2.6	Common Improvements	11
2.7	No Cooperative or Condominiums	11
2.8	No Right to Expand Project	11
2.9	No Restrictions on Alienation	11
2.10	Appointment of Trustee	11
ARTICLE 3 – HOMEOWNER’S ASSOCIATION		12
3.1	Form of Association	12
3.2	Membership	12
3.3	Change of Ownership	12
3.4	Voting	12
3.5	Bylaws of Association	13
3.6	Attorney in Fact	14

ARTICLE 4 – BOARD OF DIRECTORS	14
4.1 Board Purpose	14
4.2 Board Approvals	14
4.3 Board Authority	14
ARTICLE 5 – COMMON AREAS AND COMMON IMPROVEMENTS	16
5.1 Generally	16
5.2 Specific Common Areas	16
5.3 Ownership	16
5.4 Use, Maintenance, Repair or Replacement of Common Area	17
5.5 Association Responsibilities	18
5.6 Owner Responsibilities	18
ARTICLE 6 – TOWNHOMES	18
6.1 Plat Map Identification	18
6.2 Townhome Boundaries and Components	18
6.3 Variances / Encroachments	20
6.4 Disputes Regarding Certain Townhome Boundaries	21
ARTICLE 7 – TOWNHOME PARTY WALLS	21
7.1 Definitions	21
7.2 Townhome Boundaries	21
7.3 Ownership	21
7.4 General Rules of Law	21
7.5 Sharing of Maintenance and Repair	21
7.6 Failure to Contribute	22
7.7 Destruction by Fire or Other Casualty	22
7.8 Arbitration	22
7.9 Right to Contribution Runs With Land	23
7.10 Encroachments	23
7.11 Alteration/ Removal Prohibited	23
ARTICLE 8 – MAINTENANCE, REPAIR AND REPLACEMENT OF TOWNHOMES AND TOWNHOME LOTS	24
8.1 Owner Maintenance, Repair or Replacement of Townhomes	24
8.2 Association Maintenance, Repair or Replacement of Townhomes	27
8.3 Disputes Regarding Maintenance, Repair or Replacement of Townhomes/Townhome Lots	28

ARTICLE 9 – MAINTENANCE, REPAIR AND REPLACEMENT OF SINGLE FAMILY HOMES AND SINGLE FAMILY HOME LOTS	29
9.1 Single Family Homes and Single Family Home Lots	29
9.2 Maintenance of SFH Lots	31
9.3 Irrigation & Landscaping Requirements	31
ARTICLE 10 – PARTY FENCES SINGLE FAMILY HOME LOTS	31
10.1 Use and Enjoyment	31
10.2 Repair and Maintenance	31
10.3 Disputes	32
10.4 Perimeter Fences and Walls	32
ARTICLE 11 – ACCESS TO LOTS	32
ARTICLE 12 – AESTHETICS AND ARCHITECTURAL STANDARDS	33
12.1 Generally	33
12.2 Design and Construction Guidelines	33
12.3 Design Review Board	34
12.4 Improvements	34
12.5 Common Area / Common Improvements	35
12.6 Vacant Lots	35
12.7 Nonconforming Improvements	35
12.8 Enforcement/Fines	35
ARTICLE 13 – EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS	36
13.1 Association Functions	36
13.2 Easement of Enjoyment	36
13.3 Governmental Public Services	36
13.4 Easements for Swale Maintenance and Flood Water	36
13.5 Easements for Utilities	37
13.6 Easements for Ingress and Egress	37
13.7 Delegation of Use	38
13.8 Construction Easements	38

ARTICLE 14 – PERMITTED USES AND RESTRICTIONS	38
14.1 Occupancy and Use	38
14.2 Prohibited Occupation or Uses	38
14.3 Commercial / Retail Activities	38
14.4 Animals	39
14.5 Fencing	40
14.6 Signs	40
14.7 Lighting / “Dark Sky” Compliance	40
14.8 Trucks, Trailers, Campers and Boats	41
14.9 Motor Vehicles	41
14.10 Parking	41
14.11 Outdoor Recreational Equipment Prohibited	41
14.12 Poles	41
14.13 Clotheslines	42
14.14 Window Coverings	42
14.15 Garage Openings	42
14.16 Tree Removal	42
14.17 Energy Conservation Equipment	42
14.18 Temporary Occupancy and Temporary Buildings	42
14.19 Storage Sheds	43
14.20 Nuisances; Offensive Activity; Construction Activities	43
14.21 Storage of Waste and Non-Construction Materials or Equipment	44
14.22 Diseases and Insects	44
14.23 Communication Devices	44
14.24 Roofs	46
14.25 Vacant Lots	47
14.26 Restriction on Further Subdivision, Property Restrictions and Rezoning ..	47
14.27 Mineral Exploration	47
14.28 Drainage	47
14.29 Declarant’s Exemption	47
14.30 Model Homes	47
14.31 Leases	48
14.32 Mailbox Banks	48
14.33 No Hazardous Activity	48
14.34 Utility Service	48
14.35 Driveways and Walkways	49
14.36 Hot Tubs	49
14.37 Dwelling Completion Before Occupancy	49
14.38 Violations of Law	49
14.39 Long-Term and Short-Term Leases/Rentals	49
14.40 Effect on Association Insurance	50
14.41 Board Rules / Fines	50

ARTICLE 15 – FINES	50
15.1 Generally	50
15.2 Imposition of Fines	50
15.3 Amount of Fines	52
15.4 Tenants/Guests/Occupants	52
ARTICLE 16 – BUDGETS AND EXPENSES	53
16.1 Association Budget and Estimated Expenses	53
16.2 General Reserve Fund Line Item	54
16.3 SFH Lots Reserve Fund Line Item	54
16.4 Townhome Lots Reserve Fund Line Item	55
16.5 Common Expense Fund	56
16.6 Reserve Analysis	56
16.7 Reserve Funds	57
16.8 Funds to be Maintained Separately	58
16.9 Recordkeeping	59
ARTICLE 17 – ASSESSMENTS	59
17.1 Owner Payment of Assessments	59
17.2 Allocation of Assessments	61
17.3 SFH Lot Assessments	61
17.4 Townhome Lot Assessments	61
17.5 Annual Assessments	61
17.6 Notice of Assessments and Time for Payment	61
17.7 Special Assessments	62
17.8 Reimbursement Assessments	65
17.9 Collection of Assessments / Failure to Pay	65
17.10 Lien / Foreclosure	66
17.11 Future Lease Payments	68
17.12 Reassessment of Delinquent Assessments	69
17.13 Remedies Cumulative	69
ARTICLE 18 – COMPLIANCE AND ENFORCEMENT	69
18.1 Enforcement	69
18.2 Remedies	70
18.3 Action by Owners	70
18.4 No Waiver of Strict Performance	70

ARTICLE 19 – INSURANCE	71
19.1 Property Insurance	71
19.2 General Liability Insurance	71
19.3 Insurance Coverage for Theft and Embezzlement of Association Funds ..	71
19.4 Directors and Officers Insurance	71
19.5 Association Personal Property	72
19.6 Workers’ Compensation Insurance	72
19.7 Insurance Trustee	72
19.8 Insurance Trustees; Power of Attorney	72
19.9 Miscellaneous	72
19.10 Owner Insurance Coverage	73
ARTICLE 20 – DAMAGE OR DESTRUCTION	74
20.1 Generally	74
20.2 Homeowners Association as Attorney-In-Fact	74
20.3 Estimate of Damages or Destruction	74
20.4 Repair and Reconstruction	74
20.5 Funds for Repair and Reconstruction	75
20.6 Disbursement of Funds for Repair and Reconstruction	75
20.7 Decision Not to Rebuild	75
20.8 Notice to First Mortgagees	75
ARTICLE 21 – CONDEMNATION	75
21.1 Rights of Owners	75
21.2 Partial Condemnation; Distribution of Award; Reconstruction	76
21.3 Complete Condemnation	76
ARTICLE 22 – CONSENT IN LIEU OF VOTE	76
22.1 Sixty-Day Limit	76
22.2 Revocation of Written Consent	76
22.3 Notice	77
22.4 Statutory Requirements or Restrictions	77
ARTICLE 23 – LIMITATION OF BOARD MEMBERS’ LIABILITY	77
23.1 No Personal Liability	77
23.2 Indemnification of Board Members	77

ARTICLE 24 – MORTGAGEE REQUIREMENTS	77
24.1 Notice of Action	77
24.2 Matters Requiring Prior Eligible Mortgagee Approval	78
24.3 Availability of the Village at Wolf Creek Documents and Financial Statements	78
24.4 Subordination of Lien	78
24.5 Payment of Taxes and Other Common Area Expenses	79
24.6 Priority	79
ARTICLE 25 – MORTGAGEE REQUIREMENTS	79
25.1 Term	79
25.2 Amendments	79
25.3 Unilateral Amendments	80
25.4 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions.....	80
ARTICLE 26 – DECLARANT’S RIGHTS	80
26.1 Transfer	80
26.2 Modifications	81
26.3 Amendment	81
26.4 Sales Office	81
26.5 Easement for Development	81
26.6 Period of Declarant’s Control	81
26.7 Partial or Complete Termination of Period of Declarant’s Control	82
26.8 Membership	82
26.9 Assessments	82
26.10 Model Homes	82
ARTICLE 27 – MISCELLANEOUS	83
27.1 Service of Process	83
27.2 Delivery of Notices to the Association	83
27.3 Delivery of Notices to the Owners	83
27.4 Delivery of Notices to Mortgagees	84
27.5 Security Disclaimer	84
27.6 Mechanics Lien	84
27.7 Severability	84
27.8 Effective Date	85
27.9 Rules Against Perpetuities and Unreasonable Restraints	85
27.10 Consistent with Acts	85
27.11 Liberal Construction	85
27.12 Covenant Running with Land	85
27.13 “Person”, etc.	85
27.14 Captions and Exhibits	86

AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
THE VILLAGE AT WOLF CREEK

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGE AT WOLF CREEK (“**Declaration**”) dated July 18, 2018, is made by The Villages at Wolf Creek, LLC, a Utah limited liability company (the “**Declarant**”).

RECITALS

A. On or about February 22, 2002, David W. Steffensen executed that certain Articles of Incorporation of The Village at Wolf Creek Homeowners Association, Inc. (the “**Original Articles**”), which were filed with the Utah Division of Corporations on February 22, 2002.

B. The Original Articles served to establish The Village at Wolf Creek Homeowners Association, Inc. (the “**Association**”) for the purpose of holding title to any Common Area that comprised the residential subdivision known as The Village at Wolf Creek (the “**Project**”) and to perform the administrative functions of the Association as set forth in the Original Declaration and the Original Bylaws.

C. On or about April 16, 2002, David W. Steffensen, on behalf of Triple D Land Development, LLC, a Utah limited liability company, for itself and on behalf of its wholly-owned subsidiary, Triple D Villages LLC, a Utah limited liability company (collectively, the “**Original Declarant**”) executed that certain plat map entitled “The Village at Wolf Creek, a Planned Residential Unit Development” which was recorded in the Weber County Recorder’s Office on April 16, 2002 in Book 55 beginning at Page 68 as Entry No. 1841069 (the “**Plat Map**”).

D. On or about April 16, 2002, David W. Steffensen, on behalf of the Original Declarant executed that certain Declaration of Covenants, Conditions, Easements and Restrictions for the Village at Wolf Creek, a Planned Residential Unit Development (the “**Original Declaration**”) which was recorded in the Weber County Recorder’s Office on April 16, 2002 in Book 2224 at Page 2106 et. seq. as Entry No. 1841070.

E. On or about April 16, 2002, David W. Steffensen, as President of The Village at Wolf Creek Homeowners Association, Inc. executed that certain Bylaws of The Village at Wolf Creek Homeowners Association, Inc. (the “**Original Bylaws**”) which were recorded in the Weber County Recorder’s Office on April 16, 2002 in Book 2224 at Page 2174 et. seq. as Entry No. 1841071.

F. On or about July 6, 2007, the Original Declarant executed that certain Warranty Deed (which was recorded in the Weber County Recorder’s Office on August 22, 2007, as Entry No. 2286530) under which the Original Declarant granted and conveyed to Brent A. Ferrin 52 Lots located within the Project.

G. Pursuant to that certain Trustee's Deed dated February 4, 2009 (which was recorded in the Weber County Recorder's Office on February 6, 2009, as Entry No. 2389601) title to 50 Lots located within the Project (collectively, the "**Declarant's Lots**") was granted and conveyed to Hawkins Capital Fund LLC, an Idaho limited liability company ("**Hawkins**").

H. Pursuant to that certain Warranty Deed dated May 10, 2018 (which was recorded in the Weber County Recorder's Office on May 11, 2018, as Entry No. 2920078) title to the Declarant's Lots was granted and conveyed by Hawkins to Flagstaff Holdings & Investments, LLC, a Utah limited liability company ("**FH&I**").

I. Pursuant to that certain Warranty Deed dated May 23, 2018 (which was recorded in the Weber County Recorder's Office on May 23, 2018, as Entry No. 2922038) title to the Declarant's Lots was granted and conveyed by FH&I to the Declarant.

J. As stated under Section 18.3 of the Original Declaration, the Declarant may unilaterally amend the Original Declaration for various reasons including bringing the Original Declaration into compliance with applicable governmental statutes, rules or regulations. As further set forth under Section 18.3 of the Original Declaration, for so long as the Class B Membership exists, Declarant has the authority to unilaterally amend the Original Declaration provided such amendment does not materially adversely affect the substantive rights of any Owner, nor shall adversely affect title to any property without the consent of the Owner.

K. As set forth under Article IX of the Original Bylaws, the Declarant may also unilaterally amend the Original Bylaws for various reasons including bringing the Original Bylaws into compliance with applicable governmental statutes, rules or regulations. As further set forth under Article IX of the Original Bylaws, for so long as the Class B Membership exists, Declarant has the authority to unilaterally amend the Original Declaration provided such amendment does not materially adversely affect the substantive rights of any Owner, nor shall adversely affect title to any property without the consent of the Owner.

L. As set forth under Section 6.4.2 of the Original Declaration, any Class B Memberships are held by any successor of the Original Declarant who takes title for the purpose of development and sale of the Declarant's Lots and who is designated as the successor Declarant in a recorded document executed by such successor Declarant.

M. As further set forth under Section 6.4.2 of the Original Declaration, the Class B Memberships shall continue to exist until (A) the total Class A Membership votes are equal to or exceed 47, (B) twenty-five (25) years from the date the Original Declaration was recorded, or (C) when, in its discretion, the Declarant so determines.

N. As of the date of this Declaration, the Class B Memberships continue to exist and are held by the Declarant. Pursuant to Section 6.4.2 of the Original Declaration, the Declarant desires to amend and restate the Original Declaration by adopting and recording this Declaration and the attached Bylaws. The purpose of this Declaration is to, among other things: (i) establish for the Project a uniform set of covenants, conditions and restrictions that are consistent with current applicable laws, rules and regulations related to community associations and Planned Residential

Unit Developments, (ii) eliminate certain provisions of the Original Declaration that are no longer applicable to the Project, (iii) clarify the manner in which Single Family Residences and Townhomes will be governed, managed and administered, and (iv) clarify the Declarant's rights, obligations and authority with regard to the Project.

O. This Declaration and the attached Bylaws shall completely replace and supersede, and restate in their entirety: (i) the Original Declaration, (ii) the Original Bylaws, and (iii) any other recorded or unrecorded declarations or bylaws, and any amendments or supplements to any such other declarations or bylaws, or any similar recorded or unrecorded documents that may have been recorded or enforced against the Project (or any portion thereof) prior to the date this Declaration is recorded.

DECLARATION

It is agreed by acceptance of a conveyance, contract for sale, lease, rental agreement, or any form of security agreement or instrument, or any privileges of use or enjoyment respecting the Project or any Lot that the Governing Documents together with the Plat Map referred to herein, sets forth covenants, conditions, restrictions, and reservations effecting a common plan for a planned residential unit development that is mutually beneficial to the owners of each of the described Lots, and that the covenants, conditions, restrictions, reservations and plan are binding upon the entire Project and upon each Lot as a parcel of realty, and upon such Lot's owners or possessors, and their respective heirs, personal representatives, successors and assigns, through all successive transfers of all or part of the property or any security interests therein without requirement of further specific reference or inclusion in deeds, contracts or security instruments, and regardless of any subsequent forfeiture, foreclosures, or sales of Lots under security instruments.

ARTICLE 1 - DEFINITIONS

The following words when used in the Governing Documents and/or the Plat Map (unless the context otherwise requires) shall have the following meanings:

1.1 “**Acts**” collectively means and refers to the Community Act and the Nonprofit Corporation Act, as such Acts may be supplemented or amended from time to time.

1.2 “**Additional Charges**” cumulatively means and refers to all collection and administrative costs, including but not limited to all attorney's fees, late charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.

1.3 “**Annual Meeting**” means and refers to the annual meeting of the Owners/Members which shall be held at the Project as more particularly described under Section 2.3 of the Bylaws.

1.4 “**Annual Assessments**” means and refers to Assessments that are used to pay Common Expenses. Annual Assessments shall be equally imposed against all Lots (including all Townhome Lots and Single Family Home Lots) based upon the Percentage Interest of each Lot.

1.5 “**Articles**” means the Articles of Incorporation of The Village at Wolf Creek Homeowners Association, Inc. as such Articles have been or may be filed with the Utah Division of Corporations, and as such Articles may be amended. During the Declarant’s Control Period the Declarant may, in the Declarant’s sole discretion, unilaterally amend the Original Articles or any subsequent Articles.

1.6 “**Assessment**” means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the provisions of the Governing Documents or any applicable law, including Annual Assessments, Single Family Home Lot Assessments, Townhome Lot Assessments, Special Assessments, Reimbursement Assessments and any other Assessments which may be applicable to one or more Owners.

1.7 “**Association**” means and refers to The Village at Wolf Creek Homeowners Association, Inc., or any other entity as the Association may be known and identified by the business entity records of the Utah Division of Corporations and Commercial Code of the Utah Department of Commerce.

1.8 “**Association Sprinkler System**” means and refers to any secondary water irrigation/sprinkler systems located within the Project that are connected to a water meter associated with a utility account that is paid by the Association, including any Irrigation System Control Devices or other components connected to such secondary water irrigation/sprinkler systems.

1.9 “**Board of Directors**” or “**Board**” shall mean and refer to the governing board of the Association vested with the authority to manage and maintain the Project and to enforce the Governing Documents.

1.10 “**Building**” means and refers to any structure that contains Townhomes. The term “Building” does not refer to any other structure that may be located within the Project including, without limitation, any Single Family Home.

1.11 “**Bylaws**” means the Bylaws of the Association, as they may be amended from time to time, which are attached to and made part of this Declaration as Exhibit “B”.

1.12 “**Common Area**” means any portion of the Project that is not a Lot. The Common Area of the Project specifically refers to those portions of the Project identified and depicted on the Plat Map as “NEW COMMON AREA,” as well as those thoroughfares and drives and cul-de-sacs that are identified and depicted on the Plat Map as “PRIVATE DRIVE” and “PRIVATE ROAD.”

1.13 “**Common Expenses**” means and refers to any costs incurred by the Association in order to exercise any of the powers provided for in the Governing Documents, including, for example, but without limitation:

- (a) Expenditures made or incurred by or on behalf of the Association for the administration, maintenance, repair, or replacement of all Common Areas (including any Common Improvements located on such Common Areas);
- (b) Expenditures made or incurred by or on behalf of the Association for the administration, maintenance, repair, or replacement of all Private Streets located throughout the entire Project;

- (c) Any sums that may be required by the Board and/or the Manager to perform or exercise their functions, duties, or rights under the Acts or the Governing Documents;
- (d) Expenditures lawfully made or incurred by or on behalf of the Association for the operation, management and regulation of the Project; and
- (e) Any other expenses that are identified or defined as Common Expenses under the Acts or the Governing Documents.

As used in this Declaration, the term “Common Expenses” also includes SFH Lot Common Expenses and any Townhome Lot Common Expenses, although such expenses shall be separately itemized under the Annual Budget as set forth under Section 16.1.1.

1.14 “**Common Expense Fund**” means and refers to that fund more particularly described under Section 4.3, which is to be used to cover basic expenses related to administration, maintenance, and management of the Association and Project including, without limitation, the Common Expenses and those expenditures more particularly described under Section 16.5 of this Declaration.

1.15 “**Common Improvements**” means, refers to and includes any infrastructure, facilities and/or improvements located within the Project that: (a) the Association intends to be used or enjoyed by all Owners or more than one Owner; and (b) have been recognized and identified as a Common Improvement by either: (x) this Declaration; (y) a majority of the Board; or (z) a Majority of the Owners. Common Improvements do not include any such improvements that may have been placed, installed or constructed on any portion of the Project by an Owner.

As used in this Declaration, the term “**Common Improvements**” shall include the following improvements located within the Project, to the extent such improvements have been constructed or installed within the Project: (i) any pavement, curbs, gutters or similar improvements that comprise any Private Streets or parking areas, (iii) mailbox banks, (iv) Project signage or monuments, (v) streetlights, (vi) Common Area Walkways, (vii) any fencing that may be installed and/or maintained by the Declarant or Association, (viii) any Association Sprinkler System, (ix) any Landscaping located within the Project, and (x) any other facilities, improvements or amenities located on the Common Area that are intended to be used or enjoyed by all Owners or more than one Owner.

1.16 “**Community Act**” means and refers to the Utah Community Association Act (Utah Code Section 57-8a-101 *et. seq.*) as may be supplemented or amended from time to time.

1.17 “**County**” means and refers to Weber County, located in the State of Utah.

1.18 “**Declarant**” means and refers to The Villages at Wolf Creek, LLC, a Utah limited liability company, or any assignee or successor of The Villages at Wolf Creek, LLC.

1.19 “**Declaration**” means and refers to this Amended and Restated Declaration of Covenants, Conditions, and Restrictions, as may be amended or supplemented from time to time.

1.20 “**Design Review Board**” or “**DRB**” means and refers to the Design Review Board as more particularly described under Article 12.

1.21 “**Dwelling**” means and refers to any SFH or any Townhome.

1.22 “**Driveway**” means and refers to any driveway leading to the garage of any Single Family Home or any Townhome. The Governing Documents may refer to any Driveway that serves a Townhome as a “Townhome Driveway” and any Driveway that serves a Single Family Home as a “SFH Driveway.” The term “Driveway” does not mean or refer to any portion of the Project identified on the Plat Map as a “PRIVATE DRIVE.”

1.23 “**Eligible Mortgagee**” means and refers to a Mortgage which has requested notice of certain matters from the Association in accordance with this Declaration.

1.24 “**General Reserve Fund**” means and refers to that certain fund that may be established for the purpose of repairing, replacing and restoring Common Improvements that are intended for the use and benefit of the Owners of all Lots located in the entire Project.

1.25 “**Governing Documents**” means and refers to this Declaration, the Bylaws, the Rules and Regulations of the Association, and the Design and Construction Guidelines, as such documents may be amended or supplemented from time to time.

1.26 “**Improvements**” generally means and refers to any Dwelling, Building, Common Improvement, Walkway, or any other structure or improvement that may be constructed or installed on any part of the Project including, for example but without limitation, storage sheds, hot tubs, decks, etc.

1.27 “**Landscaping**” means and refers to any and all vegetation and flora including, for example, grass, lawns, flowers, plants, hedges, shrubs, bushes, trees, or any other similar vegetation or flora.

1.28 “**Lot**” means and refers to any numbered Lot as shown on the Plat Map. Each Lot is either a Dwelling Lot or a Townhome Lot as more particularly described in this Declaration. Each Owner of a Lot owns his or her Lot in fee simple.

1.29 “**Majority of the Owners**” shall mean and refer to more at least 51% of the Owners of all Lots that are part of the Project, including all SFH Lots and all Townhome Lots. As set forth under Section 3.4.3, the vote for each Lot must be cast as a single vote. Accordingly, if a Lot is owned by more than one Owner, the co-Owners of such Lot will be deemed as one Owner for the purpose of determining whether a “Majority of the Owners” have approved or disapproved a particular matter.

1.30 “**Manager**” shall mean and refer to any person and/or entity that may be retained by the Association to manage, operate and/or maintain the Project by, among other matters, enforcing the Governing Documents. The obligations, duties and authority of the Manager shall be set forth in a written agreement that has been adopted and signed by the Manager and by the Board on behalf of the Association. The term “Manager” shall not refer to any person and/or entity (i.e. property manager, rental management company, etc.) that may be retained by any Owner(s) to manage or maintain that Owner’s Lot or Dwelling.

1.31 “**Member**” shall mean and refer to the Owner of a Lot (whether or not the Dwelling located on such Lot serves as the Owner’s primary residence). Each Member is entitled to participate in decisions made by the Association. Each Owner shall be a Member of the Association and shall be entitled to one membership for each Lot so owned. The term “Owner” and “Member” shall be deemed as synonymous under the Governing Documents.

1.32 “**Mortgage**” means any mortgage, deed of trust or other document pledging any portion of a Lot or interest therein as security for the payment of a debt or obligations, provided an instrument evidencing any such mortgage, deed of trust or other document has been recorded with the Recorder's Office. The term “Mortgage” shall not mean or refer to an executory contract of sale.

1.33 “**Mortgagee**” means the beneficiary of a Mortgage as well as a named Mortgagee. The term “Mortgagee” shall not mean or refer to a seller under an executory contract of sale.

1.34 “**Nonprofit Corporation Act**” means and refers to the Utah Revised Nonprofit Corporation Act (Utah Code Section 16-6a *et seq.*) as may be supplemented or amended from time to time.

1.35 “**Occupant**” shall mean and refer to any tenant, guest, invitee or other occupant of any Dwelling, including the family members of any Owner or tenant.

1.36 “**Owner**” shall mean and refer to the owner(s) of record of any Lot (and the Dwelling constructed on such Lot, if any) according to the Recorder’s Office. As used in this Declaration, the term “Owner” does not include a mortgagee, a beneficiary or trustee under a deed of trust, or any other person or entity holding a security interest in a Lot (including the Dwelling constructed in such Lot, if any) unless and until such party has acquired title to the Lot (and the Dwelling constructed upon such Lot, if any) pursuant to foreclosure or any arrangement or proceeding in lieu thereof. The term “Owner” and “Member” shall be deemed as synonymous under the Governing Documents.

1.37 “**Percentage Interest**” means and refers to the percentage of undivided ownership interest of each Lot Owner in the Common Area. The Percentage Interest of each Lot Owner shall be calculated by dividing the number “1” by the total number of Lots in the Project. The Project includes a total of 62 Lots. Accordingly, the Percentage Interest of each Lot is 1/62 or 1.613%

1.38 “**Period of Declarant’s Control**” means and refers to a period of time commencing on the date this Declaration is recorded and terminating upon the occurrence of the earliest of the following events:

- (a) 60 days after 100% of the total number of Lots (as the Project may be amended or expanded from time to time) have been conveyed to Owners other than the Declarant;
- (b) twenty-five (25) years after the Declarant has ceased to offer Lots for sale in the ordinary course of business; or
- (c) the date upon which Declarant has recorded an instrument voluntarily surrendering all rights to control the Association.

The term Period of Declarant’s Control is intended to be synonymous with the phrase “period of administrative control” as that phrase is used throughout the Community Act.

1.39 “**Plat Map**” means and refers to that certain plat map entitled “The Village at Wolf Creek, a Planned Residential Unit Development” as more particularly identified under Recital C.

1.40 “**Private Drives**” means and refers to those portions of the Project that are identified and labeled on the Plat Map as a “PRIVATE DRIVE,” including Lakeview Court (4925 East), Creekside Way (4900 East), and Village Way.

1.41 “**Private Roads**” means and refers to those portions of the Project that are identified and labeled on the Plat Map as a “PRIVATE ROAD,” including Willow Creek Lane (4875 East), Willow Creek Loop (3525 North and 3550 North), and Willow Brook Circle (3475 North and 3500 North).

1.42 “**Private Streets**” means and refers to both Private Drives and Private Roads. The area upon which each Private Street is located is Common Area, while the pavement, curbs and gutters or similar improvements that comprise the Private Streets are Common Improvements. Notwithstanding certain inaccurate language in the Owner’s Dedication paragraph of the Plat Map, no portion of the Project has been dedicated, granted or conveyed as a public thoroughfare. As such, the Association is solely responsible for maintaining, repairing and replacing any and all thoroughfares (*i.e.* Private Streets) located within the Project.

1.43 “**Project**” means that certain residential subdivision commonly known as “The Village at Wolf Creek.” The “Project” includes the land upon which the Project is located, as well as any Lots, Dwellings, Common Area and Common Improvements, including and Private Streets located upon such land. The term “Project” also includes all easements, rights, restrictions and servitudes related to the Project.

1.44 “**Recorder’s Office**” means the Recorder's Office of Weber County, State of Utah.

1.45 “**Recording Date**” means the date upon which this Declaration is recorded in the Recorder's Office.

1.46 “**Reimbursement Assessment**” means and refers to any Assessment that may be imposed against one or more Owner (but less than all Owners) pursuant to Section 17.8.

1.47 “**Reserve Fund**” collectively means and refers to (a) the General Reserve Fund, (b) the SFH Reserve Fun, and (c) the Townhome Reserve Fund.

1.48 “**Rules and Regulations**” means and refers to any rules and/or regulations that may be adopted, passed, amended, revised and/or enforced by the Board from time to time as deemed by the Board as necessary for the Owners’ use and enjoyment of the Project. Prior to adopting, approving, amending, updating and/or clarifying any Rules and Regulations, the Board must first comply with the requirements of the Community Act regarding such Board action by, for example, giving the Owners notice of such proposed Board action and allowing Owners an opportunity to be heard at a Board meeting before the Board takes any action regarding any proposed Rule or Regulation.

1.49 “**Single Family Home**” or “**SFH**” means and refers to any Dwelling that is free-standing and detached from any other Dwelling. Each SFH includes the garage that is attached to such SFH. Each and every SFH located within the Project is intended to be constructed on a SFH Lot.

1.50 “**Single Family Home Lots**” or “**SFH Lots**” means and refers to Lots 1 through 39, as shown on the Plat Map, upon which only Single Family Homes may be constructed.

1.51 “**Single Family Home Lot Assessments**” or “**SFH Lot Assessments**” means and refers to Assessments that are used to pay Single Family Home Lot Common Expenses. SFH Lot Assessments may be assessed only against SFH Lots and shall be equally imposed against all SFH Lots.

1.52 “**Single Family Home Lot Common Expenses**” or “**SFH Lot Common Expenses**” means and refers to any Common Expense that is shared and paid only by the Owners of SFH Lots including, for example, the cost of maintaining, repairing and/or replacing any Common Improvements that may be located on any SFH Lot.

1.53 “**Single Family Home Lots Reserve Fund**” or “**SFH Lots Reserve Fund**” means and refers to that certain fund that may be established for the purpose of repairing, replacing and restoring Common Improvements that are solely intended for the use and benefit of the Owners of all SFH Lots located in the entire Project.

1.54 “**Townhome**” means and refers to any Dwelling that is attached to another Dwelling by a Shared Wall. Each and every Townhome located within the Project is intended to be constructed on a Townhome Lot. The boundaries and components of each Townhome are more particularly described under Article 6 and Article 7 of this Declaration.

1.55 “**Townhome Lots**” means and refers to Lots 40 through 62 as shown on the Plat Map, upon which only Townhomes may be constructed.

1.56 “**Townhome Lot Assessments**” means and refers to Assessments that are used to pay Townhome Lot Common Expenses. Townhome Lot Assessments may be assessed only against Townhome Lots and shall be equally imposed against all Townhome Lots.

1.57 “**Townhome Lot Common Expenses**” means and refers to any Common Expense that is shared and paid only by the Owners of Townhome Lots including, for example, the cost of (A) maintaining, repairing and/or replacing any Common Improvements that may be located on any Townhome Lot, and (B) maintaining, repairing and/or replacing any portions or components of the Townhomes for which the Association is responsible as set forth under Section 8.2, below.

1.58 “**Townhome Lots Reserve Fund**” means and refers to that certain fund that may be established for the purpose of repairing, replacing and restoring: (A) Common Improvements that are solely intended for the use and benefit of the Owners of all Townhome Lots located in the entire Project, and/or (B) those portions or components of the Townhomes that Association is required to maintain, repair, replace and/or restore under Section 8.2.

1.59 “**Vacant Lot**” means and refers to any Lot upon which construction of a Dwelling has yet to be completed. A Lot shall cease to be deemed a “Vacant Lot” immediately upon the completion of construction of a Dwelling (or any improvements related to such Dwelling) upon such Lot. The term “Vacant Lot” may be used to describe a vacant SFH Lot or a vacant Townhome Lot.

1.60 “**Walkway**” means and refers to any sidewalk, trail or walkway that provides access to any Townhome or that may be constructed or installed across any Common Area. The Governing Documents may refer to any Walkway that serves a Townhome as a “Townhome Walkway” and any Walkway constructed or installed across any Common Area as a “Common Area Walkway.” The term “Walkway” is only applicable to the Townhome Lots or Common Area and is not applicable to any sidewalk, trail or walkway that may be located on any Single Family Home Lot.

ARTICLE 2 – DESCRIPTION OF PROJECT

The purpose of this Article 2 is to provide certain information required under Section 57-8a-212 of the Community Act.

2.1 Project

The name of the Project is “The Village at Wolf Creek.” The Project is a Planned Residential Unit Development (PRUD). The Project consists of Sixty-Two (62) Lots upon which Dwellings have been or will be constructed, as well as Common Areas upon which Landscaping, Private Streets and other Common Improvements have been or will be constructed, placed or installed. Certain elements of the Project, such as Lots, Common Area, Private Streets, and utility and drainage easements are identified and/or depicted on the Plat Map.

2.2 Association

The name of the Association is “The Village at Wolf Creek Homeowners Association, Inc.” which shall manage, govern and administer the entire Project. If Declarant determines the Project would be more efficiently managed and administered by two homeowner associations, the Declarant may, in Declarant’s sole discretion, elect to form one homeowner associations for the Single Family Home Lots and a separate homeowner associations for the Townhome Lots. If Declarant elects to form two separate homeowners associations, the Declarant shall record with the Recorder’s Office the appropriate governing documents for the formation and administration of each homeowners association.

2.3 Legal Description and Location

The legal description of the land on which the Project is located is set forth under Exhibit “A” which is attached to and made part of this Declaration. The entire Project is located within Weber County in the State of Utah.

2.4 Lots

Each Lot is identified, depicted and numbered on the Plat Map. Each Lot may be independently owned, encumbered, and conveyed.

2.5 Common Area

The Common Areas of the Project are identified and depicted on the Plat Map as “NEW COMMON AREA.”

2.6 Common Improvements

As of the Recording Date, the Project includes the following Common Improvements: Landscaping, Private Streets and Common Area Walkways. The Declarant may, but is under no obligation, to add other Common Improvements such as benches and picnic tables.

2.7 No Cooperative or Condominiums

The Project is not a cooperative, and no portion of the Project contains or will contain any condominiums.

2.8 No Right to Expand Project

Declarant does not have any option or right to expand the Project.

2.9 No Restrictions on Alienation

Except as otherwise provided under the Governing Documents, there shall be no restriction or restraint on alienation of any Lot or any Dwelling located on such Lot.

2.10 Appointment of Trustee

Metro National Title (“**Metro**”) located at 1366 South Legend Hills Drive, Suite #140, Clearfield, UT 84015 is hereby appointed and designated as the trustee for purposes of enforcing and securing payment of Assessments pursuant to Utah Code Sections 57-1-20 and 57-8a-302. Declarant at any time during the Period of Declarant’s Control, or the Association after the end of the Period of Declarant’s Control has expired or been terminated, may appoint a successor trustee at any time by filing a notice in the office of the Recorder pursuant to Utah Code Section 57-1-22.

ARTICLE 3 - HOMEOWNERS' ASSOCIATION

3.1 Form of Association

The Association is a Utah nonprofit corporation organized under the laws of the State of Utah.

3.2 Membership

3.2.1 Qualification. Each Owner shall be a Member of the Association and shall be entitled to one membership for each Lot so owned. Ownership of a Lot shall be the sole qualification for membership in the Association.

3.2.2 Transfer of Membership. Each Owner's Association membership shall be appurtenant to the Lot giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to such Lot. Any attempt to make a prohibited transfer of any Association membership shall be void. Any transfer of title to a Lot shall automatically transfer to the Lot's new Owner the membership in the Association that is appurtenant to such Lot.

3.2.3 Mandatory Membership. The Owner of each Lot is required to be a Member of the Association. Likewise, each purchaser of a Lot, by virtue of accepting a deed or other document of conveyance thereto, shall automatically become a Member of the Association. Membership may not be partitioned from the ownership of any Lot.

3.2.4 No Membership for Tenants or Lessees. Limited membership privileges shall be extended to the tenants and lessees of Dwellings as provided for in the Governing Documents, but tenants and lessees shall not be Members nor shall they have the right to vote.

3.3 Change of Ownership

In the event a Lot and/or Dwelling is conveyed, sold or otherwise transferred, no later than five (5) business days following the date the conveyance document (*i.e.* recorded grant deed, quitclaim deed, etc.) has been recorded with the Recorder's Office, the new Owner shall deliver (or shall cause to be delivered) to the Association a transfer fee of \$50 or such higher amount as may be permitted under the Community Act. The new Owner may either deliver the transfer fee directly to the Secretary or may cause the transfer fee to be delivered to the Association as part of the closing of escrow on the new Owner's purchase of the Lot/Dwelling. As set forth under Section 27.3, each new Owner shall provide the Secretary of the Association with an email address and mailing address where the Association may deliver notices as set forth under the Governing Documents.

3.4 Voting

3.4.1 Number of Votes. The collective voting power of the Owners shall be equal to the total number of Lots that comprise the Project. The Owner(s) of any one Lot shall be entitled to one (1) vote.

3.4.2 Voting Owner. There shall be one “voting representative” for each Lot. If a person owns more than one Lot, that person shall have the votes for each Lot owned. For any Lot held in trust, the Owner shall be the acting trustee of the trust at the time.

3.4.3 Joint Owner Disputes. The vote for a Lot must be cast as a single vote, and fractional votes shall not be allowed. In the event the joint Owners of any Lot are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. In the event more than one vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

3.4.4 Pledged Votes. In the event the record Owner or Owners of any Lot have pledged their vote regarding special matters to a mortgagee or beneficiary of a deed of trust under a duly recorded mortgage or deed of trust, or to the vendor under a duly recorded real estate contract, only the vote of such mortgagee, beneficiary, or vendor will be recognized in regard to the special matters upon which the vote is so pledged, if a copy of the instrument with such a pledge has been filed with the Board.

3.4.5 Notice of Owners’ Vote. The Association may provide all Owners with notice of any matter upon which the Owners must vote, or have been invited to vote, in any manner permitted under Section 27.3 of this Declaration.

3.4.6 Mail-In Ballots. In any instance where voting on a matter is permitted or required herein, such vote may be carried out without a meeting by mail-in ballot sent to all Owners entitled to vote on the matter pursuant to the applicable procedure set forth in the Bylaws, and the approval of a majority of the votes actually cast shall be sufficient to approve such matter, except where a different threshold is specifically required herein.

3.4.7 Online/Electronic Mail Voting. Unless otherwise prohibited by the Acts, with regard to any matter upon which the Owners must vote, or have been invited to vote, the Association may utilize online balloting as provided and administered through a reputable third party online/website service. The Association may not simply send an email to Owners requesting that Owners vote by replying to the email. The Association may, however, email a scanned copy of a ballot to Owners and permit the Owners to either mail the completed ballot back to the Association, or email a scanned copy of the completed ballot to the Association. Notwithstanding any other provision of this Declaration, the Association must mail to, and receive from, all Owners a hardcopy (paper) ballot for any vote related to an amendment to this Declaration. Any such vote related to an amendment of this Declaration may not be administered via email or an online/website service. All other matters, including for example and without limitation, the election of Board members or the approval of a Special Assessment may be administered via email or an online/website service.

3.5 Bylaws of Association

3.5.1 Adoption of Bylaws

Bylaws for administration of the Association and the Project and for other purposes not inconsistent with the Acts or with the intent of this Declaration, have been adopted by the Association and a copy of such Bylaws is attached to and made part of this Declaration as Exhibit “B”.

3.5.2 Bylaws Provisions

The Bylaws may contain supplementary provisions, not inconsistent with this Declaration, regarding the operation, management and administration of the Project.

3.6 Attorney in Fact

Each Owner, by the mere act of becoming an Owner or contract purchaser of a Lot, irrevocably appoints the Association as such Owner's attorney-in-fact, with full power of substitution, to take such action as reasonably necessary to promptly perform the duties of the Association, including but not limited to the duties to manage, operate, maintain, repair and improve the Project, to negotiate with insurance carriers upon damage or destruction to certain portions of the Project, and to secure insurance proceeds.

ARTICLE 4 – BOARD OF DIRECTORS

4.1 Board Purpose

Administrative, management, and enforcement authority of the Association is vested in the Board, which shall be elected by the Owners pursuant to the Bylaws. The Board, for the benefit of the Association and the Owners, shall administer, manage and enforce the provisions of the Governing Documents and shall have all powers and authority permitted to the Board under the Acts and the Governing Documents. The Board shall elect officers from among the Board members pursuant to the Bylaws. The Board may delegate all or any portion of the Board's authority to a Manager, or in such other manner as may be permitted under the Governing Documents.

4.2 Board Approvals

Any actions requiring Board approval under the Governing Documents including, without limitation, any actions the Board is permitted to take or approve without prior approval of the Owners (such as, for example, the imposition of certain Special Assessments per Section 17.7 of this Declaration) must be adopted and approved by a majority vote of the Board (*i.e.* more than half of the Board members).

4.3 Board Authority

4.3.1 The Board shall acquire, and shall pay for out of the Common Expense Fund, any goods and services required for the proper functioning of the Association and the Project, including but not limited to the following:

(a) Utilities. Water, sewer, garbage collection, electrical, telephone, gas and any other utility service as may be necessary for the operation or maintenance of the Common Area or any Common Improvement.

(b) Insurance. Policies of insurance or bonds providing coverage for fire and other hazard, liability for personal injury and property damage, fidelity of Association officers and Association agents or employees, and director's and officer's liability or errors and omissions, as such policies are more fully described and required in this Declaration and in the Bylaws.

(c) Management Services. The services of persons or firms as required to properly manage and operate the affairs of the Association and/or the Project to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine are necessary or proper for the operation, maintenance, repair and/or replacement of the Common Area and any Common Improvements, whether or not such personnel are hired directly by the Board or are furnished or hired by the Manager.

(d) Professional Services. Legal and accounting services necessary or proper in the management and operation of the Association's affairs, administration of the Project, or the interpretation, modification, or enforcement of the Governing Documents.

(e) Common Area Maintenance Services. Maintenance, restoration, replacement and/or repair of the Common Area and Common Improvements as the Board shall determine as necessary and proper.

(f) Materials, Supplies. Materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to secure by law, or which in the Board's reasonable opinion shall be necessary or proper for the operation of the Project or for the enforcement of the Governing Documents; provided that if for any reason such materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are provided for particular Lots or their Owners, the cost thereof shall be charged to the Owner(s) of such Lots via Reimbursement Assessment.

(g) Personal & Real Property. Acquire and hold in the name of the Association, for the benefit of the Owners, tangible and intangible personal property and real property and interest therein, and dispose of the same by sale or otherwise; and such property shall be held, sold, leased, rented, mortgaged or otherwise dealt with for the benefit of the Association as the Board may direct. The Board shall not, however, in any case acquire real property personal property or equipment (other than for purposes of restoring, repairing or replacing portions of the Common Area or any Common Improvements) valued in excess of Five Percent (5%) of the total Annual Budget (excluding the amount of the Reserve Fund Line Item) by lease or purchase without the approval of a Majority of the Owners.

(h) Lien Discharge. Pay any amount necessary to discharge any lien or encumbrance levied against the Project or any part thereof which is claimed to or may, in the opinion of the Board, constitute a lien against the Project or against the Common Areas or any Common Improvement, rather than merely against the interest therein of any particular Owner(s). Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs and expenses incurred by the Board by reason of such lien or liens shall be assessed against the Owners and the Lot responsible to the extent of their responsibility.

4.3.2 Not for Profit. Nothing herein contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all or any of the Owners.

4.3.3 Right to Contract. The Board shall have the right to contract for all goods and services on behalf of the Association, payment of which is to be made from the Common Expense Fund. The Board may delegate such powers to a Manager subject to the terms and conditions of the Governing Documents.

4.3.4 Common Area Entry by Board. The Board and its agents or designees (including the Manager, if any) may enter any portion of the Common Area from time to time in order to perform and discharge the responsibilities, duties and obligations of the Association pursuant to the Governing Documents.

ARTICLE 5 – COMMON AREAS AND COMMON IMPROVEMENTS

5.1 Generally

The Common Area of the Project specifically refers to those portions of the Project identified and depicted on the Plat Map as “NEW COMMON AREA.” Such Common Areas generally constitute all parts of the Project except any portion of the Project that is not a Lot.

The Common Improvements of the Project include various Improvements that have been or may be constructed or installed on Common Area, such as Association Sprinkler Systems, Landscaping, Common Area Walkways and Private Streets. It is possible that certain Common Improvements, such as Association Sprinkler Systems and Common Area Walkways, may intentionally or unintentionally be constructed, installed or located upon Lots.

5.2 Specific Common Areas

Without limiting the generality of Section 5.1, the Common Areas shall include the following:

- (a) Private Streets;
- (b) general parking areas, if any such parking areas are constructed or installed within the Project;
- (c) open space within the Project, which is identified on the Plat Map as “NEW COMMON AREA”; and
- (d) all repairs, refurbishments or replacements of any of the foregoing.

5.3 Ownership

Because the Project is a PRUD, all Common Areas of the Project are entirely owned by the Association for the benefit of, and on behalf of, the Owners. The Owners do not hold or own any interest (undivided or otherwise) in the Common Area of the Project. The Association shall continuously hold title to the Common Areas free and clear of any and all liens or encumbrances (other than the current year’s property taxes, if any).

5.4 Use, Maintenance, Repair or Replacement of Common Area

5.4.1 Common Areas – Generally. The use, condition and appearance of all Common Area located throughout the entire Project must comply with the Governing Documents. The Board may adopt and revise Rules and Regulations in order to establish, clarify, promulgate and/or enforce further requirements or restrictions regarding the use, condition and appearance of such Common Areas.

5.4.2 Association Sprinkler Systems. In order to maintain control over the consumption and cost of secondary water, the Association shall, at all times, retain complete control over any and all Association Sprinkler Systems located throughout the entire Project, including any portion of such Association Sprinkler Systems that may be located on any Lots. The Association is hereby granted an irrevocable easement to access, operate, maintain, repair and/or replace any and all portions or components of such Association Sprinkler Systems that may be located on any portion of the Project, including on or across any Lots, provided the Association accesses, operates, maintains, repairs and/or replaces any portion of such Association Sprinkler Systems at a time and in a manner that does not unreasonably disturb Owners or Occupants.

5.4.3 Alterations to the Common Area. During the entire Period of Declarant's Control, the Declarant may make changes to the design and construction of the Common Areas, including any Common Improvements that may be constructed or installed thereon, without providing any advance notice to, and without obtaining the approval or permission of, the Board, the Association or any Owners.

5.4.4 Limitations on Alterations by Association. During the entire Period of Declarant's Control, neither the Association nor the Board shall, without the prior written consent of the Declarant, make any changes or alterations whatsoever to any of the Common Areas, including any Common Improvements that may be constructed or installed thereon, other than such repairs, replacements, or similar efforts as may be necessary to properly maintain such Common Areas or Common Improvements as originally designed, created or constructed or otherwise approved by the Declarant.

5.4.5 Maintenance, Repair or Replacement by Association. The Association shall be solely responsible for any and all maintenance, repair and/or replacement of any portions or components of the Common Areas, including any Landscaping or other Common Improvements that may be constructed or installed thereon.

5.4.6 Negligent or Willful Acts or Omissions by Owner. Notwithstanding the language of Subsection 5.4.4, if any portion of the Common Area, including any Common Improvement that may be constructed or installed thereon, is damaged, destroyed, or requires maintenance, repair or replacement due to the negligent or willful acts or omissions of any Owner (or such Owner's tenants, family members, guests, or invitees) that Owner shall be responsible for the cost of the maintenance, repair or replacement of such Common Area and/or Common Improvement, and such costs shall automatically and immediately be a Reimbursement Assessment against such Owner. Likewise, each Owner will be personally liable, will be financially liable to the Association, and may (in addition to any assessments for the cost of maintenance, repair or replacement of the Common Areas or Common Improvements) be assessed and/or fined by the Association for any damage (beyond

normal or reasonable wear and tear) caused to the Common Areas or Common Improvements due to the actions or inactions of such Owner or his or her tenants, family members, guests, or invitees in connection with such Common Areas or Common Improvements.

5.4.7 Property Damage / Personal Injury. Each Owner shall also be held liable for any damage or injury caused to any personal or real property, or to any individual, as a result of such damage to the Common Areas or Common Improvements caused by such Owner (or such Owner's tenants, family members, guests, or invitees).

5.5 Association Responsibilities

The Association shall be solely responsible for the maintenance and repair of all Common Areas located on any portion of the Project including, without limitation any Landscaping or other Common Improvements located on the Common Area.

The Association is hereby granted a nonexclusive, perpetual easement over, across and upon all Common Areas as necessary or appropriate to perform any maintenance, repair or replacement duties and functions the Association may be obligated or permitted to perform pursuant to the Governing Documents.

Each Owner shall, to the fullest extent of the law, indemnify, defend and hold the Association, including its officers, directors, managers, and other Owners, employees and agents harmless from and against any claims losses, damages, demands, actions, causes of action, liabilities or expenses of any kind or nature directly or indirectly related to any damage to all or any portion of such Owner's Dwelling or Lot that may have been caused or were allegedly caused, in whole or in part, by the Association's maintenance of all or any portion of the Common Area, except where caused by the Association's gross negligence or willful misconduct.

5.6 Owner Responsibilities

Each Owner must take reasonable measures to prevent any damage, destruction or degradation to any portion of the Common Areas by, for example, refraining from depositing or keeping any trash, debris or unsightly personal property or belongings on any portion of the Common Area. As set forth under Section 5.5, the Association is responsible for maintaining Landscaping and all other Common Improvements located on any portion of the Common Area.

ARTICLE 6 – TOWNHOMES

6.1 Plat Map Identification

Each Townhome is identified on the Plat Map by a distinct Townhome Lot number.

6.2 Townhome Boundaries and Components

Subject to further specification herein, each Townhome generally consists of and includes all portions of the Building located upon and within the boundary of each Townhome Lot as shown on the Plat Map, including but not limited to:

6.2.1 Roof. Any portion of the Building roof that covers the Townhome, including, for example and without limitation, beams, rafters, underlayments, flashing, shingles, soffit, fascia, corbels, gables, eaves, gutters, roof vents.

6.2.2 Walls. Any and all interior and exterior, structural, load-bearing, non-structural or non load-bearing walls and wall surfaces, including, for example and without limitation, studs, underlayments, drywall, wallpaper, paint, trim, natural or cultured stone, and any other finished interior or exterior wall material. Any Townhome wall, or any portion thereof, that is built as part of the original construction of a Building and divides any two Townhomes shall constitute a "Party Wall." The boundary of any Townhome that shares a Party Wall with another Townhome shall extend to the center of such Party Wall, which forms the boundary between those two Townhomes. The ownership, maintenance, repair and replacement of such Party Wall is governed by Article 7, below.

6.2.3 Ceilings. Any and all portions of any ceiling located within any Townhome, including, for example and without limitation, any ceiling joists, studs, beams, rafters, drywall, paint, trim and any other finished ceiling material.

6.2.4 Floors. Any and all portions of any floors located within any Townhome, including, for example and without limitation, any floor joists, subfloor materials, finished flooring materials, radiant heating system components, etc.

6.2.5 Windows/Doors. Any and all exterior or interior window systems and door systems, including, for example and without limitation, frames, glass, screens, and garage doors.

6.2.6 Window Wells. Any window well that accommodates the window of any room located on the lower floor level of any Townhome. The boundaries of any such window well shall be defined by the stone, concrete, metal or other building material that comprises the original design and construction of the window well.

6.2.7 Walkways. Any Townhome Walkway, or portion thereof, that solely provides access to the Townhome. The boundaries of the Walkway shall be the edge of the paved area of such Walkway as originally constructed. Such paved area may not be enlarged or extended beyond the size of the Walkway as originally constructed. The Association may, but shall not be obligated to, mark the boundaries of any Townhome Driveway using painted striping or any other inconspicuous marking.

6.2.8 Garage. Any garage that may be attached to and directly accessible from a Townhome.

6.2.9 Driveway. Any Townhome Driveway, with the boundaries of the Driveway being determined by the edge of the paved area of such Townhome Driveway as originally constructed. Such paved area may not be enlarged or extended beyond the size of the Townhome Driveway as originally constructed. The Association may, but shall not be obligated to, mark the boundaries of any Townhome Driveway using painted striping or any other inconspicuous marking.

6.2.10 Balconies/Decks/Patios. Any balcony, deck or patio area attached to the Townhome. The boundaries of any such balcony, deck or patio shall be defined by any walls, railings or fences enclosing or surrounding said balcony, deck or patio areas as originally constructed. Any such balcony, deck or patio may not be enlarged, expanded or altered beyond its original construction. With regard to any ground-level patio areas that are not enclosed or surrounded by railings or fences, the boundaries of such ground-level patio areas shall be determined by the edge of the paved area of such patio as originally constructed. Such paved areas may not be enlarged or extended beyond the size of the ground-level patio as originally constructed.

6.2.11 Fireplace. Any fireplace that may be located within a particular Townhome as well as any interior or exterior portions or components of such fireplace, including, for example and without limitation, the flue, chase cover, mortar crown, or chimney cap.

6.2.12 Mechanical Equipment / Appurtenances. Any mechanical equipment and appurtenances located within the Townhome or located outside of such Townhome but designated and designed to serve only that Townhome, such as appliances, fixtures, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like. Likewise, any and all pipes, wires, conduits or other public utility lines or installations that only serve the Townhome are also part of that Townhome.

6.3 Variances / Encroachments

The original construction of any Townhome shall be the controlling dimensions for such Townhome. As used in this Declaration, the term “original construction” shall generally refer to the original installation of foundations, framing, and wallboard. Any structure, including any part of a Building, that extends beyond the vertical plane of the ground level boundary of the Townhome shall be deemed a part of that Townhome if it: (1) is attached to or part of such Townhome, and (2) was constructed as part of the original construction of the Townhome.

None of the rights and obligations of the Owners created herein, or by the deeds conveying any Townhome Lots, shall be altered in any way due to any encroachments that may result from engineering errors, errors in original construction, errors in the Plat Map, settling, rising or shifting of the earth, settlement or shifting of structures, changes in position caused by repair or reconstruction of any Building or any part thereof, or any other similar cause. Accordingly, each Townhome is hereby declared to have a perpetual and irrevocable easement over all immediately adjacent portions of the Common Areas and/or immediately adjacent Townhome Lots for the purpose of accommodating any such encroachments, including any encroachment that may cause any portion of a Townhome to overhang or project into or onto an immediately adjacent portion of the Common Areas and/or an adjacent Townhome Lot.

There shall be permanent and valid easements for any such encroachment and for the use, maintenance, repair and/or replacement of any such encroaching Townhome so long as the encroachment shall exist, provided, however, that in no event shall a valid easement for encroachment be created in favor on an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners. In the event a Townhome is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over immediately adjacent portions of the Common Areas and/or immediately adjacent Townhome Lots shall be permitted, and that there shall be valid easements for the use, maintenance, repair and/or replacement of said

encroachments so long as they shall exist. The foregoing encroachments shall not be construed as encumbrances affecting the marketability of title to any Townhome Lot. Such encroachments shall not be considered to be encumbrances either to any Common Areas or to the Townhome Lots.

6.4 Disputes Regarding Certain Townhome Boundaries

In the event of any dispute regarding the boundaries of any balcony, deck, patio, Townhome Walkway, Townhome Driveway or window well, the Board shall have the authority to resolve such dispute and determine such boundaries by reasonably applying and interpreting the descriptions and definitions of such areas as set forth in this Declaration. This Section 6.4 shall only apply to the boundaries of balconies, decks, patios, Townhome Walkways, Townhome Driveways or window wells, and shall not apply to any disputes regarding any other boundaries of any Townhome.

ARTICLE 7 – TOWNHOME PARTY WALLS

7.1 Definitions

Any Townhome wall, or any portion thereof, that is built as part of the original construction of a Building and divides any two Townhomes shall constitute a “**Party Wall**”.

7.2 Townhome Boundaries

The boundary of any Townhome that shares a Party Wall with another Townhome shall extend to the center of such Party Wall, which shall form the boundary between those two Townhomes.

7.3 Ownership

The Owner of any Townhome that adjoins any Party Wall shall be deemed the “Owner” of such Party Wall for the purposes of this Declaration. The Owners of any Townhomes that adjoin such Party Wall may be referred to as the “Owners” or “Co-Owners” of such Party Wall for the purposes of this Declaration.

7.4 General Rules of Law

In the event of any damage to, destruction of, or dispute regarding a Party Wall, the provisions of this Article 7 shall apply. Any matters concerning Party Walls that are not covered by the provisions of this Article 7 shall be governed by the general rules of law, including liability for damage due to negligence or willful acts or omissions concerning Party Walls.

7.5 Sharing of Maintenance and Repair

In the event of damage or destruction to any Party Wall from any cause, other than the negligence or willful misconduct of either Co-Owner of such Party Wall, the Co-Owners of the Party Wall shall repair or rebuild such Party Wall. Except as otherwise set forth in this Article 7, the cost of repairing or rebuilding any portion of any Party Wall (including, for example and without limitation, the framing, structural components, and insulation of such Party Wall) shall be borne equally by the Co-Owners of such Party Wall.

Any mechanical equipment and appurtenances located within any one Townhome, or located outside such Townhome, but designed and designated to serve only that Townhome; including, for example and without limitation, electrical receptacles and outlets, air conditioning, heating and other ventilation apparatus, fixtures and the like, pipes, wires, conduits, or other utility lines or installations, shall be considered part of that Townhome; and to the extent any such mechanical equipment and appurtenances penetrate, are attached to, or are located between or within a Party Wall, the Owner of that Townhome shall be responsible for the maintenance, repair and replacement of such mechanical equipment and appurtenances. In the event any such mechanical equipment and appurtenances service both Townhomes that are separated by the Party Wall, the cost for maintaining, repairing and/or replacing such mechanical equipment and appurtenances shall be equally shared by the Owners of the Party Wall.

Notwithstanding the above paragraph, if an Owner's negligence or willful misconduct is the cause of damage to or destruction of any Party Wall or to any mechanical equipment and appurtenances that penetrate, are attached to, or are located between or within such Party Wall, such Owner shall bear the entire cost of repair or reconstruction of the Party Wall and said mechanical equipment and appurtenances.

7.6 Failure to Contribute

If any Owner shall fail or refuse to pay his or her share of the cost of repair or reconstruction of a Party Wall, or any Owner fails or refuses to pay all of such costs in the case of his or her negligence or willful misconduct, the other Owner(s) of the Party Wall may have such Party Wall repaired or restored and shall be entitled to record a mechanic's lien on the Townhome of the Owner(s) who fail or refuse to pay for the amount of such defaulting Owners' share of the repair or replacement costs together with interest at the maximum rate allowable. The Owner having such Party Wall repaired shall, in addition to the mechanic's lien, be entitled to recover reasonable attorney's fees and shall be entitled to all other remedies provided herein or by law. The mechanic's lien granted herein is effective only if properly and timely filed in the Recorder's Office by an affidavit declaring under oath the claim of the mechanic's lien.

7.7 Destruction by Fire or Other Casualty

If a Party Wall is damaged or destroyed by fire or other casualty, any Owner thereof may restore the Party Wall, and the other Owner(s) thereof shall equally contribute to the cost of restoration thereof, subject, however, to the right of any such Owner(s) to demand a larger contribution from the other Owner(s) under any applicable rule of law regarding liability for negligent or willful acts or omissions.

7.8 Arbitration

In the event any dispute arises concerning a Party Wall, the Co-Owners of the Party Wall shall attempt to resolve the matter through mediation as conducted by the President of the Association. If any Owner involved in the dispute objects to such attempted mediation, the Co-Owners shall submit the matter to arbitration. The Co-Owners may (but shall not be required to) mutually agree that the outcome of such arbitration shall be final and binding. If the Co-Owners are unable to mutually agree to such binding arbitration, the arbitration shall be non-binding. The arbitration (whether binding or non-binding) shall be conducted on a confidential basis pursuant to

the then applicable Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in real property litigation and shall include a written record of the arbitration hearing. The parties to the dispute shall have the right to object to the arbitrator. If the parties are unable to agree upon a single arbitrator, each party to the dispute shall choose one arbitrator, and such arbitrators shall select one additional arbitrator, and a final and binding decision regarding the outcome of the dispute shall be made by a majority of the arbitrators. Should either party refuse to appoint an arbitrator within ten (10) days after written request therefore, the Board shall select an arbitrator for such refusing party. Any award or decision resulting from such arbitration may be confirmed in a court of competent jurisdiction.

7.9 Right to Contribution Runs With Land

The right of any Owner(s) of a Party Wall to receive contribution from the other Owner(s) of a Party Wall under this Article 7 shall be appurtenant to the land and shall pass to such Owner's successor in title.

7.10 Encroachments

If any portion of any Party Wall now or hereafter constructed encroaches upon any part of the Common Area or upon any Townhome Lot, an easement for the encroachment and for the use, maintenance, repair and/or replacement of such Party Wall is hereby granted and reserved and shall exist and be binding upon the Declarant, the Association and all present and future Owners of any part of said Party Wall for the benefit of the present and future Owners of such encroaching Party Wall. In the event a Party Wall becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements for the benefit of all present and future Owners of such Party Wall are hereby granted and reserved upon adjacent or impacted Common Area and/or Townhome Lot(s) to the extent reasonably necessary or advisable in order to maintain, repair and/or replace such Party Wall. The easements for encroachment herein granted and reserved shall run with the land.

7.11 Alteration/ Removal Prohibited

Except for non-structural interior decorations, Party Walls shall not be altered, moved or removed under any circumstances or in any manner whatsoever. No doorway, hatch, stairway, elevator or similar alteration that permits passage between two Townhomes may be created in or through any Party Wall.

ARTICLE 8 – MAINTENANCE, REPAIR AND REPLACEMENT OF TOWNHOMES AND TOWNHOME LOTS

The provisions of this Article 8 shall only apply to the maintenance, repair and replacement of Townhomes and Townhome Lots. The provisions of this Article 8 shall not apply to any Single Family Homes or any Single Family Home Lots.

8.1 Owner Maintenance, Repair or Replacement of Townhomes

The provisions of this Section 8.1 shall apply to each Townhome as well as the Townhome Lot upon which such Townhome has been constructed. Except as otherwise specifically set forth in this Declaration, each Owner shall, at such Owner's sole expense, have the duty to maintain, repair and replace any and all portions of his or her Townhome and Townhome Lot in compliance with the Governing Documents, including any damage not covered by insurance.

8.1.1 Maintenance. The Owner of each Townhome Lot shall, at such Owner's sole expense, maintain, repair and replace the following parts and components of his or her Townhome (including any damage to such items not covered by an insurance claim):

- (a) all interior and exterior doors, including thresholds and door jams,
- (b) all paneling, tiles, wallpaper, paint, carpet, finished interior flooring, fireplaces, and any other materials constituting the finished interior surfaces of floors, ceilings, or walls;
- (c) all drywall, wallboard, or similarly functioning materials located within the Townhome;
- (d) all framing, insulation, and other materials associated with interior walls;
- (e) all windows, window sills, window frames, and skylights, including the interior and exterior cleaning of such windows and any door glass (the Association may elect to arrange and pay for the cleaning of exterior windows as a Common Expense or may require the Owners to pay a particular person or company to clean on a schedule determined by the Association);
- (f) all sewer and drainage pipes, water, power, and other utility lines, and any wiring related to the provision of television, telephone, or Internet services, to the extent that they are located within the Townhome or serve only that Townhome;
- (g) all plywood decking and similar materials on interior floors;
- (h) any of the following located wherever they might be located (inside or outside of the Townhome) that exclusively serve a Townhome: lighting fixtures (including lighting particular to that Townhome's patio, balcony or deck, but not including exterior lighting attached to a Townhome for the purpose of lighting Common Area), fans, plumbing fixtures (other than pipes located outside of a Townhome), stoves, refrigerators, hot water heaters, air conditioning units (including compressors, condensers, ducting, and forced air units), intercoms, security systems, and such other appliances, fixtures, and decorations as an Owner may install as permitted in this Declaration;
- (i) any decorative or non-structural elements or components (e.g. insulation, drywall or paint) of any interior wall of any Townhome
- (j) any framing or structural components of any Townhome ceilings or floors

- (k) any framing, joists, beams, rafters, or any other structural elements or components of any Townhome (except for the structural portion or components of the Townhome's exterior walls, which are to be maintained by the Association per Section 8.2, below; and
- (l) foundations, concrete pads and any subsurface Townhome improvements.

Each Owner shall also be responsible for keeping the Townhome, including any patio, balcony, deck, Walkway, Driveway or window well that is part of such Townhome in a clean, sanitary and uncluttered condition, free of pests and rodents. The Board may set forth in the Rules and Regulations any limits, restrictions, or guidelines on what may or may not be left, stored, or installed on any patio, balcony, deck, Walkway or Driveway, which may include a prohibition on leaving, installing, or storing certain items or any items in such places.

8.1.2 Maintenance of Townhome Interior Surfaces and Fixtures. Without limiting the generality of Subsection 8.1.1, each Owner shall have the right and the duty at his or her sole cost and expense to maintain, repair, paint, paper, panel, plaster, tile, and finish the interior surfaces of the ceilings, walls, floors, window frames, door frames, and trim located within his or her Townhome and shall not permit or commit waste of such Townhome. Each Owner and his or her agent has the right to maintain, repair, paint, finish, alter, substitute, add or remove any fixtures attached to said ceilings, floors or walls. However, no Owner shall interfere with or cause damage to the structural integrity of any Building or interfere with the use and enjoyment of any part of the Common Areas or any other Townhomes. This Subsection 8.1.2 shall not be construed to limit the powers or obligations of the Board hereunder. Except as otherwise specifically provided under this Declaration, or required by law, all costs associated with the maintenance and repair of any Townhome, whether performed by or at the direction of the Association or the Board or the Owner shall be the sole responsibility of the Owner(s) of such Townhome.

8.1.3 Major Townhome Interior Modifications – Approval & Deposit. An Owner may not make any improvement or alteration to his or her Townhome that: (a) constitutes a structural change to the Townhome or the Building, such as moving, removing, adding, or altering any walls, doorways, and the like, or (b) affects any Common Area or any other Townhome, without first submitting detailed plans therefor to the Board and obtaining the Board's written approval of such plans and changes, which approval may be granted or denied in the Board's sole discretion. In the event such plans and changes are approved by the Board, the Owner shall, in advance of such work, deliver to the Association a security deposit in an amount to be reasonably determined by the Board. All local codes shall be adhered to and all applicable permits must be obtained by the Owner prior to commencement of any such work. All construction activities, including cleanup, access by workers, acceptable work hours, etc., must be performed in accordance with standards and regulations set forth by the Association.

8.1.4 Installation of Improvements, Mechanical Systems or Fixtures. An Owner may not, without the prior written consent of the Board, install or erect any improvement, mechanical system or fixture that either: (a) protrudes beyond the boundaries of his or her Townhome; or (b) is located outside his or her Townhome.

8.1.5 Patio, Balcony, Deck or Driveway Shelters/Enclosures. Owners are prohibited from placing, erecting or constructing any temporary or permanent shelters or enclosures on, in or around any patio, balcony, deck, Walkway or Townhome Driveway.

8.1.6 Certain Work Prohibited. Notwithstanding any other provisions of the Governing Documents, no Owner shall do any work or make any alterations or changes that would jeopardize the soundness or safety of any portion of the Project, reduce its value or impair any easement or hereditament, without in every such case obtaining the unanimous written consent of all other Owners.

8.1.7 Project Exterior Appearance. In order to preserve the uniform exterior quality and appearance of the Project, no changes whatsoever shall be commenced, erected, maintained, made or done by any Owner to the exterior of any Townhome, including any patio, balcony, deck, Driveway or window well that is a part of such Townhome without the Board's prior written approval. The Board shall have sole discretion to establish, regulate and determine the exterior appearance of the Buildings. The Board may also restrict, prescribe or regulate the screen or glass exterior doors of each Townhome including, for example and without limitation, the type, color and hardware of any such screen or glass exterior doors and the maintenance thereof. Awnings or sunshades are not allowed on the exterior of any Building, unless the color, style, construction material, installation method, and uniformity of appearance have been approved by the Board in advance and in writing.

Each Townhome shall be maintained so as not to detract from the health, safety or uniform appearance of any Building as well as the overall Project and so as not to adversely impact the value or use of any other Townhome. Each Owner shall keep his or her Townhome clean, safe, and in a sanitary condition. The Board may, by rule, adopt, promulgate and enforce further requirements for the repair and maintenance of a Townhome required for each Owner, in accordance with the terms of this Declaration and/or the Bylaws.

Owners are strictly prohibited from performing any repair, replacement or maintenance of any portion of his or her Townhome that may, in any manner whatsoever, impact or alter the exterior appearance of any portion of any Building without obtaining the prior written permission of the Board, which permission may be granted or denied in the Board's sole discretion. The replacement, repair or maintenance referenced in the prior sentence includes, by example and without limitation, the maintenance, repair and/or replacement of any exterior walls, roofs, doors, windows, or any other exterior portion or surface of any Townhome.

8.1.8 Ice/Snow Removal. Each Owner must at all times keep his or her patio, balcony, deck, Townhome Walkway and Townhome Driveway clear of ice and snow. Such ice and snow must be removed in a safe and prudent manner so as to avoid injury to any individuals, or damage to any personal or real property. If such ice or snow removal results in damage to any portion of the Project (including any portion of any Building) the Association may repair such damage and impose on the Owner deemed by the Board as responsible for such damage a Reimbursement Assessment equal to a portion or the entire cost of such repair, as determined by the Board. An Owner will be held responsible and liable for injury to any individuals, or damage to any personal or real property, caused by the ice or snow removal activities of any third party (*i.e.* the Owner's tenant or guest, or any ice or snow removal contractor or service).

If the Association and/or Manager determines that an Owner has failed to properly keep his or her patio, balcony, deck, Townhome Walkway and/or Townhome Driveway clear of ice or snow and such ice or snow poses a threat of damage to another part of the Project to other Owners or Occupants, the Association and/or Manager may (but shall not be obligated to) cause the removal of such ice or snow, and the Owner will be charged for the entire cost of such removal. If the Association and/or Manager fails, for any reason or no reason, to cause the removal of ice or snow from any such areas, neither the Association nor the Manager shall be held responsible or liable for any bodily injury, damage to any personal or real property, or any other damages that may be directly or indirectly caused or allegedly caused by such ice or snow. The Board shall adopt and enforce specific rules and policies regarding snowfall removal, provided that such rules and policies are consistent with this Subsection 8.1.8.

8.2 Association Maintenance, Repair or Replacement of Townhomes

In order to preserve the uniform exterior quality and appearance of the Project, as well as the soundness and safety of each Building, the Association shall, at the Association's expense, be responsible for maintaining, repairing and/or replacing the following portions or components of each Townhome (which are collectively referred to in this Declaration as the "**Association Maintained Townhome Components**"):

- (a) The entirety of the Townhome's roof, including any components thereof, such as shingles, underlayments, flashing, soffit, fascia, corbels, gables, eaves, gutters, roof vents, etc. (not including, however, the drywall or any wallpaper, paint, trim, or other finished ceiling materials that may be part of any portion of the Townhome's ceiling that is attached to or located immediately below the Townhome's roof);
- (b) The exterior surface and construction of the Townhome's exterior walls (*i.e.* any walls that face outside), and all components that are part of such exterior surface and construction (such as, for example and without limitation, underlayments, siding, paint, trim, natural or cultured stone, and any other finished exterior wall material) except as otherwise specifically assigned by this Declaration to the Owner of the Townhome for maintenance and repair; and
- (c) Any components of the Townhome's fireplace located on, within or above the roof, such as, for example and without limitation, the chase cover, mortar crown, or chimney cap (not including, however, any portion or components of the fireplace located below the structural components of the roof).

If any of the above Association Maintained Townhome Components are damaged, destroyed, or require maintenance, repair or replacement due to the negligent or willful acts or omissions of any Owner (or such Owner's tenants, family members, guests or invitees) the Owner shall be responsible for any costs incurred by the Association in connection with the maintenance, repair or replacement of any such Association Maintained Townhome Components, and such costs shall automatically and immediately be a Reimbursement Assessment against such Owner.

Aside from the maintenance, repair or replacement of the Association Maintained Townhome Components specified under this Section 8.2, the Association shall not be responsible for the maintenance, repair or replacement of any other feature, aspect, portion or component of any Townhome.

The Townhomes comprise the entirety of each Building. As such, the Buildings do not contain any structural components or foundations that are separate and apart from any Townhomes. Accordingly, the Association shall have no liabilities, responsibilities or obligations whatsoever regarding any framing, joists, beams, rafters, or any other structural elements or components contained inside any Building. Likewise, the Association shall have no liabilities, responsibilities or obligations whatsoever regarding any foundations, concrete pads, slabs or any similar or related portions of any Building.

8.3 Disputes Regarding Maintenance, Repair or Replacement of Townhomes/Townhome Lots

In the event of any dispute regarding the extent to which the Owner(s) or the Association are responsible for maintaining, repairing and/or replacing any portion or component of any Townhome or Townhome Lot, or to the extent such maintenance, repair and/or replacement responsibilities are not clearly addressed in this Declaration, the Association may, pursuant to a majority vote of the Board, make such a determination. Such determination shall be set forth in a Board resolution which shall be distributed and delivered to all Owners and will be binding against all Owners.

The Association may assume an Owner's maintenance, repair and/or replacement responsibilities as to any Townhome or Townhome Lot if, in the opinion of a majority of the Board: (A) such Owner is unwilling or unable to adequately perform such maintenance, repair and/or replacement and (B) the Owner's unwillingness or inability to perform such maintenance, repair and/or replacement poses a threat of damage to another part of the Project to other Owners or Occupants. Prior to assuming any such maintenance, repair and/or replacement, the Board shall provide written notice to the Owner of the Association's intention to perform such maintenance, repair and/or replacement, and if, in the Board's opinion, such Owner has not commenced and diligently pursued remedial action within fourteen (14) days after such written notice has been received by the Owner, the Association may proceed with such maintenance, repair and/or replacement.

Notwithstanding the preceding paragraph, the Board may authorize the Association to immediately commence such maintenance, repair and/or replacement if the Board determines that such immediate remediation is necessary in order to mitigate or prevent any new or further damage to any other portion of the Project and/or to prevent personal injury or death. The Owner shall immediately reimburse the Association for any and all expenses incurred by the Association in connection with such maintenance, repair and/or replacement, and such expenses shall automatically and immediately be a Reimbursement Assessment against such Owner.

ARTICLE 9 – MAINTENANCE, REPAIR AND REPLACEMENT OF SINGLE FAMILY HOMES AND SINGLE FAMILY HOME LOTS

The provisions of this Article 9 shall only apply to the maintenance, repair and replacement of Single Family Homes and Single Family Home Lots. The provisions of this Article 9 shall not apply to any Townhome or Townhome Lot.

9.1 Single Family Homes and Single Family Home Lots

9.1.1 Owner Responsibility. Each Owner shall properly maintain, repair and/or replace his or her Single Family Home or any Single Family Home Lot consistent with all requirements of the Governing Documents so as not to (a) detract from the uniform appearance of the Project, (b) adversely impact the value, safety or use of any portion of the Project; or (c) pose any threat to the health or safety of any animals or people.

9.1.2 No Association Responsibility. The Association shall have no responsibility or liability whatsoever regarding the maintenance, repair or replacement of any portion or any aspect of any Single Family Home or any Single Family Home Lot.

9.1.3 Property Deterioration. Owners shall not allow Property Deterioration to occur on or to any portion of their SFH or any SFH Lot. As used in this Declaration, the term “**Property Deterioration**” refers to and means, for example and without limitation: severely cracked, heaving or missing portions of driveways, patios or sidewalks; neglected paint, trim or siding, or roofing; broken windows; sagging, rotting or deteriorating railings, decks or porches; unsightly or loud heating, air conditioning or similar equipment; or any similar unsightly, unsafe or unacceptable conditions as determined by the Board.

The Board shall have the power and authority to, on behalf of the Association, identify and address Property Deterioration on any SFH or any SFH Lot. If the Board identifies any such Property Deterioration, the Board shall deliver to the Owner of such SFH or any SFH Lot written notice specifying the nature of the Property Deterioration (the “**Initial Property Deterioration Warning**”). The Owner of such SFH or any SFH Lot shall have thirty (30) days following the Owner’s receipt of such Initial Property Deterioration Warning to provide the Board with a written plan/timeline for repairing the Property Deterioration.

If the Owner refuses or fails to timely provide the Board with a written plan/timeline for repairing the Property Deterioration, the Board shall serve the Owner with a second written notice (“**Second Property Deterioration Warning**”) that a fine will be imposed if the Owner fails to (a) contact the Board in writing regarding the Property Deterioration within fourteen (14) days of receiving the Second Property Deterioration Warning, and (b) fails to commence and diligently pursue to completion repair of the Property Deterioration within a reasonable period of time (as determined by the Board) following the date the Owner receives the Second Property Deterioration Warning.

If an Owner fails to timely contact the Board and/or timely commence and diligently pursue to completion repair of the Property Deterioration, the Board may opt to (a) impose a fine against the Owner and/or (b) repair the Property Deterioration and impose a Reimbursement Assessment for the costs of such repairs.

Prior to imposing any such fine and prior to commencing any such Property Deterioration repair, the Board must deliver to the Owner a final written notice (“**Final Property Deterioration Warning**”) that (a) the Owner has received and failed to respond to the Initial Property Deterioration Warning and the Second Property Deterioration Warning, (b) the Board has elected to impose a fine and/or commence repair of the Property Deterioration, and (c) the Owner may request an informal hearing to dispute such fine and/or the Board’s election to commence repair of the Property Deterioration as described under Section 9.1.4.

9.1.4 Property Deterioration – Owner’s Right to Request Hearing.

Any Owner who has received a Final Property Deterioration Warning may request an informal hearing before the Board to dispute the Board’s decision to impose a fine and/or commence repair of the Property Deterioration by delivering to the Board a written request for such hearing no later than thirty (30) days after the day on which the Owner receives the Final Property Deterioration Warning.

At the informal hearing, the Board shall:

(a) provide the Owner a reasonable opportunity to present the Owner’s position to the Board; and

(b) allow the Owner, a member of the Board, or any other person involved in the hearing to participate in the hearing by means of electronic communication.

If an Owner timely requests an informal hearing under this Section 9.1.4, no interest or late fees may accrue on the fine, and the Board must refrain from commencing any repair of the Property Deterioration until after the Board conducts the hearing and the Owner receives a final written decision from the Board.

An Owner may appeal a fine assessed by the Board and/or the Board’s decision to commence repairing the Property Deterioration by initiating a civil action no later than one hundred eighty (180) days after:

(a) if the Owner timely requests an informal hearing, the day on which the Owner receives a final decision from the Board; or

(b) if the Owner does not timely request an informal hearing, the day on which the time to request an informal hearing expires.

If an Owner initiates such a civil action, the Board shall have no right to collect the fine or commence repair of the Property Deterioration until a final decision has been rendered in connection with any and all relevant issues related to the civil action, including any and all appeals.

9.2 Maintenance of SFH Lots

9.2.1 Generally. Each Owner of a Lot shall keep all shrubs, trees, hedges, grass and plantings of every kind located on his or her SFH Lot neatly trimmed, and shall keep all such areas properly cultivated. No weeds, dead trees or plants, trash, rubbish, debris or unsightly materials of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot.

The Owner of each Single Family Home Lot shall, at such Owner's sole expense, maintain, repair and replace the entirety of such Lot in compliance with the Governing Documents. The Owner of any vacant Single Family Home Lot must keep and maintain his or her Vacant Lot in a clean, safe, and debris-free condition.

9.3 Irrigation & Landscaping Requirements

The Owner of each SFH Lot shall properly irrigate and landscape his or her Lot so as to maintain the entire Lot in an attractive manner.

ARTICLE 10 –PARTY FENCES SINGLE FAMILY HOME LOTS

The rights and duties of Party Fence Owners shall be as set forth in this Article 10. As used in this Declaration, the term "Party Fence Owners" means and refers to any Owners of adjacent SFH Lots that are separated by one or more fences. In the case of any Party Fence located between any Common Area and a Lot, the Association shall be deemed as one of the Party Fence Owners.

10.1 Use and Enjoyment

Party Fence Owners each have an equal right to use and enjoy the fence that separates their SFH Lots (the "**Party Fence**") provided the use by one Party Fence Owner does not interfere with the use and enjoyment of the Party Fence by the other Party Fence Owner. Impairment of the structural integrity of any Party Fence is prohibited.

10.2 Repair and Maintenance

Except as provided below the cost of reasonable repair and maintenance of a Party Fence shall be equally shared by the Party Fence Owners.

If any Party Fence is damaged or destroyed due to the act or failure to act of a Party Fence Owner or his or her Occupants, it shall be the obligation of such Party Fence Owner to promptly rebuild and repair the Party Fence without cost to the other Party Fence Owner. Any dispute regarding a Party Fence Owner's liability for such damages shall be resolved as provided in Section 10.3, below, but any liability imposed on any Party Fence Owner shall not prevent such Party Fence Owner from seeking indemnity from the persons who caused the damage or destruction of the Party Fence.

In the event any Party Fence is damaged or destroyed (including deterioration from ordinary wear and tear and lapse of time) other than by the actions or omissions of a Party Fence Owner or his or her Occupants, it shall be the obligation of both (or all) all Party Fence Owners whose Lots adjoin such Party Fence to rebuild and repair such Party Fence at their shared and joint expense. Such expense shall be proportionately allocated among the Party Fence Owners in accordance with the amount of the front edge of their Lots along the Party Fence.

10.3 Disputes

In the event of any dispute between any Party Fence Owners with respect to the construction, maintenance, repair, replacement or rebuilding of a Party Fence, or with respect to the allocation of the cost thereof, such Party Fence Owners shall submit the dispute to the Board, and the Board's decision shall be binding.

10.4 Perimeter Fences and Walls

Perimeter fences or walls along major roadways (*i.e.* any private or public roadways located outside the boundaries of the Project) if any such perimeter fences or walls are constructed or installed, shall be maintained by the Association, except that the Owner of any Lot upon which a perimeter fence is located shall be responsible for maintaining the surface of the portion of such perimeter wall or fence that faces his or her Lot.

ARTICLE 11 – ACCESS TO LOTS

As set forth under Section 57-8a-224 of the Community Act, the Board and its agents or designees (including the Manager) may, only after reasonable notice has been delivered to the Owner or occupant of a particular Lot (including any Single Family Home Lot or Townhome Lot) access such Lot: (A) from time to time during reasonable hours, as may be necessary for the maintenance, repair, or replacement of any portion of the Lot or any Common Improvement; or (B) for the purpose of making emergency repairs.

Any such entry made for the purpose of non-emergency maintenance, repair, or replacement of any portion of any Lot or Common Improvement shall be made with as little inconvenience to the Owner(s) or Occupant(s) of such Lot as reasonably practicable, and any damage caused to such Lot or any Common Improvements shall be repaired by the Association.

In the event any such entry upon a Lot is made for the purpose of emergency repairs, any damage caused to such Lot (including any Dwelling or Common Improvement located on such Lot) shall be repaired by the Association, unless such entry was made for the purpose of emergency repairs which resulted from the actions or inactions of the Owner(s) or any Occupant(s) of a particular Lot, in which case the cost of repairing any damage to any Lot (or damage to any Common Improvements) shall be specially and specifically imposed as a Reimbursement Assessment against the Lot of the Owner(s) or Occupant(s) whose actions or inactions caused the need for such emergency repairs. Likewise, if any repairs or maintenance were necessitated by or for the Lot entered, or were requested by the Owner(s) or Occupant(s) of such Lot, the costs thereof shall be specially and specifically imposed as a Reimbursement Assessment against the Lot and/or its Owner(s) as a Reimbursement Assessment.

As used in this Article 11, the term “reasonable notice” means: (i) written notice that is hand-delivered to the Owner of the Lot no less than 24 hours prior to the proposed entry; (ii) in the case of emergency repairs, notice that is reasonable under the circumstances; or (iii) any other applicable definition of “reasonable notice” as may be set forth under the Community Act.

As used in this Article 11, the term “emergency repairs” means any repairs that, if not made in a timely manner, will likely result in immediate and substantial damage to any portion of the Project. 24-hour advance notice is not required in such emergency situations.

No Owner or occupant of any Lot shall unreasonably prevent, prohibit or delay access to such Lot by the Board, or by the Board’s agents or designees, or by the Manager, in connection with any of the purposes described under this Article 11.

The Board and its agents or designees (including the Manager) may also enter a Lot in which, or as to which, any violation of the Governing Documents exists and correct, abate or remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist, as further set forth under Article 11 of this Declaration. Provided that the structure, thing, or condition requiring such correction, abatement or removal is not reasonably perceived by the Board or Manager to pose a threat to the safety of people, domestic animals or property, the Board or Manager will make every reasonable effort to provide the defaulting Owner(s) or occupant of the Lot with no less than seventy-two (72) hours written notice prior to entering such Lot.

Due to the Association’s obligations to maintain, repair and/or replace certain portions or components of each Townhome, as set forth under Section 8.2, the right of the Board and its agents or designees (including the Manager) to access a Townhome Lot includes the right to access the Townhome that has been constructed upon such Townhome Lot. Meanwhile, the right of the Board and its agents or designees (including the Manager) to access a Single Family Home Lot generally does not include the right to access the Single Family Home that has been constructed upon such Single Family Home Lot, except in the rare instance that such access becomes necessary in order to prevent or halt any damage to the Project’s Common Areas or Common Improvements.

ARTICLE 12 – AESTHETICS AND ARCHITECTURAL STANDARDS

12.1 Generally

It is the intent and purpose of this Declaration to impose aesthetic and architectural standards that result in a Project with Dwellings, Buildings, Lots, Common Areas, Common Improvements and any other Improvements that are constructed, installed and maintained in an attractive and aesthetically pleasing manner, including Dwellings that are consistent and compatible with regard to their design, size, exterior building materials, color scheme and general appearance.

12.2 Design and Construction Guidelines

The appearance of all improvements located within the Project must be consistent with building, design and landscaping guidelines (collectively, “**Design and Construction Guidelines**”) that have been drafted by the Association’s Design Review Board (“**DRB**”) and approved by a majority vote of the Board. The Design and Construction Guidelines must at all times remain consistent with any provisions of this Declaration that directly or indirectly impact the aesthetic and architectural standards of the Project.

The DRB may periodically present to the Board proposed amendments, updates, clarifications and/or supplements to the Design and Construction Guidelines. A majority of the Board must approve any such changes to the Design and Construction Guidelines. Prior to approving any such changes to the Design and Construction Guidelines, the Board must first comply with the requirements of the Community Act regarding such Board action by, for example, giving the Owners notice of such proposed Board action and allowing Owners an opportunity to be heard at a Board meeting before the Board takes any action regarding any proposed change to the Design and Construction Guidelines. The Board must, at all times, maintain a current version of the Design and Construction Guidelines in writing, and must furnish or make available to the Owners a complete copy of the current version of such Design and Construction Guidelines.

12.3 Design Review Board

The DRB shall consist of three (3) members. During the entire Declarant's Control Period, the DRB shall be appointed by the Declarant and the DRB may or may not include any Owners. After the Declarant's Control Period has expired or been terminated, the DRB shall be appointed by the Board but shall at all times be comprised of (i) one member of the Board, (ii) one Owner who is not a member of the Board, and (iii) the Declarant, for as long as the Declarant continues to own at least one Lot. The Board shall determine the term of each person who has been appointed to the DRB. The Declarant may name any person to act as the Declarant's representative on the DRB, provided that person has not already been appointed to the DRB by the Board. The Declarant may, at any time, notify the Board in writing that Declarant no longer wishes to be a member of the DRB. If the Declarant relinquishes the Declarant's membership on the DRB, or if the Declarant no longer owns any Lots, the Board shall immediately fill the Declarant's vacated position. The Board may, in the Board's sole discretion, fill the Declarant's vacated position with another member of the Board or another Owner who is not a member of the Board.

12.4 Improvements

The Design and Construction Guidelines shall address the aesthetics and appearance of all Improvements. All Improvements must comply with the Design and Construction Guidelines, and construction of any new Dwelling or any new Improvements may not be commenced unless and until the builder of the new Dwelling or new Improvement has first obtained the Board's written approval of the plans and specifications of the new Improvement.

In order to preserve the Project's attractive and uniform appearance, no exterior changes whatsoever to any Dwelling and no changes to any Improvement shall be attempted, commenced, performed constructed, maintained, made or done without the Board's prior written approval. The Board may require and otherwise regulate painting and other decorative finishing of any Dwelling and prescribe the type and color of such decorative finishes, and may prohibit, require or regulate any modification or decoration of such Dwelling undertaken or proposed by any Owner. This authority of the Board extends to roofing, siding, exterior screens, doors, windows, awnings, railings or any other exterior portion of any Dwelling, as well as any other portion of any Dwelling or any Improvement, or any improvement that may be attached to or otherwise part of such Dwelling or Improvement, that is visible from any Private street or any portion of the Common Area.

12.5 Common Area / Common Improvements

The Design and Construction Guidelines shall address the aesthetics and appearance of the Common Areas and Common Improvements (including Landscaping located throughout the Project). In order to establish and maintain the Project's uniform appearance, no changes may be made to any portion of the Common Areas or any Common Improvements (including the Landscaping) without the Board's prior written approval. Any requests for permission to alter any Common Area, or to alter, construct, install or remove any Common Improvements (including any Landscaping) shall be delivered to the Board in writing and shall include plans and specifications detailing the nature and extent of such alteration, construction, installation or removal.

12.6 Vacant Lots

The provisions of this Article 12 shall also apply to any Vacant Lot. Accordingly, the Owner of any Vacant Lot shall not construct, erect, install, maintain or place on his or her Vacant Lot any improvement of any kind whatsoever (including, without limitation, any Improvement) without the Board's prior written consent.

12.7 Nonconforming Improvements

Any Improvement that was installed on any portion of the Project prior to the recording of this Declaration that fails to comply with any provision of this Declaration, but was previously approved by the Board in writing, may be retained by the present Owner, and all subsequent Owners, of such improvement as a "**Nonconforming Improvement.**" The Owner of such Nonconforming Improvement must present the Board with proof of such prior written Board approval. Any proposed changes or additions to a Nonconforming Improvement must be submitted to the Board, and the Board may require that such changes or additions incorporate any modifications necessary to bring the Nonconforming Improvement into compliance with this Declaration or any other Governing Document. The Board reserves the right to review, inspect and/or demand the immediate removal of any improvement that was not previously approved by the Board in writing and/or fails to comply with the requirements of this Declaration. If an Owner fails or refuses to move or remove any Nonconforming Improvement within thirty (30) days of receiving written notification from the Board, the Board may, in the Board's discretion, move or remove the Nonconforming Improvement and impose all costs related to such work against the Owner (and his or her Lot) as a Reimbursement Assessment.

12.8 Enforcement/Fines

The Design and Construction Guidelines shall be solely enforced by the Board. The Board may, but shall not be obligated to, seek recommendations from the DRB in connection with the Board's enforcement of the Design and Construction Guidelines. The DRB may, with or without any prior request from the Board, submit to the Board recommendations related to enforcement of the Design and Construction Guidelines, but the Board shall ultimately determine (by majority vote) whether or not to act upon or taken into account such DRB recommendations.

As more particularly set forth under Article 8 of this Declaration, the Board may adopt Rules and Regulations that impose fines for any violation of the Design and Construction Guidelines or any provisions of this Declaration that directly or indirectly impact the aesthetic and architectural standards of the Project. The Board must impose any such fines in a manner that is consistent with Article 8 of this Declaration.

ARTICLE 13 – EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

13.1 Association Functions

There is hereby reserved to the Association, or the Association's duly authorized agents and representatives, such nonexclusive easements upon, across, over and under the entire Project as are necessary to perform the duties and obligations of the Association as set forth in the Governing Documents. Without in any way limiting the previous sentence, the Association is also hereby granted a nonexclusive easement to make such use of the Common Area as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to the Governing Documents.

13.2 Easement of Enjoyment

Each Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas subject to the right of the Association to impose reasonable rules and regulations regarding the operation, use and maintenance of such Common Areas. Pursuant to Section 57-8a-218 of the Community Act, such rules and regulations may, for example but without limitation, reasonably limit the number of individuals who may use the Common Areas and Common Improvements as guests of any Owner or the tenant of any Owner. Such right and easement of use and enjoyment in and to the Common Areas shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom.

13.3 Governmental Public Services

In addition to the nonexclusive easements reserved to the Association pursuant to this Declaration, there shall also be granted, for the benefit of all Owners, a nonexclusive easement for county and federal public services, including but not limited to, the right of the police to enter upon any part of the Common Area for the purpose of enforcing the law and other purposes incident thereto. Weber County shall also have the easement and right of way over and on the Common Area for the purpose of repairing and replacing facilities or improvements therein and thereon at its option, in the event the Association fails and neglects to do so, and to have a lien therefor to guarantee replacement of the costs thereof against each of the Dwellings or Lots within the Project.

13.4 Easements for Swale Maintenance and Flood Water

Various Common Areas and Lots have lengthy depressions in the surface of the soil, similar to a ditch, water course, create or stream, and which are designed to carry water through the Project and/or away from any Common Area or Lot as may be depicted on the Plat Map or otherwise found on such portions of the Project (a "Swale"). All owners of Lots wherein Swales are located must (a) install, keep, maintain, and replace the Swales surface in order to prevent flooding; (b) maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. Notwithstanding the foregoing, the Declarant reserves for itself and its successors, assigns and designees, a perpetual, nonexclusive right and easement, but not the obligation to enter upon the Swales located within any Common Area or Lot for the purpose of maintaining, repairing, cleaning, or altering drainage and water flow, and shall have an access easement over and across any Common

Area or Lot (but not the Dwelling located thereon) abutting or adjacent to any portion of any Swale to the extent reasonably necessary to exercise their rights under this Section 13.4. The Declarant's rights and easements provided in this Section 13.4 shall be transferred automatically to the Association at such time as the Declarant shall cease to own any Lot that is subject to this Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument that has been recorded at the Recording Office of the County. All persons entitled to utilize these easements shall use reasonable care in, and repair any material damage resulting from, the use of such easements. Nothing herein shall be construed to make Declarant or any other person liable for damage resulting from flooding due to heavy rainfall, excessive spring run-off, or natural disasters. Swales and drainage areas are for the purpose of natural flow of water only. Owners and Occupants are strictly prohibited from disrupting the drainage pattern and shall not interfere with, obstruct, read channel, construct upon, alter, billed in, fill in, or impair any Swale or the drainage pattern over his or her Lot from or to any other Lot as that pattern may be established by Declarant or the County or any other governmental agency with authority over such matters.

13.5 Easements for Utilities

There is hereby created an easement at specific locations approved by Declarant upon, across, over and under the Common Areas for reasonable ingress, egress, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment at such locations on the Common Area but no sewers, electrical lines, waterlines or other utility or service lines may be installed or located on the Common Areas; except as initially designed, approved and or constructed by the Declarant or as approved by the Board.

13.6 Easements for Ingress and Egress

There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Areas. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across the Private Streets and parking areas located throughout the Project. Such easements shall run in favor of and before the benefit of the Owners of the Lots and their Occupants. Further, certain pathways or trails around and or through the Project may be developed and maintained from time to time as part of hiking and for bicycling trail systems serving the public in addition to Owners and Occupants; in such instances, members of the public shall also have the right to use such trails for the purposes for which they are developed and maintained, subject to reasonable, not discriminatory Rules and Regulations as the Board may adopt from time to time and subject to applicable requirements and regulations of the County or any other governmental body or agency having jurisdiction over such matters. There is also hereby created an easement upon, across and over the Common Area and all Private Streets and parking areas within the Project for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel. The Board shall have the right to relocate and or reconfigure any and all such easements from time to time as it sees fit without the consent of any owners (but subject to any necessary approvals of the County or any other governmental body or agency having jurisdiction thereof over including in particular, but without limitation, the easements granted herein for police, fire, medical and other emergency vehicles and personnel).

13.7 Delegation of Use

Each Member shall, in accordance with this Declaration and the Rules and Regulations and the limitations therein contained, be deemed to have delegated his or her rights of enjoyment in the Common Areas to the members of his or her family, his or her tenants or lessees, his or her guests or invitees or to his or her tenants family, guests or invitees.

13.8 Construction Easements

And the construction of the first dwelling unit or other improvements thereon. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the property and a fix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the lots no sewers, electrical lines, water lines, or other utilities or service lines maybe installed or relocated on any lot except as initially programmed and approved by the declarant.

ARTICLE 14 – PERMITTED USES AND RESTRICTIONS

This Article 14 applies to the entire Project, including all Dwellings, Lots, Common Area and Common Improvements.

14.1 Occupancy and Use

Dwellings shall be occupied and used for single-family residential purposes only, including on a rental or lease basis as permitted by the Governing Documents and applicable County zoning and ordinances. Dwellings may be used for common social, recreational or other reasonable uses normally incident to such single-family residential purposes. Such occupation and use as a single-family residence shall be deemed to include accessory use as a professional office to the extent permitted by applicable County zoning and ordinances, and to the extent customarily incidental to primary use as a residence. The Dwellings and Common Area shall be further occupied and used pursuant to the terms and conditions of the Governing Documents.

14.2 Prohibited Occupation or Uses

No Dwelling shall be converted, nor constructed or used as, a duplex or any other multi-family structure, or as a halfway house or similar housing for individuals who have been discharged from prison or similar institutions.

14.3 Commercial / Retail Activities

Retail or commercial activities of any size, kind or nature whatsoever are prohibited on any portion of the Common Area. Retail or commercial activities are likewise prohibited in any Dwelling; provided, however, that this restriction generally does not apply to using a portion of the Dwelling as a professional office.

Dwellings may be used for certain activities normally associated with maintaining a professional office or conducting certain small businesses from home such as, for example, record-keeping, telephone calls, reception of mail, and computer or Internet activity. Any home-based business that involves employees (outside of the Owner's immediate family or household) working from the Dwelling is prohibited.

The overall purpose of the restrictions set forth under this Section 14.3 is to preserve the right of Owners and Occupants to enjoy a community that is free from business-related employee, client or customer interaction, potential Association liability due to business being conducted within the Project, and the nuisance or annoyance often associated with increased or excessive vehicular or pedestrian traffic. The restrictions of this Section 14.3 do not apply to the leasing or renting of any Dwelling, nor do they apply to the Declarant's use of any Dwelling as a model home for the purpose of promoting and marketing the sale of Dwellings located within the Project.

14.4 Animals

14.4.1 Limits. No more than two (2) domestic animals shall be kept in any Dwelling, although this limitation shall not apply to certain animals that are maintained continually in appropriate small enclosures, such as fish in a small tank or encaged birds, are permitted. In no event shall any Owner be permitted to raise, breed, keep or maintain any animals for any commercial purposes upon any portion of the Project. No livestock or poultry of any kind shall be raised, bred or kept upon any portion of the Project.

14.4.2 Fencing/Leashes. All pets must be kept in a fenced yard or on a leash at all times. Electrical fences may not be utilized, although "invisible" dog fences may be used. No animal (including domesticated birds) shall be allowed to make an unreasonable amount of noise or to become a nuisance.

14.4.3 Animal Enclosures/Houses. Animal enclosures or structures are only permitted within the backyard area of SFH Lots. The location and construction of any such animal enclosures or structures (including building materials and color) must be approved by the DRB in writing prior to commencing construction. No animal enclosures or structures of any kind whatsoever including, without limitation, doghouses, kennels, or dog runs may be temporarily or permanently constructed or maintained on any portion of the Common Area.

14.4.4 Animals in Common Area. All animal waste shall be promptly removed from the Common Area (including any Common Area that is contiguous and/or immediately adjacent to any Dwelling) and be picked up and properly disposed of by the animal's owner.

14.4.5 Removal of Animal. The Project is located within an unincorporated portion of Weber County and is therefore (a) subject to Title 6 of the Weber County Code of Ordinances (Comprehensive Animal Control) and (b) within the jurisdiction of Weber County animal control authorities. As such, any animals located within the Project are subject to removal and impoundment pursuant to Chapter 5 (Impoundment) of Title 6 of the Weber County Code of Ordinances. Any questions regarding animal control, including the removal of animals from the Project, should direct such inquiries to the proper Weber County animal control authorities. Serious issues regarding pets (*e.g.* any animal acting aggressively toward other animals or people) should be immediately reported to the appropriate Weber County authorities such as Weber County Sheriff and/or Animal Control. Written documentation of such incidents should be delivered to the Board.

14.4.6 Indemnification. Each Owner who keeps an animal shall, to the fullest extent of the law, indemnify, defend and hold the Association, including its officers, directors, managers, and other Owners, employees and agents harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such animal in the Project.

14.4.7 Additional Board Rules. The Board may adopt additional rules restricting the maintenance and keeping of animals within the Project and their enforcement, including, without limitation, the assessment of fines to Owners who violate such rules.

14.5 Fencing

Fencing must be constructed along the side yards and backyards of each SFH Lot. The location and construction of any such animal enclosures or structures (including building materials and color) must be approved by the DRB in writing prior to commencing construction. The Declarant may also, in the Declarant's discretion, install or construct decorative fencing within the Project's Common Areas.

14.6 Signs

Except as otherwise provided in this Declaration, no signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

- (a) Signs required by legal proceedings;
- (b) No more than two (2) identification signs for individual Dwellings, each with a face area of seventy-two (72) square inches or less, provided such identification sign has been approved by the DRB in advance and in writing;
- (c) Signs for the sale or lease of a Dwelling or the sale of a Lot, provided the nature, size, number and location of such sign has been approved in advance and in writing by the DRB and which comply with signage rules or guidelines adopted by the DRB. All such "for sale" or "for lease" signs must be removed within 48 hours of the closing of the sale or lease of the Dwelling, or the sale of the Lot, or the expiration of the real estate listing; and/or
- (d) Signs posted by the Declarant, or any individual or entity authorized by the Declarant, for the purpose of marketing or selling any Lots or Dwellings located within the Project.

14.7 Lighting / "Dark Sky" Compliance

Any lighting located within the Project should be "dark sky" compliant and is subject to DRB approval. No outdoor lighting is permitted unless such lighting is designed and installed so as to aim downwards and limit the field of light to the confines of the Dwelling, Building or Lot upon which such lighting has been installed. Exterior lighting fixtures shall not direct excessive lighting or glare into any other Dwellings, Buildings or Lots or beyond the boundaries of the Project. Whenever possible, efforts should be made to ensure that both indoor and outdoor lighting is not unreasonably offensive to surrounding property owners. No excessively bright indoor lighting, such as industrial lights, floodlights, workroom lights, or fluorescent lights are permitted. In order to

ensure compliance with this Section 14.7 throughout the entire Project, the Board may require the removal and/or replacement of any noncompliant or nonconforming lighting that may have been installed prior to or after the recording of this Declaration.

Exterior lighting throughout the Project is also subject to any rules, regulations and ordinances that may be implemented or enforced by governmental agencies with authority regarding such matters. In particular, the Project is subject to the Weber County Lighting Ordinance which, as of the Recording Date, includes more restrictive lighting requirements for multi-unit structures such as the Buildings. As such, the County's exterior lighting requirements for the Townhomes may differ from the exterior lighting requirements for the Single Family Homes.

14.8 Trucks, Trailers, Campers and Boats

Any motor vehicles with a manufacturer rating exceeding 3/4-ton, as well as recreational vehicles, mobile homes, travel trailers, tent trailers, trailers, camper shells, detached campers, boats, boat trailers, commercial vehicles or other similar equipment or vehicle must be parked and maintained in garages only.

14.9 Motor Vehicles

No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Private Street or Common Area within the Project. Any such activity must be conducted in garages only. Likewise, inoperable vehicles may only be stored or parked in garages.

14.10 Parking

Because the Private Streets within the Project are relatively narrow, the overnight parking of vehicles along any Private Street is prohibited. Vehicles may be parked in garages and Driveways and in other designated parking areas as Declarant may establish in the Project. No vehicle (including any trailer connected to such vehicle) may extend into any Private Street or other thoroughfare. No vehicle, equipment or item may be parked on any portion of the Common Area that has not been clearly designated as a parking space or parking area. Parking within the Project may be further regulated by Rules and Regulations adopted by the Board from time to time.

14.11 Outdoor Recreational Equipment

Any temporary or permanent outdoor recreational equipment, such as, for example and without limitation, playground sets, swing sets, jungle gyms, trampolines, skateboard ramps, volleyball nets, basketball backboard and/or pole systems are only permitted within the backyard area of SFH Lots. The location of such items must be approved by the DRB. Outdoor recreational equipment may not be temporarily or permanently placed or installed on any portion of the Common Area.

14.12 Poles

No poles, including but not limited to any flagpole, shall be placed, constructed, or maintained on any portion of the Project unless such pole is approved in advance and in writing by the DRB. The DRB may adopt one or more Rule or Regulation permitting an Owner to install and

maintain a flagpole upon such Owner's Lot, provided the location and size of such flagpole (and the number and size of any flags mounted thereon) maybe regulated by the DRB, and may, if so provided in such Rule or Regulation, be made subject to the DRB's prior approval. Nothing in this Section 14.12 shall be deemed to prohibit the Declarant from installing and maintaining flagpoles on, at or adjacent to model homes located within the Project. Poles to which basketball backboards, goals, and related equipment are affixed, shall also be governed by this Section 14.12.

14.13 Clotheslines

Outside clotheslines or other outside facilities for drying or airing clothes are only permitted within the backyard area of SFH Lots. Clotheslines are strictly prohibited on any Townhome Lot.

14.14 Window Coverings

The color of any such window coverings or treatments must be in harmony with the exterior of the Dwelling or Common Improvement. No window may be temporarily or permanently covered using paint, aluminum foil, reflective tint, paper, newspapers, cardboard, bedsheets, blankets or any other permanent or temporary materials or coverings not intended for such purpose. No interior or exterior reflective material shall be used as a window covering unless such material has been approved by the Design Review Board

14.15 Garage Openings

All garages shall be fully enclosed. No carports shall be permitted. No garage door shall be open except when necessary for access to and from the garage.

14.16 Tree Removal

No trees shall be removed except for (a) diseased or dead trees; and (b) trees which must be removed to promote the growth of other trees or for safety reasons, unless otherwise approved by the Design review Board in writing.

14.17 Energy Conservation Equipment

Solar energy collector panels or attendant hardware must be constructed and installed in an aesthetically pleasing manner and location. Such equipment must be an integral and harmonious part of the architectural design of any Single Family Home or Building or other structure as determined in the sole discretion of the Design Review Board. The location, design and overall appearance of any such equipment must be approved by the DRB in advance and in writing.

14.18 Temporary Occupancy and Temporary Buildings.

No trailer, basement of any incomplete structure, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used as a temporary or permanent residence. Temporary buildings or structures may be approved by the Design Review Board for use during the construction of any structure on any Lot and/or for the marketing of Lots and Dwellings, but shall be removed immediately after the completion of construction and/or marketing activities.

14.19 Storage Sheds

Storage Sheds are only permitted within the backyard area of SFH Lots. The location of any Storage Shed (including building materials and color) must be approved by the DRB in writing prior to commencing construction. Storage Sheds that are owned by an Owner are prohibited on any portion of the Common Area. The Declarant may choose to construct or install on the Common Area a Storage Shed for storage of Association equipment. As used in this Declaration, the term “**Storage Shed**” includes any freestanding or “lean to” structure that is designed or intended for the storage of any materials, equipment or personal property. Notwithstanding the language of this Section 14.19, an Owner may construct or erect an enclosure for garbage cans, provided the Owner has obtained the DRB’s prior written approval.

14.20 Nuisances; Offensive Activity; Construction Activities

No noxious, dangerous or offensive activity (including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of the Project) shall be carried out on any Lot, in any Dwelling, or on any other portion of the Project, nor shall anything be done on any Lot, in any Dwelling, or on any other portion of the Project that may be or may become an annoyance or nuisance to other Owners or Occupants. Due to the close proximity of Dwellings, Owners and all Occupants must be aware of and respect the Owners and Occupants of nearby Dwellings when burning wood or charcoal outdoors by preventing excessive amounts of smoke and/or odors from entering neighboring Dwellings.

Certain recreational vehicles such as snowmobiles, off-road motor vehicles such as dirt bikes or ATVs may not be operated on any portion of the Project except as necessary for the loading or unloading of such vehicles. Motorized vehicles are strictly prohibited on any sidewalks or walking trails.

The use or discharge of fireworks of any size, kind or nature on any portion of the Project is strictly prohibited, including during holidays or celebrations such as Independence Day, New Year’s Eve, etc.

Excessive or disturbing noise is prohibited at all times. Such noise includes barking dogs, exterior speakers, horns, whistles, firecrackers, bells or other sound devices (except security devices used exclusively for security purposes), noisy HVAC equipment or any other noise that would disturb other Owners or Occupants. No activity that creates any noise that may disturb Owners or other Occupants is permitted before 8 A.M. or after 10 P.M. Exceptions to this Section 14.20 may be permitted with prior written consent of the Board, which the Board may grant or deny in the Board’s sole discretion.

Normal construction activities and parking in connection with the construction of any Improvements within the Project shall not be deemed a nuisance or otherwise prohibited by this Declaration. Nonetheless, during any such construction, all portions of the Project under construction should be kept in a reasonably neat and tidy condition. Trash and debris shall not be permitted to accumulate, while brick, block, lumber and other building materials may be piled only in such areas as approved by the Design Review Board. In addition, any construction equipment and building materials stored or kept on any Lot during such construction may be kept only in areas approved by the Design Review Board in writing, which approval may require screening of the storage areas. This Section 14.20 shall not be construed to prohibit the short-term storage or

accumulation of such building materials during active construction, provided such construction is commenced, diligently pursued and timely completed in accordance with the Design and Construction Guidelines and/or any written directive of the DRB. The DRB in its sole discretion shall have the right to determine whether the existence of any particular materials, activities or conditions poses a nuisance.

14.21 Storage of Waste and Non-Construction Materials or Equipment

14.21.1 Waste Storage. No storage of waste of any kind is permitted on any portion of the Project (including on any Driveway) unless such waste is stored in a closed container that has been approved by the Board and is located in the backyard area of a SFH Lot. Such waste includes, without limitation, any form of trash, garbage, recyclable materials or debris including, for example, lawn, tree, or landscape clippings or trimmings, household refuse, or recyclable materials. No composting, trash, garbage or recyclable material containers may be stored in front of any Dwelling, at any time, except for the day on which such containers are scheduled to be collected or emptied. In no event shall such containers be stored on or near any Private Street except for the day on which such containers are scheduled to be collected or emptied. On such days, the composting, trash or recyclable material containers shall be temporarily placed at the edge of the street and removed from such location at the end of that same day. No outdoor incinerators shall be kept or maintained on any portion of the Project.

14.21.2 Non-Construction Materials or Equipment. Materials and/or equipment that are not directly associated with the construction of any Improvements within the Project (“**Non-Construction Materials or Equipment**”) may not be stored or accumulated on any portion of the Project without the DRB’s prior written approval. Such Non-Construction Materials or Equipment includes farm or landscaping equipment. Under no circumstances shall any portion of the Common Area be used as storage areas or service yards.

14.22 Diseases and Insects

No Owner shall permit any thing or condition to exist upon any Lot which may or does induce, breed or harbor infectious plant diseases or noxious insects.

14.23 Communication Devices

The installation or use, on or in any portion of the Project, of any broadcasting, receiving, satellite and/or wireless signal dishes, antennas or similar devices (collectively, “**Communication Devices**”) that are not permitted and/or regulated by the Federal Communications Commission (“**FCC**”) is prohibited. Communication Devices that are one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, and/or receive or transmit any wireless signals, may be installed only to the extent and in locations that (a) comply with this Section 14.23, and (b) are clearly permitted under applicable local, state or federal law. The temporary or permanent installation or use of any Communication Devices upon any portion of the Project, including upon any Dwelling, Building or Lot must be approved by the Board, in advance and in writing.

14.23.1 Installation of Communication Devices on Single Family Home Lots. Any Communication Devices that are in any way placed, constructed or attached upon any Single Family Home Lot must be positioned, maintained and used in a safe and attractive manner and location.

Any antenna or other similar Communication Device that does not require a “line of sight” between transmitter and receiver in order to function (*e.g.* over-the-air HDTV antennas) must be located in the attic, crawl space, garage, or other interior spaces of the Single Family Home so as not to be visible from outside the Single Family Home (SFH).

Satellite dishes, wireless signal dishes and similar Communication Devices that require a “line of sight” between transmitter and receiver may only be placed, constructed or installed on the backyard area of SFH Lots or on the rear portion of Single Family Homes.

14.23.2 Installation of Communication Devices on Townhomes Lots. Any Communication Devices that are in any way placed, constructed or attached upon any Building must be positioned, maintained and used in a safe and attractive manner and location. The placement, construction or installation of Communication Devices on any portion of any Townhome Lot, including any portion of any Townhome or Building, must be approved by the DRB in advance and in writing.

Communication Devices may not, without the DRB’s prior written permission, be constructed, erected or attached to any portion of any Building including, without limitation, any walls or railings that surround, encompass or comprise any decks, patios or other Limited Common Areas. Any Communication Devices that are in any way placed or used on any decks, patios or other Limited Common Area of any Townhome using a tripod or similar mounting device must be positioned, maintained and used in a safe and attractive manner and location. No Owner may install any Communication Device on the exterior, roof, or restricted areas of any Building without the DRB’s prior written permission. Owners may not drill holes in or through the exterior walls, doors or window frames, or the roof of any Building in order to install any Communication Device or run cable from the Communication Device into any Townhome without the DRB’s prior written permission. The small size of Townhome Lots may cause a Communication Device that serves one Townhome Lot to encroach upon another Townhome Lot. The DRB will take every reasonable measure to ensure that any Communication Device that serves a particular Townhome is not attached to the Building in a manner that poses a nuisance to, or blocks the views from, or detracts from the appearance or value of, any other Townhome.

14.23.3 Installation of Communication Devices – DRB Discretion. Notwithstanding the restrictions and guidelines set forth under Subsections 14.23.1 and 14.23.2, should an Owner determine that a Communication Device cannot be located in compliance with such restrictions and guidelines without precluding reception of an acceptable quality signal, the Owner may petition the DRB to install the Communication Device in the least conspicuous alternative location within the Project where an acceptable quality signal can be obtained. The DRB may grant such petition in the DRB’s reasonable discretion. The DRB may adopt rules establishing a preferred hierarchy of alternative locations and requiring screening of any Communication Device, so long as such rules do not unreasonably increase the cost of installation, maintenance, or use of the Communication Device.

14.23.4 Installation of Communication Devices on Other SFH Lot. A Communications Device may only be installed within the boundaries of the SFH Lot that is served by such Communications Device, unless the Owners of multiple SFH Lots who wish to share the use of a Communications Device agree to such shared use in writing. Any Owner who agrees to such shared use of a Communications Device may revoke such permission at any time. No Owner of any SFH Lot may construct or erect any Communication Device upon another SFH Lot without the prior written permission of the Owner of that SFH Lot. The DRB may not force the Owner of any SFH Lot to permit the installation of a Communications Device on his or her SFH Lot. This Subsection 14.23.4 only applies to SFH Lots and does not apply to Townhome Lots. The installation of Communications Devices on Townhome Lots is addressed under Subsection 14.23.2.

14.23.5 Installation of Communication Devices – Common Area. Owners are strictly prohibited from constructing or erecting any Communication Device(s) upon any portion of the Common Area. Owners may not petition the DRB (and the DRB may not grant any Owner permission) to install any Communications Devices on any Private Street or any portion of any Common Area.

14.23.6 Liability and Insurance. Owners are responsible for any injury or damage to persons or property caused by their Communication Device(s). Each Owner's homeowner insurance policy must adequately cover any potential liabilities associated with the use any such Communication Device.

14.23.7 FCC Rules. All Communication Device installations must be performed in complete compliance with all applicable laws, rules and regulations. If permits are required, the Owner must obtain all such permits prior to installation. The provisions of this Section 14.23 are intended to comply with applicable FCC rules, as may be amended from time to time. All requirements of such FCC rules are hereby incorporated herein. In the event any portion of this Section 14.23 is held to conflict with any applicable laws, rules or regulations, those portions shall be deemed stricken and all other portions of this Section 14.23 regarding Communication Device installation, maintenance, use and insurance will remain in full force and effect.

14.23.8 Waiver. No requirements or restrictions of this Section 14.23 may be verbally waived or changed by the Board. Any such waiver or change will be effective only when placed in writing, specifically stating the nature of the waiver, that has been approved by a majority of the Board. If any Owner receives the benefit of any waiver or change related to the provisions of this Section 14.23, it shall be that Owner's responsibility and obligation to keep and safeguard the written waiver or change and to produce it upon any future request of the Board.

14.24 Roofs

No apparatus, structure or object shall be placed on the roof of any Dwelling or any Building without the prior written consent of the DRB. Any apparatus, structure or object which is approved by the DRB for placement on the roof of a Dwelling or Building shall be mounted on the rear of the roof so that such apparatus or object is below the highest ridge on the roof. Evaporative coolers (i.e. swamp coolers) are prohibited on any Dwelling. Window air conditioning units are also prohibited on any Dwellings. Central air conditioning units, connected to furnace systems, are permitted and must be placed in an inconspicuous and aesthetically pleasing location.

14.25 Vacant Lots

Any and all restrictions, rules or regulations related to Lots as set forth in any of the Governing Documents shall be entirely applicable to any Vacant Lot, as well as the Common Area that is contiguous and immediately adjacent to such Vacant Lot. Likewise, the Owner of any Vacant Lot shall be subject to the enforcement provisions of the Governing Documents including, without limitation, any such provisions related to fines. If any improvement should be demolished, then the owner shall at all times maintain the vacant lot in a clean slightly condition, and show clear and shall continue to clear the lot of any weeds, debris, garbage, trimmings or like items.

14.26 Restriction on Further Subdivision, Property Restrictions and Rezoning

No Lot shall be further subdivided or separated into smaller Lots, and no portion less than all of any Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Declarant (or the Board following expiration or termination of the Period of Declarant's Control). Any such further subdivision or conveyance of any easement must be evidenced by revising the Plat Map and/or the recording of an appropriate instrument as required by the County or any applicable law. This Section 14.26 shall not apply to transfers of an ownership interest in the whole of any Lot. No application for rezoning of any Lot, and no applications for variances or use permits, shall be filed with the County unless the proposed use of the Lot complies with this Declaration.

14.27 Mineral Exploration

No Lots shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

14.28 Drainage

No owner shall interfere with or obstruct the drainage pattern over his or her Lot from or to any other Lot has that pattern may be established by Declarant or other developer as described in Section 13.4 with respect to Swales.

14.29 Declarant's Exemption

Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or its duly authorized agents, of structures, Improvements or signs necessary or convenient to development or sale of property within the Project if those structures, improvements or signs have been approved by the Design Review Board.

14.30 Model Homes

The provisions of this Declaration which, in certain instances, prohibit non-residential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by Declarant or any other persons or entities engaged in the construction of Dwellings within the Project and parking incidental to the visiting of such model homes so long as the location of such model homes and the opening and closing hours are approved by the Design Review Board, and the construction, operation and maintenance of such model homes otherwise complies with each of the

provisions of this Declaration. The Design Review Board may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with applicable County ordinances and any applicable Rules or Regulations that may be adopted by the Design Review Board. Any Dwellings constructed at model homes shall cease to be used as model homes at any time the Owner thereof, or any lessee of Owner, is not actively engaged in the construction and sale of Dwellings at the Project and no Dwelling shall be used as a model home for the sale of homes not located at the Project

14.31 Leases

Any lease between an Owner and a lessee respecting a Lot or Dwelling shall be subject in all respects to the provisions of the Governing Documents, and any failure by the lessee to comply with the terms of such Governing Documents shall be a default under the lease. Specifically, all leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Governing Documents.

14.32 Mailbox Banks

Mailbox banks are for the exclusive use of Owners and their family members and tenants. Keys to the mailboxes may be obtained from the Association.

14.33 No Hazardous Activity

No activity may be conducted on any Lot, in any Dwelling, or on any other portion of the Project that is, or would be considered by a reasonable person to be, unreasonably dangerous or hazardous. Such activity includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms, firecrackers or fireworks, and setting open fires (not including properly supervised and contained barbecues and fire pits).

14.34 Utility Service

No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, and cable information highways, shall be directed, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on Single Family Homes, Buildings or other structures as approved by the Declarant or the Design Review Board except for:

- (a) Overhead power poles and lines to perimeter areas of the Project as approved by Declarant; and
- (b) on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices.

14.35 Driveways and Walkways

Driveways and Walkways shall be used exclusively for normal vehicle or pedestrian transit and/or traffic, and no obstructions shall be placed thereon except with the Board's prior written consent. Driveways and Walkways may not be used to store any equipment or any items whatsoever.

14.36 Hot Tubs

Hot tubs may be installed on any Lot provided the DRB has approved the location, design and color of the hot tub in advance and in writing. The DRB may reasonably restrict or disapprove the location of any hot tub and/or require the installation of certain landscaping around the hot tub for various reasons such as aesthetics, privacy, and minimizing interference with the quiet enjoyment of neighboring or nearby Dwellings. Hot tubs located on any SFH Lot must be placed in the backyard area of the Lot.

14.37 Dwelling Completion Before Occupancy

No Dwelling may be occupied prior to its completion and the issuance of a permanent certificate of occupancy.

14.38 Violations of Law

Any activity which violates local, state, or federal laws or regulations is prohibited; however, the board shall have no obligation to take enforcement action in the event of a violation.

14.39 Long-Term and Short-Term Leases/Rentals

14.39.1 Generally. Dwellings may be leased or rented on a long-term or short-term basis. All tenants must abide by the Governing Documents. The Owner of any Dwelling that is being rented or leased (whether short-term or long-term) must provide his or her tenant(s) with an electronic or written copy of all current Rules and Regulations, and a list of any relevant provisions of this Declaration related to tenant conduct.

14.39.2 Occupancy Limitations and Definition of Bedroom

Pursuant to Subsection 57-8a-218(5) of the Community Act, the Association may adopt and enforce Rules and Regulations specifying maximum occupancy limitations on any rented Dwelling.

Notwithstanding any provision of any Governing Document regarding occupancy requirements or the definition of a bedroom, the Association shall have no responsibility or liability whatsoever regarding the portion of a Dwelling where an Owner elects to place beds, cots, futons, bunkbeds, mattresses, sleeper sofas or similar furnishings.

14.39.3 Tenant Conduct. Any Owner who rents their Dwelling assumes complete responsibility for the actions and behavior of their tenants and the guests or invitees of such tenants. Any violation of any provision of the Governing Documents by any tenant, guest of tenant or any other occupant of the Dwelling may result in a fine being levied against the Dwelling, the payment of which shall be the sole responsibility of the Owner of that Dwelling.

14.39.4 Indemnification. Each Owner who rents his or her Dwelling shall, to the fullest extent of the law, indemnify, defend and hold the Association, including its officers, directors, managers, and other Owners, employees and agents harmless from and against any claims losses, damages, demands, actions, causes of action, liabilities or expenses of any kind or nature directly or indirectly related to tenant's occupancy or use of the Dwelling, use or occupancy of the Common Areas or use of any Common Improvements by any of Owner's tenants or any guests or invitees of any tenants.

14.40 Effect on Association Insurance

Nothing shall be done or kept in any Dwelling or in the Common Area (including any Common Area that is contiguous and/or immediately adjacent to any Dwelling) that may increase the rate of insurance on the Common Area without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his or her Dwelling or in the Common Area which will result in the cancellation of insurance of the Project or any portion of the Project, or which would be in violation of any applicable local, state or federal law.

14.41 Board Rules / Fines

The Board may, by rule or regulation, adopt, clarify and/or enforce further requirements or restrictions regarding the use of any portion of the Project, including, without limitation, the use restrictions set forth under this Article 13. Prior to adopting, approving, amending, updating and/or clarifying any Rules and Regulations, the Board must first comply with the requirements of the Community Act regarding such Board action by, for example, giving the Owners notice of such proposed Board action and allowing Owners an opportunity to be heard at a Board meeting before the Board takes any action regarding any proposed Rule or Regulation. The Board must place any such Rules and Regulations in writing, and must furnish or make available to the Owners a complete copy of such Rules and Regulations.

As more particularly set forth under Article 15, below, the Board may adopt Rules and Regulations that impose fines for any violation of the use restrictions set forth under this Article 14, or any violation of use-related rules or regulations that may be adopted by the Board. The Board must assess such fines in a manner that is consistent with Article 15 of this Declaration.

ARTICLE 15 – FINES

15.1 Generally

As provided under this Declaration, the Board is empowered to adopt, pass, amend, revoke and/or enforce Rules and Regulations as the Board deems necessary or convenient to ensure compliance with the Governing Documents. Such Rules and Regulations may include the imposition of fines for any violation of the Governing Documents. The imposition, enforcement and collection of such fines shall be consistent with this Article 15.

15.2 Imposition of Fines

The purpose of this Section 15.2 is to comply with Section 57-8a-208 of the Utah Community Association Act, as may be periodically amended or supplemented.

15.2.1 Prior to imposing or assessing any fine against an Owner due to a violation of any provision of any Governing Document, the Board must first deliver to the Owner a written warning that:

- (a) describes the violation;
- (b) states the provision of the Governing Documents that the Owner's conduct violates;
- (c) states that the Board may, in accordance with the provisions of this Section 15.2, assess fines against the Owner if a continuing violation is not cured or if the Owner commits similar violations within one (1) year after the day on which the Board gives the Owner the written warning or assesses a fine against the Owner under this Section 15.2; and
- (d) if the violation is a continuing violation, states a time that is not less than 48 hours after the day on which the Board gives the Owner the written warning by which the Owner must cure the violation.

15.2.2 The Board may assess a fine against an Owner if:

- (a) within one (1) year after the day on which the Board gives the Owner a written warning described under Section 15.2.1, the Owner commits another violation of the same provision of the Governing Documents identified in the written warning; or
- (b) for a continuing violation, the Owner does not cure the violation within the time period that is stated in the written warning described in Section 15.2.1.

15.2.3 After the Board has assessed a fine against an Owner under this Section 15.2, the Board may, without further warning, assess an additional fine against the Owner each time the Owner:

- (a) commits a violation of the same provision of the Governing Documents within one (1) year after the day on which the Board assesses a fine for a violation of the same rule or provision; or
- (b) allows a violation to continue for ten (10) days or longer after the day on which the Board assesses the fine.

15.2.4 An Owner who is assessed a fine may request an informal hearing before the Board to dispute the fine by delivering to the Board a written request for such hearing no later than thirty (30) days after the day on which the Owner receives notice that the fine is assessed.

15.2.5 At the informal hearing described under Section 15.2.4, the Board shall:

- (a) provide the Owner a reasonable opportunity to present the Owner's position to the Board; and
- (b) allow the Owner, a member of the Board, or any other person involved in the hearing to participate in the hearing by means of electronic communication.

15.2.6 If an Owner timely requests an informal hearing under Section 15.2.4, no interest or late fees may accrue until after the Board conducts the hearing and the Owner receives a final written decision from the Board.

15.2.7 An Owner may appeal a fine assessed under this Section 15.2 by initiating a civil action no later than one hundred eighty (180) days after:

(a) if the Owner timely requests an informal hearing under Section 15.2.4, the day on which the Owner receives a final decision from the Board; or

(b) if the Owner does not timely request an informal hearing under Section 15.2.4, the day on which the time to request an informal hearing under Section 15.2.4 expires.

15.2.8 (a) Subject to Section 15.2.8(b) a Board may delegate the Board's rights and responsibilities under this Section 15.2 to a managing agent.

(b) The Board may not delegate the Board's rights or responsibilities described under Section 15.2.5.

15.2.9 If any provision of any Governing Document provides a longer period of time within which an Owner may or must cure a violation than is stated in this Article 15, or a longer period of time before the Board is permitted to impose a fine than is stated in this Article 15, that longer period of time shall apply.

15.3 Amount of Fines

As set forth under Subsection 57-8a-208(3) of the Community Act, any fine that is assessed must be in an amount that is provided for under the Governing Documents, and may accrue interest and late fees as also provided for under the Governing Documents. Accordingly, the Board shall publish and may periodically update and/or revise a schedule of fines, late fees and interest rates, which the Board shall adopt as part of the Association's Rules and Regulations. Notwithstanding the previous sentence, the Board may not:

(a) adopt or attempt to enforce any late fees that exceed Twenty-Five Dollars (\$25);

(b) adopt or attempt to enforce an interest rate that exceeds Eighteen Percent (18%) per annum;

(c) adopt or attempt to enforce any fine that exceeds One Hundred Dollars (\$100); or

(d) assess against any Owner during any single calendar month an aggregate amount of fines that exceed Five Hundred Dollars (\$500) for multiple violations of the same rule or provision of any Governing Document.

15.4 Tenants/Guests/Occupants

Each Owner is accountable and responsible for the behavior of the residents, tenants, invitees, guests and/or other occupants of such Owner's Dwelling. Accordingly, any fines that are levied against such residents, tenants, invitees, guests and/or other occupants of any Dwelling shall be the sole responsibility of the Owner of that Dwelling.

ARTICLE 16 – BUDGET AND EXPENSES

16.1 Association Budget and Estimated Expenses

16.1.1 Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year. The fiscal year normally begins on January 1st of each calendar year and ends on the subsequent December 31st of that same year. However, the Board may choose to adjust the fiscal year to coincide with the date of the Annual Meeting. Not less than thirty (30) days prior to the annual Owners' meeting, the Board (or the Manager, if so requested by the Board) shall prepare and furnish to the Owners an operating budget (the "**Annual Budget**") which shall set forth an itemization of expenditures for the then current fiscal year. The Board may furnish the Annual Budget to the Owners solely by posting a copy of the Annual Budget on the Association's website. Alternatively, the Board may choose to mail a copy of the Annual Budget to the Owners.

The Annual Budget shall be based upon estimated cash requirements by the Board to provide for the payment of all expenses growing out of or connected with the administration, operation and maintenance of the Project during such fiscal year. The Annual Budget shall itemize the estimated costs for any and all Common Expenses, anticipated receipts (if any), any deficit or surplus from prior operating periods. The Annual Budget shall separately itemize SFH Lot Common Expenses, if any, and shall separately itemize Townhome Lot Common Expenses, if any. The Annual Budget shall also include the General Reserve Fund Line Item for such fiscal year as described under Section 16.2, as well as the SFH Lots Reserve Fund Line Item, if any, as described under Section 16.3, and the Townhome Lots Reserve Fund Line Item, if any, as described under Section 16.4.

The Annual Budget shall serve as the supporting document for the Annual Assessment for the fiscal year to which the Annual Budget applies, and as a major guideline under which the Project shall be operated and managed during such fiscal year. The Annual Budget, and each line item therein, is intended as a management tool for the Board to meet the Common Expenses and cash needs of the Association for the applicable fiscal year. The actual amount of any given line item or category may exceed or be less than the amount that is set forth in the Annual Budget. Nothing herein or in the Annual Budget shall prevent the Board, in its discretion, from reallocating funds from one line item or category in the Annual Budget to another line item or category in order to meet actual expenses as they are incurred. Any such reallocation shall not require the Board to give prior notice to the Owners or obtain the approval of the Owners.

The Annual Budget also may, but is not required to, include a Reserve Fund budget that shows the total amounts that are intended to be deposited into the Reserve Fund during the upcoming fiscal year, as well as the total amounts that are intended to be disbursed from the Reserve Fund during such upcoming fiscal year, including the manner in which such disbursements are intended to be used. Any such Reserve Fund budget must be reasonably consistent with the determinations of the most recent reserve analysis.

16.1.2 Owner Disapproval. The proposed Annual Budget and Annual Assessments shall become effective as of the date of the annual Owners' meeting (and shall retroactively apply to the beginning of the fiscal year for which the Annual Budget was prepared) unless the Annual Budget is specifically disapproved by a vote of at least a Majority of the Owners either at the annual Owners' meeting or at a special meeting that is held and completed not later than forty-five (45) days following the date of the annual Owners' meeting.

Unless the Annual Budget is specifically disapproved by a Majority of the Owners the Annual Budget and Annual Assessments resulting from the Annual Budget shall be deemed approved. Notwithstanding the foregoing, however, if the Annual Budget and Annual Assessments are disapproved by a Majority of the Owners, or the Board fails for any reason to establish the Annual Budget and Annual Assessments for a particular fiscal year, until such time as a new Annual Budget and new schedule of Annual Assessments has been established, the Annual Budget and the Annual Assessments in effect for the previous fiscal year shall continue for the succeeding fiscal year.

16.1.3 Annual Budget Shortfall. If the sums estimated and budgeted for the Annual Budget, or any portion thereof, at any time prove inadequate for any reason the Board may, under the circumstances described under Section 17.7.1 impose a Special Assessment in order to remedy such shortfall.

16.2 General Reserve Fund Line Item

The purpose of this Section 16.2 is to comply with Section 57-8a-211 of the Community Act, as may be periodically amended by the Utah legislature.

16.2.1 Determination of General Reserve Fund Line Item. In calculating, formulating or determining its Annual Budget, the Association must include a “**General Reserve Fund Line Item**” which shall be used to fund the General Reserve Fund. The General Reserve Fund Line Item shall be in: (A) an amount the Board determines, based upon the reserve analysis, to be prudent; or (B) a higher amount if the Board reasonably determines that such higher amount is required in order to properly maintain or replenish the General Reserve Fund as a result of, for example and without limitation, an unexpected depletion of the General Reserve Fund due to the repair, replacement, or restoration of Common Areas and/or Common Improvements that was unanticipated, or not accounted for, as part of the Association’s most recent reserve analysis. There shall be only one General Reserve Fund Line Item in the Annual Budget.

16.2.2 Veto of General Reserve Fund Line Item. No later than forty-five (45) calendar days after the day on which the Association adopts the Annual Budget, the General Reserve Fund Line Item may be vetoed by a Majority of the Owners (at a special meeting called by the Owners for the purpose of voting whether to veto the General Reserve Fund Line Item).

If the Owners veto the General Reserve Fund Line Item as provided under this Section 16.2.2, and a General Reserve Fund Line Item exists in a previously approved Annual Budget that was not vetoed, the Association shall continue to fund the General Reserve Account in accordance with the General Reserve Fund Line Item from the previously approved Annual Budget.

16.3 SFH Lots Reserve Fund Line Item

In addition to the General Reserve Fund, the Association may also choose to establish a SFH Lots Reserve Fund Line Item in order to fund a SFH Lots Reserve Fund for the purposes that Reserve Funds are established and maintained as described under Section 16.6.

16.3.1 Determination of SFH Lots Reserve Fund Line Item. In calculating, formulating or determining its Annual Budget, if the Association has elected to establish a SFH Lots Reserve Fund, the Association shall include in the Annual Budget a separate “**SFH Lots Reserve Fund Line Item**”

which shall be used to fund such SFH Lots Reserve Fund. The SFH Lots Reserve Fund Line Item shall be in: (A) an amount the Board determines, based upon the reserve analysis, to be prudent; or (B) a higher amount if the Board reasonably determines that such higher amount is required in order to properly maintain or replenish the SFH Lots Reserve Fund as a result of, for example and without limitation, an unexpected depletion of a SFH Lots Reserve Fund due to the repair, replacement, or restoration of Common Improvements located on SFH Lots that were unanticipated, or not accounted for, as part of the Association's most recent reserve analysis.

16.3.2 Veto of SFH Lots Reserve Fund Line Item. No later than forty-five (45) calendar days after the day on which the Association adopts the Annual Budget, the SFH Lots Reserve Fund Line Item may be vetoed by a majority of all Owners of the SFH Lots (at a special meeting that may be called by any Owner(s) of the SFH Lots for the purpose of voting whether to veto the SFH Lots Reserve Fund Line Item).

If such Owners veto the SFH Lots Reserve Fund Line Item as provided under this Section 16.3.2, and a SFH Lots Reserve Fund Line Item exists in a previously approved Annual Budget that was not vetoed, the Association shall continue to fund the SFH Lots Reserve Fund in accordance with the SFH Lots Reserve Fund Line Item from the previously approved Annual Budget.

16.4 Townhome Lots Reserve Fund Line Item

In addition to the General Reserve Fund, the Association may also choose to establish a Townhome Lots Reserve Fund Line Item in order to fund a Townhome Lots Reserve Fund for the purposes that Reserve Funds are established and maintained as described under Section 16.6.

16.4.1 Determination of Townhome Lots Reserve Fund Line Item. In calculating, formulating or determining its Annual Budget, if the Association has elected to establish a Townhome Lots Reserve Fund, the Association shall include in the Annual Budget a separate "**Townhome Lots Reserve Fund Line Item**" which shall be used to fund such Townhome Lots Reserve Fund. The Townhome Lots Reserve Fund Line Item shall be in: (A) an amount the Board determines, based upon the reserve analysis, to be prudent; or (B) a higher amount if the Board reasonably determines that such higher amount is required in order to properly maintain or replenish the Townhome Lots Reserve Fund as a result of, for example and without limitation, an unexpected depletion of the Townhome Lots Reserve Fund due to the repair, replacement, or restoration of Common Improvements located on Townhome Lots that were not anticipated or accounted for as part of the Association's most recent reserve analysis.

16.4.2 Veto of Townhome Lots Reserve Fund Line Item. No later than forty-five (45) calendar days after the day on which the Association adopts the Annual Budget, the Townhome Lots Reserve Fund Line Item may be vetoed by a majority of all Owners of the Townhome Lots (at a special meeting that may be called by any Owner(s) of the Townhome Lots for the purpose of voting whether to veto the Townhome Lots Reserve Fund Line Item).

If such Owners veto the Townhome Lots Reserve Fund Line Item as provided under this Section 16.4.2, and a Townhome Lots Reserve Fund Line Item exists in a previously approved Annual Budget that was not vetoed, the Association shall continue to fund the Townhome Lots Reserve Fund in accordance with the Townhome Lots Reserve Fund Line Item from the previously approved Annual Budget.

16.4.3 Owner Legal Action. If the Association fails to comply with the requirements of Section 57-8a-211 of the Community Act and/or any provisions of this Declaration pertaining to the General Reserve Fund Line Item or the SFH Lots Reserve Fund Line Item or the Townhome Lots Reserve Fund Line Item, and the Association fails to remedy such noncompliance within the time period specified under Section 57-8a-211 of the Community Act, any Owner may file an action in state court for damages or remedies pursuant to Section 57-8a-211 of the Community Act.

16.5 Common Expense Fund

With the exception of those amounts that may be set aside and deposited into the Reserve Fund as provided under this Declaration, the total amount of any and all Assessments paid by the Owners shall be deposited into the Common Expense Fund.

16.6 Reserve Analysis

16.6.1 Reserve Analysis Frequency. The Board shall cause a reserve analysis to be conducted no less frequently than every six (6) calendar years; and subsequently review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) calendar years.

16.6.2 Reserve Analysis Purpose. As set forth under Section 57-8a-211 of the Community Act, the purpose of the reserve analysis is to determine: (a) the need for a Reserve Fund to accumulate money to cover the cost of repairing, replacing, or restoring Common Area and/or Common Improvements that have a useful life of three (3) years or more and a remaining useful life of less than thirty (30) years, if the cost cannot reasonably be funded from the Annual Budget (including the Common Expense Fund) or other funds of the Association; and (b) the appropriate amount of the Reserve Fund.

16.6.3 Reserve Analysis Contents. The contents of the reserve analysis, and the manner in which the reserve analysis is reported to the Owners, must comply with the requirements of the Community Act, as may be periodically amended or supplemented. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

16.7 Reserve Funds

16.7.1 General Reserve Fund / SFH Lots Reserve Fund / Townhome Lots Reserve Fund.

16.7.1.1 General Reserve Fund. The Association shall establish and maintain a General Reserve Fund for the purpose of repairing, replacing and restoring Common Improvements that are intended for the use and benefit of the Owners of all Lots located in the entire Project. Examples of such Common Improvements include, for example but without limitation, Project signage or monuments, open space, walking trails, benches and picnic areas that may be used by all the Owners of all Lots located in the entire Project.

16.7.1.2 SFH Lots Reserve Fund. In addition to the General Reserve Fund, the Association may also establish and maintain a SFH Lots Reserve Fund for the purpose of repairing, replacing and restoring certain Common Improvements that are located on any SFH Lots and that have a useful life of three (3) years or more and a remaining useful life of less than thirty (30) years. The Association shall establish and maintain a SFH Lots Reserve Fund only if such a SFH Lots Reserve Fund becomes necessary.

16.7.1.2 Townhome Lots Reserve Fund. In addition to the General Reserve Fund and the SFH Lots Reserve Fund, the Association may also establish and maintain a Townhome Lots Reserve Fund for the purpose of (A) repairing, replacing and restoring certain Common Improvements that are located on any Townhome Lots and that have a useful life of three (3) years or more and a remaining useful life of less than thirty (30) years, and/or (B) accumulating money to cover the cost of repairing, replacing, or restoring any Association Maintained Townhome Components that have a useful life of three (3) years or more and a remaining useful life of less than thirty (30) years.

16.7.2 Purpose of General Reserve Fund. In addition to the purposes for which Reserve Funds are established and maintained as described under Section 16.6, or any other provisions of this Declaration, the General Reserve Fund may also be used to pay for any unexpected Common Expenses, provided the cost of such unexpected Common Expenses cannot reasonably be funded through the Annual Budget, or from the Common Expense Fund or other funds of the Association. However, the General Reserve Fund may only be used to pay for unexpected Common Expenses that do not include SFH Lot Common Expenses or Townhome Lot Common Expenses. Meanwhile, the SFH Lots Reserve Fund may only be used to pay for unexpected SFH Lot Common Expenses, while the Townhome Lots Reserve Fund may only be used to pay for unexpected Townhome Lot Common Expenses.

16.7.3 Funding of General Reserve Fund. The General Reserve Fund shall be funded via the General Reserve Fund Line Item as described under Section 16.2 of this Declaration. As set forth under Section 17.7.3, the General Reserve Fund may also be funded via Special Assessment(s) that are imposed against the Owners of all Lots located in the entire Project.

16.7.4 Funding of SFH Lots Reserve Fund. Any SFH Lots Reserve Fund the Association may elect to establish shall be funded via the SFH Lots Reserve Fund Line Item as described under Section 16.3 of this Declaration. As set forth under Section 17.7.4, the SFH Lots Reserve Fund may also be funded via Special Assessments that are imposed only against the Owners of SFH Lots.

16.7.5 Funding of Townhome Lots Reserve Fund. Any Townhome Lots Reserve Fund the Association may elect to establish shall be funded via the Townhome Lots Reserve Fund Line Item as described under Section 16.4 of this Declaration. As set forth under Section 17.7.5, the Townhome Lots Reserve Fund may also be funded via Special Assessments that are imposed only against the Owners of Townhome Lots.

16.7.6 Use of Reserve Funds.

16.7.6.1 Use of General Reserve Fund. As set forth under the Community Act, the Board may not use money in the General Reserve Fund (i) for daily Association maintenance or administrative expenses, unless a Majority of the Owners vote to approve the use of such General Reserve Fund monies for such purpose; or (ii) for any purpose other than those purposes for which the General Reserve Fund was established. The Board is also prohibited from using any money in the General Reserve Fund for the payment of any SFH Lot Common Expenses or any Townhome Lot Common Expenses.

16.7.6.2 Use of SFH Lots Reserve Fund. Notwithstanding any other language in this Declaration, the Board may not use money in the SFH Lots Reserve Fund (i) for daily Association maintenance or administrative expenses; or (ii) for any purpose other than those purposes for which the SFH Lots Reserve Fund was established. The Board is prohibited from using any money in the SFH Lots Reserve Fund for any costs or expenses that are not solely related to the SFH Lots. If the Board wishes to use monies in the SFH Lots Reserve Fund in a manner that is restricted or prohibited by this Subsection 16.7.5.2, or by any other provision of this Declaration, the Board must first obtain an affirmative vote or written consent from a majority of all Owners of the SFH Lots.

16.7.6.2 Use of Townhome Lots Reserve Fund. Notwithstanding any other language in this Declaration, the Board may not use money in the Townhome Lots Reserve Fund (i) for daily Association maintenance or administrative expenses; or (ii) for any purpose other than those purposes for which the Townhome Lots Reserve Fund was established. The Board is prohibited from using any money in the Townhome Lots Reserve Fund for any costs or expenses that are not solely related to the Townhome Lots. If the Board wishes to use monies in the Townhome Lots Reserve Fund in a manner that is restricted or prohibited by this Subsection 16.7.5.2, or by any other provision of this Declaration, the Board must first obtain an affirmative vote or written consent from a majority of all Owners of the Townhome Lots.

16.7.7 Annual Presentation and Discussion of Reserve Fund. As required under the Community Act, the Association shall, at each annual meeting of the Owners or at a special meeting of the Owners called for the purpose of addressing the General Reserve Fund and any SFH Lots Reserve Fund that may have been established or any Townhome Lots Reserve Fund that may have been established: (i) present the reserve analysis; and (ii) provide an opportunity for the Owners to discuss reserves and vote on whether to fund such Reserve Funds and, if so, how to fund them and in what amount. The Association shall prepare and keep minutes of each such meeting held and indicate in the minutes any decision relating to funding any Reserve Fund.

16.8 Funds to be Maintained Separately

The Common Expense Fund and each Reserve Fund (including the General Reserve Fund, as well as the SFH Lots Reserve Fund and the Townhome Lots Reserve Fund, if any) shall be kept in

separate accounts, shall be established and deposited with a federally-insured bank or credit union, and shall be deposited into a checking, savings or certificate of deposit account. In the event the Board elects to establish and maintain any separate fund, a separate account shall be established for each such fund and deposited with a federally insured bank or credit union.

16.9 Recordkeeping

As required under the Community Act, the Board shall keep receipts and expenditures affecting the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses incurred. Such records shall be available for examination by any Owner at convenient hours of weekdays no later than fourteen (14) calendar days after the Owner makes a written request to examine such records.

ARTICLE 17 – ASSESSMENTS

17.1 Owner Payment of Assessments

17.1.1 Assessments. Each Owner shall pay Assessments subject to and in accordance with the procedures set forth in this Article 17 or any other applicable provisions of the Governing Documents. As used in this Declaration, the term “**Assessments**” shall include Annual Assessments, SFH Lot Assessments, Townhome Lot Assessments, Special Assessments and Reimbursement Assessments as permitted under the Governing Documents.

17.1.2 Purpose of Assessments. Any and all Assessments provided for under this Declaration shall be used for the general purpose of operating the Project, paying Common Expenses, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners, including the maintenance of any real and personal property owned by the Association, and regulating the Project, all as may be more specifically authorized from time to time by the Board.

17.1.3 Imposition of Assessments. The amount of, and purpose for, any Assessment shall be determined pursuant to the procedures set forth in the Acts and/or the Governing Documents. The Board shall have the authority and discretion to determine certain details such as how and when any Assessment will be paid by and collected from the Owners (*e.g.* deadline for payment of the Assessment, whether the Assessment will be collected via multiple installments versus single lump-sum payment, etc.).

17.1.4 Obligation to Pay Assessments. Each Assessment shall be a joint and several personal debt and obligation of the Owner(s) and contract purchaser(s) of Lots for which the same are imposed as of the time the Assessment is made and shall be collectible as such. Each Owner, by acceptance of a deed or as a party to any other type of conveyance of any Lot, vests in the Association or its agents the right and power to (a) bring all actions against him or her personally for the collection of any debts arising out of or related to any Assessments, or any other charges related to such Assessments; or (b) foreclose any lien arising out of or related to any Assessments, or any other charges related to such Assessments, in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

17.1.5 No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including, without limitation, non-use of Common Area, non-use of any Common Improvements, and/or the abandonment of his or her Lot.

17.1.6 Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association, the Board or the Manager to take some action or perform some function required to be taken or performed by the Association, the Board or the Manager pursuant to the Governing Documents, or for any inconvenience to any Owner arising from or related to any maintenance or repairs occurring anywhere within the Project, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

17.1.7 Application of Payments. All payments received by the Association from Owners shall be applied in the following order: (i) Additional Charges, (ii) past due Assessments, and (iii) currently due Assessments.

17.1.8 Account Status. The Association shall provide Owners with a timely accounting of the status of their accounts upon written request to the Board. Such accountings will be considered accurate unless challenged within ninety (90) calendar days of the posting of any item. After 90 calendar days, the costs incurred by the Association to review any item will be the responsibility of the individual Owner.

17.1.9 Statement of Assessments Due. Upon written request by any Owner, the Board shall furnish to such Owner a statement of Assessments due, if any, on his or her Lot. The Association may require the advance payment of a processing charge not to exceed \$25.00 (or the maximum amount permitted under the Community Act) for the issuance of such statement. This written statement of Assessments due shall be conclusive in favor of any person who relies on such statement in good faith.

17.1.10 Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled which, insofar as it adversely affects the Association's lien for unpaid Assessments, each Owner by accepting a deed or other document of conveyance to a Lot hereby waives.

17.1.11 Declarant. Notwithstanding any language in the Governing Documents to the contrary, unless otherwise prohibited by the Acts or any applicable governmental law, rule or regulation, the Declarant shall not be obligated to pay Assessments on any Lots that are owned by the Declarant unless and until: (A) the Dwellings to be constructed on such Lots have been completed as evidenced by the County's issuance of a Certificate of Occupancy; or (B) Declarant voluntarily elects to pay the such Assessments. However, the Declarant shall not be exempt from the payment of any Special Assessments that may be imposed by the Association or the Board or that may be otherwise required under the Governing Documents. With regard to any Dwellings that are owned by the Declarant and serve as a model home for sales purposes, Declarant shall pay Fifty Percent (50%) of the Annual Assessments or the SFH Lot Assessments or Townhome Assessments due and payable on the Lots upon which such Dwellings are constructed.

17.2 Annual Assessments / Allocation of Assessments

The Association may collect from the Owner of each SFH Lot both an Annual Assessment and a SFH Lot Assessment, and may collect from the Owner of each Townhome Lot both an Annual Assessment and a Townhome Lot Assessment. As noted below: (A) Annual Assessments shall be used to pay all Common Expenses except SFH Lot Common Expenses and Townhome Lot Common Expenses, (B) SFH Lot Assessments will be used to pay SFH Lot Common Expenses, and (C) Townhome Lot Assessments will be used to pay Townhome Lot Common Expenses.

The purpose of imposing Annual Assessments, SFH Lot Assessment and Townhome Lot Assessments is to ensure that Common Expenses are properly and fairly allocated between the Owners (*e.g.* the Owners of SFH Lots are not paying the costs to maintain the Townhomes, while the Owners of Townhome Lots are not paying the maintenance costs that are unique and specific to SFH Lots). The Association shall impose SFH Lot Assessments against the Owners of SFH Lots only if the Association incurs expenses unique and specific to SFH Lots. Likewise, the Association shall impose Townhome Lot Assessments against the Owners of Townhome Lots only if the Association incurs expenses that are unique and specific to the Townhome Lots.

17.3 SFH Lot Assessments

If the Association determines it is necessary to collect SFH Lot Assessments, those Assessments shall be equally imposed against all SFH Lots. The Association is prohibited from using SFH Lot Assessments for any purpose other than paying SFH Lot Common Expenses (including funding of the General Reserve Fund or the SFH Lots Reserve Fund) without first obtaining an affirmative vote or written consent from a majority of the Owners of the SFH Lots.

17.4 Townhome Lot Assessments

If the Association determines it is necessary to collect Townhome Lot Assessments, those Assessments shall be equally imposed against all Townhome Lots. The Association is prohibited from using Townhome Lot Assessments for any purpose other than paying Townhome Lot Common Expenses (including funding of the General Reserve Fund or the Townhome Lots Reserve Fund) without first obtaining an affirmative vote or written consent from a majority of the Owners of the Townhome Lots.

17.5 Annual Assessments

Annual Assessments shall be equally levied by the Board against all Lots located in the Project (including all Townhome Lots and all SFH Lots) in order to pay all Common Expenses that are not SFH Lot Common Expenses or Townhome Lot Common Expenses. Annual Assessments shall be equally imposed against all Lots based upon the Percentage Interest of each Lot.

17.6 Notice of Assessments and Time for Payment

The Board shall notify each Owner in writing as to the amount of the proposed Annual Assessment (and the SFH Lot Assessment or Townhome Lot Assessment, if any) for the upcoming fiscal year no later than thirty (30) calendar days prior to the beginning of such upcoming fiscal year. Each such Assessment shall be due and payable in twelve (12) equal monthly installments, with each such installment due on the first day of each calendar month during the fiscal year to which the Assessment relates.

The monthly installment of each Assessment shall become due and payable on the first day of the fiscal year to which the proposed Assessment relates (the “**Intended Fiscal Year**”) and shall continue to be due and payable on the first day of each subsequent calendar month unless or until the Annual Budget upon which the proposed Assessment was based is disapproved by the Owners as described under Section 16.1.2. If such Annual Budget is disapproved, each Owner shall thereafter pay the monthly installment based upon the Assessment(s) that was/were paid by such Owner under the Annual Budget of the previous fiscal year, and shall continue to pay such amount on the first day of each calendar month until such time as the Annual Budget for the Intended Fiscal Year has been approved. The Board shall determine the manner in which any discrepancies in monthly installments due and payable by each Owner for any Intended Fiscal Year (caused by delayed approval of the Annual Budget for that Intended Fiscal Year) will be resolved.

The failure of the Board to deliver timely notice of any Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, nor a release of any Owner from the obligation to pay such Assessment; however the date when the payment shall become due in such case shall be deferred to a date fifteen (15) calendar days after notice of such Assessment shall have been given to the Owner.

17.7 Special Assessments.

In addition to Annual Assessments, SFH Lot Assessments and/or Townhome Lot Assessments, the Board may, on behalf of the Association, periodically impose special assessments (“**Special Assessments**”) pursuant to this Section 17.7.

17.7.1 Annual Budget Shortfall. If the sum estimated and budgeted for the Annual Budget, or any portion thereof, at any time proves inadequate for any reason the Board may impose a Special Assessment in order to remedy such shortfall.

17.7.1.1 Excess/Unforeseen SFH Lot Expenses.

If the shortfall is caused by excess or unforeseen SFH Lot Common Expenses, the Special Assessment required to remedy the shortfall shall be equally imposed only against the SFH Lots. The Board shall not, except in the event of an emergency situation, use any General Reserve Fund monies to remedy any shortfall caused by excess or unforeseen SFH Lot Common Expenses. If a majority of the Board determines that such an emergency situation has occurred, and that General Reserve Fund monies absolutely must be utilized in order to remedy the shortfall, the Owners of the SFH Lots must replace the monies that were withdrawn from the General Reserve Fund no later than ninety (90) days after the funds were withdrawn. The Board shall impose against the Owners of the SFH Lots a Special Assessment in order to replenish the General Reserve Fund, and the Board shall not be required to obtain any vote or approval of the Owners of the SFH Lots prior to imposing such a Special Assessment.

17.7.1.2 Excess/Unforeseen Townhome Lot Expenses.

If the shortfall is caused by excess or unforeseen Townhome Lot Common Expenses, the Special Assessment required to remedy the shortfall shall be equally imposed only against the Townhome Lots. The Board shall not, except in the event of an emergency situation, use any

General Reserve Fund monies to remedy any shortfall caused by excess or unforeseen Townhome Lot Common Expenses. If a majority of the Board determines that such an emergency situation has occurred, and that General Reserve Fund monies absolutely must be utilized in order to remedy the shortfall, the Owners of the Townhome Lots must replace the monies that were withdrawn from the General Reserve Fund no later than ninety (90) days after the funds were withdrawn. The Board shall impose against the Owners of the Townhome Lots a Special Assessment in order to replenish the General Reserve Fund, and the Board shall not be required to obtain any vote or approval of the Owners of the Townhome Lots prior to imposing such a Special Assessment.

17.7.1.3 Excess/Unforeseen Common Expenses.

If the shortfall is caused by excess or unforeseen Common Expenses (not including any SFH Lot Expenses or any Townhome Lot Expenses) the Special Assessment required to remedy the shortfall shall be imposed against each Lot located in the entire Project.

Any such Special Assessment deemed by a majority of the Board as necessary to remedy an Annual Budget shortfall caused by excess or unforeseen Common Expenses, and imposed by the Board without the prior approval of the Owners, shall not exceed twenty percent (20%) of the Annual Assessment for the same fiscal year in which the Special Assessment has been imposed. Owners shall be given no less than thirty (30) calendar days written notice of any such Special Assessment caused by an Annual Budget shortfall caused by excess or unforeseen Common Expenses.

If a majority of the Board determines an Annual Budget shortfall caused by excess or unforeseen Common Expenses may only be adequately remedied by a Special Assessment that exceeds twenty percent (20%) of the Annual Assessment for the same fiscal year in which the Special Assessment is to be imposed, such a Special Assessment shall require an affirmative vote or written consent of a Majority of the Owners. In the event the Board is unable to obtain such an affirmative vote or written consent of a Majority of the Owners, the Board may cover the Annual Budget shortfall by using all or any portion of the General Reserve Fund.

17.7.2 No Board Majority. If a majority of the Board is unable to determine that an emergency situation has occurred (as described under Subsection 17.7.1) or that an Annual Budget shortfall may only be adequately remedied by a Special Assessment (as also described under Section 17.7.1) then the Board shall present the matter to a vote of the Owners of the SFH Lots, the Owners of the Townhome Lots or the Owners of the entire Project (as applicable) and the Special Assessment must then be approved by a majority of the Owners of the SFH Lots, the Owners of the Townhome Lots or the Owners of the entire Project (as applicable).

17.7.3 General Reserve Fund Shortfall. In the event of a shortfall in the General Reserve Fund, the Board may impose against all Owners of the entire Project a Special Assessment to remedy such shortfall, provided the Board has first obtained an affirmative vote or written consent from a Majority of the Owners. Such Special Assessment shall be equally assessed to each Lot and the Owner(s) thereof. If the Board is unable to obtain an affirmative vote or written consent from a Majority of the Owners, the General Reserve Fund may only be replenished through the General Reserve Fund Line Item of the Annual Budget, as more particularly described under Section 16.2.

17.7.4 SFH Lots Reserve Fund Shortfall. In the event of a shortfall in the SFH Lots Reserve Fund, the Board may impose (against all Owners of the SFH Lots) a Special Assessment to remedy such shortfall, provided the Board has first obtained an affirmative vote or written consent from a majority of the Owners of the SFH Lots. Such Special Assessment shall be equally assessed against each Lot and the Owner(s) thereof. If the Board is unable to obtain an affirmative vote or written consent from a majority of such Owners, the SFH Lots Reserve Fund may only be replenished through the SFH Lots Reserve Fund Line Item of the Annual Budget, as more particularly described under Section 16.3.

17.7.5 Townhome Lots Reserve Fund Shortfall. In the event of a shortfall in the Townhome Lots Reserve Fund, the Board may impose (against all Owners of the Townhome Lots) a Special Assessment to remedy such shortfall, provided the Board has first obtained an affirmative vote or written consent from a majority of the Owners of the Townhome Lots. Such Special Assessment shall be equally assessed against each Lot and the Owner(s) thereof. If the Board is unable to obtain an affirmative vote or written consent from a majority of such Owners, the Townhome Lots Reserve Fund may only be replenished through the Townhome Lots Reserve Fund Line Item of the Annual Budget, as more particularly described under Section 16.4.

17.7.6 Special Assessments for Capital Improvements and Extraordinary Expenses. Notwithstanding any other provisions of this Declaration, and in addition to the Special Assessments and other Assessments authorized above, the Association may levy, during any fiscal year, a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located within the Project, including, for example but without limitation, Private Streets and related Improvements, or for the purposes of defraying other extraordinary expenses, provided that any such Special Assessment shall have the assent of at least sixty-seven percent (67%) of the total Percentage Interest of the Association's voting rights. The provisions of this Subsection 17.7.6 are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the purposes stated in this Subsection 17.7.6.

17.7.7 No Authority to Incur Expenses. This Section 17.7 shall not be construed as an independent source of authority for the Association or the Board to incur expenses, but shall only be construed to prescribe the manner of assessing for any Annual Budget shortfall or any shortfall in any Reserve Fund(s).

17.7.8 Notice and Payment. Special Assessments shall be payable on such date(s) and over such time periods as the Board may determine. The Board, in its sole discretion, may allow any Special Assessment to be paid in installments. Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the Owners. However, no payment of any Special Assessment, or any portion of any Special Assessment, shall be due less than thirty (30) calendar days after such notice shall have been given. The failure of the Board to deliver prompt notice of any Special Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, nor a release of any Owner from the obligation to pay such Special Assessment or any other Assessment.

17.8 Reimbursement Assessments

The Association may levy a Reimbursement Assessment against a particular Owner or group of Owners, and his or her or their Lot(s), in order to reimburse the Association for any costs the Association may incur due to the acts or omissions of such Owner(s) or his, her or their family members, tenants, guests or invitees.

The Association may impose a Reimbursement Assessment if, for example:

- (a) the Association provides services or materials that were requested by a particular Owner or group of Owners for the benefit of that Owner or group of Owners* (*e.g.* removal or installation of Landscaping at the request of an Owner or group of Owners),
- (b) the Association repairs Property Deterioration pursuant to Section 9.1.3,
- (c) an Owner or his or her family member, tenant, guest or invitee causes damage to the Common Area or any Common Improvement,
- (d) an Owner or his or her family member, tenant, guest or invitee fails to comply with any provision of any Governing Documents causing the Association to incur expenses to effect compliance, including attorneys' fees and costs,
- (e) the Association incurs expenses related to the collection of an Owner's delinquent Assessments, or
- (f) any similar incidents or circumstances.

*The Association may require that a Reimbursement Assessment be received by the Association prior to the Association providing any services or materials requested by a particular Owner or group of Owners for their benefit.

17.8.1 Reimbursement Assessment vs. Fine. A Reimbursement Assessment shall not be deemed a fine (*i.e.* a sum of money imposed as a penalty) provided the Reimbursement Assessment resulted from an expense the Association reasonably incurred due to the acts or omissions of an Owner or his or her family members, tenants, guests or invitees as described under this Section 17.8. As such, the imposition of a Reimbursement Assessment shall not be subject to the provisions of Article 15 regarding fines, including the procedure for assessing fines, limitations regarding the dollar amount of fines, informal hearings and appeals. The Association may elect to impose both a Reimbursement Assessment and a fine in connection with the same incident or circumstances.

17.9 Collection of Assessments / Failure to Pay

Each Owner shall be obligated to pay his or her Assessments to the Association on or before the due date as set forth under this Declaration or otherwise determined by the Board.

17.9.1 Delinquent Assessments. Any Assessment not paid when due shall be immediately deemed as delinquent, and a lien securing the obligation to pay such Assessment shall automatically attach to the Lot of the Owner(s) failing to timely pay such Assessment, regardless of whether a written notice is recorded.

17.9.2 Late Fees and Accruing Interest. Except for any late fees or interest that may be specifically set forth in this Declaration, the Association's policies regarding late fees and/or accruing interest in connection with delinquent Assessment payments shall be determined by the Board and shall be set forth in the Rules and Regulations. Such policies shall be consistent with applicable state law regarding the imposition of late fees and/or interest on delinquent Assessment payments.

17.9.3 Suspension of Right to Vote. At the discretion of the Board, the right of an Owner to vote on issues concerning the Association may be suspended if that Owner is delinquent in the complete payment of any Assessments, and has failed to cure or make satisfactory arrangements to cure the default after the Board has provided written notice pursuant to Section 17.9.4.

17.9.4 Notice of Suspension. Before suspending any Owner's right to vote, the Board shall give written notice to such Owner. The notice shall state: (A) voting rights will be suspended if payment of the Assessment is not received within three (3) business days; (B) the amount of the Assessment due, including any late fees, interest, and costs of collection; and (C) that the Owner has a right to request a hearing by submitting a written request to the Board within fourteen (14) calendar days from the date the notice is received. If a hearing is requested, the Owner's right to vote may not be suspended until after the hearing has been conducted and a final decision has been reached by the Board.

17.9.5 Security Deposit. Any Owner who has been late in delivering payment of his or her Assessments more than twice during any given twelve (12) month period may be required by the Board to make and maintain a security deposit not in excess of six (6) months of estimated Assessments, which may be collected in the same manner as other Assessments. Such deposit monies may be kept deposited and held in the Common Expense Fund under a separate budget category.

17.10 Lien / Foreclosure

17.10.1 Lien. The Association shall have a lien on the interest of the Owner(s) of the Lot for (1) any delinquent Assessment, (2) fees, charges, and costs associated with collecting any delinquent Assessment, including, court costs and reasonable attorney fees, late charges, interest, and any other amount the Association is entitled to recover under the Governing Documents, the Acts, or an administrative or judicial decision, and (3) any fine the Association may impose against the Owner of such Lot. The recording of this Declaration constitutes record notice and perfection of the lien described in this Section 17.10.1. A lien under this Section is not subject to Utah Code Annotated Title 78B, Chapter 5, Part 5, Utah Exemptions Act. If an Assessment is payable in installments, the lien described in this Section is for the full amount of the Assessment from the time the first installment is due, unless the Association otherwise provides in the notice of Assessment. A lien under this Section has priority over each other lien and encumbrance on a Lot except:

- (a) a lien or encumbrance recorded before this Declaration was recorded;
- (b) a first or second security interest on the Lot secured by a deed of trust or mortgage that is recorded before a recorded notice of lien by or on behalf of the Association; or

(c) a lien for real estate taxes or other governmental assessments or charges against the Lot.

17.10.2 Foreclosure of Lien and/or Collection Action. If the delinquent Assessments remain unpaid, the Association may, as determined by the Board, institute suit to collect the amounts due and/or to foreclose the lien. Suit to recover a money judgment for the unpaid Assessments shall be maintainable without foreclosure or waiving the lien securing the same.

17.10.3 Foreclosure of Lien as Mortgage or Trust Deed. In order to enforce a lien for any delinquent Assessment, or any of the other fees, charges, costs or fines described under Section 17.10.1, the Association may cause a Lot to be sold through nonjudicial foreclosure as though the lien were a deed of trust, in the manner provided by Utah Code Annotated §57-1-24 through §57-1-27 or any other applicable law, or foreclose the lien through a judicial foreclosure in the manner provided by law for the foreclosure of a Mortgage. For purposes of a nonjudicial or judicial foreclosure, the Association is considered to be the beneficiary under a trust deed and the Owner of the Lot being foreclosed is considered to be the trustor under a trust deed. An Owner's acceptance of the Owner's interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale, to the trustee designated as provided in this Section for the purpose of securing payment of all amounts due under this Declaration and the Acts. In any such judicial or nonjudicial foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees) and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of any such judicial or nonjudicial foreclosure, and all such Assessments shall be secured by the lien being foreclosed. The Board shall have the right and power in behalf of the Association to bid in at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Lot in the name of the Association.

17.10.4 Appointment of Trustee. If the Board elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Association, provided he or she is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, each Owner hereby transfers in trust to said Trustee all of his or her right, title and interest in and to the Lot for the purpose of securing his or her performance of the obligations set forth herein.

17.10.5 Notice of Foreclosure. At least thirty (30) calendar days before initiating a nonjudicial foreclosure, the Association shall provide notice to the Owner of the Lot that is the intended subject of the nonjudicial foreclosure. The notice shall (i) notify the Owner that the Association intends to pursue nonjudicial foreclosure with respect to the Owner's Lot to enforce the Association's lien for an unpaid Assessment; (ii) notify the Owner of the Owner's right to demand judicial foreclosure in the place of nonjudicial foreclosure; (iii) be sent to the Owner by certified mail, return receipt requested; and (iv) be in substantially the following form:

NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND JUDICIAL FORECLOSURE, The Village at Wolf Creek Homeowners Association, Inc., a Utah non-profit corporation, the Association for the project in which your Lot is located, intends to foreclose upon your Lot and allocated interest in the common

areas and facilities using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the Association's lien against your Lot and to collect the amount of an unpaid assessment against your Lot, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. If you make this demand and the Association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that "I demand a judicial foreclosure proceeding upon my Lot," or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within 15 days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand is [insert the current address of the Association for receipt of a demand].

17.10.6 One-Action Rule Inapplicable. As provided under the Acts, the one-action-rule provided in Utah Code Annotated Subsection 78B-6-901(1) shall not apply to the Association's judicial or non-judicial foreclosure of a lien for Common Expenses.

17.11 Future Lease Payments

As set forth under Section 57-8a-310 of the Community Act, if the Owner of a Dwelling who is leasing the Dwelling fails to pay an Assessment for more than sixty (60) calendar days after the Assessment is due, the Board, upon compliance with this Section 17.11, may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid.

17.11.1 Notice to the Owner. The Manager or Board shall give the Owner written notice of its intent to demand full payment from the tenant. The notice shall: (A) provide notice to the tenant that full payment of the remaining lease payments, beginning with the next monthly payment unless the Assessment is received within fifteen (15) days from the date of the notice, must be paid directly to the Association at the following address: (address to which payment should be mailed, payment must go to the attorney if the account has been turned over for collection); (B) state the amount of the Assessment due, including any interest or late payment fee; and (C) state that any costs of collection, and other Assessments that become due, may be added to the total amount due.

17.11.2 Notice to the Tenant. If the Owner fails to pay the Assessment due by the date specified in the written notice described under Section 17.11.1, the Manager or Board may deliver written notice to the tenant that demands future payments due to the Owner be paid to the Association. The Manager or Board shall mail a copy of the notice to the Owner. The notice shall state: (A) that due to the Owner's failure to pay the Assessment within the time period allowed, the Owner has been notified of the intent of the Board of Directors to collect all lease payments due to the Association; (B) that until notification by the Association that the Assessment due, including any interest, collection cost, or late payment fee, has been paid, the tenant shall pay to the Association all future lease payments due to the Owner; and (C) that payment by the tenant to the Association in compliance with this Section will not constitute a default under the terms of the lease agreement.

17.11.3 All funds paid to the Association pursuant to this Section shall be deposited in a separate account and disbursed to the Association until the Assessment due is paid in full. Any remaining balance shall be paid to the Owner within five (5) business days after payment in full to the Association.

17.11.4 Within five (5) business days after payment in full of the Assessment, including any interest, late payment fee, and costs of collection, the Manager or Board shall notify the tenant in writing that future lease payments are no longer due to the Association. The Association shall mail a copy of the notification to the Owner.

17.11.5 If, as described under this Section 17.12, the Association receives lease payments for a particular Dwelling that are otherwise due and payable to the Owner of that Dwelling, the Association shall not assume any obligations, responsibilities or liabilities as the “landlord” of the Dwelling. The Owner shall continue to assume any and all of the Owner’s obligations, responsibilities or liabilities as the Owner/landlord of the Dwelling.

17.12 Reassessment of Delinquent Assessments

In the event that all or part of any Assessment (including any Annual Assessment or Special Assessment) or any other expenses of the Board cannot be promptly collected from the Owners or any other persons or entities liable for the payment of such Assessments or expenses pursuant to the Acts or the Governing Documents, the Board shall have the right and authority to apply and reassess and reallocate such uncollected Assessments or expenses to all Owners as a Common Expense, without prejudice to the Board’s right and authority to the collection of such uncollected Assessments or expenses from the Owners or any other persons or entities liable for their payment.

17.13 Remedies Cumulative

The remedies provided to the Association under this Article 17 are cumulative and the Association may pursue any such remedies concurrently, as well as any other remedies which may be available under law although not expressed herein.

ARTICLE 18 – COMPLIANCE AND ENFORCEMENT

18.1 Enforcement

Each Owner shall comply with the provisions of the Governing Documents, as the same may be lawfully amended from time to time, and with all decisions adopted pursuant to the Governing Documents. Failure to comply shall be grounds for an action to recover sums due for damages, or injunctive relief, or both, maintainable by the Board on behalf of the Owners, or by the aggrieved Owner on his or her own. Reasonable fines may be levied and collected as an Assessment for violations of the Governing Documents. A schedule of fines may be adopted by the Board specifying the amounts of such fines, and any other provisions or procedures related to the levying of such fines.

The Association shall be entitled to an award of its attorneys’ fees and costs in any action taken for the purpose of enforcing or otherwise implementing the terms of the Governing Documents, or for any action taken pursuant to the Governing Documents, if it prevails in such action, regardless of who instituted the action.

18.2 Remedies

Violation of any provisions of the Governing Documents, or of any decision of the Association made pursuant to such documents, shall give the Board acting on behalf of the Association, the right, but not the obligation, in addition to any other rights set forth in the Governing Documents, or under law, to do, any or all of the following after giving written notice:

(a) Subject to the provisions of this Declaration, to enter any Lot or any portion of the Common Area (including any Common Area that is contiguous and/or immediately adjacent to any Lot or Dwelling) where such violation exists and to summarily correct, abate or remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of the provisions of the Governing Documents, and the Board shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;

(b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

(c) To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board, a copy of which shall be delivered to each Owner, mailed to the mailing address of the Lot or Dwelling or mailed to the mailing address designated by the Owner in writing to the Association;

(d) To suspend the voting rights of any Owner, after notice and an opportunity to request a hearing, for any infraction of any of the published Rules and Regulations of the Association or the Governing Documents, including failure to timely pay an Assessment; and/or

(e) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any Rules or Regulations adopted pursuant thereto.

18.3 Action by Owners

Subject to any limitations that may be imposed under this Declaration, the Bylaws or applicable Utah law, an aggrieved Owner may bring an action against any other Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

18.4 No Waiver of Strict Performance

The failure of the Board in any one or more instances to insist upon the strict performance of any of the terms, covenants, conditions or restrictions of the Governing Documents, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Board of any Assessment from an Owner, with knowledge of any such breach shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in a writing been signed by the Board.

ARTICLE 19 – INSURANCE

19.1 Property Insurance

The Association shall maintain, to the extent reasonably available using typical insurance carriers and markets: (a) property insurance on Common Improvements that are owned, managed and/or controlled by the Association, if any, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, and (b) liability insurance, including medical payments insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area. If the Association becomes aware that property insurance or liability insurance is not reasonably available, the Association shall, within seven (7) calendar days after becoming aware, give all Owners notice that the insurance is not reasonably available.

19.2 General Liability Insurance

The Association shall obtain General Liability insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area (including Common Improvements) or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

19.3 Insurance Coverage for Theft and Embezzlement of Association Funds

The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three months of Annual Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) officers, directors, or any other members of the Board of Directors, (b) any members of the Association, (c) employees and volunteers of the Association, (d) any Manager of the Association, and (e) officers, directors, and employees of any Manager of the Association.

19.4 Directors and Officers Insurance

The Association shall obtain directors' and officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

19.5 Association Personal Property

The Association may, in the Board's discretion, maintain insurance against loss of personal property of the Association by fire, theft and other losses with deductible provisions as the Board deems advisable.

19.6 Workers' Compensation Insurance

The Board of Directors may, in the Board's discretion, purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board of Directors deems appropriate.

19.7 Insurance Trustee

An insurer under a property insurance policy issued to the Association shall adjust with the Association a loss covered under the Association's policy. Notwithstanding the above, the insurance proceeds for a loss under a property insurance policy of the Association are payable to an Insurance Trustee that the Association designates or, if no Insurance Trustee is designated, to the Association, and may not be payable to a holder of a security interest. An Insurance Trustee or the Association shall hold any insurance proceeds in trust for the Association, the Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property. After such disbursements are made and the damaged property has been completely repaired or restored or the project terminated, any surplus proceeds are payable to the Association, the Owners, and lien holders.

19.8 Insurance Trustees; Power of Attorney

Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "**Insurance Trustee**"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each Owner appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

19.9 Miscellaneous

19.9.1 Waiver of Liability. The Association and Board that acquires from an insurer the property insurance required in this Section is not liable to Owners if the insurance proceeds are not sufficient to cover 100% of the full replacement cost of the insured property at the time of the loss.

19.9.2 Election to Restore in Lieu of Cash Settlement. Each such policy shall provide that, notwithstanding any provision thereof which gives the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable if it is in conflict with any requirement of law or without the prior written approval of the Association.

19.9.3 Name of the Insured. The named insured under each policy shall be in form and substance essentially as follows “The Village at Wolf Creek Homeowners Association, Inc., a Utah domestic nonprofit corporation, for the use and benefit of the individual Owners” or such other form as may be required by the Association’s insurance provider.

19.9.4 Certificate of Insurance. An insurer that issues any insurance policy under this Section, or the insurer's authorized agent, shall issue a certificate or memorandum of insurance to the Association, an Owner, and a holder of a security interest, upon the Association’s, an Owner's or the holder's written request.

19.9.5 Cancellation or Nonrenewal Subject to Procedures. A cancellation or nonrenewal of any insurance policy under this Paragraph is subject to the procedures stated in Utah Code Annotated § 31A-21-303.

19.9.6 Qualifications of Insurance Carriers & General Coverage Requirements. The Association shall use insurance carriers licensed to do business in Utah and holding a rating of XI or better in the Financial Category as established by A. M. Best Company, Inc., if reasonably available, or if not available, the most nearly equivalent rating.

19.9.7 Waiver of Subrogation. An insurer under a property insurance policy or liability insurance policy obtained under this Article 19 waives the insurer's right to subrogation under the policy against any Owner or member of the Owner's household.

19.9.8 Additional Coverage. The provisions of the Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by the Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

19.9.9 Review of Insurance. The Board shall annually review (or cause a review) of the coverage and policy limits of all insurance on the Project and adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or by such other qualified appraisers as the Association may select.

19.10 Owner Insurance Coverage

Each Owner shall obtain adequate insurance coverage in connection with any Improvements that such Owner may have temporarily or permanently constructed, located, stored, parked, placed or installed upon any street or any portion of the Common Area (including, without limitation, any Common Area that is contiguous and/or immediately adjacent to any Lot or Dwelling).

ARTICLE 20 – DAMAGE OR DESTRUCTION

20.1 Generally

The Project shall be subject to any applicable provisions of the Community Act (as such Act may be amended or supplemented) pertaining to damage or destruction of a project including, by example and without limitation, Section 57-8a-407 of such Act.

In the event the Association determines that any damage or destruction of the Common Area cannot or shall not be repaired or reconstructed pursuant to any applicable provisions of the Community Act, and no alternative improvements are authorized, then the Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

20.2 Homeowners Association as Attorney-In-Fact

Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorneys-in-fact in such Owners name, place and stead for the purpose of dealing with the damage or destruction of any Common Improvements as provided in this Article or a complete or partial taking as provided in Article 21, below. Acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the homeowners Association as attorney-in-fact. All proceeds from the insurance required here under shall be payable to the Association except as otherwise provided in this Declaration.

20.3 Estimate of Damages or Destruction

As soon as practical after an event causing damage to or destruction of any Common Improvements, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction those Common Improvements (and the Common Areas upon which such Common Improvements are/were located) that have been damaged or destroyed. "Repair and reconstruction "as used in this Article 20 shall mean restoring the damaged or destroyed Common Improvements to substantially the same condition in which they existed prior to the damage or destruction.

20.4 Repair and Reconstruction

As soon as possible after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Common Improvements (and the Common Areas upon which such Common Improvements are/were located). As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

20.5 Funds for Repair and Reconstruction

The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction of any Common Improvements. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may levy, assess, and collect in advance from all Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

20.6 Disbursement of Funds for Repair and Reconstruction

The insurance proceeds held by the Association and the amounts received from any Special Assessments as described under Section 20.5 constitutes a fund for the payments of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Association under Section 20.5 above, or if no Special Assessments were made, and then in equal shares, first to the Mortgagees and then to the Owners, as their interests appear.

20.7 Decision Not to Rebuild

If Owners representing at least sixty-seven percent (67%) of the votes of the Association's membership and fifty-one percent (51%) of the Eligible Mortgagees (based upon one vote for each Mortgage owned) of the Lots vote not to repair and reconstruct and no alternative Common Improvements are authorized, then and in that event the affected portion of the common areas shall be restored to their natural state and maintained in an undeveloped portion of the Common Areas by the Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed in equal shares first to the Mortgagees and then to the Owners, as their interests appear.

20.8 Notice to First Mortgagees

The Association shall give timely written notice to any holder of any First Mortgage on a Lot who requests such notice in writing in the event of substantial damage to or destruction of a material part of the Common Areas.

ARTICLE 21 – CONDEMNATION

21.1 Rights of Owners

Whenever all or any part of the Common Areas shall be taken or conveyed in lieu of and under threat of condemnation, each Owner shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceedings, unless otherwise prohibited by law.

21.2 Partial Condemnation; Distribution of Award; Reconstruction

The award made for such taking shall be payable to the Association as trustees for all owners to be dispersed as follows:

If the taking involves a portion of the Common Areas on which Common Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners representing at least sixty-seven (67%) of the Members of the Association shall otherwise agree, the Association shall restore or replace such Common Improvements on the Common Areas in accordance with plans approved by the Board and the Design Review Board. If the such Common Improvements are to be repaired or restored, the provisions in Article 20, above, regarding the disbursement of the funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Membership, first to the Mortgagees and then to the Owners, as their interests appear.

21.3 Complete Condemnation

If all of the Project is taken, condemned, sold, or otherwise disposed of in Lou of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Areas shall be distributed to Owners based upon the relative value of the Lots or Dwellings (as applicable) prior to the condemnation.

ARTICLE 22 – CONSENT IN LIEU OF VOTE

Subject to Subsection 16-6a-707 of the Nonprofit Corporation Act (as such Subsection may be amended from time to time) in any instance in which a vote of the Owners is required in order to authorize or approve any transaction, action, or event, such requirement may be fully satisfied by obtaining, with or without a meeting, written consent to such transaction, action, or event from Owners who collectively hold not less than the minimum voting power that would be necessary to authorize or authorize or approve the transaction, action, or event at a meeting at which all Owners entitled to vote on the matter were present and voted.

22.1 Sixty-Day Limit

All necessary written consents must be obtained prior to the expiration of sixty (60) calendar days from the time the first written consent is obtained.

22.2 Revocation of Written Consent

Any Owner giving such written consent may revoke his or her consent by a signed writing that: (a) describes the transaction, action, or event; (b) states that the Owner's prior consent is revoked; and (c) is received by the Association prior to the effectiveness or commencement of the transaction, action, or event.

22.3 Notice

If a transaction, action, or event is approved by such written consent of Owners without a meeting, written notice of the approval must be given to all Owners no later than ten (10) calendar days before consummation of the transaction, action, or event authorized by such written consent of Owners.

22.4 Statutory Requirements or Restrictions

The provisions of this Article 22 are subject to any applicable requirements or restrictions that may be set forth in the Nonprofit Corporation Act.

ARTICLE 23 – LIMITATION OF BOARD MEMBERS' LIABILITY

23.1 No Personal Liability

So long as a Board member, Association officer, member of the Association or the Board or any committee, or any employee, independent contractor or agent of the Association has acted in good faith, without malicious, willful or intentional misconduct, upon the basis of such information as may be possessed by such person, then no such person shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of such person; provided, that this Section shall not apply where the consequences of such act, omission, error or negligence are covered by insurance obtained by the Board pursuant to Article 19.

23.2 Indemnification of Board Members

Each Board member, Association officer, or member of any Association or Board committee shall be indemnified by the Owners against all expenses and liabilities, including attorney's fees reasonably incurred by or imposed in connection with any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of holding or having held such a position, or any settlement thereof, whether or not he or she holds such position at the time such expenses or liabilities are incurred except in such cases wherein such person is adjudged guilty of malicious, willful or intentional misconduct in the performance of his or her duties; provided, that, in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association.

ARTICLE 24 – MORTGAGEE REQUIREMENTS

24.1 Notice of Action

Upon written request made to the Association by the Mortgagee, or an insurer or a governmental guarantor of a Mortgage, which written request shall identify the name and address of such Mortgagee, insurer or governmental guarantor and the Lot number or address of the Dwelling, any such Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of:

24.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor;

24.1.2 Any delinquency in the payment of Assessments or charges owed by an Owner, whose Lot is subject to a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

24.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Association; and

24.1.4 Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 24.2 below or elsewhere herein.

24.2 Matters Requiring Prior Eligible Mortgagee Approval

Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Members in the association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding Mortgages on Lots having at least fifty-one percent (51%) of the votes of the Lots subject to Mortgages held by Eligible Mortgagees shall be required to abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs. Termination of the legal status of the Project for any other reason shall require (i) the affirmative vote or authorization of Eligible Mortgagees holding at least sixty-seven percent (67%) of the Mortgages on lots; or (ii) restore or repair the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration.

24.3 Availability of the Village at Wolf Creek Documents and Financial Statements

The Association shall maintain and have current copies of the Governing Documents and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of Mortgages that are secured by Lots. Generally, these documents shall be available during normal business hours.

24.4 Subordination of Lien

The lien or claim against a Lot for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgagee affecting such Lot, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Lot shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No Assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Lot affected or previously affected by the First Mortgage concerned.

24.5 Payment of Taxes and Other Common Area Expenses

In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance lapses, is not to maintain, or the premiums thereof are not paid when due, any First Mortgagee or any combination of First Mortgagees may, jointly or singly, pay such taxes or premiums or secure such insurance. Moreover, in the event the Association is not adequately maintaining the Common Areas, then the County may (but shall not be obligated to) enter upon the Common Areas and perform such maintenance work as reasonably necessary to comply with this Declaration. If any First Mortgagee or the County expends funds for any such purposes, it shall be entitled to immediate reimbursement therefor from the Association.

24.6 Priority

No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots or the Common Areas.

ARTICLE 25 – TERM; AMENDMENTS; TERMINATION

25.1 Term

This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each.

25.2 Amendments

Amendments to this Declaration shall be made by a recorded instrument that sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Owners. Amendments may be adopted at a meeting of the Owners if Owners holding sixty-seven percent (67%) of the Owners' cumulative voting rights vote in favor of such amendment, or without any meeting if all Owners have been duly notified and Owners holding sixty-seven (67%) percent of the Owners' cumulative voting rights consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the President of the Association and shall be attested by the Secretary, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon recording in the Recorder's Office and any other appropriate governmental offices as may be required by applicable law. It is specifically covenanted and understood that any amendment to this Declaration properly adopted will be completely effective to amend any or all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration unless otherwise specifically provided in the section being amended or the amendment itself. During the entire Period of Declarant's Control, or within twenty-five (25) years from the Recording Date of this Declaration, whichever time period extends for a greater period of time, this Declaration may be amended only with the Declarant's written approval.

25.3 Unilateral Amendments

Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be unilaterally amended at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith to make technical corrections to fix mistakes or remove/clarify ambiguities; or (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless such Owner shall consent thereto in writing. For so long as the Period of Declarant's Control continues, Declarant may unilaterally amend this Declaration for any other purpose, provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any Lot without the written consent of the affected Owner of such Lot.

25.4 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions

Anything in this Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any portion of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, FHLMC, or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agencies approval of this Declaration or approval of the sale of any Lot within the Project, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s). Any such amendment shall be placed into effect by the recordation by Declarant of a Certificate of Amendment duly signed by Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the entire Period of Declarant's Control. If any amendments requested pursuant to the provisions of this Article 25 deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control.

ARTICLE 26 – DECLARANT'S RIGHTS

The purpose of this Article 26 is to confirm the Declarant's obligations, rights, duties and authority with regard to the Association and the Project.

26.1 Transfer

Any or all of the Declarant's rights and obligations may be transferred to other persons or entities, provided that such transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Recorder's Office. So long as Declarant continues to have rights under this Article 26, no person or entity shall record any declaration of

covenants, conditions and restrictions, or similar instrument affecting any portion of the Project without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or similar instrument being void and of no force and effect unless subsequently approved by a written consent that has been signed by the Declarant and recorded with the Recorder's Office.

26.2 Modifications

Subject to the Plat Map and applicable zoning, Declarant reserves for itself and its assigns the right to vary the timing, mix, type, use, style, and total number of Dwellings and Lots, and other such details of construction or modifications of the Project.

26.3 Amendment

This Article 26 may not be amended without the Declarant's express written consent; provided, however, the rights contained in this Article 26 shall terminate upon the earlier of (A) the end of the Period of Declarant's Control, or (B) upon recording by Declarant of a written statement that all sales activity has ceased.

26.4 Sales Offices

Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising the Project, and models in any areas of the Project. Declarant may relocate sales offices, management offices and models to other locations within the Project at any time.

26.5 Easement for Development

The Declarant is hereby reserved an easement throughout the Project for the purpose of completing any and all Improvements that may be contemplated by the Declarant or by this Declaration. Declarant shall be entitled to use all Common Areas within the Project, including any and all Lots and Private Streets located within the Project to design, construct and complete such Improvements.

26.6 Period of Declarant's Control

The term Period of Declarant's Control is intended to be synonymous with the term "Period of Administrative Control" as that term is used in the Community Act.

During the entire Period of Declarant's Control:

- A. the Declarant shall have the authority to appoint or remove all members of the Board and the Design Review Board,
- B. the Declarant shall have the authority to exercise the authority assigned to the Association under the Governing Documents.
- C. the actions or decisions of the Association and the Board must be approved by the Declarant before such actions or decisions become effective; and
- D. the Declarant is exempt from the Rules and Regulations and any Association rulemaking procedures.

26.7 Partial or Complete Termination of Period of Declarant's Control

Notwithstanding any language in any Governing Documents that may be construed to the contrary with respect to the Declarant's ability to voluntarily terminate the Period of Declarant's Control, the Declarant may (in its sole and absolute discretion) voluntarily terminate the Period of Declarant's Control in whole or in part, with respect to all or any portion of the Project, or with respect to any issue, matter or subject whatsoever. Declarant's decision to voluntarily partially or completely terminate the Period of Declarant's Control with respect to all or any portion of the Project, or with respect to any issue, matter or subject shall in no event affect, modify, or act to waive Declarant's authority under the Period of Declarant's Control except with respect to such portion of the Project, or with respect to any issue, matter or subject.

Termination of the Period of Declarant's Control shall not result in any loss or waiver whatsoever of Declarant's rights incident to Declarant's ownership of any Lots or any unbuilt and/or unsold Dwellings.

26.8 Membership

As is the case for any other Owner, the Declarant shall be a Member of the Association and shall be entitled to one membership for each Lot so owned.

26.9 Assessments

With regard to each Vacant Lot that is owned by Declarant, the Declarant shall be required to pay Assessments equal to one-half (50%) of any Assessments that may imposed against such Vacant Lot.

Declarant shall pay the entire amount of any Assessments (including Annual Assessments or Special Assessments) that may be imposed against any Lot that is owned by Declarant once construction of a Dwelling has been completed as evidenced by the County's issuance of a certificate of completion or occupancy.

26.10 Model Homes

Declarant may use any Dwelling that is owned or leased by Declarant in any portion of the Project as a model home for the purpose of promoting and marketing the sale of Dwellings that have been built by Declarant (including any Dwelling(s) located within the Project or residential homes located in other communities the Declarant may be developing). Declarant may simultaneously use more than one Dwelling that is owned or leased by Declarant for such promotional and marketing purposes.

ARTICLE 27 – MISCELLANEOUS

27.1 Service of Process

Service of process for the purposes provided in the Acts may be made upon the offices of the President of the Association or upon the Manager of the Association, if any. The Board may at any time designate a new or different person, entity or agency for such purposes by filing an amendment to this Declaration limited to the sole purpose of making such change, and such amendment need only be signed and acknowledged by the then President of the Association.

27.2 Delivery of Notices to the Association

All notices to the Association or the Board shall be sent in care of the Manager or, if there is no Manager, to the principal office of the Association or to such other address as the Board may hereafter designate from time to time.

27.3 Delivery of Notices to the Owners

Pursuant to Section 57-8a-214 of the Community Act, except as otherwise specifically permitted under any provision of this Declaration or the Bylaws or except as otherwise required under the Acts, the Association may send notices to Owners via first-class mail, registered mail or email.

The Association may also post notices on the Association's website (if any), but only if such notice has also been delivered to the Owners via first-class mail, registered mail or email. The Association may not utilize the Association's website as the sole means of delivering notices to the Owners. The Association may not utilize text messaging or any other electronic transmission (as that term is defined under Section 16-6a-102 of the Nonprofit Corporation Act) to deliver notices.

Each Owner must provide the Secretary of the Association with an email address which the Association may use for electronic delivery of certain notices. Each Owner shall also provide the Secretary of the Association with a mailing address at which the Association may mail any notices that, pursuant to the provisions of this Declaration, the Bylaws or the Acts, may not be electronically delivered. The Secretary of the Association shall maintain each Owner's email address and mailing address in the Association's ownership records.

Any notice that is sent via first-class mail or registered mail shall be sent to the mailing address that is on file with the Association. Any notice that is delivered via first-class mail shall be deemed to have been delivered three (3) business days after a copy has been deposited in the United States mail, postage prepaid.

If an Owner has not provided the Association with a mailing address, any notices the Association wishes to mail to that Owner shall be delivered via first-class mail or registered mail to both (A) the mailing address for such Owner that is published on the Weber County Assessor's Office website and (B) the physical address of such Owner's Lot/Dwelling (if the two addresses are different).

An Owner may, by written demand to the Board, require that the Association abstain from delivering any notices to such Owner via email or any other electronic means and require that the Association only deliver notices to such Owner via first-class mail or registered mail.

If a Lot and/or Dwelling is jointly owned or the Lot and/or Dwelling has been sold under a land sale contract, notices shall be sent to a single mail address, of which the Board has been notified in writing by such parties. If no address has been given to the Board in writing, notices shall be sent to the mailing address that appears on the website for the Weber County Assessor's Office for to mailing address for the Owner's Lot and/or Dwelling

27.4 Delivery of Notices to Mortgagees

Upon written request to the Secretary of the Association, a Mortgagee, or deed of trust beneficiary of any Lot or Dwelling shall be entitled to be sent a copy of any notices respecting the Lot or Dwelling covered by his or her security instrument until the request is withdrawn or the security right discharged. Notices will only be sent to those Mortgagees on record with the Association as having requested such notifications. The Association is not responsible to search for entities that may be entitled to receive notification.

27.5 Security Disclaimer

The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. Neither the Association, nor the Board shall in any way be considered insurers or guarantors of security within the Project, however; and neither the Association, nor the Board shall be held liable for any loss or damage by reason or failure to provide adequate security or ineffectiveness of security measures undertaken. Neither the Association nor the Board has made or shall make any express or implied representations or warranties to any Owner or to any residents, tenants, invitees, guests and/or other occupants of any Dwelling regarding any security measures that may be, or may have been, undertaken within the Project.

27.6 Mechanics Liens

Liens for materials, labor or money against any Dwelling or Lot Owner or the Association are to be indexed in the public records under the name of the Dwelling or Lot Owner. With regard to a lien on multiple Dwellings or Lots for materials, labor or money provided to the Association or affecting the Common Area, a Dwelling or Lot Owner may pay his or her prorata share of the amount of any lien and that shall be sufficient to release the lien as to his or her Dwelling or Lot. Any person, entity or organization who elects to provide materials or perform labor at the Project shall do so subject to the terms, covenants, and conditions of this Section 27.6.

27.7 Severability

The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof, if the remainder complies with the Acts or as covenants affect the common plan.

27.8 Effective Date

This Declaration shall take effect immediately upon recording.

27.9 Rules Against Perpetuities and Unreasonable Restraints

As provided under Section 57-8a-108 of the Community Act, the rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat any provision of the Governing Documents. Accordingly, no provision of this Declaration shall be deemed unlawful, void, or voidable by reason of any applicable law restricting the period of time that covenants running with the land, or conditions on land, may be enforced.

27.10 Consistent with Acts

Capitalized terms such as, but not limited to, “Association”, “Common Area”, “Common Expenses”, and “Project”, as used in this Declaration are intended to have the same meaning given in the Acts unless the context clearly requires otherwise or to so define the terms would produce an illegal or improper result.

27.11 Liberal Construction

The provisions of the Governing Documents shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Project consistent with applicable Utah law. It is intended and covenanted also that, insofar as it affects the Governing Documents and the Project, the provisions of the Acts referenced herein shall be liberally construed to effectuate the intent of the Governing Documents insofar as reasonably possible. In the event any provision of the Governing Documents is deemed as inconsistent with or illegal under any provision of the Acts (or any other applicable Utah law, rule or regulation) then the applicable provision(s) of the Acts (or any other applicable Utah law, rule or regulation) shall govern.

27.12 Covenant Running with Land

It is intended that this Declaration shall be operative as a set of covenants running with the land, or equitable servitudes, supplementing and interpreting the Acts, and operating independently of the Acts should the Acts be, in any respect, inapplicable.

27.13 “Person”, etc.

When interpreting this Declaration, the term “person” may include natural persons, partnerships, corporations, associations, and personal representatives. The term “mortgage” may be read to include deeds of trust. The singular may include the plural and the masculine may include the feminine, or vice versa, where the context so admits or requires.

27.14 Captions and Exhibits

Captions given to the various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of the substantive provisions hereof. The various exhibits referred to herein by reference are hereby incorporated herein as though fully set forth where such reference is made.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized officer/member on the ____ day of July, 2018.

“Declarant”

The Villages at Wolf Creek, LLC
a Utah limited liability company

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

(Declarant's Signature - The Villages at Wolf Creek, LLC)

STATE OF UTAH)
)ss.
COUNTY OF _____)

On this ____ day of July in the year 2018, before me

_____, a notary public, personally appeared
Notary Public Name

_____, proved on the basis of satisfactory evidence
Name of Document Signer

to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same. Witness my hand and official seal

Notary Seal

(Signature of Notary)

My Commission Expires: _____

Exhibit "A"

to

Amended and Restated Declaration of Covenants, Conditions, and Restrictions
for The Village at Wolf Creek Homeowners Association

Legal Description

The real property that is subject to and burdened by this Declaration includes any and all real property (including, without limitation, any and all 62 Lots, all Common Area and all Private Streets) and any easements or improvements located upon such real property (including, without limitation, any and all Dwellings and Common Improvements) located in that certain Planned Residential Unit Development located in Weber County, State of Utah, commonly known as "The Village at Wolf Creek" as identified in that certain Plat Map (as such Plat Map may be substituted or amended) identified as:

The Village at Wolf Creek, a Planned Residential Unit Development, which was recorded in the Weber County Recorder's Office on April 16, 2002 in Book 55 beginning at Page 68 as Entry No. 1841069.

Exhibit "B"
to
Amended and Restated Declaration of Covenants, Conditions, and Restrictions
for The Village at Wolf Creek Homeowners Association

Bylaws
of
The Villages at Wolf Creek Homeowners Association

[See attached Bylaws consisting of twenty-one (21) pages]

**BYLAWS
OF
THE VILLAGE AT WOLF CREEK HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE 1
NAME, PRINCIPAL OFFICE AND DEFINITIONS**

1.1 Name and Location. These are the Bylaws of The Village at Wolf Creek Homeowners Association, Inc., a Utah nonprofit corporation (the “**Association**”). The Village at Wolf Creek is a Planned Residential Unit Development (“**PRUD**”) residential community that has been subjected to that certain Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reservations for The Village at Wolf Creek to which these Bylaws are attached as Exhibit “B”.

1.2 Principal Office. The principal office of the Association shall be located at such office as may be designated by the Board from time to time.

1.3 Purposes. The Association has been formed to serve as a means by which the Owners may collectively take action with regard to the administration, management and operation of the Project.

1.4 Applicability of Bylaws. The Association, all Owners and all persons using the Project (including any occupants of any Dwellings) shall be subject to these Bylaws and to all rules and regulations which may be adopted by the Board on behalf of the Association pursuant to the Declaration and these Bylaws.

1.5 Incorporation of Association.

(a) The Association shall be incorporated under the Utah Revised Nonprofit Corporation Act. The Articles of Incorporation of the Association shall be consistent with the Declaration and these Bylaws, and these Bylaws shall constitute the Bylaws of the incorporated Association.

(b) In the event the incorporated Association shall at any time be 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, which vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any such successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the incorporated Association as if they had been made to constitute the governing documents of the unincorporated association.

1.6 Definitions. The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

ARTICLE 2
MEMBERSHIP; MEETING OF ASSOCIATION MEMBERS

2.1 Membership. The Association shall have two classes of Membership: Class “A” and Class “B”. The Class “A” Members shall be the Owners. The sole Class “B” Member shall be the Declarant.

The Class “B” Membership shall terminate upon the earlier of: (a) two years after expiration of the Period of Declarant’s Control or (b) when, in Declarant’s sole discretion, Declarant declares the Class “B” Membership as terminated as evidenced by an instrument that has been recorded in the Recorder’s Office.

The continuation of Class “B” Membership after the Period of Declarant’s Control has expired shall not, in any manner whatsoever, cause the Declarant to retain any rights, duties, obligations, powers or authority that were granted or imposed upon the Declarant during the Period of Declarant’s Control pursuant to the Governing Documents. During the period of time that begins on the date the Period of Declarant’s Control has expired, and continuing until the date the Class “B” Membership has terminated, the Declarant shall merely be entitled to appoint one Director as more particularly described under Section 3.1 of these Bylaws. The Declarant may elect to relinquish this right to appoint one Director during such time period by delivering to the Board written notice of such election.

2.2 Place of Meeting. The Association shall hold meetings at a location that is suitable and convenient to the Members as may be designated by the Board from time to time.

2.3 Annual Meetings. There shall be an annual meeting of the Members on or about the first Thursday of each June at 6:00 p.m. at the Project or at such other reasonable place and time (although not more than sixty (60) calendar days before or after such date) as may be designated by written notice of the Board delivered to the Members and all Eligible Mortgagees, no less than thirty (30) calendar days prior to the date fixed for such meeting.

At or prior to such annual meeting, the Board shall furnish, or cause to be furnished, to each Owner for their review: (i) a copy of the proposed Annual Budget for the new fiscal year, and the estimated allocation of such proposed Annual Budget to each Owner; and (ii) a statement of the Common Expenses, and an itemization of receipts and disbursements for the previous and new fiscal year, together with the allocation thereof to each Owner; and (iii) a copy of any documents related to any matters described in the annual meeting notice as matters to be discussed and/or approved at such meeting (for example, and without limitation, Association contracts or agreements).

At the annual meeting, there shall be presented a review of the Common Expenses, itemizing receipts and disbursements for the preceding fiscal year, and the allocation thereof to each Members, the estimated Common Expenses for the new fiscal year, and a final proposed Annual Budget based upon such estimated Common Expenses.

Within ten (10) business days after the annual meeting, a copy of the proposed Annual Budget shall be delivered to any Members who were not present at the annual meeting.

2.4 Special Meetings. Special meetings of the Members may be called at any time for the purpose of considering matters which require the approval of all or some of the Members, or for any other reasonable purpose. Such meetings may be called by written notice of the President of the Association upon the decision of the President, or pursuant to a written request signed by a majority of the Board, or by written request by Members cumulatively holding at least thirty-three percent (33%) of the total Percentage Interest, which notice shall be delivered according to Section 2.5 below. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

2.5 Notice of Meetings. The Board may provide Members notice of each meeting either via U.S. mail or via certain electronic methods as specifically set forth under this Section 2.5.

2.5.1 Contents of Notice. Each notice shall include the following information: (a) The place, day and hour of the meeting; (b) A description of any matter or matters that must be approved by the Members at such meeting; and (c) In the case of a special meeting, the purpose of such meeting.

2.5.2 Mailed Notice. If notice of any meeting is delivered via mail, such notice shall be mailed via United States Postal Service, postage prepaid for first-class delivery, no later than thirty (30) calendar days, but no more than sixty (60) calendar days, prior to such meeting to each Member entitled to vote at such meeting. Such mailed notice shall be deemed as delivered when deposited in the U.S. mail addressed to the Member at the Member's registered address, with first-class postage thereon prepaid. Each Member shall register with the Association such Member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a Member's Dwelling address shall be deemed to be that Member's registered address for purposes of notice in this Subsection 2.5.2.

2.5.3 Electronic Notice. Notice of any meeting may be delivered to Members via email or the Association's website. However, any Member may, by written demand, require that the Association provide notice to such Member via U.S. mail only.

2.6 Members of Record. Upon purchasing a Dwelling in the Project, each Member shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Dwelling has been vested in such Member, which copy shall be maintained in the records of the Association. For the purpose of determining Members entitled to receive notice of, or to vote at, any meeting of the Members, the Board may designate a record date, which shall be no later than thirty (30) calendar days, nor more than sixty (60) calendar days, prior to the meeting for determining Members entitled to receive notice of, or to vote at, the meeting. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed as the record date for determining Members entitled to receive notice of, or to vote at, the meeting. The persons or entities appearing in the records of the Association on such record date as the Members of record of Dwellings in the Project shall be deemed to be the Members of record entitled to receive notice of, and vote at, the meeting of the Members.

2.7 Voting Rights. The total voting power of all Members shall be equal to the total number of any Dwellings in the Project that (a) are owned by an Owner other than the Declarant, or (b) have been completed as evidenced by the County's issuance of a Certificate of Occupancy and have been made subject to the terms and conditions of this Declaration. The total "voting right" available to the Member of any one Dwelling shall be equal to the Percentage Interest for that Dwelling. The Board shall be entitled to cast a vote on behalf of any Dwelling which has been acquired by or on behalf of the Association. Any such vote must be cast on behalf of the Dwelling consistent with a majority vote of the Board. The Board shall not be entitled to cast a vote on behalf of any Dwelling which has been acquired by or on behalf of the Association with regard to any election of any Director.

2.8 Proxies, Absentee Ballots and Rights of Mortgagees.

2.8.1 Proxies. Any vote may be cast by proxy. A proxy given by an Member to any person who represents the Member at meetings of the Association shall be in writing, dated and signed by such Member and shall be filed with the Secretary no less than three (3) calendar days prior to the meeting at which such proxy is intended to be utilized. No proxy shall be valid after the meeting for which it was solicited (but a proxy shall be valid for any vote regarding adjournment of the meeting for which it was solicited), unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution. No proxy shall be valid if it purports to be revocable without notice. A Member may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association, or to the Board if a vote is being conducted by written ballot in lieu of a meeting pursuant to Section 2.15 below. Every proxy shall automatically cease upon sale of the Dwelling. A proxy must be for the entire voting right of a Dwelling with no divisions accepted.

2.8.2 Absentee Ballots. Any vote may be cast by absentee ballot.

2.8.3 Mortgage Rights. Any Owner may pledge or assign that Owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative shall be entitled to receive all notices to which the Owner is entitled hereunder and to exercise the Owner's voting rights from and after the time that the Mortgagee shall have given written notice of the pledge or assignment to the Board. Any first Mortgagee may designate a representative to attend all or any meetings of the Association.

2.9 Fiduciaries and Joint Owners.

(a) Fiduciaries. An executor, administrator, guardian, or trustee may vote in-person or by proxy or by absentee ballot at any meeting of the Association with respect to any Dwelling owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided that the person shall satisfy the Secretary that he or she is the executor, administrator, guardian, or trustee holding the Dwelling in such capacity.

(b) Joint Owners. Whenever any Dwelling is owned by two or more persons jointly, according to the records of the Association, the vote of the Dwelling may be exercised by any one of the Owners then present, in the absence of protest by a co-owner. In the event of a protest, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Dwelling shall be disregarded completely in determining the proportion of votes given with respect to the matter.

2.10 Quorum of Members.

(a) At any regular annual meeting of the Association, the Members that are represented for any purpose at the annual meeting shall constitute a quorum. For any other meeting of the Association, including special meetings or action taken without a meeting, Members cumulatively holding at least fifty percent (50%) of the total Percentage Interest of the Association's voting rights, whether present in-person or by proxy or by absentee ballot, shall constitute a quorum.

(b) The subsequent ratification by a Member of the action taken at a meeting shall constitute the presence of that person for the purpose of determining a quorum. Once a quorum is present to organize a meeting it cannot be broken by the subsequent withdrawal of a Member or Members.

(c) Unless otherwise provided or prohibited under any provision of the Acts, the Declaration or these Bylaws, if any meeting of Members (including the regular annual meeting) cannot be organized or conducted due to a lack of quorum, the Members who are present, either in-person or by proxy (but not by absentee ballot), may reconvene the meeting no sooner than thirty (30) minutes from the time of the originally scheduled meeting and the quorum requirement at such adjourned meeting shall be one-half (1/2) of the quorum requirement of the original meeting.

The provisions of this Subsection 2.10(c) shall not supersede any vote or decision that requires the approval or disapproval of a "Majority of the Owners" as set forth under the Governing Documents. In other words, if the Declaration provides that a particular matter requires the approval of a "Majority of the Owners", that matter must be approved by Owners holding at least Fifty Percent (50%) of the total Percentage Interest; such matter cannot be approved merely by a majority of the Owners who attend a particular meeting, even if a "quorum" has been established to organize or conduct that meeting.

2.11 Binding Vote. The vote of the holders of more than fifty percent (50%) of the total Percentage Interest of voting rights present (whether in-person, by proxy, or by absentee ballot) at a meeting at which a quorum is constituted shall be binding upon all Members for all purposes except where a higher percentage vote or a higher number of votes is required by law, the Declaration, or these Bylaws.

2.12 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, form of proxies and the method of ascertaining Members present shall be deemed waived if no objection is made either at the meeting or within thirty (30) calendar days following the date of the meeting.

2.13 Order of Business. The order of business at annual meetings of the Association shall be according to the order established by the President, and by way of example, may include the following: (a) Calling of the roll and certifying of proxies; (b) Proof of notice of meeting or waiver of notice; (c) Reading of minutes of preceding meeting; (d) Reports of officers; (e) Reports of committees, if any; (f) Election of any Director(s); (g) Unfinished business; (h) New business; and (i) Adjournment.

2.14 Meeting Procedure. Meetings shall be conducted according to appropriate parliamentary procedure pursuant to rules of order as adopted by a resolution that has been approved by a majority vote of the Board. When a dispute arises as to conduct of meetings of Members, the Association agrees to follow rules of order as established in the latest edition of “Robert’s Rules of Order.”

2.15 Action by Written Ballot in Lieu of a Meeting.

2.15.1 Action by Written Ballot. At the discretion of the Board, any action, except removal of Directors, that may be taken at any annual, regular or special meeting of the Association, may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter no later than thirty (30) calendar days prior to the date on which the ballots must be received by the Association in order to be counted.

2.15.2 Form and Effect of Ballot. The written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action. Any Member who has the right to vote at an annual meeting, but cannot personally attend such meeting, shall be permitted to submit his or her vote via facsimile or a scanned and emailed copy of that Member’s ballot. Once a written ballot has been submitted (whether in-person or via facsimile or scanned and emailed ballot) such ballot may not be revoked or withdrawn.

2.15.3 Information Required in Ballot Solicitations. All solicitations for votes by written ballot must:

- (1) State the number of responses needed to meet any applicable quorum requirements and the total percentage of votes needed for approval.
- (2) Specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of the following unless the vote is pursuant to the secrecy procedure described in Subsection 2.15.4: (a) The date on which the Association has received a sufficient number of approving ballots to pass the proposal; (b) The date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage; or (c) A date certain on which all ballots must be returned to be counted.

2.15.4 Secrecy Procedure. The Board may elect to conduct a vote pursuant to this Subsection by a secrecy procedure whereby a written ballot is accompanied by: (1) A secrecy envelope; (2) A return identification envelope to be signed by the Member; and (3) Instructions for marking and returning the ballot.

2.15.5 Determination of Vote. The outcome of a vote by written ballot in lieu of a meeting shall be determined by the Board within seventy-two (72) hours of the deadline for the return of ballots, or in the event the ballot return date is postponed, within forty-eight (48) hours of the postponed date. Matters that may be voted on by written ballot shall be deemed approved or rejected as follows:

- (1) If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed as approved when the date for return of ballots has passed, a quorum of Members has voted and the required percentage of approving votes has been received. Otherwise the proposal shall be deemed as rejected.
- (2) If approval of a proposed action otherwise would require a meeting at which a specified percentage of Members must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to be rejected when the votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and such required percentage has not been met.
- (3) Except as provided in Subsection 2.15.5(4), votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.
- (4) Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

2.15.6 Member Notification of Ballot Results. The Board shall notify each Member no later than fifteen (15) calendar days after the ballots have been counted, by mail, e-mail or via the Association's website, of the results of the ballot meeting, or that a quorum of ballots was not returned (if a quorum was in fact required).

ARTICLE 3 BOARD OF DIRECTORS – SELECTION, TERM OF OFFICE

3.1 Declarant Appointment and Removal. During the entire Period of Declarant's Control the Declarant shall be entitled to appoint each and every Director. During the entire Period of Declarant's Control, the Directors appointed by the Declarant may or may not be Owners. During such Period of Declarant's Control the Declarant may, in the Declarant's sole discretion, voluntarily choose to appoint an Owner to one (1) Director position on the Board, or may voluntarily allow the Owners to elect an Owner to fill such position on the Board.

During the period of time that begins on the date the Period of Declarant's Control has expired, and continuing until the date the Class "B" Membership has terminated, the Declarant shall be entitled to appoint one (1) Director who may or may not be an Owner. During such period of time the Declarant may voluntarily choose to appoint an Owner to such Director position, or may voluntarily allow the Owners to elect an Owner to fill such position on the Board.

Any Director position that is or may be filled by the Declarant, regardless of whether or not that Director is an Owner and regardless of whether or not Declarant elected or appointed such Director, shall serve at the pleasure of the Declarant and may therefore be removed from the Board by a unilateral decision of the Declarant at any time, with or without cause.

3.2 Number and Qualifications.

(a) During the entire Period of Declarant's Control, the affairs of the Association shall be governed by a Board of Directors composed of three (3) Directors or five (5) Directors. During the entire Period of Declarant's Control, the Declarant shall determine the total number of Directors that serve on the Board. The term of office for each Director may be one (1) or two (2) calendar years, and the expiration of such terms may, to the extent practical or possible, be offset or staggered such that the normal number of vacancies in any given calendar year will not be a majority of the positions on the Board.

(b) Except for any Director who was appointed to the Board by the Declarant, beginning with the first election that occurs after every Dwelling within the entire Project has been conveyed to an Owner other than the Declarant, each Director that is elected to the Board must be an Owner or the co-Owner of a Dwelling. However, at no time may multiple Owners of the same Dwelling simultaneously serve as Directors. An officer or employee of a corporation, a partner of a partnership, a trustee of a trust, a personal representative of an estate or an employee of a trust or estate, may serve on the Board if the corporation, partnership, trust or estate owns a Dwelling.

(c) After the Period of Declarant's Control has expired or terminated: (i) the affairs of the Association must be governed by a Board of Directors composed of five (5) Directors, (ii) with the exception of any Director that was appointed by the Declarant and that continues to serve on the Board while the Class "B" Membership continues, any other Directors must be Owners, and (iii) at least two (2) Directors must be Townhome Lot Owners and at least two (2) Directors must be Single Family Home Lot Owners.

(d) After the Class "B" Membership has expired or terminated, all Directors must be Owners.

3.3 Removal of Board Members.

(a) As set forth under Section 3.1, during the entire Period of Declarant's Control the Declarant shall be entitled to unilaterally appoint and remove each and every Director. Accordingly, only the Declarant may remove any Director who was appointed to the Board by the Declarant.

(b) At any annual or special meeting, other than a meeting by written ballot conducted pursuant to Section 2.15, any Director, other than any Declarant appointee, may be removed, with or without cause, by Owners holding more than fifty percent (50%) of the total Percentage Interest who are present, whether in-person or by proxy or by absentee ballot, at a duly constituted meeting at which a quorum is present. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Director whose removal has been proposed by the Owners may be given an opportunity to be heard at the meeting.

(c) The Board may remove any Director, other than any Declarant appointee, for cause by the vote of a majority of all Directors then in office. Reasons for removal for cause may include: delinquency in Assessment payments for sixty (60) calendar days or more; suing, or being sued by the Association or the Board or any Director or Member of the Association; and absence from three (3) consecutive regular meetings of the Board. The vacancy shall be filled as provided in Section 3.3 of these Bylaws.

3.4 Vacancies. Any Board vacancy caused by the removal or resignation of any Director who was appointed by the Declarant shall only be filled by an appointee of the Declarant.

Any Board vacancy caused by the Board's decision to remove a Director, or caused by the resignation of a Director who was not appointed by the Declarant, shall be filled for the balance of the term of such Board vacancy by the affirmative vote of a simple majority of the remaining Directors even though they may constitute less than a quorum. If the remaining Directors are unable to achieve a simple majority to fill the Board, that vacancy shall be filled by a vote of the Owners pursuant to the Association's process for electing Directors.

Any Board vacancy caused by the removal of a Director by a vote of the Owners shall be filled by a vote of the Owners pursuant to the Association's process for electing Directors.

No later than thirty (30) days following the expiration of the Period of Declarant's Control, the Owners shall hold an election in order to replace any positions on the Board that the Declarant is no longer entitled to fill.

No later than thirty (30) days following termination of the Class "B" membership, the Owners shall hold an election in order to replace the position on the Board that the Declarant is no longer entitled to fill.

Any person appointed or elected to fill a mid-term vacancy of the Board shall complete the remaining term of the vacated Board position.

3.5 Compensation. No Director shall receive compensation for any service he or she may render to the Association. However, any Director may be reimbursed for reasonable actual expenses incurred in the performance of his or her duties.

3.6 Action Taken Without A Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take a regular or special meeting by obtaining the written approval of all the Directors in accordance with Utah Code Section 16-6a-813, as may be amended from time to time. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

ARTICLE 4 APPOINTMENT, NOMINATION AND ELECTION OF DIRECTORS

4.1 Expiration of Period of Declarant's Control. The provisions of this Article 4 shall apply only after the Period of Declarant's Control has expired.

4.2 Nomination.

(a) Method of Nominations. Nomination for election to the Board may be made by a Nominating Committee. Prospective Directors must be nominated from among the Owners. Any such prospective Director must provide the Nominating Committee notice of his or her intent to run no later than five (5) calendar days prior to the meeting in which elections will occur. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies.

(b) Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board; and two (2) or more Members of the Association.

4.3 Election. At the election for Directors, the Owners or their proxies shall cast one (1) vote towards the entire list of Director nominees. If just one Director position must be filled, the nominated Owner receiving the largest amount of votes (with each Owner's vote being given the same weight as that Owner's Percentage Interest) shall be elected. If two (or more) Director positions must be filled, then the two (or more) nominees receiving the largest amount of votes shall be elected. The results of each Director election shall be posted at the Association's clubhouse and on the Association's website.

Directors may be elected by mail-in ballot (in lieu of a meeting of the Owners). Mail-in ballots must be sent to all Owners entitled to participate in the election. Provided a ballot has been mailed to all such Owners entitled to vote, the properly completed ballots that are received by the Association shall be sufficient to determine the outcome of the election.

4.4 Class "B" Membership Following Period of Declarant's Control. During the period of time that begins on the date the Period of Declarant's Control has expired, and continuing until the date the Class "B" membership has terminated, the nomination and election procedures set forth under this Article 4 shall be subject to the Declarant's right to hold or appoint one (1) position on the Board as required under Section 3.1 of these Bylaws.

ARTICLE 5
MEETINGS OF THE BOARD OF DIRECTORS

5.1 Organizational Meeting.

(a) Location, Date and Time. The first meeting of a newly-elected Board shall be held within fourteen (14) calendar days of election at such place, date and time as shall be fixed by the Directors at the meeting at which the Directors were elected. Notice of such first meeting shall be given to each member of the newly-elected Board.

(b) Procedure and Business. Until the election of new officers, the meeting shall be chaired by the outgoing President, or in the absence of such person, the outgoing Secretary, regardless of whether the outgoing President or Secretary is as member of the newly constituted Board. At the organizational meeting, the Board shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

5.2 Regular Meetings. Regular meetings of the Board shall be held no less than four (4) times during each fiscal year, with each such meeting being held no less than once each quarter, at such place and hour as may be fixed from time to time by resolution of the Board. Should the Board meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, or at another date and time agreed upon by the Board with notice to all Directors.

5.3 Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) calendar days notice to each Director by mail, including electronic mail if approved by the Board, telephone, or facsimile. The notice must state the time, place, and purpose of the meeting.

5.4 Meeting Procedure.

(a) Meetings of the Board shall be conducted by the President.

(b) A decision of the Board is deemed valid without regard to any procedural errors related to the rules of order unless the error is reflected in the meeting minutes or appears on the face of the Board resolution (if any) memorializing the Board's decision.

5.5 Open Meetings; Executive Sessions.

(a) Open Meetings. Except as provided in Subsection (b) of this Section 5.5, all meetings of the Board shall be open to Owners. An Owner may participate in discussions regarding a particular matter on the Board's agenda during the portion of the meeting designated for such discussion. The Board shall have the authority to exclude from a Board meeting any Owner who disrupts the proceedings of the meeting.

(b) Executive Sessions. In the discretion of the Board, the following matters may be considered in executive session: (1) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters; (2) Personnel matters, including salary negotiations and employee discipline; (3) The negotiation of contracts with third parties; (4) Collection of unpaid Assessments; and (5) Other matters of a sensitive, private, or privileged nature.

(c) Executive Session Procedure. Except in the case of an emergency, the Board shall vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the President or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to Owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

5.6 Meetings by Telephonic or Electronic Communication. In the event of an emergency, or by decision of the Board, meetings of the Board may be conducted by communication or by the use of a means of communication that allows all Directors participating to hear each other simultaneously or otherwise to be able to communicate during the meeting.

5.7 Waiver of Notice. Any Director may, at anytime, waive notice of any meeting of the Board in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice by the Director, except where the Director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all Directors are present at any meeting of the Board, no notice to Directors shall be required and any business may be transacted at the meeting.

This Section 5.7 is intended to be consistent with the requirements of Section 16-6a-815 of the Utah Nonprofit Corporation Act. In the event Section 16-6a-815, as may be periodically amended, provides “waiver of notice” requirements that in any way differ from those contained in this Section 5.7, then the requirements of Section 16-6a-815 shall control.

5.8 Quorum and Acts. At all meetings of the Board a majority of the existing Directors shall constitute a quorum for the transaction of business and the acts of the majority of the Directors present shall be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. Any unfinished business upon such adjournment of a Board meeting may only be transacted at a subsequent regular or special meeting of the Board that has been properly held by giving notice and conducting such meeting as required by these Bylaws.

ARTICLE 6 POWERS, RIGHTS, AND DUTIES OF THE BOARD

6.1 General Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, the Declaration or by these Bylaws directed to be exercised and done by the Owners.

6.2 Specific Powers. In addition to powers authorized by the Declaration, these Bylaws or by resolution of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, and subject to Section 6.3 of these Bylaws, the Board shall have the power to:

(a) Adopt and publish rules and regulations governing the use of Common Areas, including any improvements, facilities and amenities located thereon, and the personal conduct of the Owners and their tenants or guests thereon, and to establish penalties for the infraction thereof.

(b) Suspend the voting rights and right to use of any recreational facilities located on any Common Area by any Owner member during any period in which such Owner shall be in default in the payment of any Assessment levied by the Association.

(c) Engage the services of a manager or managing company, accountants, attorneys or other professionals, employees or agents and to pay to said persons a reasonable compensation therefore.

(d) Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board.

(e) Supervise all officers, agents, managers and employees of the Association, and to see that their duties are properly performed.

(f) Operate, maintain, repair, improve and replace the Common Areas.

(g) Determine and pay the Common Expenses.

(h) Assess and collect the proportionate share of Common Expenses from the Owners.

(i) Enter into contracts, deeds, leases or other written instruments or document for and in behalf of the Association and to authorize the execution and delivery thereof by the appropriate officers.

(j) Open bank accounts on behalf of the Association and designate the signatures for such bank accounts pursuant to a resolution adopted by the Board.

(k) Purchase, hold, sell, convey, mortgage or lease any interest in real property for and in behalf of the Association subject to the restrictions, limitations and provisions of the Declaration, so long as the Board has obtained the prior written approval of at least two-thirds (2/3) of the first Mortgagees.

(l) Bring, prosecute and settle litigation for itself, the Association and Project, provided it shall make no settlement which results in a liability against the Board, the Association, or the Project in excess of \$5,000 without prior written approval of a Majority of the Owners.

(m) Obtain insurance for the Association with respect to the Dwellings and the Common Areas and Common Improvements, as well as Worker's Compensation Insurance.

(n) Repair or restore the Project (or any portion of the Project) following damage or destruction, or a permanent taking by the power of, or power in the nature of, eminent domain or by an action or deed in lieu of condemnation, not resulting in the removal of the Project from the provisions of the Acts.

(o) Purchase or lease, and sell or otherwise acquire or dispose of, on behalf of the Association, items of personal property necessary to convenient in management of the business and affairs of the Association and the Board and in the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

(p) Keep adequate books and financial records so that the Board can reasonably and regularly assess the financial status and strength of the Project. Such books and records may include, by example and without limitation, financial reports normally presented by the Manager to the Board, such as budget-to-actual reports for each fiscal quarter, quarterly reports of Owners who are delinquent in their payment of Assessments or any Additional Charges, fiscal quarterly and fiscal annual statements of Association's bank account balances, Association reserves reports, and Special Assessment reports (as applicable), and any other relevant financial reports.

(q) Borrow funds and enter into promissory notes, provided that any such action has been approved in writing by a Majority of the Owners.

(r) Sell portions of the Common Areas, provided that any such action has been approved in writing by at least seventy-five percent (75%) of the Owners.

(s) Maintain a corporate seal.

(t) Approve and sign checks and issue payment vouchers.

(u) Pay off or otherwise satisfy any liens against any portion of the Project.

(v) Do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Dwelling if the same is necessary to protect or preserve the Project.

6.3 Requirements Regarding Association Contracts.

(a) Minimum Required Bids. The Board shall not execute any contract or agreement on behalf of the Association (i) for any goods or services that exceed \$5,000 or (ii) that has a term of more than one year, unless the Board has first made a reasonable attempt to obtain at least two (2) bids from vendors or contractors qualified to provide such goods or services. The requirements of this Subsection 6.3(a) shall not apply (A) if the Board is unable to identify or locate more than one (1) such qualified vendor or contractor that is able or willing to provide the goods or services being sought; or (B) in the event of emergency maintenance or repairs as described under Subsection 6.3(c) below.

(b) Minimum Required Signatures. No member of the Board of Directors (including the President or Vice-President) may unilaterally obligate or bind the Board or the Association regarding the acknowledgement of, performance of, or payment under any contract, agreement or any other document whatsoever. Any such contract, agreement or document must be signed by at least two (2) members of the Board of Directors.

(c) Emergency Maintenance or Repairs. The Manager is prohibited from signing any contract, agreement or other document whatsoever on behalf of the Board or the Association. However, the language of this Subsection 6.3(c) shall not prevent the Manager from performing emergency maintenance or repairs, or from engaging or retaining the maintenance or repair services of any third party, as deemed necessary by the Manager in order to prevent or mitigate any harm or injury to any portion of the Project, any Owners, any tenant, guest or other occupant of any Dwelling, or any other individuals or property that may be located on the Project.

(d) Period of Declarant's Control. The provisions of this Section 6.3 shall not apply during the Period of Declarant's Control.

6.4 Right of Declarant to Disapprove Actions. So long as the Class B Memberships exist, the Declarant shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole and exclusive judgement judgment of the Declarant, would tend to impair rights of the Declarant under the Governing Documents, or interfere with development, construction of any portion of the Project, or diminish the level of services being provided by the Association. No such action, policy or program shall become effective or be implemented unless and until:

- (a) The Declarant has been given written notice of all meetings and proposed actions approved at meetings of the Association, the Board or any committee thereof by certified mail (return receipt requested), or by personal delivery at the address it has registered with the Association, as such address may change from time to time, which notice shall, except in the case of the regular meeting held pursuant to the Governing Documents, set forth in reasonable particularity the agenda to be followed at said meeting; and
- (b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion. The Declarant, its representatives or agents shall make their concerns, thoughts and suggestions known to the Board and/or the members of the subject committee. The Declarant shall have and is hereby granted an exclusive right to disapprove any such action, policy, or program authorized by the Association, the Board or any committee thereof, if the Board's, the committee's or the Association's approval is necessary for such action. This right may be exercised by the Declarant, its successors, assigns, representatives or agents at any time within ten (10) days following the meeting held pursuant to the applicable terms and conditions of the Governing Documents. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulation.

ARTICLE 7
OFFICERS AND THEIR DUTIES

7.1 Designation and Qualification.

(a) Designation. The officers of the Association shall include a President, Secretary and a Treasurer. The Board members may also designate the office of Vice-President, Assistant Treasurer and Assistant Secretary.

(b) Qualifications. The President, Vice-President (if any), Secretary and Treasurer shall each be a member of the Board, but the other officers need not be Board members. Any Board member may be an officer of the Association.

(c) Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices specified in Subsection 7.1(a).

(d) Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

7.2 Election and Vacancies.

(a) Generally. The officers of the Association shall be elected from the Board, and shall be elected by the Board at the organizational meeting of each new Board held in accordance with Section 5.1 or at any Board meeting thereafter, to serve until their respective successors are elected at the next organizational meeting. If any office becomes vacant by reason of death, resignation, removal, disqualification or any other cause, the Board shall elect a successor to fill the unexpired term at any meeting of the Board.

(b) Period of Declarant's Control. During the entire Period of Declarant's Control, the Declarant shall name, appoint and/or remove any and all officers of the Association. Such officers must be named or appointed from the Directors that have been appointed to the Board by the Declarant.

(c) Class "B" Membership Following Period of Declarant's Control. During the period of time that begins on the date the Period of Declarant's Control has expired, and continuing until the date the Class "B" membership has terminated, the Declarant shall not have the right to name, appoint and/or remove any officers of the Association. During that period of time, however, the Director who was appointed to the Board by the Declarant pursuant to Section 3.1 may be elected to an officer position pursuant to an election of the members of the Board.

7.3 Resignation. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

7.4 Removal of Officers. Officers shall hold office at the pleasure of the Board. Upon an affirmative vote of a majority of the members of the Board any officer may be removed from the Board, either with or without cause. However, as set forth under Section 3.1, during the entire Period of Declarant's Control the Declarant shall be entitled to unilaterally appoint and remove some or all members of the Board as provided herein. Accordingly, the Declarant may veto any vote of the Board to remove any officer of any other Director from the Board.

7.5 Compensation of Officers. No officer who is a member of the Board may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a vote of a Majority of the Owners. The Board may fix any compensation to be paid to any officers who are not also Board members.

7.6 Duties of Officers. The duties of the officers are as follows:

(a) President. The President shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties which are usually vested in the office of President of an association.

(b) Vice-President. The Vice-President (if any) shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

(c) Secretary. The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association, have charge of such books and papers as the Board may direct, and in general, perform all of the duties normally incident to the office of Secretary.

(d) Treasurer. The Treasurer shall have responsibility for the Association's funds and securities not otherwise held by the Manager, and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The Treasurer shall be responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board and disbursing funds as directed by resolution of the Board.

ARTICLE 8 INDEMNIFICATION OF OFFICERS AND BOARD MEMBERS

Each officer and Director of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by law against expenses and liabilities reasonably incurred by him or her in connection with the defense of any action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Director or officer of the Association. The foregoing right to indemnification shall be exclusive of any other rights to which the Director or officer or person may be entitled by law or agreement or vote of the members or otherwise.

ARTICLE 9
RECORDS AND AUDITS

The Association shall maintain within the State of Utah, all documents, information and other records of the Association in accordance with the Declaration, these Bylaws and the Utah Revised Nonprofit Corporation Act in the manner prescribed by a resolution adopted by the Board.

9.1 General Records.

(a) The Board or Manager, if any, shall keep records of the actions of the Board and Manager; minutes of the meetings of the Board; and minutes of the meeting of the Association.

(b) The Board or Manager, if any, shall maintain records containing the rules, regulations, and policies adopted by the Association and Board.

(c) The Board or Manager, if any, shall maintain a list of Owners. The list of Owners may specify whether or not the Owner is an Owner in good standing.

(d) The Association shall retain within the State of Utah all records of the Association for not less than the period of time specified and required under applicable law.

9.2 Records of Receipts and Expenditures. The Board or Manager, if any, shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Project, itemizing the maintenance and repair expenses of the Common Areas or Association property and any other expenses incurred.

9.3 Assessment Roll. The Assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Dwelling. The account shall designate the Dwelling number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

9.4 Financial Reports and Audits.

(a) An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to all Owners and to all Mortgagees of Dwellings who have requested the same in writing no later than ninety (90) calendar days following the end of each fiscal year.

(b) No less than once every three (3) fiscal years, the Board shall, at the expense of the Association, obtain an audit or other financial review of the Association's books and records, and shall either cause a copy of the results of such audit or other financial review to be available for review by the Owners, or shall post the results of such audit or other financial review on the Association's website. The Board may not conduct the audit or other financial review itself, and must retain the services of a qualified independent financial entity.

9.5 Inspection of Records by Owners.

(a) Except as otherwise provided in Section 9.6 below, all records of the Association shall be reasonably available for examination by an Owner and any Mortgagee of a Dwelling pursuant to rules adopted by resolution of the Board or if no such resolution has been adopted, pursuant to the Utah Revised Nonprofit Corporation Act.

(b) The Board shall maintain a copy, suitable for the purposes of duplication, of the following: (1) the Declaration, Bylaws and any amendments in effect or supplements thereto, and Rules and Regulations of the Association; (2) the most recent financial statement prepared pursuant to Section 9.4; and (3) the current Annual Budget of the Association.

(c) The Association, within five (5) business days after receipt of a written request by an Owner, shall furnish the requested information required to be maintained under Subsection 9.5(b), subject to a reasonable fee for furnishing copies of any documents, information or records described in this Section 9.5. The fee may include reasonable personnel costs incurred to furnish the information.

(d) The Board, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this Section 9.5. The fee may include reasonable personnel costs incurred to furnish the information.

9.6 Records Not Subject to Inspection. Records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the records concern:

(a) Personnel matters relating to a specific identified person or a person's medical records.

(b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.

(c) Communications with legal counsel that relate to matters specified in Subsections (a) and (b) of this Section 9.6, and any other communications with legal counsel that are protected by any privilege, including the attorney client privilege.

(d) Disclosure of information in violation of law.

(e) Documents, correspondence or management or Board reports compiled for or on behalf of the Association or the Board by its agents or committees for consideration by the Board in executive session held in accordance with these Bylaws.

(f) Documents, correspondence or other matters considered by the Board in executive session held in accordance with these Bylaws.

(g) Files of individual Owners, other than those of a requesting Owner or requesting Mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association.

9.7 Notice of Sale or Mortgage. Immediately upon the sale or Mortgage of any Dwelling, the Owner shall promptly inform the Secretary or Manager of the name and address of the purchaser, vendee or Mortgagee.

ARTICLE 10 AMENDMENTS

10.1 Adoption. During the entire Period of Declarant's Control, the Declarant may unilaterally amend these Bylaws. After the Period of Declarant's Control has expired or terminated, amendments to these Bylaws may be approved by the Association at a duly constituted meeting or via meeting by written ballot conducted pursuant to these Bylaws. Approval by at least sixty-seven percent (67%) of the total Percentage Interest of those votes that are actually cast is required for any amendment to be adopted. The approval of sixty-seven percent (67%) of the total Percentage Interest of all Owners shall be required for any amendment or change to the material provisions of the Bylaws pertaining to voting rights. No amendment to these Bylaws may remove, revoke, or modify any right or privilege of Declarant without the prior written consent of Declarant or the assignee of such right or privilege.

10.2 Execution and Recording. An amendment shall not be effective until certified by the President and Secretary of the Association as being adopted in accordance with these Bylaws, acknowledged and recorded with the Recorder's Office.

10.3 Challenge to Validity. No action to challenge the validity of an adopted amendment may be brought more than one (1) calendar year after the amendment is recorded.

ARTICLE 11 MISCELLANEOUS

11.1 Notices.

(a) Association. All notices to the Association or the Board shall be delivered as set forth under Section 27.2 of the Declaration.

(b) Owners. All notices to the Owners shall be delivered as set forth under Section 27.3 of the Declaration.

11.2 Waiver, Precedent and Estoppel. No restriction, condition, obligation, or provision contained in these Bylaws or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association as to any similar matter.

11.3 Invalidity; Number; Captions. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used herein, the singular shall include the plural and the plural the singular. 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 these Bylaws.

11.4 Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

11.5 Adoption of Bylaws. These Bylaws have been created for the Association by the Declarant and will be formally adopted by the Board of Directors on behalf of the Association at the Board's organizational meeting.